

Hybrid Contract in Islamic Financial Services

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Abstract. *The hybrid contract is needed to accommodate modern transactions unavailable in the classical Islamic period. The current financial service products use hybrid contracts, such as in debt transfer, import and export letters of credit, and credit cards. The evaluation of the use of contracts in these products reveals the use of multiple alternative contracts in debt transfer and Letters of Credit; and single contract alternative for credit card services. This study shows the complexity of contracts in modern financial products, requiring more complex documentation. The merger of several contracts in one transaction is based on the argument that there is no prohibition on using multiple contracts in one transaction, as long as it avoids usury (ribā).*

Keywords: *hybrid contract; sharia product; fatwa; sharia financial institution*

Abstrak. *Penggabungan akad merupakan kebutuhan untuk mewadahi transaksi modern yang tidak ditemukan di masa Islam klasik. Bentuk penggabungan akad tersebut terjadi di antaranya pada produk jasa keuangan modern seperti pengalihan utang, Letter of Credit impor dan ekspor, dan kartu kredit. Dengan mengevaluasi penggunaan akad-akad dalam produk tersebut ditemukan beberapa alternatif penggabungan akad pada produk pengalihan hutang dan Letter of Credit, serta satu alternatif penggabungan akad untuk produk kartu kredit. Penggabungan akad tersebut didasarkan atas argumen tidak ada larangan penggabungan akad selama tidak menimbulkan ribā. Hasil penelitian ini menunjukkan kompleksitas akad pada produk keuangan modern yang pada praktiknya membutuhkan dokumentasi yang lebih kompleks.*

Kata kunci: *multi akad; produk syariah; fatwa; lembaga keuangan syariah*

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Introduction

The current practice of Islamic economics in many countries, including Indonesia, is regulated by *fatwa's* (legal opinions) issued by the state-based religious authority or independent religious institutions. In Indonesia, the fatwa of the National Sharia Council of the Indonesian Ulama (DSN-MUI) is used as a reference and guideline for the implementation of Sharia in the economic field. DSN-MUI is an independent institution outside the state power structure.

So far, there have been 143 fatwas issued by DSN-MUI (DSN and BI, 2006). Most of these fatwas are related to contracts or transactions. Contracts, according to Maksum (2014: 49), can be categorized into single contracts (*basit*), multi-contracts (*uqūd muta'addidah*), and multiple contracts or hybrid contracts (*'uqūd mujtami'ah*). Multi-contracts and multiple contracts are included in the category of contract development. Among the types of contract are a Letter of Credit (LC) (*al-I'timād al-Mustanadiyah/khiṭāb i'timād*), multiple contracts, credit cards, and diminishing partnerships. The hybrid contract is mentioned in more than 30 fatwas of DSN-MUI (DSN and BI, 2006) and will continue to grow as needed. According to the data, the hybrid contract has been considered permissible by this fatwa institution, though its existence is still debatable among other *fiqh* (Islamic jurisprudence) scholars.

The differences among scholars are because of a hadith that says, "The Messenger of Allah forbade two contracts in one transaction" (Ibn Hanbal: 198, al-Syaukani: 152). Scholars interpret this hadith differently. Nazih Hammad, for example, noted that the hadith emphasizes the aspects of buying and selling. Some scholars interpret the hadith as "two buying and selling activities in one sale". In the hadith narrated by Abu Hurairah, Nazih noted that there are at least eight views of Islamic legal scholars (Hammad, 2001). Likewise, the scholars' interpretation of the meaning of "two contracts in one transaction" in the hadith narrated by Ibn Mas'ud also varies. However, in Nazih's notes, scholars generally interpret the hadith in the context of buying and selling and nothing else (Hammad: 181-182).

This article evaluates the concept of hybrid contracts in the DSN-MUI fatwa. The four hybrid contract products include service products, i.e. debt transfer, import LC, export LC, and Sharia card. These products are available in Islamic banking.

Jaih Mubarak (2004) wrote a book, entitled *The Development of Sharia Economic Fatwas in Indonesia*, with the DSN-MUI fatwa from 2000 to 2004

(about 40 fatwas) as the object. In this book, Jaih concludes there are three models for determining fatwa. The first is *mua'malah* (commercial transaction) concepts which are applied without modification. The second is *mua'malah* concepts which are applied with slight modifications. The last is the combination of several concepts, as they cannot be operated without the combination. The combination of concepts in Jaih's writing aligns with this research, although Jaih does not support his study with a comprehensive application example.

Another study on multi-contracts is the research of Nazih Hammad (2005), reviewing the scholarly debates on the legal status of multi-contracts and their compatibility with Islamic law. Al-Imrani (2006) also wrote the same theme in his dissertation, providing examples of multi-contract practices and reviewing multi-contract law.

