

**ANALYSIS OF LEGAL ASPECTS ON DEBT TRANSFER FROM CONVENTIONAL BANK TO SHARIA BANK POST THE APPLICATION OF QANUN ACEH NO. 11 OF 2018**

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**ABSTRACT**

*The Government of Aceh has promulgated Qanun Number 11 of 2018 concerning Islamic Financial Institutions, in which all financial institutions, banking institutions and non-banking institutions must adopt Sharia principles, including all debts must be transferred to Islamic banks from non-Islamic banks. The purpose of this study is to determine the debt transfer process and the impact of debt transfer activities from Conventional Banks to Sharia Banks in Banda Aceh City and the suitability of its implementation after the enactment of Qanun No. 11 of 2018 concerning Islamic financial institutions in terms of the Hawalah contract. This research method uses an empirical juridical research approach. The research results show that there are several stages in the credit transfer implementation mechanism. Second, the impact for the bank is that it can increase bank margins; for customers, the impact is getting additional funds, and financial solutions with sharia transactions bases and can extend instalment of their debt. Finally, implementing the transfer of debt at Bank Syariah Indonesia (BSI) Banda Aceh City is in accordance with the established regulatory mechanism and with positive law and sharia law using the hawala contract.*

**Keywords:** Aceh, Credit, Conventional Bank, Islamic Bank, and Qanun LKS,

**INTRODUCTION**

Financial institutions have been developing various products to meet the needs of a diverse society.<sup>1</sup> The products of financial institutions that aim to provide for customers are getting better and have multiple options.<sup>2</sup> Financial institutions in Indonesia are divided into two, namely, Conventional Financial Institutions and Islamic Financial Institutions.<sup>3</sup> The Islamic Financial Institutions are divided into two, namely, Islamic banking Institutions and Islamic non-banking institutions.

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<sup>1</sup> Sutan Remy Sjahdeini, *Perbankan Syariah: Produk-produk dan Aspek-Aspek Hukumnya* (Jakarta: Kencana, 2018).

<sup>2</sup> Adiwarmanto Azwar Karim, *Islamic Banking: Fiqh and Financial Analysis*, 3rd edition (Jakarta: PT RajaGrafindo Persada, 2008).

<sup>3</sup> Karim.

There are different systems between Islamic and conventional banking in the banking industry. The fundamental difference in the Islamic banking system is that there is a prohibition on the practice of usury (interest) and gharar (uncertainty).<sup>4</sup> This distinguishes the Islamic economic system from conventional economics, which is the principle of self-interest as the basis for formulating the concept. Islamic Financial Institutions (LKS) do not use interest in their transactions but by estimating future increases in funds resulting from using the funds provided.<sup>5</sup>

The Government of Aceh promulgated Qanun Aceh Number 11 of 2018 concerning Islamic Financial Institutions in January 2019, wherein the Regulation states that all financial institutions, both banks and non-banks, must use Sharia principles.<sup>6</sup> As a consequence of the LKS Qanun, all banks using the conventional system must convert to banking using the Sharia system.<sup>7</sup> Likewise, customers who have accounts at conventional banks must switch their accounts to become Islamic banks.

Establishing an Islamic Bank through a conversion mechanism is a process of legally formal transformation of a conventional Bank into an Islamic Bank. The implementation of the conversion policy has implications for the authority of the bank to design and carry out financial services according to Sharia principles.<sup>8</sup> It is consistently obliged to carry out bank management according to banking regulations. Bank operations are core business activities in collecting, storing, and channelling public funds through certain Sharia financial transaction schemes.<sup>9</sup> Applying the post-conversion Profit Loss-Sharing (PLS) scheme to Islamic banking transaction contracts is inseparable from the funding risk that impacts mudharabah and musyarakah contracts, which have a smaller portion compared to debt-based financing schemes. Debt-based financing schemes such as Murabaha contracts are not fully in line with the principles of justice in Islamic economics and are inseparable from the prohibited practice of usury.

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<sup>4</sup> Karnaen Anwar Perwataatmadja, *Apa dan bagaimana bank Islam: Islamic Development Bank, International Association of Islamic Banks, Bank Muamalat Indonesia, BPR syariah* (Jakarta: Dana Bhakti Wakaf, 1992).

