

Analysis Of Rent-Based Capital Loan Contracts From A Sharia Law Perspective

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Abstract

The purpose of this study is to review and evaluate the implementation of capital loan contracts in Islamic microfinance practices. This study contributes theoretically and practically to the development of sharia law, especially the implementation of capital loan contracts in sharia microfinance. The research method used is qualitative research with a field research approach. The object of this research is a sharia capital loan contract in the program to build a prosperous family economy. Primary data were obtained through interviews and analyzed comprehensively with qualitative sharia contracts. The study results found that the practice of capital loans differed from Islamic Law because there were indications of prohibited interest practices and the practice of *gharar* in the operational procedures of capital loans.

Keywords: contract, capital loan, sharia microfinance, qardul hasan

INTRODUCTION

A financial system based on the principles of sharia law has become a major concern in recent decades, including in Indonesia. According to OJK data, total capital loans disbursed by Islamic banks in Indonesia in 2021 reached IDR 240.5 trillion, an increase of 8.9% from the previous year. Islamic banking capital loans consist of *financing mudharabah*, *musharakah*, *murabahah*, *ijarah*, *salam*, *istishna'*, and *qardh*.

Capital loans are a form of financing financial institutions provide to customers who need funds for business or consumption purposes. Capital loans can be done in various ways, both with an interest and sharia systems. The sharia system is a system that refers to the principles of Islamic law that govern the relationship between the giver and recipient of capital loans. The sharia system

does not recognize interest but uses certain contracts under Islamic law. Various types of contracts are used in Islamic capital loans, such as *murabahah*, *mudharabah*, *musharakah*, *ijarah*, *salam*, *istishna'*, *qardh*, and others (Dewi, 2004). Each contract has different characteristics, mechanisms, and implications.

This study discusses capital loans using the "*Qard al-Hasan*" or "*Qardhul Hasan*" contract. In this capital loan contract, the lender provides a loan to the borrower without setting the level of profit or interest to be paid by the borrower. This agreement is based on benevolence and loyalty in helping others and avoiding transactions that contain elements of *riba* (interest) (Baihaki & Malia, 2017). This principle is very important in Sharia law because *riba* is considered a sin and forbidden by Islam (Ghafar Ismail & Taufiq Possumah, n.d.).

There have been many studies that discuss the analysis of capital loan contracts with *qardh* contracts (Komarudin et al., 2023), namely research conducted by Muhammad Ash-Shiddiqy entitled "Analysis of *Qardh* financing contracts and loan repayment efforts in Islamic microfinance institutions". This study aims to determine how the implementation of the *qardh* contract at the Sharia Microfinance Institution Almuna Berkah Mandiri Special Region of Yogyakarta, as well as efforts to repay loans from community behavior. Research conducted by Rizky Dwi Putra entitled "Analysis of Capital Loan Implementation System at PT PNM Mekar Syariah". This study aims to determine the implementation system of capital loans at PT PNM Mekar Syariah and the factors that affect the success of capital loans. Research conducted by Nurul Hidayati entitled "Analysis of *Qardh* Financing Agreement in Sharia Microfinance Institutions of the Special Region of Yogyakarta." This study aims to determine how the implementation of cards financing contracts in Sharia Microfinance Institutions (MFIs) in the Special Region of Yogyakarta, as well as factors that affect loan repayment rates. Research conducted by Muhammad Fauzi entitled "Analysis of *Qardh* Hasan's Financing Agreement at Bank Syariah Mandiri Malang Branch." This study aims to determine how the process of implementing the card hasan financing agreement at Bank Syariah Mandiri Malang Branch, as well as the impact on bank performance. Research conducted by Nurul Huda entitled "Analysis of *Qardh* Hasan's Financing Agreement on Baitul Maal Wat Tamwil (BMT) Al-Falah Malang City". This study aims to determine how the implementation of the *qardh* Hasan financing contract at BMT Al-Falah Malang City, as well as the factors that affect the success of the *qardh* Hasan financing contract.

This study tries to strengthen and enrich previous research on implementing *qardh* contracts on capital loans in Islamic microfinance

institutions applied in PNM Mekar. One of the programs at PNM Mekar is a capital loan service for underprivileged women ultra-micro entrepreneurs through a program to foster a prosperous family economy. The program is strengthened by business mentoring activities carried out in groups that provide special services for underprivileged women and ultra-micro-business actors.