Mudzhaz (1993), Adams (1999), and Ali (2009) wrote about the role of fatwas in the formation of legislation. The third concludes that fatwas are among material sources used in the formulation of state regulations. The multi-contracts in this study are also used as sources of regulation in the Financial Services Authority (Otoritas Jasa Keuangan/ OJK) to be implemented by Islamic financial institutions. Such practice, however, is not part of the discussion in this paper.

Research on contracts and multi-contracts was carried out by Muhammad Maksum (2014), stating that the contracts used in Islamic financial institutions can be divided into three: single contracts (*basit*), multiple contracts (*mujtami'ah*), and double contracts (*muta'addidah*). However, a detailed explanation of the multiple contracts is missing from Maksum's study.

Muhammad Iman Sastra Mihajat (2015) studies Hybrid Contract in Islamic Banking and Finance: A Proposed Shariah Principles and Parameters for Product Development. Mihajat reveals that even though the hadith of the Prophet implies the prohibition of using more than one contract in one transaction, most Sharia banks implement this practice in the contemporary age. He further argues that the transaction is allowable if it follows the rules and parameters set by Sharia. In another study, Fikri Lahafi, Rahman Ambo Masse, Syahriyah Semaun, Wahidin, and Rusdaya Basri (2018) study the forms of multi-contracts, such as *musharakah mutanaqishah* (diminishing partnership) and financial takeover. They manage that the contract is risky for the stakeholders. However, Law No. 21 of 2008 concerning Sharia Banking manages the risk liability of transactions by including the administrative and criminal sanctions for the violators.

Mery Maulin (2020) analyzes the implementation of multi-contract or hybrid contract methods in Islamic banking products. Similar to other previous studies, she argues for the permissibility of the contracts only if no violations against Sharia principles are involved. These violations include the elements of *ribā* (usury), *mayisir* (gambling), *gharar* (uncertainty), etc.

On the other hand, Fathullah Asni and Jasni Sulong (2020) argue that some hybrid contracts are lawful, while others are prohibited. The lawful hybrid contracts are *ijārah muntahiyah bi al-tamlik*, *ijārah mausufah fi al-dhimmah* and *musharakah mutanaqishah*. The unlawful ones are *tawarruq* and *bay' biṭaman ajil*. These concepts will further be explained in the following sections.

Methods

This is normative legal research conducted to examine the application of Islamic legal norms, including *uṣūl fiqh* (principles of Islamic jurisprudence; *qawā'id fiqhiyyah* (Islamic legal maxim) and *fiqh* (Islamic jurisprudence). Soerjono Soekanto calls this type of research dogmatic legal research, while Soetandyo Wignjosebroto calls it the doctrinal legal study. Notably, this study compares Islamic law and Indonesian law regarding contracts. The discussion of various Islamic legal scholars' opinions is to seek the most potent legal argument. This study uses the DSN-MUI fatwas concerning multiple contracts. These fatwas are elaborated by considering legal opinions from classical and modern Islamic legal scholars and analyzed using the content analysis approach.

Results and Discussion

Debt Transfer Product

Fatwa No. 31 of 2002 concerning Debt Transfer dated 26 June 2002 regulates the transfer of debt from a non-Islamic bank to an Islamic bank. This transaction involves at least three parties, namely customers, an Islamic Financial Institution (IFI) and a Conventional Financial Institution (CFI). The debt transfer is conducted using a particular contract, which determines the legal status of the transaction and the contract object (Ibn 'Abidin, 355; Al-Zuhaili, 1989: 2918). Four alternative contracts can be used in the debt transfer: *qard* contract, buying and selling, and *murābahah*. Through a *qard* contract, IFI provides a loan to pay off a customer's loan (debt) to CFI. Thus, the asset purchased on credit from CFI becomes the entire property of the customer (*al milk al tam*). Then, the customer sells the assets to IFI to pay off the loan provided by IFI for closing the debt at CFI. That way, the customer has no debt to IFI and CFI, but the asset now belongs to IFI.

However, the truth is that the customer does not sell the asset to IFI. The customer only intends to transfer the debt from CFI to IFI. Therefore, the asset is then resold by IFI to the customer using a *murābahah* contract. After that, the customer will pay in installments. With *murābahah*, the asset returns to the customer, and he/ she is in debt to IFI and should pay in installments. This debt transfer process seems to use two contracts, namely *qard* and *murābahah*. In fact, it appears that the process also involves buying and selling. This means three contracts have been used at once: *qard*, *murābahah*, and buying and selling. The combination of the three contracts is called *murakkab* contract.

Every single contract used above is permissible. However, the problem arises when more than one contract is combined. The permissibility of every single contract does not imply that it can be used in combination. According to Shatibi, the *mujtami'ah* is not always the same as *munfarida* (Al-Syatibi, 2006:144).