<sup>5</sup> Saradi Wantona, 'Pembahasan Qanun LKS Tak Prediksi Dampak Konversi terhadap Bisnis dan Pembangunan - Jurnal Aceh', 2021, <https://jurnalaceh.pikiran-rakyat.com/ekonomi/pr-1792010356/pembahasan-qanun-lks-tak-prediksi-dampak-konversi-terhadap-bisnis-dan-pembangunan>.

<sup>6</sup> Chairul Fahmi, 'Revitalisasi Penerapan Hukum Syariat Di Aceh (Kajian Terhadap UU No.11 Tahun 2006)', *TSAQAFAH* 8, no. 2 (30 November 2012): 295–310, <https://doi.org/10.21111/tsaqafah.v8i2.27>.

<sup>7</sup> Wantona, 'Pembahasan Qanun LKS Tak Prediksi Dampak Konversi terhadap Bisnis dan Pembangunan - Jurnal Aceh'.

<sup>8</sup> Yuniarti Yuniarti, 'Pengalihan Kredit dari Konvensional ke Syariah, Mungkinkah? - Klinik Hukumonline', *hukumonline.com*, 2022, <https://www.hukumonline.com/klinik/a/pengalihan-kredit-dari-konvensional-ke-syariah-mungkinkah-lt60daa80b60be9/>.

<sup>9</sup> M. Guffar Harahap et al., *Perbankan Syariah: Teori, Konsep & Implementasi* (Jakarta: Sada Kurnia Pustaka, 2023).

The most popular product conventional banks provide is loan products with some interest. Meanwhile, in the Sharia banking system, interest is not permitted. Instead, Islamic banking introduces the concept of profit sharing between banks and customers.<sup>10</sup> Nevertheless, after implementing the regulation on Islamic financial institutions in Aceh province, it required all customers at conventional banks, shall transfer their credit to the Islamic banking system. Based on this issue, the author will examine the suitability of the credit transfer process from Conventional Banks to Indonesian Sharia Banks in Banda Aceh City.

## FINDINGS AND DISCUSSIONS

### Debt Transferring Mechanism

The process and procedure for transferring debt from conventional banking to Islamic banking is based on Sharia principles, namely the Hawalah principle. Hawalah is one way to transfer debt from conventional banks to Islamic banks.<sup>11</sup> Islamic banking takes over customer debt at conventional banks with the *Hawalah Bil Ujrah* contract.<sup>12</sup>

As is the case with conventional banks, customers must apply for financing to Islamic banking according to the conditions set by the bank. In addition, Islamic banks must adapt all products offered to customers by referring to the fatwas of the National Sharia Council of the Indonesian Ulema Council (DSN MUI). All of these fatwas must be a reference for Sharia banks and Sharia business units in carrying out the operations of these Sharia banks.<sup>13</sup>

There are several procedures for transferring debt to Bank Syariah Indonesia as follows:<sup>14</sup>

First, an Islamic bank will confirm with the customer whether he agrees not to transfer credit to the financing model at Indonesian Islamic banks; then, the customer will apply for a debt transfer. Suppose an agreement has been reached between the customer and the marketing bank, and the Bank agrees to provide financing. In that case, the customer submits a credit settlement to a conventional bank that provides credit, and the conventional Bank concerned agrees. Following the agreement by both parties, the Bank carries out the financing document verification process by ensuring the customer's identity matches the identity listed.

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<sup>10</sup> Chairul Fahmi et al., 'THE ROLE OF LOCAL GOVERNMENT IN MAINTAINING COFFEE PRICES VOLATILITY IN GAYO HIGHLAND OF INDONESIA', *PETITA: JURNAL KAJIAN ILMU HUKUM DAN SYARIAH* 8, no. 1 (1 April 2023): 37–46, <https://doi.org/10.22373/petita.v8i1.168>.

<sup>11</sup> Ismail Ismail, *Perbankan Syariah* (Jakarta: Kencana, 2017).

<sup>12</sup> Ismail.

<sup>13</sup> Zulfahmi Zulfahmi, 'Eksistensi Qanun Nomor 11 Tahun 2018 tentang Lembaga Keuangan Syariah terhadap Konversi Bank Konvensional menjadi Bank Syariah', *Jurnal Hukum Ekonomi Syariah* 5, no. 01 (25 June 2021): 49–63, <https://doi.org/10.26618/j-hes.v5i01.3276>.