This research is important because it will provide an in-depth understanding of the aspects of sharia law in capital loan contracts. In addition, this research plays a role in developing more diverse and innovative Islamic financial products. By understanding more deeply about capital loan contracts, Islamic financial industry players can create financial products that follow the principles of sharia law to meet the needs of the Muslim community better. With a more creative range of financial products, the Islamic financial industry will be more relevant and competitive in the global market, which can increase the Sharia-based economy's overall growth. In addition, this research will provide better protection for consumers. With an in-depth analysis of capital loan contracts, it will ensure clarity and transparency in Islamic financial transactions. Consumers will feel more confident and secure in using Islamic banking and finance services because they know that their transactions are under the principles of fair and legitimate sharia law.

RESEARCH METHODS

This research is qualitative research with a field research approach. This research is a descriptive analysis that describes the data studied that occurs in the field as it is without any reviews or guidance from researchers. The object of this study is the sharia capital loan contract in the program to build a prosperous family economy at PNM Mekar, and the subject of this research is the analysis of the sharia perspective capital loan contract. Primary data were obtained through interviews and analyzed comprehensively with qualitative sharia contracts. The data analysis method used in this study is to use data reduction, data presentation, and conclusions.

RESULTS AND DISCUSSION

LENDING IN ISLAMIC LAW (QARD)

Islamic law, which can also be called sharia, is a rule based on the revelation of Allah SWT, which is based on the Qur'an and al-hadith (Afkar, n.d.). Islamic law has regulated how Muslims should behave, which is based on Islamic rules. In this case, Islamic Law is a command from Allah Almighty that is obliged to be carried out by all His people. One of the topics in Islamic law is

borrowing money (Qord). In general, money loans are defined as a type of debt provided by individuals or financial institutions, where a certain amount of money is provided to be lent to debtors. In fiqh terms, money lending is called qord. Qord is linguistically derived from the word qarada, synonymous with gotho'a, which means to cut. This is because the person who gives the loan/debt deducts part of his property to be given to the person who receives the debt (mustard). Thus, al-card is an agreement between two parties whereby the first party gives money or goods to the second party to be used with the condition that the money or goods must be returned exactly as they received from the first party (Wulandari, 2019).

Qard Legal Basis (Laldin & Furqani, 2016) is in the Word of Allah QS Al-Maidah verse 2, which means "... And help you in virtue and piety, and do not help in sinning and enmity. Fear Allah, indeed Allah is very heavy in His torments." In addition, there is also in verse 245 of QS Al-Baqarah, which means, "Whoever wants to lend to Allah with a good loan, Allah multiplies him by much. Allah withholds and expands (sustenance), and to Him, you are returned.

Guided by this verse, Islam allows debts in human life in a good way. However, on the contrary, if the debt is accompanied by bad behavior and brings suffering to others, then the law can turn into haram or something forbidden by the teachings of Islam (Afkar, n.d.). So that this debt does not bring losses to one party, it is not only a responsibility for people who lend money to others but also an obligation for people who borrow money to repay the loan (Rasyid et al., 2023).

PNM Mekar Syariah or Permodalan Nasional Madani Fostering Prosperous Families is a group-based empowerment service under the provisions of Islamic law based on fatwas and sharia conformity statements from the National Sharia Council of the Indonesian Ulema Council intended for pre-prosperous women ultra micro entrepreneurs (Saputri et al., 2021), through Improving financial management to realize family ideals and welfare; Unsecured business capital financing; habituation of the culture of saving; Increased competence in entrepreneurship and business development.

The Mekar Syariah program is implemented through business indoctrination following Islamic law. These namely, Weekly meetings must be carried out in a disciplined and timely manner by saying prayers, customer promises, mekar Syariah account officer promises, and joint promises. Mekar syariah customers are those who already have a business, will do business, or have been in business because they already have previous business experience

under Islamic law. Customers must have a business after being given financing from the recipient of alms to the giver of alms.