Shatibi's view is based on several hadiths of the Prophet that explain the prohibition of merging *salaf* and *bay'* contracts, two-in-one buying and selling, and two *ṣafqah* in one *ṣafqah*, even though these contracts are allowed to be used independently. According to Ibn Qayyim, the prohibition of merging, meant by the Prophet, is to avoid the forbidden usury. It happens because the *murābahah* contract is a *hilah* for not falling into usury by adding to the loan (*qard*) given (Al-Jauziyah, 153).

Usury, in the merging of *tabarru'* and *mu'awwaḍah* contracts, has a great possibility. Likewise, the first alternative to the debt transfer contract might lead to usury. This possibility occurs due to indecisive restrictions in fatwa to avoid the possibility of usury. Usury might happen when the *qard* and *murābahah* contracts are not separated. When IFI provides loans to customers through a *qard* contract, then buying and selling assets occurs, and IFI resells the assets through *murābahah* to the customers. The customers then pay the asset's price in installments, which is undoubtedly higher than the money lent to the customer. The high price of this loan can be the actual price of IFI assets sold to customers through *murābahah*, or the price is added from its original to anticipate (*hilah*) from falling into the practice of usury as the cost exceeds the loan amount. This is highly possible, especially if the traded assets are not handed over. The probability for *hilah* usury is exemplified in the prohibition of the Prophet in a hadith, stating: "*The Messenger of Allah forbade buying and selling and salaf*" (Al-Syaibani, 178). Scholars interpret the prohibition of merging between buying and selling and *salaf* in the Prophet's hadith in various ways (Al-Syafi'i, 205). The forbidden of this merger contract is because it will lead to price ambiguity and usury.

The second alternative is to transfer debt using *shirkah* and *murābahah* contracts. This means that IFI channels its funds by purchasing customers' assets. With this purchase and permission of the CFI, *shirkah al-milk* (joint ownership) of the asset by IFI and the customers. Assets purchased by IFI equal the amount of debt the customer still bears to CFI. IFI has paid the customers' obligation to CFI by purchasing this asset. Then, IFI has shares (co-ownership) in the assets.

After joint ownership occurs, the next stage is IFI sells part of its assets to customers through *murābahah*. In this way, the assets become the customers' property, with the condition that the customer pays installments to IFI for part of the asset purchased.

The collection of these two *musharakah* and *murābahah* contracts is not prohibited because the two contracts are both *mu'awwadah* contracts. When the *mu'awwadah* contract is collected, the following rules apply: "the basic principle of a contract is the validity of the conditions, until Islamic law terminates it."

Moreover, there should not be elements prohibited by any Islamic legal injunction. For example, the two contracts should not consist of usury; the contract's object, price, and period are transparent and fully known by involving parties. This way, the integration of the contracts is permissible and does not violate the sharia. However, this second alternative contract can be forbidden if the *musharakah* contract is fictitious or does not actually exist. If the funds issued by the IFI are intended to be loaned to the customer and not as a capital investment in the asset, usury is highly possible.

The third alternative is to transfer debt using *ijārah* and *qard* contracts. These two contracts can be used simultaneously or only *ijārah* without *qard*. IFI undertakes the settlement to CFI to hand over the assets. For the settlement of this asset, an *ijārah* contract is used between the customer and the IFI. There are two possibilities for settling assets to ownership. *First*, customers use their own funds to cover the lack of installments on the asset. *Second*, IFI bails out the remaining installments on behalf of the customers to CFI. For the first possibility, only the *ijārah* contract is used, and IFI is only hired for its role of transferring customer debt from CFI to IFI. As for the second possibility, IFI has been mandated to process the debt transfer and bail out the lack of customers' installment on the assets.

If only the *ijārah* contract is used, then this debt is transferred using a simple contract (*baṣīṭah*). (Al-'Imrani, 2006: 45) Meanwhile, if these two contracts are used, there are two possibilities. First, the contract becomes a *muta'addid*

or a *murakkab* contract. When two contracts, *qard* and *ijarah*, are operated independently, the contract is *muta'addid*. However, if the two are merged and have the same legal effect, the contract is *murakkab*. The fatwa clearly states that even though two contracts are used, they must be separated. *Ijarah* contract, as referred to in number one, may not be required by (must be separated from) bailouts as referred to in number 2 (*qard*) (DSN and BI, 187). The clause in this Article confirms that the DSN fatwa rejects the type of *murakkab* contract from the '*uqud mutaqābilah* (Al-'Imrani, 54)