<sup>14</sup> Sarah, staff of financing at Bank Syariah Indonesia Kota Banda Aceh, interview on 29 November 2022.

Islamic banking parties will also analyze whether or not the prospective customer will be given financing (adjusted to the loan amount from the previous conventional bank that will be transferred). After being approved by the conventional bank, the customer must then complete the requirements or required documents for debt transfer financing (hawala) at BSI. The administrative requirements that must be completed for the transfer of credit to financing are:<sup>15</sup>

- a. Indonesian citizens
- b. The minimum age is 21 years, and the maximum is 65 years for self-employed persons and 55 years for employees at the maturity date of the financing.
- c. Application for permanent employees/employers/professionals / civil servants.
- d. Photocopy of Identity Card
- e. Photocopy of Family Card
- f. Photocopy of marriage/divorce certificate
- g. Photocopy of Taxpayer Identification Number
- h. Print out a description of the remaining debt at the previous conventional bank.
- i. Decree of appointment or certificate of employment
- j. Business certificate (for entrepreneurs)
- k. Last month's salary sheet or original income certificate

Second, after the customer completes all administrative requirements, the bank will check the Financial Information Service System (SLIK).<sup>16</sup> The financial information service system is managed by the Financial Services Authority to support the implementation of supervisory duties and information services in the financial sector.<sup>17</sup> SLIK can expedite the process of providing funds, implementing credit risk management or financing. This SLIK check is carried out to determine whether the customer is included in the block list. If the customer is included in the blocklist, Indonesian Islamic banks cannot process the transfer because it can be quite a risk.<sup>18</sup>

Furthermore, suppose it has been declared eligible for financing.<sup>19</sup> In that case, it will then be carried out by the credit committee to discuss and decide whether a customer has a nominal credit and a period for financing it. The leadership or deputy leader of the BSI bank in Banda Aceh City

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<sup>15</sup> Sarah Sarah, Pelaksanaan Transfer Utang dari Perbankan Konvensional Ke Perbankan Syariah, 2022.

<sup>16</sup> Sarah.

<sup>17</sup> Sarah.

<sup>18</sup> Sarah.

<sup>19</sup> Syamsuri Syamsuri et al., 'Analisis Qanun (Lembaga Keuangan Syariah) Dalam Penerapan Ekonomi Islam Melalui Perbankan Syariah Di Aceh', *Jurnal Ilmiah Ekonomi Islam* 7, no. 3 (9 November 2021): 1705–16, <https://doi.org/10.29040/jiei.v7i3.3662>.

made the financing decision. After the customer and the BSI bank agree on the contract. Then the BSI bank made a financing of *hawalah* agreement.

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- h. Print out a description of the remaining debt at the previous conventional bank.
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- j. Business certificate (for entrepreneurs)
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Finally, After the customer completes all administrative requirements, the bank will check the Financial Information Service System (SLIK).<sup>21</sup> The financial information service system is managed by the Financial Services Authority to support the implementation of supervisory duties and information services in the financial sector. SLIK can expedite the process of providing funds, implementing credit risk management or financing. This SLIK check is carried out to determine whether the customer is included in the block list. If the customer is included in the blacklist, Indonesian Islamic banks cannot process the transfer because it can be quite a risk. Furthermore, suppose it has been declared eligible for financing. In that case, it will then be carried out by the credit committee to discuss and decide whether a customer has a nominal credit and a period for financing it. The leadership or deputy leader of the BSI bank in Banda Aceh City made the financing decision. After the customer and the BSI bank agree on the contract. Then the BSI bank made a financing agreement.

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<sup>20</sup> Sarah, Pelaksanaan Transfer Utang dari Perbankan Konvensional Ke Perbankan Syariah.

<sup>21</sup> Sarah.

