

Wadi'ah Contract in DSN-MUI Fatwa Number 02/DSN-MUI/IV/2000 Concerning Saving Connected with the Theory of Intention (*Nadhariyat An-Niyat*) and Sharia Principle

Neni Sri Imaniyati*

Law Faculty
Universitas Islam Bandung
Bandung, Indonesia
*limaniyati@yhaoo.com

Panji Adam, Syifa Zulfah Zakiyah

Sharia Faculty
Universitas Islam Bandung
Bandung, Indonesia
panjiadam@gmail.com, syifazulfahzakiyah@gmail.com

Abstract—The mandate of Law Number 21 Year 2008 concerning Sharia Banking gives authority to the National Sharia Council-Indonesian Ulama Council (DSN-MUI) to make fatwa in the field of Sharia Banking. One of them is fatwa number 02/DSN-MUI/IV/2000 about Savings. In the stipulated fatwa, the contracts used for savings in sharia banks are *Mudharabah* and *Wadi'ah* contracts. Both contracts become the reason to conduct this study aiming at finding *Wadi'ah* contract in the DSN-MUI fatwa number 02/DSN-MUI/IV/2000 concerning Savings in terms of theory of intention (*Nadhariyat An-Niyat*) and sharia principles. This study used normative juridical with descriptive analysis, secondary data, and literature study as data collection method. Qualitative data analysis was interpreted systematically. The results showed that, first, the product according to the DSN-MUI fatwa used *Mudharabah* and *Wadi'ah* contracts. However, in *Wadi'ah* contract, the bank used *Qardh* contract because the entrusted object is money and the funds are used by the bank. Based on the theory of intention, it is the substance that becomes a guide, not the formalistic naming. Hence, though the name is *Wadi'ah* contract, the reality, it is *Qardh* contract. In the discussion of contemporary muamalah *fiqh*, it is called *wadi'ah yad al-dhamânah* contract. Second, the development of *Wadi'ah* contract in fund raising products in DSN-MUI fatwa do not contradict sharia principles because in its application, sharia banks do not promise the existence of bonuses or prizes required at the beginning of the contract, so that this product is free from prohibited transaction such as usury.

Keywords: contract, wadi'ah, DSN-MUI, theory of intention

I. INTRODUCTION

The study of sharia economics in Indonesia is increasingly finding its relevance to practical needs after the issue of Law Number 21 Year 2008 concerning Sharia Banking. Thoughts from scholars regarding sharia economic law in the past in various *fiqh* books begin to become a study object. The time span of the golden age of Imams and the current millennial era has created many inequalities in various contexts. Therefore, the effort to make economic studies become contextual requires comprehensive wisdom and understanding through

interpretation of texts in the context of the right time and place [1].

Devices, institutions, sharia banking, and sharia financial institution (LKS/*Lembaga Keuangan Syariah*) are profit-oriented institutions. Hence, they must compete with conventional financial institutions to seize market share. As an intermediary institution bridging customers who have surplus funds and customers who need capital, LKS is demanded to be able to play a role in accordance with the principles outlined by Islamic law [1].

Article 1 number (12) of Law Number 21 Year 2008 concerning Sharia Banking explains that the meaning of sharia principles is Islamic law principles in banking activities based on fatwas issued by institutions having the authority to determine fatwas in the sharia sector.

The institutionalization of sharia principle as a principle underlying the operational system of non-usury banking business activities is an estuary for sharia economic business operations. The institutionalization of sharia principles in the operations of banking business activities is expected to be an alternative solution for optimizing the potential of economic resources of the community, especially for Muslim community who have long doubted the legality of interest system, which in turn can eliminate various forms of usury business activity practices [2].

As the aforementioned sharia principles, National Sharia Council-Indonesian Ulama Council (DSN-MUI/*Dewan Syariah Nasional-Majelis Ulama Indonesia*) as an institution having authority in making fatwas in sharia economics field has several duties and authorities, one of which is a fatwa regarding financing in the form of fund raising in sharia banks. One of the fatwas issued by DSN-MUI is the fatwa regarding fund raising products, namely National Sharia Council Fatwa Number 02/DSN-MUI/IV/2000 concerning Saving. This fatwa explains that the contract used in the fund raising product in the form of saving is *wadi'ah* and *mudharabah* contract. The fatwa is actually a development of classical muamalah *fiqh*

(jurisprudence) concept which serves to provide answers to economic and business development.

