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Microfinancing from the Zakat Fund in Baitulmal Aceh and the Readiness of Malaysia's Asnaf Entreprenuers

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Abstract: The recent Covid-19 pandemic has swept the globe. As a result, there has been a spike in the number of relative poor who are experiencing economic hardships. This poses a predicament for the unbankable, reducing their options to apply for funding via banking products. With the available financial capacity, zakat institutions are viewed as the closest alternative in terms of being a source of funding, either through the microfinacing method or the gard hasan principle. Zakat is considered capable of becoming a social entrepreneurial system and a worthy alternative. The question is whether Islam permits microfinancing using zakat funds. If permitted, what is the rationale for distributing zakat through microfinance? Are there asnaf entreprenuers in Malaysia ready to take microfinance from the zakat fund to finance their businesses? This study is done using the case study method by conducting a semi-structured interview with zakat expertise and asnaf entreprenuers. Based on the content analysis, the findings of the study indicate that Islam permits microfinance using zakat funds. Asnaf entreprenuers are likewise eager to acquire microfinance from zakat money in order to strengthen their economic position and develop in life. This microfinancing is expected to have a good effect, particularly on the rising demand for asnaf entreprenuers. So, it is expected that asnaf entreprenuers will be able to switch from being a zakat recipient to a zakat payer within a certain amount of time. This will increase the amount of zakat and decrease the number of poor people. Even the poor's economy can be stimulated without usury (riba).

Keywords: Microfinance, zakat fund, Baitul Mal Aceh, readiness, asnaf entreprenuers, Malaysia

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Abstrak: Pandemi Covid-19 baru-baru ini telah melanda dunia. Akibatnya, terjadi lonjakan jumlah orang yang relatif miskin yang mengalami kesulitan ekonomi. Hal ini menimbulkan kesulitan bagi mereka yang tidak memiliki rekening bank, sehingga mengurangi pilihan mereka untuk mengajukan permohonan pendanaan melalui produk perbankan. Dengan kapasitas keuangan yang tersedia, lembaga zakat dipandang sebagai alternatif terdekat dalam hal menjadi sumber pendanaan, baik melalui metode pembiayaan mikro maupun prinsip qard hasan. Zakat dianggap mampu menjadi sistem kewirausahaan sosial dan alternatif yang layak. Pertanyaannya adalah apakah Islam membolehkan pembiayaan mikro menggunakan dana zakat. Jika diperbolehkan, apa dasar pemikiran untuk mendistribusikan zakat melalui keuangan mikro? Apakah ada pengusaha asnaf di Malaysia yang siap mengambil pembiayaan mikro dari dana zakat untuk membiayai bisnis mereka? Penelitian ini dilakukan dengan menggunakan metode studi kasus dengan melakukan wawancara semiterstruktur dengan ahli zakat dan pengusaha asnaf. Berdasarkan analisis isi, temuan penelitian menunjukkan bahwa Islam mengizinkan pembiayaan mikro menggunakan dana zakat. Pengusaha asnaf juga ingin memperoleh pembiayaan mikro dari uang zakat untuk memperkuat posisi ekonomi mereka dan berkembang dalam kehidupan. Pembiayaan mikro ini diharapkan dapat memberikan efek yang baik, terutama pada meningkatnya permintaan pengusaha asnaf. Dengan demikian, diharapkan para pengusaha asnaf akan mampu beralih dari penerima zakat menjadi pembayar zakat dalam jangka waktu tertentu. Ini akan meningkatkan jumlah zakat dan mengurangi jumlah orang miskin. Perekonomian orang miskin pun bisa digenjot tanpa riba.

Kata kunci: Keuangan mikro, dana zakat, Baitul Mal Aceh, kesiapan, pengusaha asnaf, Malaysia

Introduction

The zakat is an important institution in an Islamic economic framework for poverty alleviation and economic welfare. But what is more important is that zakat needs to be distributed more sustainably. Sustainable in the distribution of zakat means that the distribution of zakat can be made continuously even if the annual zakat collection amount is affected. To achieve that goal, the distribution of zakat in the form of subsistence is no longer made directly, instead, the distribution is made indirectly through the distribution of productive zakat. In other words, the proceeds from zakat distributed in a productive form will be used to finance their livelihood. With that, zakat recipients within a certain period of