Several contracts are used in the Mekar Syariah program, namely murabahah, wakalah, and wadiah contracts (Isfandiar, 2013). Akad Murabahah is a sale and purchase agreement between Mekar Syariah / lender and customer. Mekar Syariah buys the goods the customer needs and then sells them to the customer concerned at the acquisition price plus the profit margin agreed between Mekar Syariah and the customer. The murabahah contract is used in business capital financing where PNM lends Rp. 2,000,000. (two million rupiah) to the customer, the loan is paid in installments for 50 weeks, and every week, the customer must deposit Rp. If it totaled 50,000 (fifty thousand rupiahs), PNM gets Rp 2,500,000 (two million five hundred thousand rupiahs).

The second contract of wakalah is the delegation of power by one person as the first party to another person as the second party in the matters represented. In this case, Mekar Syariah authorizes customers to purchase goods as needed. The application of the wakalah contract in capital financing is that PNM hands over money to the naabah to be used to buy goods according to their business needs, but not all customers use the money for business capital; some use it for school fees, meeting daily needs and buying other needs outside the business. Like Putri's mother, who uses her money to pay for her son's school fees.

The third wadiah contract is the customer's deposit, which must be maintained and returned whenever the customer wants. Mekar Syariah is responsible for the return of the deposit. In practice, contracts are used to provide convenience to customers in the form of savings; if customers cannot pay installments in the future, PNM can take customer savings to pay installments.

The practice of lending and borrowing at PNM Mekar Syariah offered by PNM Mekar consists of two types and the first is the first cycle of lending, namely the initial loan made by the customer with the provision that the first business capital loan provided by PNM Mekar to the customer is Rp. 2,000,000 (two million rupiah), provided that the customer has completed the requirements and has been surveyed by PNM Mekar's officer. Then, the customer sets aside money as savings of 5% of each loan, which is Rp. 100,000 from the loan amount of Rp. 2,000,000. Furthermore, the money cannot be taken while the installment is still running and can be taken at the end after the installment is paid off. There is a grace period, an early installment holiday or time given to customers not to make installment payments for two weeks. So, the first installment payment will be made two weeks after the disbursement of

funds. This grace period only applies to first-cycle customers, while for second-cycle customers and so on, there is no grace period, as well as customers who rejoin. There is a holiday period for Eid al-Fitr, which is the time given to customers not to pay installments for two weeks, on the first week of the holiday and the second week after the holiday.

The second lending practice at PNM Mekar Syariah is the provision of second and subsequent cycle loans. The provision of second cycle loans and so on is a loan obtained after the customer completes the first cycle installments or after. The following provisions must be made in the loan. In the second stage of the loan, you can choose the loan amount, which is fixed Rp. 2,000,000, - such as the initial loan or Rp. 3,000,000 or Rp. 4,000,000,-. As for the next loan, the maximum loan is Rp. 5,000,000,-. Customers set aside money as savings equal to 5% of each loan. There is a holiday period for Eid al-Fitr, which is the time given to customers not to pay installments for two weeks, on the first week of the holiday and the second week after the holiday. The loan installment payment period at PNM Mekar is divided into 2 types, namely 25-week and 50-week loans. If the loan is Rp. 2,000,000 while the chosen period is 25 weeks, the amount of money deposited each week is Rp. 90,000. Then, if the chosen period is 50 weeks, then the amount of money deposited each week is Rp. 50,000.

Margin/profit determination in PNM Mekar Syariah is a term to refer to the difference between profit and turnover in a business in the form of a percentage, or briefly called the percentage of profit from a product. The profit in PNM Mekar is calculated from the principal amount, based on a maturity of 25% with a period of 50 weeks and 12.5% with a period of 25 weeks.

ANALISIS AKAD PINJAMAN MODAL MELALUI MEKAR DALAM PERSPEKTIF SYARIAH

(Lubis, 1994)'*again*, i.e., one who gives loans and borrows (owes). In this case, those who provide loans are PNM Mekar, and those who borrow (owe) are customers. It is required that both have perfect legal acting skills, be in puberty, and be intelligent. Second, *Ma'qud 'alayh*, i.e., property lent/owed. It is required that the property lent is material (material), the loaned property must be known, namely known in its level and nature and can be handed over, and the loaned property is an equivalent property that can be weighed, measured, and calculated, and the loaned property must not provide additional (interest). Meanwhile, in the practice of capital loans at PNM Mekar, in the form of money, there is an interest rate of 25% for installments with a period of 50 weeks and 12.5% for installments with a period of 25 weeks. Third is Shigoh (*ijab qobul*), the handover between the two parties. Shigah is required by *lafadz*, which indicates the purpose of borrowing/receivables (Lubis, 1994).