In Islamic *fiqh*, a muamalah contract that has a similarity to saving is *wadi'ah* contract. In some LKSs, *wadi'ah* instrument is used as an instrument to recruit and solicit funds from the society. In its turn, it is used as an alternative instrument to replace saving equipped with interest instruments in conventional financial institutions [3].

The problem is whether *wadi'ah* contract as an instrument of saving products in sharia banks becoming an alternative substitute for saving in conventional financial institutions is the same as the concept of Islamic contract in the classical *fiqh* books as the legacy of the previous scholars. Therefore, it is necessary to conduct an analysis of saving products in fatwa Number 02/DSN-MUI/IV/2000 concerning Saving using *wadi'ah* contract.

II. METHOD

The method used was based on a normative juridical approach by reviewing or analyzing secondary data in the form of primary and secondary legal materials by understanding the law as a set of positive rules or norms in applicable legislation. Hence, this study included as literature study, namely study on secondary materials [4]. Its specification was descriptive analysis to describe current problems (actual problems), by collecting, compiling, classifying, analyzing, and interpreting data. Descriptive analysis aimed at describing observational data without testing hypotheses [5].

The type of data used in this study was secondary data, namely laws and regulations having relevance to the focus of discussion, such as Law Number 21 Year 2008 concerning Sharia Banking or legal documents in the form of DSN-MUI fatwas. The data collection method used literature study, namely by studying and analyzing the DSN fatwa Number 02/DSN-MUI/IV/2000 concerning Savings. Data analysis method used a qualitative method. The qualitative analysis of secondary data was conducted based on legal theory or legal doctrine contained in the mindset, then applied deductively to the focus of problem.

III. RESULTS AND DISCUSSION

A. *Wadi'ah* Contract in Fatwa Number 02/DSN-MUI/IV/2000 concerning Saving From the Theory of Intention

Wadi'ah is taken from the word *wad' al-syai'* (deposit something) meaning that to deposit something by someone to another one to be kept [6]. Therefore, etymologically, *wadi'ah* means something that is placed to someone other than its owner to be kept or maintained [7]. The word *wadi'ah* in Indonesia language is translated into a deposit whose meaning is in line, as regulated in BW.

The terminological meaning of *wadi'ah* among jurists produces difference editorial meanings. However, substantively, *wadi'ah* has similar meaning defined by those jurists. For instance, Hanafiyah defines *wadi'ah* as to give control to other parties to keep their properties, both in *sharih* and *dalalah* [8]. Whereas Malikiyah [9], almost sharing with

Shafi'iyah [10], provides the definition of *wadi'ah* with a representation in keeping the assets owned or specifically respected in certain ways. Hanabilah gives the definition of *wadi'ah* with a representative contract in keeping assets that are *tabarru'* or a contract receipt of deposited assets as a representative in its protection [11].

Fiqh experts distinguish *wadi'ah* and *al-ida'* in which *wadi'ah* is a word indicating deposited objects to be kept by the recipient, while *al-ida'* shows its actions. They state that terminologically, *wadi'ah* is deposited assets to other parties to be kept. Therefore, *wadi'ah* also means giving authority or control to keep or maintain deposited objects [12].

In the legal context in Indonesia, several products related to *wadi'ah* have been found, both in the form of laws and regulations and in the form of fatwas issued by DSN-MUI. In Law Number 21 Year 2008 concerning Sharia Banking, one of sharia banking products is deposit consisting of saving and current account. Deposit is defined as funds deposited by customers to sharia banks and/or sharia business unit (UUS/*Unit Usaha Syariah*) based on *wadi'ah* or other contracts not contradicting with sharia principles in the form of current account, saving, or other similar forms. However, saving is the deposit based on *wadi'ah* contract or fund investments based on *mudharabah* or in accordance with certain agreed terms and conditions, but cannot be withdrawn by check, current account, and/or other similar tools [3].

