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Qardul Hasan Principles: Theory And Implementation In Islamic Banking

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Abstract

The *qardul hasan* contract is one of the contracts to seek the afterlife, because it is not a business contract. So this contract cannot be used for purposes commercial. Islamic banks as an objective financial institution forearning profit cannot rely on *tabarru'* contracts for looking for profit. If our goal is to make a profit, use contracts Which is commercial, namely in the contracts. The paper aims to extract *Qardul Hasan* Principles: Theory and Implementation in Islamic Banking. Understanding *qardul hasan* will help us determine the action that should or should not be done in performing *qardul hasan*. It has hoped that this research can contribute to the development of Islamic economics, both in theory and real practice.

Keywords: Contract, Qardul Hasan, Islamic Banking

A. Introduction

Islam is a religion that completes previous religions, a religion which addresses various aspects of both *aqidah*, morals and sharia (law). Islam regulates all aspects of human life, including economic or banking aspects, how Islam teaches not only God but also humanity and our behavior must be true and pious, so Islam teaches things of balance to be beautiful so that Islam is also called the religion of *rahmatan lil'alam*.¹ Economic problems enter the study system, where the law as long as everything is permissible, may be done until there is an argument stating the prohibition not to do it again. In this *muamalah* the prophet did not give detailed rules, even the prophet had said *أنتم أعلم بأمور دنياكم* (you know your world affairs more).

This means that the Qur'an and *Sunnah* only provide basic principles and philosophies that emphasize the prohibitions that must be shunned, then we are required to do all the things so that we do as much innovation and creativity as possible.

A transaction is a form of activity or human interaction as social beings, meaning that humans with His *sunatullah* will come into contact with one another.² Therefore, a norm is needed which regulates the establishment of a *maslahah* interaction, which brings good benefits and impacts, not only good in the eyes of humans but can be accepted by religion. One transaction in *muamalah* is a contract or contract transaction. The contract / contract in the study of *muamalah* fiqh is broadly divided into two parts, namely the *tabarru'* contract and the contract of engagement, but in this discussion will focus more on the *qardul hasan* contract issue which is reviewed from the theoretical and practical side of the contract in Islamic banking.

Qardul hasanas beautiful loan is a terminology derived from the *Qur'an* where it occurs different verses. It is a unique contract in which no tangible profit accrued. In Islamic banking, it refers to interest-free loans. *Qardul hasan* is primarily a business transaction that establishes a relationship off lender and borrower. Syafi'Antonio declared that the meaning of *al-qardh* is to give some wealth to another person with a bill or refunded. In other word, it is to lend without rewards.³ The borrower is only required to repay the principal amount borrowed, but he may pay an additional amount as a token of appreciation.

Qardul hasan usually uses in Islamic bank products. This product used to help the person who does not have the capital to do some

¹Arif Fauzan, Prinsip Tabarru Teori dan Implementasi diperbankan syariah, *Jurnal Al-Amwal*, Volume 8, No. 2 Tahun 2016, p. 401

²Destri Budi, Analisis Yuridis akad Tabarru' dan akad tijarah dalam produk unit link syariah, *Jurnal Mimbar Hukum*, Volume 28, Nomor 2, Juni 2016, p. 218

³ Muhammad, M.Ag. *Bank Syariah*. Ekonosia: Yogyakarta, 2004, p. 20

business or necessities.⁴ Qard hasan entered in *tabbaru'* system, not for profit. In the modern era, some banks do not do the qardul hasan in compliance with the shariah system. They aim to profit not charity. This problem found some banks. Some banks take the addition from the capital, which is clearly not the shariah compliant. The capital of the qard hasan must be returned, but the addition in capital from the loan is cannot be accepted by the shariah. Allah Swt have explained about the principle of *qardh* in Qur'an :

مَنْ ذَا الَّذِي يُقرضُ اللهَ قرضًا حسنًا فيضاعفه له أضعافًا كثيرة^٥ والله يقبض ويبيسط وإليه ترجعون

Who will lend to Allah a good loan (spend their wealth in the way of Allah), then Allah will double the payment to him with a double fold that much. And Allah narrows and paved (sustenance) and to Him, you shall be returned. (Al-Baqarah: 245)

The paper aims to extract *Qardul Hasan* Principles: Theory And Implementation In Islamic Banking. Understanding *maqoshid shariah* in *qardul hasan* will help us determine the action that should or should not be done in performing qardul hasan. It's hoped that this research can contribute to the development of Islamic economics, both in theory and real practice.

B. Research methods

The research method used in this study is to use the literature study method, namely in research conducted by studying various existing literature and literature. The literature in question is what has a relationship with the research section.⁵ By understanding the literature, you will be able to understand the purpose of the problem you want to solve.

