

THE CONCEPT OF DEBT TRANSFER (*HIWALAH*) IN ISLAMIC BANKING BASED ON DSN-MUI FATWA NO. 31/DSN-MUI/VI/2002

Aidil Fikriadi¹, Azmil Umur²

^{1,2} Universitas Islam Negeri Ar-Raniry Banda Aceh, Indonesia
Email: 180102066@student.ar-raniry.ac.id

Abstract

The purpose of the study carried out is to describe the implementation of *hiwalah* carried out in Islamic banking according to the DSN-MUI fatwa No.31/DSN-MUI/VI/2002 / regarding the transfer of debt which is generally closely related to *hiwalah* in *hiwalah* there are three parties involved, namely *muhiil*, *muhal*, and *muhal 'alaihi*. The study method used in the study carried out is qualitative using the type of literature study (*libarary research*). Data is taken directly from primary data in the form of DSN-MUI fatwas and secondary data sourced from literature related to the discussion, namely books, scientific works in the form of journals and articles related to the research topic. The study findings indicate that if the transfer of debt from conventional financial institutions to Islamic financial institutions is carried out based on the DSN-MUI fatwa which explains about each alternative financing which is a series of contracts that are carried out, it has conformity and does not contradict the DSN-MUI fatwa No.31/DSN-MUI/VI/2002 regarding debt transfer. In practice, *hiwalah* is used in various Islamic financial transactions, for example in financing, investment, and risk management.

Keywords: *Hiwalah*, Fatwa DSN-MUI, Islamic banking, Indonesia

Abstrak

Tujuan dari penelitian yang dilakukan adalah untuk mendeskripsikan implementasi *hiwalah* yang dilakukan dalam perbankan syariah sesuai dengan fatwa DSN-MUI No. 31/DSN-MUI/VI/2002 mengenai pemindahan utang yang secara umum erat kaitannya dengan *hiwalah*. Dalam *hiwalah* terdapat tiga pihak yang terlibat, yaitu *muhiil*, *muhal*, dan *muhal 'alaihi*. Metode penelitian yang digunakan dalam penelitian ini adalah metode kualitatif dengan jenis penelitian literatur (*penelitian perpustakaan*). Data diambil langsung dari data primer berupa fatwa DSN-MUI dan data sekunder yang bersumber dari literatur terkait pembahasan, yaitu buku, karya ilmiah berupa jurnal dan artikel yang berkaitan dengan topik penelitian. Hasil penelitian menunjukkan bahwa jika transfer utang dari lembaga keuangan konvensional ke lembaga keuangan Islam dilakukan berdasarkan fatwa DSN-MUI yang menjelaskan tentang setiap alternatif pembiayaan yang merupakan serangkaian kontrak yang dilakukan, maka hal tersebut sesuai dan tidak bertentangan dengan

fatwa DSN-MUI No. 31/DSN-MUI/VI/2002 mengenai transfer utang. Dalam praktiknya, *hiwalah* digunakan dalam berbagai transaksi keuangan Islam, misalnya dalam pembiayaan, investasi, dan manajemen risiko.

Kata kunci: *Hiwalah*, Fatwa DSN-MUI, Perbankan Islam, Indonesia

INTRODUCTION

Human nature to be a subject of law is closely related to other individuals. In relation to this, Islam is present to provide provisions that regulate well the association of individuals that must be passed in their social life. Islam is a religion that determines all aspects of individual life, ranging from creed, worship, morals, or *muamalah*. An example of a crucial religious teaching is the field of *muamalah*, because *muamalah* is an example of activities carried out by individuals. Of the four fields, only in the field of *muamalah* that allows humans to be creative, while in the other three fields humans are not given the freedom to create at all, because God knows better the benefits that are then achieved by individuals from the three fields. But that does not mean that all *muamalah* activities are allowed, sometimes Islam cancels a *muamalah*.¹

Banking is one example of *muamalah* activities that have developed in recent decades, especially in Indonesia, the first Islamic bank was established in 1992, namely Bank Muamalat Indonesia (BMI), according to Bank Indonesia (BI) data, the prospects for Islamic banks in 2005 were very good,² Indonesia has the potential to develop Islamic banking, so Indonesia must believe in implementing various development strategies. Therefore, through the existence of opportunities and recognition of LKS so that many individuals carry out activities in the Islamic economy.³ The importance of competition against other financial institutions so that banks can develop and can develop a number of products that have conformity to sharia principles, of course, these products must be in line with the DSN-MUI fatwa.⁴

¹ Harun, *Fiqh Muamalah*, (Surakarta: Muhammadiyah University Press, 2017), pp. 1-2.

² Nia Darmawati, Muhammad Zein, Wadiah and Hawalah and Their Implementation in Syariah Banking, *Setyaki: Journal of Islamic Religious Studies*, Vol. 2 No. 4 (2024), pp. 1-9

³ 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 (May 30, 2023): 667–86, <https://doi.org/10.26811/PEURADEUN.V11I2.923>.