The DSN-MUI fatwas related to *wadi'ah* contract is Fatwa Number 02/DSN-MUI/IV/2000 concerning Saving. It is stated that saving justified in sharia is *mudharabah* and *wadi'ah* principle-based saving. In this transaction, the customers act as *muwaddi'* and the LKS acts as *wadi'*.

The *wadi'ah* contract applied to LKS is marked by two things: first, the deposited object (*al-wadi'ah*) is money; secondly, the LKS as the deposited recipient is given permission by the requester (customer) to use the money. *Wadi'ah* contract containing permission use for the deposited object from the depositor to the recipient is substantively the same as *qardh* contract [13] Muhammad Musthafa Abuhu al-Syainqithi [14] in the following explanation:

والانتفاع بالوديعة باذن المودع يصيرها قرضا لان الانتفاع بها يهلك عينها ان كانت نقدا او مثليا غير النقد مما يمكن ضبطه وليست ايداعا

“The utilization of deposited assets with the permission of depositor (the owner) makes *wadi'ah* contract (substantially) become *qardh* contract. The utilization of deposited assets makes assets be used, even though the deposited assets including money or assets having have equality in the public (*mal mitsli*) other than those that can be kept, makes the contract substantially no longer included in *wadi'ah* contract”.

Based on the theory of intention [15], *wadi'ah* contract practiced in LKS includes *qardh* contract based on *fiqh* principles related to the following intentions [16]:

العبرة في العقود للمقاصد والمعاني لا للألفاظ والمباني

“What is used as a standard benchmark of truth in the contract is its intention and substance, not the word and sentence structure.”

In line with the aforementioned rule, Yusuf al-Qaradhawi makes a rule related to this theory that is as follows [17]:

العبرة بالمقاصد و المسميات لا بالافاظ والتسميات

“What is used as a benchmark is its intention and substance, not its editorial or naming.”

Based on the two rules regarding the theory of the aforementioned contract: intention and purpose, someone is not fixated on the terminology used, but rather focuses on the desired understanding. By returning the problem to the principle, in the contract, what being assessed is the intention, not *lafadz* (term). It is hoped that the development of muamalah *fiqh* concept from classical to contemporary *fiqh* functions to develop LKS products.

Rafiq Yunus al-Mishri is even more specific by saying that *wadi'ah* contract turns into *qardh* contract if the deposited asset is money and there is permission to manage it from the depositor. The following statement quoted from Rafiq Yunus al-Mishri [18]:

إذا كانت الوديعة من النقود، واستخدمها الوديع، انقلبت قرصاً مضموناً بذمته، ومن هنا فإن الودائع المصرفية هي قروض، لأن المصرف ماذون باستعمالها حسب النظم والاعراف

“If in *wadi'ah* contract, the deposited object is money, and (the depositor) asks the recipient to manage the deposited object, the contract will change to *qardh* (debt-receivables) contract which becomes the responsibility of depositor. Therefore, (it can be seen that the money as the deposited object) at LKS, it is *qardh* property because the LKS is given a license to use it in accordance with the regulations and practices applied at LKS.”

B. *Wadi'ah Contract in Fatwa Number 02/DSN-MUI/IV/2000 concerning Saving in Terms of Sharia Principles*

Wadi'ah saving is sharia bank funding product in the form of saving account for security and ease of use, such as *wadi'ah* current account, but flexible *wadi'ah* current account because customers cannot withdraw funds by check. The characteristics of *wadi'ah* saving are similar to conventional saving when customers are guaranteed to be able to withdraw their funds at any time by using various facilities provided by banks, such as ATM cards, etc. without charging [19].

Banks can usually use current account funds more freely than funds from *wadi'ah* current account due to inflexible withdrawal as current account. Therefore, banks have a greater chance of making a profit. Besides that, the bonus given by the

bank to *wadi'ah* saving account is usually greater than the bonus given by the bank to *wadi'ah* current account. The amount of the bonus is also not required and is not specified in advance.