The law of *ijarah* and *qard* contracts is permissible when used independently. The merging of two contracts can change each contract's legal status and compatibility with the Sharia provision. In the case of merging *tabarru'* and *mu'awwadah* contracts, a violation of the prohibition of usury may occur. When IFI acts as *mu'ajjir* and *muqrid*. IFI performs a dual role, settling the transfer of assets and bailing out the remaining asset payments. In terms of providing asset settlement services, IFI receives a fee according to the contract. This compensation is a part of the customer's obligations that must be paid, in addition to paying the funds provided by the IFI to pay CFI. What matters is whether the payoff is precisely excluded from the bailout. If the fee calculation is based on a percentage of the bailout, the reward is usury or exceeds the bailout. The principle of the bailout fund (*tabarru'*) is to help, not seek profit. In practice, the possibility of usury is wide open when effectiveness and efficiency are used as reasons. IFI does not separate the two contracts, *ijarah* and *qard*, in making contracts with customers. Even though the DSN fatwa has given strict limits to avoid the practice of usury by stipulating that the amount of the *ijarah* service fee should not be based on the number of bailouts provided by IFI to customers. Without careful monitoring for the Sharia compliance of the contract, the debt transfer can easily fall into the practice of *fadl* usury. The collection of these two contracts, according to al-'Imrāni, is permissible if there are no conditions in it and there is no purpose of getting additional *qard* (Al-'Imrani, 180).

The fourth alternative is transferring debt using *qard* contracts, buying and selling, *ijarah*, and grants/ buying and selling (IMBT). In this fourth alternative, many contracts are used. The fatwa only mentions two *qard* contracts and *ijarah muntahiya bi al-Tamlik* (IMBT). However, if parsed, there are four contracts.

The transfer process through these four alternatives, through *qard*, IFI provides loans to customers to pay off debts to CFI. This settlement means that the assets purchased with credit from CFI become the entire property of the customer. With this settlement, the customer is no longer in debt to the CFI.

After the customer gets full ownership rights of the assets, the customer then sells the asset to IFI to repay the loan. With this, the asset ownership shifts from the customer to IFI. Then, the customer is no longer in debt to the IFI. Afterwards, IFI leases the asset to the customer with the agreement to hand over the asset to the customer. At this leasing stage, there are two contracts between the IFI and this customer, *ijārah* and the buying and selling/grant of property. The second contract will be carried out after the first one is completed. In the *ijārah* contract and the property buying and selling/grant, it is not permissible to combine both contracts as stipulated by DSN-MUI fatwa number 27/DSN-MUI/III/2002 concerning *al-ijārah al-muntahiyah bi al-Tamlīk*.

The merger between these three contracts may exceed the prohibited provisions, i.e., the collection of *tabarru'* (*qard*) contracts and the required buying and selling agreements or IMBT. The prohibition of this merger occurs when it leads to usury. This is possible because buying and selling and IMBT are *hilah* to avoid usury by adding to the given loan (*qard*) (Al-Jauziyah, 153). An unclear provision or *dawābiṭ* in fatwa to separate *qard* with buying and selling or others leads to concerns about usury. In practice, it is challenging to separate *tabarru'* and *mu'awwadah*. To avoid the usury practice, IFI and the customers must clearly distinguish contracts and prevent the additions to the loans granted. There must be a clear distinction between a loan and buying and selling or lease. That way, each has a distinct role, whether to help by bailing out the remaining payment or seeking a profit by selling or renting out.

Import Islamic Letter of Credit Products

Import Islamic *Letter of Credit* (L/C), according to DSN-MUI Fatwa No. 34 of 2002, is a statement letter issued by a bank to pay to exporters on behalf of importers with specific requirements based on Sharia principles. Import L/C transaction is something new in Islamic law (*masāil fiqhiyyah mu'asshirah*) and is undiscussed in the classical *fiqh*. As a novel issue, the practice of L/C follows non-Sharia provisions. Fatwa of import Islamic L/C is needed in the Sharia banking services.

Applicable contracts to determine the status of the transaction object are essential in implementing LC (Al-Zuhaili, 2005). Contracts that can be used are *wakālah bil ujrah*, *qard*, *murābahah*, *salam/istishnā'*, *muḍārabah*, *musharakah*, *hawālah*, and *kafala bil ujrah* (DSN=MUI Fatwa No. 57 of 2007). Meanwhile, the parties involved in the L/C contract are at least importers, Islamic banks, and exporters.