¹ Zahri Hamat. "Kelestarian pengagihan dana zakat di Baitul Mal Aceh." (2010).

time are expected to be able to change their status from zakat recipients to zakat payers.²

One of the methods to realize in the form of productive is the provision of working capital from zakat funds through micro-financing. According to Imam Nawawi, this working capital can be provided in two forms namely; first, working capital can be provided in the form of cash or equipment according to their respective skills. For example, carpentry tools are given to carpenters and business capital is given to merchants or traders. Farmers are given land. Second, the amount of business capital is distributed according to the business field engaged in. Vegetable and fruit traders, for example, are given capital of five to twenty dinars. A perfume dealer for one thousand dinars, a clothes seller for two thousand dinars, a money changer for five thousand dinars and a diamond business for ten thousand.³

Micro finance means financing for petty traders and asnaf entrepreneurs that aim to help the poor change their lives for the better. Baitul Mal Aceh has actually distributed zakat to asnaf entrepreneurs through microfinancing. Hence, this paper will examine about the argument used in distributing zakat through micro financing in Baitul Mal Aceh and the readiness of asnaf entreprenuers in Malaysia to finance their business with microfinancing from the zakat fund. For that, the discussions are divided into three parts. First, the basic ruling (hukm) of microfinancing from the zakat funds. Second, the readiness of Malaysian asnaf entreprenuers to utilise microfinance from the zakat fund to finance their business. Third, the summary of the discussion.

The basic ruling (hukm) of micro financing from the zakat funds

Asnaf entreprenuers who received assistance from Baitul Mal Aceh in the form of business capital were able to overcome poverty. There are even groups of them who have transitioned from mustahik (recipient) to muzakki (payer). Microfinancing is utilised to provide the business with capital. Regarding the legal basis of microfinance from zakat funds in Baitul Mal Aceh, four arguments are presented. First, the argument relies on a linguistic or divine interpretation of the Quran and Hadith. Second, the argument is predicated on the divergent views of

² Ali Muhammad, *Revitalisasi Syariat Islam di Aceh: Problem, Solusi dan Implementasi.* Banda Aceh: IAIN Ar-Raniry. (2003).

³ Nurul Ilyana Muhd Adnan, Muhammad Anas Ibrahim, Mohd 'Adli Zahri. *Agihan Dana Zakat Secara Pembiayaan mikro: Asas dan Mekanisme Pelaksanaannya*. Gadong: UNISSA Press. (2022).

scholars regarding the vocabulary of *li tamlik*. Third, arguments based on *maslahah* requirements The fourth argument is based on zakat's underlying philosophy. In actuality, however, these arguments lead to the same conclusion, that zakat funds can be distributed as microfinancing for the benefit of the poor.

The argument based on a linguistic (*lughawi*) or divine interpretation of the Quran and Hadith

Al-Quran and Hadith can be interpreted verbally or by revelation. This is due to the fact that the Quran contains both terms that make the rule obvious and words that make it unclear (Abdul Karim Zaidan, 1999). *Lughawi* is derived from *lughah*. This arabic word means language (Lisan Arab, 2003). Language-based understanding, or linguistic comprehension, is comprehension based on the apparent meaning of words or phrases. *Illah* also refers to a transparent and consistent nature; by basing the law on this nature, the law's intended purpose can be accomplished. *Illah* is subject to change based on current circumstances. Especially when there are no detailed explanations in the Quran and Hadith (Abdul Karim Zaidan, 1999). Current considerations that can impact the process of zakat distribution include the quantity of zakat collected and the number of individuals involved.

This was highlighted by Al Yasa' Abu Bakar (2012), the Head of the Council of Ulama in Aceh Darussalam.⁴ He said the Quran and Hadith, both can be interpreted linguistically or through *illah*. According to him, when it comes to the distribution of zakat, what matters most is whether it is given directly or through microfinancing, depending on which is more useful. This is his argument:

"Al-Quran and Hadith can be understood linguistically, divinely, and based on *maslahah* considerations; therefore, for me, let's determine which is more troublesome, i.e., which is the most problematic."

On the basis of Al Yasa' Abu Bakar's argument cited previously, the scholars typically argue with surah at-Taubah, verse 60, when addressing the problem of zakat distribution. According to fiqh usul, the verse reveals the general meaning. This is due to the fact that the Quran uses the terms li and the terms fi. Tafsir states that li is lil tamlik. Asnaf that begins with the pronunciation of li must receive zakat in the form of things and nothing else, if viewed from a linguistic perspective. Whereas asnaf that begins with the letter fi can be given in the form of benefits.