As explained in the previous discussion, scholars stipulating that deposit contract (*'aqd al-wadi'ah/'aqd ida*) for money accompanied by permission from the depositor to the recipient to use money is *qardh* contract, substantively (*min nahiyat al-madah*) is emphasized in various *fiqh* books, among others [13]: (1) The Kassy al-Qina Book (4/141, 167 and 504) by al-Bahuti; (2) Hasyiyah al-Dusuqi'ala a-Syarah al-Kabir Book (3/435); al-Mughni Book (5/207) by Ibn Qudamah al-Maqdisi; Tuhfat al-Fuqaha' Book (3/284) by al-Samarqandi; Bada'i al-Shana'i Book (8/389) by al-Kassani; and Ibn Abidin Hasyiyah Book (4/504).

The scholars' opinion concerning the substance of *wadi'ah* contract at LKS is *qardh* contract used as a fundamental consideration by DSN-MUI in establishing Fatwa Number 1 Year 2000 concerning Current Account and Fatwa Number 2 Year 2000 concerning Saving, so that it also affects Fatwa Number 86 Year 2012 concerning Prizes in LKS Fund Raising.

Wadi'ah contract contained in LKS fund raising product is a contract containing permission from the owner for the recipient (LKS) to use the deposited money. In terms of *tahawwul al-'aqd* theory, *wadi'ah* contract containing permission to use the *wadi'ah* object from the depositor to the recipient is substantively the same as *qardh* contract. Therefore, the rules of *qardh* contract are enforced including the prevention of the promised benefits at the beginning of the contract because it is included in usury *qardh*. Therefore, it is irrelevant if *ja'izah tasyji'iyah* is used to promote/market *wadi'ah* saving products and *wadi'ah* current account, because substantively, the contract used is *qardh* contract included in the domain of *tabarru'* contract [20].

Indeed, in the DSN-MUI fatwas regarding *wadi'ah* contract, no explicit explanation stating that the substance of *wadi'ah* contract LKS is *qardh* contract. However, this explanation is clearly found in the glossary, namely [13]:

“*Wadi'ah* is a deposit given by one party to another party to be kept and returned when it is requested to return. The case of *wadi'ah* in the form of money, and the depositor permits the recipient to use the money, in *fiqh* muamalah such *wadi'ah* contract substantively, is *qardh* (loan, debt, and credit). Therefore, if there are additions required for that *wadi'ah*, or those additions become traditions/customs, the additions are categorized as usury.”

The argument about the prohibition of accepting gifts in debt transactions based on the hadith below [21]:

عَنْ يَحْيَى بْنِ أَبِي اسْحَاقَ الْهَنْدَايِيِّ، قَالَ: سَأَلْتُ أَنَسَ بْنَ مَالِكٍ: الرَّجُلُ مِمَّا يُقْرَضُ أَخَاهُ الْمَالَ فَيُهْدِي لَهُ؟ قَالَ: قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ: «إِذَا أَقْرَضَ أَحَدُكُمْ قَرْضًا، فَأَهْدَى لَهُ، أَوْ حَمَلَهُ عَلَى الدَّابَّةِ، فَلَا يَرْكَبُهَا وَلَا يَقْبَلُهُ، إِلَّا أَنْ يَكُونَ جَرَى «بَيْنَهُ وَبَيْنَهُ قَبْلَ ذَلِكَ»

“From Yahya ibn Abi Ishaq al-Hunai, he said, I asked Anas Ibn Malik about someone from us who lent money then he was given a gift from someone who was in debt, then he (Anas Ibn Malik) answered, that the Prophet Muhammad SAW said, when you lend money to someone, and the person who owes it gives you a gift or gives you a ride, then don’t accept those gifts and rides (because it is usury), unless the gifts and rides are something that they are accustomed to” (H.R Ibn Majah).

IV. CONCLUSIONS

Based on the previous description and analysis, several conclusions can be drawn as follows:

- In the DSN-MUI saving product, its fatwa uses *wadi’ah* contract. However, if it is examined, it turns out that the contract used is *qardh* contract because the deposited object is in the form of money and the money is used by a particular party. Based on the *theory of intention*, the rule used as a guide in the contract is its substance, not its formalistic naming. Even though its name is *wadi’ah* contract, but the essence is *qardh*, which in the framework of contemporary muamalah *fiqh*, it is called *wadi’ah yad al-dhamanah* contract.
- The development of *wadi’ah* contract in fund raising products in the fatwas of DSN-MUI does not contradict sharia principles because in its implementation, sharia banks do not promise any bonuses or prizes required at the beginning of the contract, so that this product is free from prohibited transactions, such as usury.