C. Definition of Qard Hasan

Falaary in his book, "al-Masorif al-Islamiyyah has explained that qard hasan is a transaction to help someone who needs the money for business or a sudden need without interest.⁶ Abdul Ghafar has a similar definition with stressing on *qardul hasan* being interest-free loan. From those definitions, we can infer that the main goal of *qardh hasan* is for *tabarru'*. In *qardul hasan*, it is permissible for the borrower to give an addition a part of the capital to the lender.⁷ Howefer, this should not be stipulated in the contract. *Qardis* permissible based on several *Hadith*. In this regard, it was narrated on the authority of Ibn Mas'ud that the prophet (SAW) said:

"every to loans extended by a Muslim to another count as one charitable payment".

⁴Ahcene Lahasna, *Q & A in Islamic Finance*, CERT: Kuala Lumpur, 2010, p. 174

⁵Sugiyono, *Metode Penelitian Bisnis*, (Alfabeta, Bandung:2014), p. 399

⁶Ahmad Falaary, *Al-Masorif al-Islamiyyah*. Daru-l-Fikri. Cetakan Pertama. 1998, p. 144

⁷Abdul Ghafar Islami, *Money, Islamic Banks and the real economy*. Cengage Learning. 2010, p. 72

Abdul Ghafar Ismail Explain that :

*“Qard hasan may be used by the utility as an overdraft facility for the client with whom the bank has entered into musharakah and mudharabah arrangements. Qard hasan may be extended to university undergraduates and graduates for financing their studies. The qard hasan could be structured in the form of an account with the bank where the student has the option to go into overdraft up to a certain amount”.*⁸

Qard is the transfer of ownership in fungible wealth to a person on whom it is binding to return wealth similar to it. According to Dr. Ahcene Lahsasna the element of *qard* is contract are as follows:⁹

1. The contract of qard is concluded through offer and acceptance by the use of the words qard and salaf one other word or act that conveys the meaning of qard.
2. The legal capacity for donating is stipulated for the lender.
3. The legal capacity undertakes transactions is stipulated for the borrower.
4. It is stipulated for the subject matter of the contract that it be known fungible marketable

D. Maqoshid Syariah

According to Islam, that is to always associate it with the main goal of man created namely worship. To meet this need, God adorns people with lust (lust), with this lust arising desire in humans. In Islamic economics human needs (*Maqoshid*) consist of three levels:

1. Primary

It is a necessity and foundation in upholding human welfare in the world and the hereafter which includes the maintenance of five basic elements, namely: religion, soul, reason, descent, and price. Neglect of the five elements will cause damage in the world and the hereafter. Maintenance of religion, soul, mind, descent and wealth can be done by maintaining the existence of these five constituents in human life and protecting them from various things that can damage.¹⁰ A primary goal is the main goal in legal development that must be achieved. Therefore, the *syara'* in this case is absolute and definite, and *syara law'* which has a background in fulfilling the needs of the Dharuri is "obligatory" (according to *jumhur ulama*) or "*fhardu*" (according to Hanafiah scholars). On the contrary, God's prohibition regarding *dharuri* is strict and absolute. The resulting laws include *haram dzati*.¹¹ To be able to support the achievement of the goals of

⁸Abdul Ghafar Islami, *Money, Islamic Banks and the real economy...*, p. 73

⁹Ahcene Lahsasna, *Q & A In Islamic Finance...*, p. 176

¹⁰Adiwarman A. Karim. *Sejarah Pemikiran Ekonomi edisi kedua*. (Jakarta: Grafindo Persada, 2004), p. 318

¹¹ Amir Syarifuddin, *Ushul Fiqh II* (Jakarta: Kencana Prenada Group, 2008), p. 213

the Dharuri, the *syara'* establishes complementary laws that are broken down in the books of *fiqh*.

2. Secondary

The purpose is to facilitate life, eliminate difficulties or make better maintenance of the five basic elements of human life. If the need is not realized, it will not threaten his safety but will experience difficulties. Basically, this *hajiyat* level is a complement that strengthens, strengthens and protects the *dharuriyat* level. Or more specifically it aims to facilitate or eliminate human difficulties in the world.

3. Tertiary

The point is that humans can do their best to perfect the maintenance of the five basic elements of human life. It is not intended to eliminate or reduce various difficulties, but only acts as a complement, lighting and decorating human life. In Islam, there is a policy called Islamic economic politics.¹² Islamic economic politics is a guarantee of the fulfillment of all the basic needs of each person as a whole, following the possibility of each person to fulfill their secondary and tertiary needs according to their level of ability, as individuals living in a society that has a lifestyle. Islam views each person personally, not collectively as a community that lives in a country. The first time, Islam views each person as a human being who must be fulfilled all of his primary needs thoroughly. Only then, Islam views it with its capacity to fulfill its secondary and tertiary needs according to the level of its ability.