⁴ Interview with Prof. Al-Yasa' Abu Bakar, Ketua Dewan 'Ulama Aceh Darussalam at Institut Agama Islam Negeri Al-Raniry, Banda Aceh.

Nonetheless, if it is interpreted in terms of legal cause (*illah*), the objective of zakat will be called into doubt. The obvious response is to assist the asnaf in overcoming their issues. For instance, poverty, debt, disease, etc. No ban exists if aid is given to those in need in order to alleviate their hardships. Not disclose whether the recipient can repay the assistance.

A bankrupt businessman, for instance, came to Baitul Mal seeking a loan rather than assistance. This is due to the competence and capability of the dealer. If adequate cash is provided, the loan can be returned within a year (Al Yasa' Abu Bakar, 2012). In this perspective, it is considered that *illah* forms the basis for micro financing.

According to Al Yasa', it is more beneficial to provide capital in the form of microfinance. Moreover, if the amount of zakat collected is limited while the number of the poor is increasing, then zakat collection is troublesome. Here, the ulama's jurisprudence is based on their understanding of *illah*. Ulama in Baitul Mal Aceh no longer employ linguistic understanding; the situation is now very different compared to the time of the Prophet s.a.w. This is similar to Caliph Umar al-Khattab's practise in which he stopped giving *fay*' land and instead gave only the products. Despite the fact that this action goes against the teachings of the Prophet s.a.w.

So, it is clear here that linguistic understanding is opposed to practice. However, in $maq\bar{a}sid$, the two are not opposed. Only based on term li and term fi, then zakat must be divided, and that is an overly simplistic understanding. An understanding that does not comprehend the state of society, which frequently changes. Therefore, keeping at least a portion of zakat funds for investment and a portion for self-sufficiency is permissible.

Arguments based on opinion disagreements between muslim scholars against *li* tamlik

When a new problem develops without a text in the Quran or a Hadith, the ulama will conduct ijtihad, which is done to decide the law for the situation (Abdul Karim Zaidan, 1999). Ulama must practise ijtihad since microfinance from the zakat fund are a new concept.⁵ Baitul Mal Aceh Besar Head, Armiadi Musa Basyah reaffirms this:

"There is already disagreement among the 'ulama regarding *li tamlik*, which means that zakat is not always to be *tamlik*. That is where microfinancing can come in. If we search the Quran and Sunnah for the basis of Islamic law related to microfinancing that is sourced from zakat

⁵ Interview with Armiadi Musa Basyah, Head of Badan Baitul Mal Aceh Besar at Banda Aceh.

funds, we will not find it. However, this problem can be used as a legal basis. It is a product of ijtihad".

His argument is consistent with the opinion of contemporary scholars. Contemporary scholars such as Yusuf al-Qaradawi (2002) and Mustafa al-Zarqa' (2004) contend that zakat is not necessarily distributed in the form of *akad al-tamlik*, but must be appropriate to current and local circumstances.

Based on Armiadi's (2012) argument, microfinancing from zakt funds belongs to the problem of ijtihadi. It is closely related to social change. This matter is closely related to the culture and interests of the community at a certain time and place. Therefore, *maslahah ammah* (general interest) varies according to the differences in society. This is consistent with the universal nature of Islamic Sharia.

Aside from this, the method of distributing zakat through microfinancing belongs to the category of muamalah for which there is no detailed legal text. For muamalah such as this, Islamic Sharia presents only basic rules, criteria, and general principles that are in accordance with *Maqāṣid Shari'āh* (objectives of Sharia) and that benefit and do not harm humanity.

In addition, if the history of Rasulullah s.a.w is emphasised, the government is responsible for managing zakat affairs. This is supported by modern scholars like Yusuf al-Qardawi (1999). In other words, only the government, with the allocation of powers it possesses, is capable of appropriating the property of others. The government is thereby responsible for ensuring the public's welfare.

Therefore, the government should make *maslahah* the primary basis for distributing zakat to asnaf and determining the amount of funds to be distributed. The government should also consider *maqāṣid shari'āh* when determining the method of zakat distribution.