### **Rules Concerning Debt Products According to Qanun Aceh No. 11 of 2018**

Islamic financial institutions are one of the important instruments in the implementation of Islamic economics. With the existence of Islamic financial institutions, it is hoped that they will be able to realize a just and prosperous Acehnese economy. Article 1 of Qanun Number 11 of 2018 defines an Islamic Financial Institution (LKS) as an institution that carries out activities in the banking sector, non-banking Islamic financial sector and other financial sectors according to Sharia principles.<sup>22</sup>

Islamic financial institution products are a differentiating factor from conventional financial institutions. The products offered by Islamic financial institutions are free of interest and only channel financing such as profit sharing, buying and selling, leasing, services and good loans (*qardhul hasan*).<sup>23</sup>

The existence of Aceh Qanun number 11 of 2018 concerning Islamic financial institutions also greatly influences financing for Micro, Small and Medium Enterprises (MSMEs).<sup>24</sup> Prior to the existence of the qanun, Islamic financial institutions referred to Bank Indonesia regulation number 17/12/PBI/2015 concerning the provision of MSME (Micro et al. Enterprises) loans which mandated that 20% must be channelled from financing to MSMEs. So that with the existence of the qanun, the greater the financing ratio must be channelled to MSMEs. Article 14 Paragraph (4) Aceh Qanun No.11 of 2018 concerning LKS, as follows: (1) Minimum 30 per cent no later than 2020; (2) A minimum of forty per cent no later than 2022.<sup>25</sup>

This target makes Islamic financial institutions more able to help the community's economy in particular and the regional economy in general, and disbursed financing prioritizes profit-sharing-based contracts and pays attention to the capabilities and needs of customers. Customer capabilities are contained in Article 14, Paragraph 6, as follows:<sup>26</sup>

- a. Submission of financing from prospective customers based on needs;
- b. Business prospects from prospective customers who meet the eligibility criteria for bank financing;
- c. The total amount of the customer's instalment obligations is at most 1/3 (one-third) of the official income.

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<sup>22</sup> Pemerintahan Aceh, 'Qanun No. 11 Tahun 2018 Tentang Lembaga Keuangan Syariah', Biro Hukum Pemerintahan Aceh, 2020, <http://acehprov.go.id/2020/02/info-qanun-no-11-tahun-2018-tentang-lembaga-keuangan-syariah/>.

<sup>23</sup> Ismail, *Perbankan Syariah*.

<sup>24</sup> Syamsuri et al., 'Analisis Qanun (Lembaga Keuangan Syariah) Dalam Penerapan Ekonomi Islam Melalui Perbankan Syariah Di Aceh'.

<sup>25</sup> Aceh, 'Info'.

<sup>26</sup> Aceh.

Moreover, the production sharing-based contracts are explained in Paragraph 7 as follows: (1) In 2020, at least ten per cent, (2) In 2022, at least twenty per cent; and in 2024, at least forty per cent. The Aceh Qanun on Islamic financial institutions also strengthens the protection of customers. Article 55 states that Islamic financial institutions must provide available information such as rights and conditions, products and conditions, financing mechanisms and risk management, including information on collateral or collateral control and execution.<sup>27</sup>

Regarding credit transfer in Qanun No. 11 of 2018 is contained in Article 30, which states that:<sup>28</sup>

- a. Sharia factoring is the transfer of settlement of receivables or short-term bills from the debtor to another party who then collects the receivables from the debtor or the party appointed by the debtor in accordance with Sharia Principles.
- b. Factoring activities include buying, transferring, and managing short-term receivables or claims from domestic or foreign trade transactions.

Then this Qanun also regulates administrative costs that Islamic Financial Institutions can obtain from carrying out debt transfer transactions. Article 32 of the LKS Qanun states that:<sup>29</sup>

- a. Companies and individuals who conduct factoring transactions may receive administration fees or other names.
- b. The fees can be paid by factoring companies and individuals following the level of contribution made or following local market rates.
- c. In determining the contribution rate or the local market rate, it is necessary to have an agreement between the contracting parties.

### **Debt Transfer System from Conventional Banks to Indonesian Sharia Banks**

One model for transferring debt from conventional banks to Islamic banks is *hawala* contracts.<sup>30</sup> In addition to using the Hawalah contract, you can also use the Qardh Wal Murabahah type of contract, in which Islamic banks provide loans to customers in accordance with the funds that will be transferred by the customer to the previous conventional bank.

The financing scheme for the BSI City of Banda Aceh is as follows:

- a. The customer must attach the documents in the complete requirements.
- b. Next, the marketing department will collect and adjust the data in the document.