E. Application of *qardh* in Islamic bank

Qardh is usually provided by banks to their clients as a bailout loan facility when customers experience the overdraft. This facility may be part of a financing package the other, to facilitate customer transactions. *Qardh* in banking applications usually in four ways¹³:

1. As the bailout loan *Hajj* in which the customer is given a bailout loan for the eligible costs of depositing the pilgrimage. Customers will pay it off before the departure of the *hajj*.
2. As cash loans (cash advanced) of Islamic credit card products, where customers are given the freedom to withdraw cash through ATM of the Bank. The customer will return the appropriate time specified.

¹² Ika Yunia Fauzia, dkk, *Prinsip Dasar Ekonomi Islam*, (Sidoarjo: Kencana, 2014), p. 68

¹³ Heri Sudarsono, *Bank dan Lembaga Keuangan Syariah, Deskripsi dan Ilustrasi*, Yogyakarta, Ekonosia: kampus Fakultas Ekonomi UII Yogyakarta, 2003, p. 81

3. As lending to small businesses which will burden the Bank according to the calculations of the entrepreneur if given financing scheme Ijarah sale or for the results.
4. As and credit to the management of the bank, which the bank provides this facility to ensure the fulfillment of the bank's management. The person of bank management will be returned in installments through salary deductions.

Based on the above from definition we can describe that *qardh* viewed in various perspectives, ranging from terms in the language until the sharia law is in contradiction with the bank engaged in service who desire profit or implicitly can be said to be engaged in the commercialization of services. In the subject allowed to charge an administration Bank, according to the National Sharia Board Fatwa NO: 19 / DSN-MUI / IV / 2001 on Al-Qardh that allows for the lender to charge an administrative fee to customers.¹⁴ In determining the number of administrative costs in connection with the provision of *qardh*, should not be based on the calculation of the percentage of the number of funds granted *qardh*¹⁵. The bank would then be in a better position than it otherwise would have been, to sell a number of its other products and services to the now solvent customer. The return on *qardh*, in this case, could be a customer for life.

Islam loving people who do *qardh*, verily *qardh* also been allowed for those who accept it and is not which not to be implemented, because *qardh* is giving treasure to others to be accepted and utilized in order to fulfill their needs and then treasure it is returned once the time comes to normal. *Qardul hasan* has allowed to the people because have many functions in the application. *Qardul hasan* can help the poor people until making the distance between the poor and the rich so near. Besides that with *qardul hasan* can to increase the economy and with this transaction one of good transactions. In *qardul hasan* also can minimize the *riba* transaction. As we know, *riba* is forbidden for the Muslim. With *qardul hasan* can to offer a non-profit transaction because the goal in this transaction is to help the people who need that. Besides, the best function in *qardul hasan* is to grow the solidarity and Islamic brotherhood.

Qardh the permitted according *jumhur jurist*, allowed to *qardh* to all objects that may be traded except humans, and not justified to *qardh* on benefits/services, different from the opinion of Ibn Taymiyyah, such as helping to harvest a day in exchange he will be helped harvest day, or

¹⁴Abdul Ghafar Islami, *Money, Islamic Banks and the real economy...*, p. 76

¹⁵Rizal Yaya, Ahim Abdurrahim, *Akuntansi Perbankan Syariah; Teori dan Praktik Kontemporer*, Jakarta: Salemba Empat, 2009, p. 328

occupy other people's homes in exchange for the person occupying the house¹⁶. The point is that it is allowed to *qardh* with commensurate. *Qardh* that brings advantages contact as *qardh* intended to prostrate and doing good to fellow human beings help each other as social beings, because *qardh* not aim to make a profit nor a commercial transaction. Therefore, people who are not justified given *qardh* returns to the giver *qardh* except what he had received, or any similar one.

F. Conclusion

Based on the above paper, it can be concluded some case of this study, as follows:

1. That the arguments of Al-Quran and Hadith about the shariah contract *qardul hasan* law that basically borrowing is for people who lend and permissible for people who received the loan, even encouraged in the Islamic Shari'ah, because can help and assist those in need, especially for economically weak, with no provision may benefit in the implementation of the *qardh*. However, allowed to take the benefits or gifts from customers when returning the loans that are not specified when the contract or not previously required in the contract *al-qardh* and will be returned in a period that has been agreed on in the contract.
2. Implementation *qardhul hasan* in Islamic banking is allowed to various business activities as well as for customers who need a bailout. Islamic banks may require a guarantee to customers on funds borrowed from the bank that aims to provide a guarantee against the return of loan capital *qardh* these, and customers can provide additional voluntary contributions the Islamic banking for not agreed in the contract. *Maqashid Syariah* In *qardul hasan*: to help the poor people, to increase the economy, to minimize *riba*, to foster a non-profit transaction, and to grow the solidarity and Islamic brotherhood

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