Maqāṣid shari'āh in terms of language, means the objective of the Sharia or the purpose of the Sharia. In terms of Islamic law, *maqāṣid shari'āh* means the objective of Islamic Law and the secrets placed by Allah s.w.t as the lawmaker for every law (Wahbah al-Zuhayli, 1998).

The distribution of zakat in the form of working capital through microfinancing is classified as *tahsiniyah*, the third-lowest level after *hajiyyah* and *daruriyyah*. All efforts to satisfy the requirements of *tahsiniyyah* result in the law of *mandub*, whereas ignoring the requirements of *tahsiniyyah* results in the law of *makruh*. Therefore, microfinancing is permissible even though the collection of zakat has not yet been able to meet all communities' basic needs (Armiadi Musa Basyah, 2012).

Arguments based on maslahah criteria in Maqāṣid shari'āh:

Former Director of Amil Zakat Board Uthman Ibn 'Affan Aceh Darussalam, Muhammad Yasir Yusuf stated that microfinancing from zakat funds benefits the poor. His argument was as follows⁶:

"Microfinancing from zakat fund satisfies the Al-Syatibi's *maslahah* criteria. With microfinancing from zakat fund, Muslims will no longer be trapped in usury transactions, and the ultimate goal of zakat, the eradication of poverty, will be attained. This is in accordance with the *maqāṣid shari'āh* principle, which is to attract good and repel evil."

Muhammad Yasir Yusuf argues that the distribution of zakat through microfinance does not conflict with the realisation of *maslahah ammah*. The objective of providing a mustahiq with a certain amount of zakat through microfinancing is to allow the mustahiq to work to the greatest extent possible, given the availability of sufficient capital. To alleviate poverty, it is hoped that through microbusinesses, mustahiq will become muzakki in the future. Individual *maslahah* associated with other mustahiq will not be harmed. The mustahiq will return the provided microfinance capital to the zakat institution for redistribution to other zakat recipients.⁷

In his argument, Muhammad Yasir stated that through this microfinancing, Muslims would no longer be subject to usury transactions. This will achieve the purpose of zakat, which is to eradicate poverty. This adheres to the *Maqāṣid Shari'āh* principle of attracting good and repelling evil. This is consistent with certain fiqhiyyah methods:

اذا تعارضت مفسدتان رعى اعظمهما ضررا بارتكاب اخفهما

Meaning: when you are between the devil and the deep blue sea, choose the lesser of two evils.(Al Sayuthi, 1983).

الضرر الأشديزال بالضرر الأخف

Meaning: Severe harm is removed by lesser harm.(al-Zarqa, 1989).

 $^{^6}$ Interview with Muhammad Yasir Yusof, former Director Lembaga Amil Zakāt Uthman Ibn Affan Aceh Darussalam at Banda Aceh.

⁷ However, there are a few points on which classical and contemporary scholars disagree regarding the distribution of zakat (Armiadi Musa Basyah, 2009). For instance, classical scholars believe that zakat must be distributed in the form of akad al-tamlik. Thus, the received zakat property is absolute mustahiq property. Contemporary scholars disagree with this view. According to them, the distribution of zakat need not take the form of an al-tamlik contract. It is adaptable to current requirements and conditions.

يحمتمل الضرر الخاص لدفع الضرر العام

Meaning: Facing private harm is tolerated than facing public harm.(al-Zarqa, 1989).

Based on the three fiqh methods outlined above, it is obvious that rejecting *mafsadah* is obligatory because of its benefits. This tenet exemplifies how Islam prioritises the common good over individual concerns. In the face of significant changes in the social life of the community, this provides essential guidance for making prudent decisions. Especially when neither the Quran nor the Hadith provide explicit explanations.