Suppose you look at the terms and conditions above after researching the field. In that case, almost all the pillars and conditions of capital lending at PNM Mekar have been met. However, one condition needs to be met in PNM Mekarini's capital loan: rewards or additional (interest) in the agreement. The compilation of shari'ah economic law (KHES) also explains the provisions of the worth contract in article 609, which reads: Customers can make additions/donations voluntarily to lenders as long as they are not agreed in the transaction. The purpose of this article is in line with Sharia law, namely, the repayment of loans through an excess of mustard voluntarily given by the debtor party not based on a previous agreement, then it is valid and justifiable according to the provisions of shari'a' (Rozallindah, 2016). Meanwhile, if the return of debt by exceeding the principal debt but is first agreed upon by the parties, usually in the form of a percentage of the money lent or in other words for the borrower is charged interest, then the practice is haram or prohibited by shara' (Erlindawati, 2017). This is based on the provisions of the hadith narrated by Bayhaqi, which reads:

كُلُّ قَرْضٍ جَرَّ مَنَفَعَةً فَهُوَ رِبَاٌ

Meaning: *"Every qardh contract by taking benefits is usury."*

From the statement above, researchers can understand that the contract in the lending practice managed by PNM Mekar does not follow Islamic law because it does not meet the requirements for lending (qard), namely the presence of additional elements (interest) (DSN-MUI, 2004). Zahrah states that bank interest includes riba nasi'ah, which Islam prohibits (Fakultas et al., 2019). As Allah said in the letter of Al-Imran, verse 130:

يَا أَيُّهَا الَّذِينَ ءَامَنُوا لَا تَأْكُلُوا الرِّبَاَ أَضْعَافًا مُّضَاعَفَةً وَاتَّقُوا اللَّهَ لَعَلَّكُمْ تُفْلِحُونَ

Meaning: *"O you who believe! Do not eat usury with multiples, and fear Allah, so that you may be lucky."*

In addition to al-Baqarah verse 278:

يَا أَيُّهَا الَّذِينَ ءَامَنُوا اتَّقُوا اللَّهَ وَذَرُوا مَا بَقِيَ مِنَ الرِّبَاَ إِن كُنْتُمْ مُّؤْمِنِينَ

Meaning: *"O you who believe! Fear Allah and leave the rest of usury if you believe."*

In Tafsir Jalalain, the explanation of this verse is: O you who believe, fear Allah and leave behind, that is, stay away from usury, if you believe in truth, for the nature or characteristics of the believers are to follow the commandment of Allah. (Wahid & Akbar, 2020). This verse was revealed when some of the Companions still demanded usury in the past, even though it had been forbidden (Harun, 2015). From the above verses, it is clear that Allah Almighty forbids usury, therefore, Muslims should stay away from usury unless it is in an

emergency and there is no way out. As in the rules of fiqh, it is stated المشقة تجلب التيسر "hardship brings ease" (Wahbah et al., 1986).

In addition, the lending and borrowing practices managed by PNM Mekar are carried out with a joint responsibility system. The rent-bearing system is a return pattern where members bear each other or help other members who have difficulty at the time of return. That is, if one member of the group is absent and does not pay, then other members are obliged to bail out or pay the bills of the absent member. Then, later, the absent member must reimburse the money to another member who has bailed it out. This rent responsibility system is indeed quite good because it educates the responsibility and awareness of each group member by reminding each other and helping group members who cannot deposit at a predetermined time (Wahyuni et al., 2022). However, on the other hand, the system of responsibility here goes backward with the saying of Allah in the letter Al-Maidah/5:2, which means: "And help you in virtue and piety, and do not help in sin and enmity."