⁴ Ruchhima, "Fatwa Dsn/Mui About Debt Transfer Fatwa DSN-MUI No. 21/DSN-MUI/VI/2002 About Take Over Financing or Debt Transfer". *Islamika Journal: Journal of Islamic Sciences*. Vol 19. No 2 (2019): pp 54-62.

Fatwa is different from positive law which has the power to bind all its people, but fatwa has binding force after approval and transformation into legislation.⁵ DSN-MUI is a special institution that has the authority and authority on the creation of fatwa in the field of sharia economics which has the duty, authority.⁶ and the only sharia guidelines on sharia banking operations in Indonesia.⁷

One of the financing offered by Islamic banks is debt takeover.⁸ While the definition of debt transfer in the fatwa is the transfer of customer debt from conventional banks to Islamic banks, all policies regarding policies stipulated in DSN-MUI fatwa No.31/DSN-MUI/VI/2002.⁹

Islamic banks have such a big share to carry out the fatwa on debt transfer, based on the words of Karnaen A. Perwataarmaatmadja in providing debt transfer facilities, banks provide financing based on the DSN-MUI fatwa, namely the *hiwalah* and *qardh* contracts.¹⁰

In *hiwalah*, there are three parties involved in the transaction, namely: the lender (*muhal*), the recipient of the loan (*muhil*), and the recipient of the loan from *muhal* (*muhal 'alaihi*), so in simple terms the parties above are explained like this: The transfer of debt from the *muhal* party to the *muhil* party becomes from the *muhal* party to the *muhal 'alaihi* party because the receivables of the *muhal* party to the *muhil* party are paid by the *muhal 'alaihi* party.¹¹

Based on its application to Islamic banks, the debt transfer procedure is important to be understood easily by the public, the public must know how the provisions and schemes apply in implementing the DSN fatwa

⁵Andi Fariana, "The Urgency of Fatwa Mui in the Development of Islamic Economic Law System in Indonesia", *Al-Ihkam: Journal of Law and Social Institutions*, Vol. 12, No. 1 (2017), pp: 87-106.

⁶Khotibul Umam, "Legislation of Fiqh Economic Banking: Synchronising the Roles of the National Sharia Council and the Sharia Banking Committee *Mimbar :Law, Journal of Gajah Mada University*, Vol. 24, No. 2 (2012), pp. 357-375"

⁷Akhmad Faozan, "Patterns and Urgency of Positivisation of Fatwas of the National Sharia Council of the Indonesian Ulema Council on Islamic Banking in Indonesia. *Al-Manahij: Journal of Islamic Law Studies*, Vol.10 No.2 (2016). pp. 309-321".

⁸Ahmad Antoni K Muda, "Complete Campus Economics, (Jakarta: PT Raja Grafindo Persada, 2006). p. 331". 331".

⁹National Sharia Council of MUI, "Fatwa of Sharia Council No. 31/DSN-MUI/VI/2002 on Debt Transfer. p. 3".

¹⁰Karnaen A. Perwataarmaatmadja, "Islamic Banks Theory, Practice and Role, (Jakarta: Celestial Publishing, 2007), pp. 8"

¹¹Ismail, "Islamic Banking, cet-1 (Jakarta: Kencana, 2011), p. 206"

No.31/DSN-MUI/VI/2002.¹²This study aims to find out how the legal basis and concept of debt transfer in Islamic banking as well as the analysis of the DSN-MUI fatwa, the postulates, and also the *ijma'* of the scholars on the *hiwalah* contract.

RESEARCH METHODS

The approach used in the study carried out is a qualitative approach that has a type of literature study research, which is carried out by collecting, processing, and drawing conclusions from data using a method, in order to find answers to literature studies. Literature study or *library research* is a study that only uses literature data without conducting interviews and data sample tests. The technique used in collecting data is analysing from one reference to another.¹³

RESULTS AND DISCUSSION

A. Definition of Debt Assignment

Borrowing and lending or debt is a long-standing practice in the lives of individuals, in which there is often a transfer of debts or receivables from one party to another. Islam has allowed this practice since its birth, because it is considered to reduce difficulties and can bring benefits to others.¹⁴

The word *hawalah* comes from the Arabic حواله which means to transfer or move. The transfer of debt in this description is the transfer of individual responsibility to another individual. The transfer of debt must be attended by the individual who has the debt, the individual who gives the debt, and the individual to whom the debt is transferred. *Muhil* is the individual who has the debt, *muhal* is the individual who gives the debt, and *muhal 'alaih* is the individual who pays *the muhil's* debt.¹⁵

¹²Irfan Fadillah, Arief Widyananto, "Implementation of Fatwa DSN MUI Number 31/DSN-MUI/VI/2002 Regarding Debt Transfer in Islamic Banks. *At-Tamwil: Journal of Islamic Economics and Finance*. Vol 3 No.1 (2024): pp 85-97".