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<sup>27</sup> Aceh.

<sup>28</sup> Aceh.

<sup>29</sup> Aceh.

<sup>30</sup> Sjahdeini, *Perbankan Syariah*.

- c. The processing field will verify the data and guarantee it will be submitted to the customer.
- d. Furthermore, the bank will analyze by going directly to the field and checking the completeness of customer documents.
- e. The analysis commonly used at Indonesian Sharia Banks is the 5C system analysis: *Character, Capacity*, capital, condition, and collateral.<sup>31</sup>

Documents will be submitted to the head of the branch; if the conditions have been met, then the head of the branch will approve the financing.

- a. The personal service head will follow up on the document, and disbursement will be made.
- b. The process of assessing financing guarantees by BSI is the transaction value submitted by the customer to the bank, which the bank will then realize.
- c. If the customer's debt has been paid off, then the goods transferred are entirely owned by the customer.
- d. To pay off the customer's debt to BSI, the customer will provide a mortgage certificate with a buying and selling system to BSI so that, in full, the item becomes BSI's choice. Furthermore, the goods are sold by BSI to the customer back with the specified amount and period; if the customer has paid the instalments, the goods will be fully owned by the customer.

The loan system provided by the bank to this customer uses a card contract, in which the bank provides loans to customers according to the remaining repayment debt to conventional banks, which were previously based on trust.<sup>32</sup> To maintain this trust, BSI will directly assist customers in paying off debt to the conventional bank concerned in repayment activities to conventional banks so that the funds are not misused.

### **The Impact of Transferring Credit from Conventional Banks to Indonesian Sharia Banks**

In its implementation, BSI takes over debtor financing by paying the debtor's remaining credit to previous creditors.<sup>33</sup> The cause of financing is due to several factors, one of which usually happens is that customers get product offers from BSI, where customers are interested in financing

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<sup>31</sup> Sarah, Pelaksanaan Transfer Utang dari Perbankan Konvensional Ke Perbankan Syariah.

<sup>32</sup> Chairul Fahmi, 'The Impact of Regulation on Islamic Financial Institutions Toward the Monopolistic Practices in the Banking Industrial in Aceh, Indonesia', *Jurnal Ilmiah Peuradeun* 11, no. 2 (30 May 2023): 667–86, <https://doi.org/10.26811/peuradeun.v11i2.923>.

<sup>33</sup> Sarah, Pelaksanaan Transfer Utang dari Perbankan Konvensional Ke Perbankan Syariah.



debt transfers that have been running on previous banks.<sup>34</sup> According to the results of an interview with Mrs Sarah, this has a huge impact on BSI, which can increase the bank's margin where the more customers make financing, the greater the profit BSI gets.<sup>35</sup>

*Margin* is the profit obtained by the sharia party as a seller based on the difference between the selling price and the purchase price given to the customer as a buyer. The meaning of margin here is in the form of profit obtained by BSI from the sale of goods to customers.<sup>36</sup> The more customers who make financing to BSI, the more, the greater the profit obtained by BSI. The determination of the margin at BSI is also based on the customer's agreement in choosing the loan repayment period. The longer the payment term, the lower the monthly instalments the customer pays. Additionally, the payment term between the customer and BSI bank based on the negotiation agreement of both parties.

On the other hand, the impact on customers who transfer debt from conventional banks to Islamic banks uses the *hawala* contracts or Qardh Wal Murabahah type of contract, in which Islamic banks provide loans to customers in accordance with the funds that will be transferred by the customer to the previous conventional bank.<sup>37</sup>

The financing scheme for the BSI City of Banda Aceh is as follows:

- a. The customer must attach the documents in the complete requirements.
- b. Next, the marketing department will collect and adjust the data in the document.
- c. The processing field will verify the data and guarantee it will be submitted to the customer.
- d. Furthermore, the bank will analyze by going directly to the field and checking the completeness of customer documents.
- e. The analysis commonly used at Indonesian Sharia Banks is the 5C system analysis: *Character, Capacity, capital, condition, and collateral*.