In the case of using a *wakālah bi al ujrah* contract, IFI only plays a role in settling the import documents and does not provide funds to pay for imported goods. The contract used is simple (*basi*). The importer gives the authority to IFI to take care of import documents and make payments to the exporter for the price of imported goods. The *wakālah* contract can only be made when the importer has sufficient funds in IFI to pay the cost of the imported goods. IFI gets fees from the customer according to the agreement, not the percentage of goods for their service. The problem with the *wakālah* contract is the charge of administration fees. At the same time, the *wakālah* contract is in the category of *tabarru'*, aiming at goodness, not for profit. Permissibility of administration fees in *wakālah* contracts, as stipulated in the DSN fatwa No. 34 of 2002, is based on a scholar's opinion from the *Hanbali madhhab*, that is, the opinion of Ibn Qudamah, arguing for the legalization of wages imposition in *wakālah* contract. Ibn Qudamah's opinion is based on the practice of the Prophet, who sent officers to withdraw *zakah* from the community. The legal status of *wakālah* accompanied by wages, according to Ibn Qudamah, is similar to that of *ijārah* (Ibn Qudamah, 2004: 85, Al-Syarkhasi, 2). Ibn Qudamah's opinion is supported by Ibn Humam (d.681 H), a Hanafi scholar, Al-Syaukani, a scholar from the circle of Shafi'iyah, and a contemporary scholar, Wahbah al- Zuhaili (Ibn Humam, 2; Al-Syaukani, 2000: 527). These scholars agreed that it is permissible to impose wages on *wakālah* contracts.

Both *wakālah bil ujrah* and *qard* contracts can be used simultaneously in the import Islamic L/C transactions. The implementation procedure of these two contracts is the same as the single *wakālah bil ujrah* contract. The difference is, in the *wakālah bil ujrah* contract, the customer owns sufficient funds to pay for the imported goods. Meanwhile, in using the *wakālah bil ujrah* and *qard* contract, the customer does not have adequate funds to pay for the imported goods. Therefore, by using a *qard* contract, IFI covers the cost of the imported goods. Besides being the importers' representative, IFI also acts as a *muqrid* or lender. IFI acts as the importers' representative in the import document process and as *muqrid* in the payment.

To carry out these two roles, IFI will receive wages from its role as representative of the customer. The wages agreement for IFI must be set out from the beginning in nominal terms, not a percentage of the bailout money provided by the IFI. The imposition of fees based on a percentage of loan may lead to the practice of usury because the additional cost becomes unclear whether it is paid for the role as representative or usury (*ribā fadl*) or bailout funds (*qard*). The

DSN-MUI fatwa emphasizes that the wages are determined based on nominal and decided in advance. This is based on a hadith: “*Whoever employs workers, let them know their wages.*” (HR. Abdul Razzaq)

IFI and customers can also use *murābahah* contracts in this import L/C transaction. In practice, *murābahah* contracts involve other contracts, i.e., buying and selling and *wakālah*. If IFI is the representative of the customer in the previous contract, in the *murābahah* contract, it is the opposite. The customer is the representative of IFI. As a representative, the customer takes care of the import documents for IFI, and then IFI buys the imported goods. After the document is completed, IFI pays for the import transaction. Consequently, the goods become the property of IFI. After that, IFI sells the goods to the customer on a *murābahah* basis, either paid in cash or installments. The imported goods eventually become the property of the importer, and the importer is obliged to pay the IFI together with the costs incurred.

The DSN fatwa for *murābahah* contracts provides a minor portion to customers. In the previous contract, when IFI acts as a representative of the customer, the IFI charges a service fee. On the other hand, when a customer becomes an IFI representative to process the documents, the customer's right is not explicitly mentioned as the representative of IFI. It means that when it comes to the role of IFI, it is always associated with wages or profits. However, when it comes to the customers, no wage is discussed. The situation happens because IFI is constantly judged as a party with higher authority than the customer. The customer is the party who needs IFI. In economic principles, the needs will follow the terms and conditions of the bank.

Other contracts that can be used in import Islamic L/C transactions are *salam/istishnā'* and *murābahah* contracts. In this case, the *wakālah* and *salam/istishnā'* contract occurs between IFI, importers, and exporters. *Wakālah* contract takes place between IFI and importers, while *salam/istishnā'* is between importers and exporters. Through the joint contract, the bank, on behalf of (with *wakālah*) the importer, places an order for export goods (*salam*). Then IFI administers the documents and makes payments for import transactions. The imported goods become the property of IFI. After that, IFI sells the imported goods to the importer on a *murābahah* basis, either paid in installments or cash.

Similar to the previous *murābahah* contracts, the roles of IFI and customers have been divided. Only in a *salam* contract is the order for imported goods made by the customer, while the IFI makes the payment. The use of several agreements in one contract makes it a *mujtami'ah* contract.

Other contracts may be used in importing Islamic L/C are *wakālah bil ujarah* and *mudārabah* or *musharakah* contracts. In the case of *wakālah bil ujarah* and *mudārabah*, the importer gives the authority to the bank to manage important documents and make payments for the exported goods. The fund used to make payment is the capital provided by IFI to the importer to pay for the imported goods. In this kind of contract, IFI acts as *ṣāhib al-māl*, while the customer is as *mudārib*. *Mudārabah* contract is a characteristic of IFI to distinguish it from CFI. The principle of the *mudārabah* contract is that one party acts as an investor and the other as a worker in business activity. The profit from the business is divided among both parties based on the agreed proportion. If in *mudārabah* IFI provides total capital, then *musharakah* contract can also be used, equity participation, in which IFI and customers allocate their funds for the import business. With this *musharakah* contract, import activities become a joint business between IFI and importers.