REFERENCES

- [1] I. Rasyadi, Akad Nominat Syariah: Implementasi dan Penyelesaian Sengketa, Jakarta: Prenada Group, 2019.
- [2] H. Hasan, Pemikiran Perkembangan Hukum Ekonomi Syariah Di Dunia Islam Kontemporer, Depok: Gramata Publishing, 2011.
- [3] Y. Janwari, Lembaga Keuangan Syariah, Bandung: PT Remaja Rosdakarya, 2015.
- [4] S. Soekanto and S. Mamudji, Penelitian Hukum Normatif (Suatu Tinjauan Singkat), Jakarta: Rajawali Pers., 1985.
- [5] R. Adi, Metode Penelitian Sosial dan Hukum, Jakarta: Granit, 2004.
- [6] S. Sabiq, *Fiqh al-Sunnah*, Beirut: Dar al-Kitab al-‘Arabiyyah, 1973.
- [7] L. Ma’luf, *al-Munjid Fi al-Lughat wa Al-‘Alâm*, Beirut: Dâr al-Masyariq, 1988.
- [8] Muhammad Amir Ibn Umar Ibn Abd al-‘Aziz Ibn ‘Abidin, *Hâsiyah Radd al-Mukhtâr ‘alâ Dar al-Mukhtâr*, Beirut: Dâr al-Fikr, 1992.
- [9] Syams al-Din Muhammad Ibn Ahmad Ibn ‘Urfah al-Dasuqi, *Hâsiyah al-Dasûqî*, Beirut: Dâr al-Fikr, t.th.
- [10] Syams al-Din Muhammad Ibn Ahmad al-Khatib al-Syarbini al-Syafi’i, *Mughnî al-Muhtâj ilâ Ma’rifâh Ma’ânî al-Fâdz al-Minhâj*, Beirut: Dar al-Kutub al-‘Ilmiyyah, 1994.
- [11] Manshur Ibn Yunus Ibn Shalah al-Din Ibn Ahsan Ibn Idris al-Bahuti al-Hanbali, *Kasyâf al-Qinâ’ ‘an Matan al-Iqnâ’*, Beirut: Dâr al-Kutub al-‘Ilmiyyah, t.th.
- [12] N. Hammad, ‘Aqd al-Wad’ah fi al-Syarî’ah al-Islâmiyah: ‘Ard Manhajy Muqâran, Damaskus: Dâr al-Qalam, 1993.
- [13] J. Mubarak and Hasanudin, *Fikih Mu’amalah Maliyah: Akad Tabarru’*, Bandung: Simbiosia, 2017.
- [14] M.M.A. al-Syinqithi, *Dirâsah Syar’iyyah li Ahm al-‘Uqûd al-Mâliyah al-Mustahdatsah*, Madinah Munawarah: Maktabah al-‘Ulum wa al-Hikam, 2001.
- [15] J. S. Praja, *Ekonomi Syariah*, Bandung: Pustaka Setia, 2012.
- [16] Ahmad Ibn al-Syaikh Muhammad al-Zarqa, *Syarh al-Qawâ’id al-Fiqhiyyah*, Damaskus: Dâr al-Qalam, 1989.
- [17] Y. al-Qaradhawi, *al-Qawâ’id al-Hâkimah Lifiqh al-Mu’âmalât*, Kairo: Dâr al-Syurq, 2010.
- [18] R.Y. al-Mishri, *Fiqh al-Mu’âmalât al-Mâliyah*, Damaskus: Dâr al-Qalam, 2005.
- [19] P. Adam, *Fikih Mu’amalah Mâliyah: Konsep, Regulasi, dan Implementasi*, Bandung: PT Refika Aditama, 2017.
- [20] J. Mubarak, Hasanudin, Yulizar D. Sanrego, *Fatwa Tentang Hadiah Di Lembaga Keuangan Syariah*, *Miqot Vol. Xxxvii No. 2 Juli-Desember 2013*.
- [21] Ibn Majah Abu Abdullah Muhammad Ibn Yazid al-Quzwaini, *Sunan Ibn Mâjah*, Kairo: Dâr Ihya Kutub al-‘Arabi, t.th.