The meaning of the above verse is that Allah SWT commands one to help each other in doing good and the prohibition of helping in sin. (Fauziah, 2017). The system of mutual responsibility here includes help in sinning because, in the loan, there is a value of interest/usury. So, in this case, the researcher argues that renting responsibility here is not allowed by Islamic shari'a because it includes help in sinning. After all, in the loan, there is interest/usury. The allocation of capital loans in Mekar's PNM practice is intended for female customers such as housewives and entrepreneurs who need capital for business or opening a new business.

Nevertheless, in reality, people use more than just the loans for business capital; some customers use the loan for other costs, such as household needs, school fees, etc. For example, Ibu Putri in Karobelah village uses her loan for her child's school fees, and Ibu Rofiah is used to pay her son's hospital fees. Besides that, Ibu Dartik is used for additional renovation costs for her house.

Initially, they did coaching to start a business, but the funds were not used for the business mentioned in the capital loan application form but for other purposes. In this case, the customer does not use the loan following the provisions determined by PNM Mekar and the application form submitted by the customer. In this case, the customer needs to be more honest and trustworthy in using the funds provided by PNM Mekar. As in the principle of Islamic muamalah, it is stated that muamalah activities must be carried out honestly and trustfully, as the Prophet exemplified. Therefore, it can be understood that the financing is not following Islamic Shari'a because, in muamalah, there should not be fraud, forgery, and horror (Abdulahana, 2020).

In addition, in terms of profit, PNM Mekar is calculated from the amount of principal, based on the time due, calculated upfront, and based on percentage. Thus, it is no different from usury. Suppose the percentage of interest is 25% with a period of 50 weeks and 12.5% with a period of 25 weeks. Thus, basically, in determining the margin/profit carried out by PNM Mekar, according to the author's analysis, it is not following the provisions of Islamic law because it contains a fairly high interest, as Fatwa of the Indonesian Ulema Council Number 1 of 2004 concerning Interest law, which reads "The practice of legal interest is haram, whether carried out by banks, insurance, capital markets, pawnshops, cooperatives, and other financial institutions or carried out by individuals" (DSN-MUI, 2004). In addition, as the results of interviews with interviewees, they felt burdened by the interest determined by PNM Mekar, thus burdening them in repaying the loan. As in the principle of muamalah in Islam, no party should be harmed or harmed, and there should be no element of usury. Thus, the practice of lending and borrowing managed by PNM Mekar is haram because it contains interest/usury.

COVER

The practice of lending money managed by PNM Mekar differs from Islamic law because of interest in practice. Islam forbids usury, as the legal basis is the Qur'an, sunnah, and ijtimah ulama. In addition, the pattern used in PNM Mekar is the responsibility system, which, in the practice of borrowing money, rent responsibility system is not allowed by Islamic law because it includes help in sinning and indications of. In addition, the money or capital used by some customers in reality differs from what has been determined by PNM Mekar and the financing form submitted by customers, namely for business capital or opening a business, but some are used for other needs. So, in this case, it is not under the principle of muamalah in Islam because of the dishonesty/openness of customers to PNM Mekar Syariah. While in the principle of muamalah must be done honestly and trustfully. There should be no element of fraud, forgery, and gharar.

BIBLIOGRAPHY

- Abdulahana. (2020). *Kaidah-Kaidah Keabsahan Multi Akad (Hybrid Contract) dan Desain Kontrak Ekonomi Syariah*. TrustMedia Publishing.
- Afkar, T. (n.d.). *Financing Mechanism of Islamic Banking*.
- Baihaki, A., & Malia, E. (2017). Analisis Pembiayaan Qardhul Hasan Sebagai Aplikasi Corporate Social Responsibility Entitas Lembaga Keuangan Syari'ah. *Wacana Equilibrium*.