Apart from *musharakah*, the *wakālah bil ujarah* contract can be combined with the *hawāla* contract. This contract occurs because the importer does not have sufficient funds in the bank to pay the price of the imported goods. Thus, the *wakālah bil ujarah* contract is between the importer and the IFI, in which the IFI acts as the importer's representative to manage import transactions. For settling the document, IFI will receive wages which amount is determined in nominal terms and is not related to the number of funds borne by IFI. Due to insufficient funds, the importer is in debt to the exporter. The importer transfers this debt to IFI by requesting the bank pay the exporter the cost of the imported goods. With this debt transfer, the importer's debt is paid by IFI. The importer's obligation is to pay off the loan given by IFI to pay for the imported goods. Such transaction includes a *murakkab* contract by combining the *wakālah bi al-ujrah* and *hawālah* contracts, or can also apply the *kafālah bil ujarah* contract. IFI is appointed as a guarantor for transactions between importers and exporters. The presence of the *wakālah bi al-ujrah* contract is new. So far, the *kafālah* contract is considered a *tabarru'* contract, aiming to provide specific insurance or assistance to others. In modern development, insurance has strategic status and material content, such as bank insurance. In this context, its presence as a social activity (*tabarru'*) is no longer relevant. Thus, some scholars, such as Mushthafa 'Abdullah al-Hamsyari, admit an insurance contract with wages (*kafālah bi al-ujrah*) (Shaqr, 542-543). This *fiqh* opinion is the basis for the permissibility of the *kafālah bil ujarah* contract.

Export Islamic L/C Products

Export Islamic *Letter of Credit* (L/C), according to fatwa No. 34 of 2002, is a statement issued by banks to pay exporters to facilitate export trade with specific requirements in accordance with Sharia principles. In import L/C, goods originating from abroad are imported into the country. In export L/C, goods originating from within the country are sent abroad. The parties involved are IFI, Indonesian exporters, and foreign importers.

The contracts that can be used in export Islamic L/C activities are not much different from those in import Islamic L/C, i.e. *wakālah bi al-ujrah*, *qard*, *muḍārabah*, *musharakah*, *al-bay'*, and *kafālah bi al-ujrah* contracts. The procedure of these contracts is similar to the procedure in the import Islamic L/C. However, the positions and roles of the parties involved are adjusted to import and export purposes. By involving several parties, export Islamic L/C transactions require more than one contract. Therefore, the contracts in the export L/C are included in *murakkab* contracts.

When the export Islamic L/C transaction uses the *wakālah bi al-ujrah* contract, the IFI becomes the exporter's representative to settle export documents and collections of the L/C issuing bank. The funds are then handed over to the exporter. The bank administering the documents and collections gets a wage, with the nominal determined at the beginning of the contract. This *wakālah bi al-ujrah* contract can be combined with the *qard* contract, in which IFI provides a bailout amounting to the funds spent to pay for exported goods. In this case, IFI acts as a representative for exporters and *muqrid*. As a representative, the bank administers export documents and collections to the L/C issuing bank. As *muqrid*, the bank provides a loan at the price of the goods to be exported. The bank is not allowed to take advantage of the loans provided. The bank benefits from *ujrah* for documents settlement and collections services for L/C issuers. The amount of *ujrah* must be agreed upon in advance and stated in nominal, not in percentage. Both contracts are valid when one of them is not a condition for the other. Therefore, the DSN fatwa emphasizes that there should be no link between the *wakālah bi al-ujrah* contract and the *qard* contract (*ta'alluq*). Bondage on this contract will lead to the practice of *bay'* and *salaf* transactions, which were prohibited by the Prophet and lead to usury.

In addition to *qard*, *wakālah bi al-ujrah* contracts can also be compiled with *muḍārabah* contracts. The exporter and the bank undertake *wakālah* and *muḍārabah* contracts simultaneously through these two contracts. *Wakālah* contract delegates the authority to settle documents and collect money from the exporter

to the bank. With the *muḍārabah* contract, the bank provides all the funds that the exporter needs in the export process of goods ordered by the importer. Then, the bank will collect payment for the exported goods to the L/C issuing bank when the document is received (at sight) or the due date (usance). The payments from the importer through this L/C bank are used for *ujrah* payments, *muḍārabah* refunds, and profit-sharing payments.