All requirement documents will be submitted to the head of the branch; if the conditions have been met, then the head of the branch will approve the financing. The requirement, include:

- a. The personal service head will follow up on the document, and disbursement will be made.
- b. The process of assessing financing guarantees by BSI is the transaction value submitted by the customer to the bank, which the bank will then realize.

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<sup>34</sup> La Ode Alimusa, *Manajemen Perbankan Syariah Suatu Kajian Ideologis Dan Teoritis* (Yogyakarta: Deepublish, 2020).

<sup>35</sup> Sarah, Pelaksanaan Transfer Utang dari Perbankan Konvensional Ke Perbankan Syariah.

<sup>36</sup> Alimusa, *Manajemen Perbankan Syariah Suatu Kajian Ideologis Dan Teoritis*.

<sup>37</sup> Sarah, Pelaksanaan Transfer Utang dari Perbankan Konvensional Ke Perbankan Syariah.

- c. If the customer's debt has been paid off, then the goods transferred are entirely owned by the customer.
- d. To pay off the customer's debt to BSI, the customer will provide a mortgage certificate with a buying and selling system to BSI so that, in full, the item becomes BSI's choice. Furthermore, the goods are sold by BSI to the customer back with the specified amount and period; if the customer has paid the instalments, the goods will be fully owned by the customer.

The loan system provided by the bank to this customer uses a card contract, in which the bank provides loans to customers according to the remaining repayment debt to conventional banks, which were previously based on trust. To maintain this trust, BSI will directly assist customers in paying off debt to the conventional bank concerned in repayment activities to conventional banks so that the funds are not misused.

The existence of these additional funds will have a very positive impact on the customer's business activities or increase costs for other purposes. Under the contract of the Hawalah model, customers will gain benefits and an additional fresh fund that is more widely used in the form of financing their business.

The desire of customers to carry out financing transactions in Sharia principles based on the Qur'an and hadith so that they can be applied in business life and people's transactions. The fundamental difference is in the contract. In Islamic banks, the contract refers to the principle of buying and selling in which the profit is a sales margin. Meanwhile, conventional banks use loan agreements with interest as an instrument for determining.<sup>38</sup> The customer also can extend the instalment period to reduce the number of instalments to be paid per month. However, the longer the term means, the greater the amount of credit that must be paid.

For the long term, the payment can be seen from the customer's choice of how many years, for example, five years. Within a year, the customer himself experienced problems in instalments, as for the actions taken by BSI, namely:<sup>39</sup>

- a. the bank reminds the due date for credit payments. For example, the due date is the 7th, and around the 1st, the bank contacted the customer to confirm that the payment must be made on the specified date;
- b. before the due date, the customer has been reminded again when the payment is due. If, on the 7th or due date, the customer has not paid, then on the following date, the bank officer

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<sup>38</sup> Dwi Santika, Mekanisme Pembiayaan Pada BSI Cabang Banda Aceh, 2022.

<sup>39</sup> Sarah, Pelaksanaan Transfer Utang dari Perbankan Konvensional Ke Perbankan Syariah.

will come directly to meet the customer to see the customer's condition. From several causes it can be due to his condition is sick or a debt has not been paid, or because the customer asked for several days delay of payment.

In this condition, BSI offers regular restructuring, in which BSI questioning the customer's ability to pay monthly instalments and then divides it according to the extension of the customer. This applies to customers who have good behaviour or character.

## CONCLUSION

In carrying out debt transfers, BSI City of Banda Aceh has implemented its policies in accordance with the established regulatory mechanisms. The BSI Banda Aceh City branch also provides customer assistance starting from the initial process until the transfer of the debt is complete. This transfer of debt is similar to other financing, in which the customer comes first to the bank to communicate and confirm the matter concerned. The debt transfer made to BSI Banda Aceh City uses the Qardh Wal Murabahah contract, in which the bank provides loans to customers in accordance with the funds that the customer will transfer to the previous conventional bank. In addition, the transfer of debt from conventional banking to Islamic banking also impacts BSI, namely being able to increase BSI's margins. The more BSI customers become and the greater the level of customers conducting debt transfer financing, the greater the profit BSI will get. Even so, there are impacts for customers who transfer debt; namely, customers will get additional funds; these funds can be a solution if finances are not good, can extend the instalment period so that monthly instalments are lower, and can transact in sharia principles.

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