- Dewi, G. (2004). *Aspek-aspek hukum dalam perbankan & perasuransian syariah di Indonesia*. Kencana.
- DSN-MUI. (2004). *Fatwa DSN-MUI Nomor 1 Tahun 2004 Tentang Bunga Bank*. Dewan Syariah Nasional-Majelis Ulama Indonesia.
- Erlindawati. (2017). Prinsip Manajemen Pembiayaan Syariah. *IQTISHADUNA: Jurnal Ilmiah Ekonomi Kita*, 6(1), 82–97.
- Fakultas, D., Dan, E., Islam, B., & Batusangkar, I. (2019). Perbedaan Pandangan Fuqaha Ihwal Bunga Bank dan Riba. *EKONOMIKA SYARIAH: Journal of Economic Studies*, 3(2), 47–60. <https://doi.org/10.30983/ES.V3I2.2150>
- Fauziah, C. (2017). AT-TIJARAH (PERDAGANGAN) DALAM ALQURAN (Studi Komparatif Tafsir Jami' Li Ahkam Alquran dan Tafsir Al-Mishbah). *Jurnal At-Tibyan: Jurnal Ilmu Alquran Dan Tafsir*. <https://doi.org/10.32505/tibyan.v2i1.253>
- Ghafar Ismail, A., & Taufiq Possumah, B. (n.d.). *Qardhul Hasan Principles Applied to Micro Finance Facilities*. Retrieved August 7, 2023, from <http://www.ekonis-ukm.my>
- Harun. (2015). Riba menurut pemikiran m. quraish shihab. *Suhuf*.
- Isfandiar, A. A. (2013). Analisis Fiqh Muamalah Tentang Hybrid Contract Model dan Penerapannya Pada Lembaga Keuangan Syariah. *Jurnal Penelitian*, 10(2), 205–231.
- Komarudin, P., Sodiki, M., Hukum Ekonomi Syariah, P., Antassari Banjarmasin, U., & Islam Kalimantan MAB, U. (2023). Bibliometric Mapping of Research Developments Using Qardh Financing Topics On Google Scholar Using Vosviewer. *Islamic Banking : Jurnal Pemikiran Dan Pengembangan Perbankan Syariah*, 8(2), 275–302. <https://doi.org/10.36908/ISBANK.V8I2.716>
- Laldin, M. A., & Furqani, H. (2016). Innovation versus replication: Some notes on the approaches defining shariah compliance in Islamic finance. *Al-Jami'ah*, 54(2), 249–272. <https://doi.org/10.14421/AJIS.2016.542.249-272>
- Lubis, C. P. dan S. K. (1994). *Hukum Perjanjian Dalam Islam*. Sinar Grafika.
- Rasyid, R., Masdupi, E., & Linda, M. R. (2023). *The Impact of Qardh Financing on Micro Waqf Banks on the Development of Micro-businesses in the Pesantren Environment*. 373–380. https://doi.org/10.2991/978-94-6463-158-6_33
- Rozallindah. (2016). *Fikih Ekonomi Syariah*. PT. Raja Grafindo Persada.
- Saputri, D., Miswardi, & Nasfi, N. (2021). The Economic Impact of Murabahah Financing On PT. PNM Mekar Syariah In Increasing The Welfare Of Pre-Prospered Women. *ADPEBI International Journal of Business and Social Science*, 1(1), 10–17. <https://doi.org/10.54099/AIJBS.V1I1.38>

- Wahbah al Zuhaili. (1986). *Ushul Al-Fiqih Al-Islami*. Darl-Fikr.
- Wahid, A., & Akbar, N. (2020). *Tafsir Ekonomi Kontemporer: Menggali Teori Ekonomi dari Ayat-Ayat Al-Qur'an*. Gema Insani. <https://books.google.co.id/books?id=72neDwAAQBAJ>
- Wahyuni, N., Prodi Perbankan Syariah STEBIS IGM Palembang, M., & Tinggi Ekonomi dan Bisnis Syariah Indo Global Mandiri Palembang, S. (2022). Analisis Ekonomi Syariah Terhadap Praktik Pembiayaan Sistem Tanggung Renteng (Studi Kasus PNM Mekar Cabang Talang Kelapa Palembang). *Jurnal Ilmiah Mahasiswa Perbankan Syariah (JIMPA)*, 2(2), 323–340. <https://doi.org/10.36908/JIMPA.V2I2.84>
- Wulandari, P. (2019). Enhancing the role of Baitul Maal in giving Qardhul Hassan financing to the poor at the bottom of the economic pyramid: A case study of Baitul Maal wa Tamwil in Indonesia. *Journal of Islamic Accounting and Business Research*, 10(3), 382–391. <https://doi.org/10.1108/JIABR-01-2017-0005>