Other contracts, which can be used in export Islamic L/C transactions, are *musharakah* and *bay'* contracts. In the *musharakah* contract, IFI becomes a business partner of the exporter's export. The roles of each IFI and exporter are regulated according to the contract. The bank settles export documents and collections to the L/C issuing bank. In the process, the bank gives the exporter part of the funds needed in the production process of the export goods ordered by the importer. Funds obtained from the L/C issuing bank are then used to refund *musharakah* funds and profit-sharing payments.

Bank gets refund through the resale of exported goods to importers. Meanwhile, with buying and selling contract (*al-bay'*), the bank buys the goods ordered by the importer from the exporter. Exporters represent the sale. Buying and selling contracts are used in purchasing, and *wakālah* contracts represent the export transaction. Payment by the L/C issuing bank can be made when the document is received (at sight) or the due date (usance).

The use of the *wakālah bi al-ujrah* contract in the export L/C, as stated above, does not cause a problem because there is no cumulation of contracts. As for when *wakālah bi al-ujrah* is combined with *qarḍ*, *salam*, *musharakah*, and *muḍārabah* contracts, the law is determined whether or not it is in line with Sharia provisions. Both *wakālah* and *qarḍ* contracts, either is *tabarru'* contract. The cumulation of these two contracts is not prohibited as long as no condition is required. If it requires a condition, the transaction can result in usury *faḍl* because additional cost is charged in *qarḍ*. The DSN fatwa has confirmed these two contracts' separation by determining that *ujrah* should stand independently and has nothing to do with *qarḍ*. "Between *wakālah bi al-ujrah* contract and *qarḍ* contract, should not be any bondage (*ta'alluq*)". (DSN and BI, 224) The clause on the separation of contracts in this fatwa is a *ḍawābiṭ* which is a solution (*makhraj*) to avoid additional loan costs (*qarḍ*). Although this separation is not easy in practice, hybrid contracts are allowed as long as they follow the stipulation. Meanwhile, other contracts such as *wakālah bi al-ujrah*, *murābahah*, *salam*, *muḍārabah*, or *musharakah*, have no legal status issue when combined as long as the object, price, and time are transparent and understood by the transacting parties.

Fatwa Sharia Charge Card and Sharia-Compliant Credit Card

Two Sharia banking facilities are the Sharia charge card (DSN-MUI Fatwa No. 42 of 2004 dated 27 May 2004) and the Sharia card (fatwa 54/2006 dated 11 October 2006). These two banking facilities have similarities and differences. These are new facilities in modern financial transactions, never found in the early days of Islam.

Meanwhile, a Sharia card is a card that has similar functions to a credit card, in which the legal relationship (based on an existing system) between the parties is based on Sharia principles. A Sharia charge card is a card facility used by cardholders (*hāmil al-bittaqā*) to pay or withdraw cash at certain places. In a charge card, a cardholder must have savings in a bank that provides this facility, and he can only use the card facility as long as he has available and sufficient funds in his bank account. Meanwhile, the Sharia card is not tied to the amount of savings in the bank that issued the Sharia credit card. That way, cardholders or customers can use Sharia cards without depending on their savings amount.

Unlike conventional card facilities, the Sharia card uses *kafālah*, *qarḍ*, and *ijara*. The parties involved in transactions using this card facility are the card issuer (*muṣdir al-bittaqā*), the cardholder (*hamil al-bithaqā*), and the recipient (merchant, *tājir* or *qābil al-bittaqā*). With the *kafāla* contract, the card issuer acts as a guarantor (*kafil*) on behalf of the cardholder to merchants for all payment obligations (*dayn*) arising from transactions between the cardholder and the merchant and/or cash withdrawals from other banks or ATMs of the card-issuing bank. By granting *kafālah*, the card issuer can receive a fee (*ujrah kafālah*). In the *Qarḍ* contract, the card issuer acts as a lender (*muqrif*) to the cardholder (*muqtariḍ*) through cash withdrawals from other banks or ATMs of the card-issuing bank. Furthermore, in the *ijara* contract, the card issuer provides payment system services and customer services to cardholders. For this *ijārah* service, the cardholder is charged a membership fee.

This card facility that provides flexibility in transactions requires a lot of roles and facilities. At least, the card issuer will charge guarantee services and service fees (membership) to cardholders. Therefore, the costs poured for this facility are relatively big, which are then included as costs that must be borne by the cardholder and become income for the card issuer.

The flow of how this card facility works can be described as follows; when the cardholder makes a transaction at the merchant, the *kafālah wal ijārah* contract is applied. *Kafālah* contract is used in order to guarantee the payment

of the transaction made by the cardholder that the card issuer issues. When the cardholder makes a cash withdrawal transaction, the contract is *qard and ijara*. *Qard* is applied because the card issuer gives a bailout to the cardholder when taking cash. The cardholder makes the *Ijārah* contract a rental contract for the card facilities administered by the issuer. Meanwhile, *ijārah* is applied as a service for card facilities issued by the card issuer. These two contracts are combined when the cash withdrawal transaction is made.