This will not affect other mustahiq-specific concerns. This is due to the fact that the recipient will return the loan to the zakat institution for redistribution to other mustahiqs. Citing Yusuf al-Qaradawi's opinion from 1993, he said that the process of figuring out mustahiq, which is given priority to get productive zakat, is completely in the hands of amil zakat, which is accepted in Islam.⁸

According to Yusuf al-Qaradawi, he utilised the qiyas method to pay the creditors' debts. According to him, a special fund must be established in order to implement this microfinancing. In addition, he mentioned the opinion of the Islamic Religious Council's previous scholars: such as Abu Zahrah, Abdul Wahab Khallaf and Abdul Rahman Hasan, stated that if zakat can be used to pay debts, it can be used even more to give debts.⁹

Arguments based on the philosophy of zakat

Zakat plays an essential role in ensuring that every member of society can meet his or her basic needs. Zakat can ensure the existence of a stable economic environment while stimulating demand, particularly among low-income groups. With the existence of this zakat mechanism, the economic status of the poor will always be safeguarded, and the wealthy will always be generous and considerate. This will lead to economic and social stability in a direct or indirect way, since no one will feel like they are being pushed around.

⁸ This is also supported by the fiqhiyyah method: يحتمل الضرر الخاص لدفع الضرر العام, which states that if the intention is to prevent harm to the public, it is permissible to cause harm to an individual. Consult Sayuti's writings, Kitab Asybah wan Nadhair, Muassah al kutub al Tahgafiyyah.

⁹ Yusuf al-Qardawi (1999) also cites Muhammad Hamidullah's opinion according to which the Qur'an mentions debtors as a group eligible to receive zakat. The first group is made up of people who are too poor to pay their debts. The second group is made up of people who need debt for themselves or for society.

Ridwan Nurdin, the Head of Distribution at Baitul Mal Aceh, stated that it is permissible to distribute zakat funds through the use of microfinance as there is no reason to prohibit it. He made the following remarks¹⁰:

"... zakat for the poor, regardless of whether it is given in *tamlik* or not, is justified on the basis that it can improve their lives. The purpose of zakat is to alter their character and ability to generate life."

It is understood that the purpose of zakat is to improve the lives of the poor by assisting and transforming their communities. Consequently, zakat recipients who have received productive zakat will seek independence until they no longer depend on zakat. Then, when they are able to be self-sufficient, they are no longer poor. Ridwan Nurdin also added:

"The importance of microfinance from zakat is mostly based on the principle of justice, because it gives the poor an opportunity to obtain the right to work and live in better conditions by giving them the money or schemes they need to do so."

Ridwan Nurdin's argument is consistent with the view of contemporary scholars who evaluate the *maqāṣid* of the obligation of zakat. Ibn Qayyim al-Jauzi (1975) stated, that fatwas change and vary based on location, time, community conditions, intentions, and custom.

Readiness of Asnaf Entreprenuers in Micro-financing

Entreprenuers who identify as asnaf have the potential to be excluded from the asnaf group. Still, people require assistance from zakat institutions, particularly when it comes to obtaining additional funds to expand their businesses.

The findings of the study indicate that the lack of access to additional capital hinders the growth of asnaf entreprenuers. Financial institution loans are extremely difficult to obtain. As a result, the availability of microfinancing from zakat funds will make it simpler for many asnaf entreprenuers to acquire additional capital. This simultaneously prevents incurring usurious financing.

Nine asnaf entreprenuers from Asnaf Entrepreneur Transformation Program (TUAS), were interviewed in depth by researchers. Respondent R1¹¹ expressed the following:

¹⁰ Interview with Ridwan Nurdin (Head of Distribution Department).

¹¹ Interview with responden R1.

"I would greatly appreciate it if LZS provided microfinancing to asnaf entreprenuers because not all of them are successful and some have not yet left the asnaf group."

This is also supported by the statement of respondent $R2^{12}$:

"When LZS provides financing facilities, the existing business will be enhanced."

According to both respondents, microfinancing from LZS will have a positive effect. Asnaf entreprenuers reacted positively to this strategy. In fact, they are willing to accept microfinance financing methods to obtain additional capital for their businesses. In addition, according to respondent R3¹³:

"I would love it if LZS provided microfinance to boost business productivity."

Based on the preceding statement, it is obvious that the distribution of zakat through microfinance will enable many entrepreneurs to advance their respective businesses. Specifically, by increasing production. When there is more production and adequate capital equipment, they can be competitive and increase their income. Respondent R4¹⁴ stated the exact same thing:

"Excellent and will continue to accept commitments (microfinancing). Furthermore, the business can be expanded."

This demonstrates a strong willingness to accept microfinance from zakat funds. He made it abundantly clear that he was willing to share responsibility. If previously it was a one-time investment that was insufficient to grow the business, it is certain that microfinancing will help them grow their business by providing additional capital. From respondent R5¹⁵, there is a view:

"Welcome by providing your best effort and working very hard. When payment is expected, there is a responsibility."