The legal status of the *murakkab* contract in charge card and Sharia card facilities is allowed as long as it fulfils the conditions stipulated in the fatwa. The DSN fatwas numbers 42 and 54 are the most explicit fatwas mentioning *dawābiṭ* contracts. (Ibn Nujaim, 166). This is because the fatwa on the Sharia charge cards and Sharia cards is quite controversial. In addition to the aspect of Sharia provisions, other factors trigger polemic in this card facility. In Sharia, the card facility is the most outstanding representation of combined contract transactions. In some hadiths, such cumulation is prohibited.

On the other hand, card facilities, both cash and credit, are considered a symbol of extravagance, hedonistic, and feature opulence. Meanwhile, Islam strongly encourages people to live a simple life and prohibits extravagance. In this situation, there is a dilemma between maintaining the principle of simplicity and capturing the market's need for the excellent demand for Sharia card services. In this dilemma, the issuance of Sharia card fatwa and *dawābiṭ* determination was an effort and a compromise to the dilemmas. *dawābiṭ* or such limitations include; does not cause usury, is not used for transactions that are not in accordance with Sharia (transactions of *haram* and immoral objects), does not encourage excessive spending (*isrāf*), by setting a maximum spending limit, the primary cardholder must have the financial ability to pay off at the due date, does not provide facilities that are in contrary to Sharia, and does not result to infinity debts (*ghalabah al-dayn*) (DSN and BI, 304).

The prohibition of usury is an aspect related to hybrid contracts. The object of *haram* and immorality is related to the eligibility, in which the contract object must be *halāl* (Musa, 1996: 282; Syafe'i, 2004: 58). Meanwhile, the provisions in points c, d, and f are not directly related to contract issues. This provision is more related to Muslim consumer behavior. The provisions of points d and f are associated with the problem of returning or paying debts. In a hadith, it is stated that people capable of paying the debt but delay it are wrongdoers and have the right to be punished.

The fees charged for Sharia card facilities include; membership fee, merchant fee, cash withdrawal fee, and guarantee fee (*kafālah* fee). All fees mentioned (a-d) must be determined clearly and fixed at the time the customer applies for the facility card, except for merchant fees.

Charging fees are standard, especially in *kafālah* and *ijārah* contracts. Islamic banks provide Sharia card facilities and bank guarantees to pay merchants through these two contracts. The role played by the bank creates a fee that the cardholder must pay. Charged costs for this Sharia card facility will be problematic when banks provide cash withdrawals, bailouts, or loans. The charged fees on loans or bailouts are prohibited because they include usury and excess loans. To avoid usury, the fatwa mentioned has provided an explicit provision that charging fees are not linked to the loan amount. The charging fees must be based on the costs of managing the Sharia card facility, not on the loan amount. Thus, the cumulation of *kafālah*, *qard*, and *ijārah* contracts does not open up any opportunities for usury. (Al-'Imrani, 180).

The hybrid contract in the product mentioned is an effort to accommodate complex modern transactions. The action was made by setting conditions (*dawābī*), i.e., avoiding usury and separating *qard* contracts from other *mu'awwadah* contracts. From the explanation, it can be concluded that the DSN fatwa has managed to prevent practices prohibited in hybrid contracts.

Conclusions

The financial products discussed use hybrid contracts because a single contract is not applicable. This is because more than two people are involved in implementing the product—three parties involved in the debt transfer and credit card products and four in LC products. The contracts used in the debt transfer product are *qard*, *bay'*, and *murābahah* or *musharakah* and *murābahah* contracts. *Ijārah* and *qard* or *qard* contracts, buying and selling, *ijārah* (IMBT) can also be applied. The contracts for LC products are *wakālah bil ujarah* and *qard*; buying and selling, *wakālah*, *murābahah*; *salam* or *istishna'* and *murābahah*; *wakālah bil ujarah* and *muḍārabah* or *musharakah* or *hawalah*; and *kafalah bi al-ujrah*. Contracts on credit card products are *kafālah*, *qard*, and *ijārah*.

The argument for using hybrid contracts is out of necessity and does not violate Islamic law's provisions. These contracts can be applied independently so that when combined, they will not cause any problems as long as it does not cause usury. The hybrid contract does not contain usury because taking margin or profit from the *qard* contract, which is the source of usury, is prohibited.

This study proposes two recommendations. *First*, DSN needs to implement guidelines in using multi-contracts in Islamic financial institutions. *Second*, DSN-MUI needs to disseminate information on the legal status of multi-contracts and their application in society to Islamic financial institutions and the public.

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