¹² Interview with responden R2.

¹³ Interview with responden R3.

¹⁴ Interview withresponden R4.

¹⁵ Interview with responden R5.

The viewpoint of respondent R5 reflects the same opinion expressed by the Selangor Fatwa Council that the asnaf group is behaving irresponsibly with the aid of free capital. However, with the repayment of the capital aid, they will experience the mutual obligation that must be met. In other words, when the distribution is in the form of microfinancing, asnaf entreprenuers will be more responsible for their respective businesses. This is because microfinancing requires repayment of the capital assistance received.

Additionally, this is supported by other asnaf entreprenuers. Respondent R6¹⁶ stated the following explanation when having additional capital:

"If there is microfinance from zakat funds, we are grateful. Then you can expand muruku sales to as many as 300 restaurants."

Microfinance will continue to increase productivity, according to the quote from respondent R6. Based on the researcher's findings, respondent R6 has difficulty obtaining financing because he was declared bankrupt. His wife is insolvent as well. He requires capital to increase production of the products he is currently developing. So, he is eligible for only microfinancing from zakat institutions.

Even though business operations are well-managed, asnaf entreprenuers face the risks of the current economic climate. For example, respondent R7¹⁷ explained as follows:

"...already doing the right thing and striving for excellence, but the current economic climate is causing the business to decline."

An asnaf entrepreneur explains that the failure of a business may be attributable to the current difficult economy in the preceding passage. For example, competing with larger businesses, such as the rivalry between grocery stores and supermarkets. Additionally, the prices of goods increased, leaving insufficient funds to keep goods in stock. This diminished the company's appeal to customers.

Respondent $R8^{18}$ supported business capital assistance from the zakat fund in the form of microfinance, as he explained:

¹⁶ Interview withresponden R6.

¹⁷ Interview withresponden R7.

¹⁸ Interview with responden R8.

"I welcome microfinancing from the zakat fund, but it's not as if I can't expand my business due to a lack of capital... Having to pay back the loan may make us more diligent, whereas if we receive free capital aid, we will become lax."

Respondent R9¹⁹ expressed the same opinion as follows:

"I fully agree, as it is extremely challenging to give for free and make a promise to pay back."

The distribution of business capital from zakat funds in the form of microfinancing can have the following effects in general: First, as asnaf entreprenuers, they are more accountable and committed to the capital assistance they receive. Secondly, if young asnaf entreprenuers are experiencing financial difficulties, the distribution of zakat in the form of microfinance has the potential to alleviate these difficulties, particularly with business capital. When zakat is distributed to asnaf entreprenuers via microfinance, the repayment of the distribution amount can be used to assist other asnaf entreprenuers. In actuality, the amount of the microfinance fund's working capital will fluctuate upwards.

Conclusion

In conclusion, based on *maslahah*, the scholars in Aceh deemed microfinance from the zakat fund permissible. With the introduction of this microfinance, the poor's economy can be stimulated without usury/riba. Consequently, these microfinances are unquestionably more advantageous than the distribution of zakat in the form of self-sufficiency, which results in permanent reliance on the distribution of zakat. It is unlikely that the recipients of zakat will be out of poverty. This demonstrates that, according to $Maq\bar{a}sid\ Shari\ \bar{a}h$, Islamic law permits capital assistance in the form of microfinance from zakat funds. This is due to the fact that eventually, those who receive zakat will become zakat payers. This will increase the amount of zakat and decrease the number of poor people.

In addition, asnaf entrepreneurs are generally willing to accept the implementation of zakat distribution via microfinance. The findings revealed that obtaining financing from financial institutions was challenging. The response of business owners to microfinance provided by the zakat fund is very encouraging. Thus, the distribution of zakat as microfinance facilitates the acquisition of additional capital. There will be a management commitment to this financing because there is a contract between the two parties that must be repaid. Due to the

http://jurnal.arraniry.ac.id/index.php/samarah

¹⁹ Interview with responden R9.

obligation to repay, this will facilitate the growth of the asnaf business. Repaid financing is undoubtedly the result of a business's hard work. As microfinance contracts, Qardul Hassan becomes the primary source of capital. Other contracts, however, may be adopted by mutual agreement between the parties.

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