¹³Amir Hamzah, "Library Research Methods: Philosophical, Theoretical, Application, Process, and Research Results", (Malang: Literasi Nusantara Abadi, 2020). Page 23.

¹⁴Lutpi Sahal. "Implementation of Fatwa Dsn-Mui Number 31 of 2002 concerning Debt Transfer in Islamic Financial Institutions, *Al-Iqtishadiyah: Islamic Economics and Sharia Economics*, Vol. 3. No.2, (2019), pp 88-117".

¹⁵Sayyid Sabiq, *Fikh Sunnah*, (Transl: Abdurrahman and Masrukhin), Jld V, (Jakarta: Cakrawala Publishing, 2009), p. 283. 283.

The transfer of debt in banking is often said to be Take over, which comes from English, which means taking over¹⁶ ,The transfer of credit agreements to Islamic banking certainly creates legal effects for a number of parties involved in it. Legal consequences refer to all things that are experienced from all legal actions carried out by legal subjects on legal objects or other impacts due to an event by the law concerned that has been determined or considered as a legal result.¹⁷

In this debt transfer financing, LKS classifies debt to LKK into two types, namely principal debt and interest and only principal debt. To handle customer debt in the form of principal debt and interest, Islamic banks provide *qard* services. Because, the allocation of the use of *qard* has no limit, which is also available to overcome interest-based debt. While in the form of principal debt only, Islamic banks provide *hiwalah* or debt transfer services. Because, debt transfer cannot overcome interest-based debt.¹⁸

Hiwalah is able to cancel debts owed to creditors through the main debtor and the main debtor to the transferee, and create new debts to creditors and the transferee. Thus, *hiwalah* cancels two debts and creates a new debt. *Hiwalah* is similar to the sale and purchase of debt, but it is not a sale and purchase, nor is it similar to *kafalah* and *wakalah*. However, it is a unique contract that has special features and policies.¹⁹

B. Legal Basis for Transfer of Debt

In its provisions, the transfer of debt is regulated in the DSN-MUI Fatwa, the source of which is the Qur'an, hadith, fiqh rules and ijma':

يَا أَيُّهَا الَّذِينَ آمَنُوا أَوْفُوا...بِالْعُقُودِ

"O you who believe! Fulfil your contracts..." ,

¹⁶Jonh M. Echols and Hasan Sadily, "English-Indonesian Dictionary, cet. XXVI, (Jakarta: PT Gramedia Pustaka Utama, 2005), p. 578".

¹⁷Pipin Syafrin, "Introduction to Legal Science, (Jakarta: Pustaka Setia, 1999), pp. 71"

¹⁸Adiwarman Karim, "Islamic Banks Fiqh and Financial Analysis, (Jakarta: PT Raja Grafindo Persada 2006), p. 248". 248".

¹⁹Muhammad Kharazi et al., "Analysis of Take Over Financing With Reference To DSN-MUI Fatwa No. 31/DSN-MUI/VI/2002 Concerning *hiwalah* and DSN-MUI/VI/2002 Concerning Debt Transfer (case study at BSI KCP Sigli Madjid Ibrahim), Budapest International Research and Critics Institute" journal (BIRCI-Journal). Vol 5. No. 1 (2022). Pages. 2213-2220 <https://www.bircujournal.com/index.php/birci/article/view/3824>.

The verse presented describes if a covenant is experienced by two or more covenants, namely if an individual who carries out the procurement of a covenant and then there are other individuals who join and agree with the covenant, then there are two covenants in it, where one person is connected to the other. As Muslims, we must fulfil the promises made to others. This is not just a matter of positive law or custom, but Islam also instructs other believers to fulfil the promises made to other individuals.²⁰

الْأَصْلُ فِي الْمَعَامَلَاتِ إِلَّا بَاطِلٌ إِلَّا أَنْ يَدُلَّ دَلِيلٌ عَلَى تَحْرِيمِهَا

Meaning "Basically, all forms of muamalah may be carried out unless there is evidence that forbids it".²¹

The basic law of muamalah is permissible, unless there is an argument or *nash* expressly prohibiting and forbidding it, this rule becomes the main principle if all legal bases in muamalah are permissible or permissible. Islam also regulates muamalah activities without having to harm one of the parties.

22

The basis for the ordinance of the transfer of debt or *Hiwalah* from the hadith is the words of the Prophet Muhammad PBUH. As narrated by Al-Baihaqi,²³

مَطْلُ الْغَنِيِّ ظُلْمٌ وَإِذَا أَتَيْتُمْ عَلَى مَلِيٍّ فَلْيَتَّبِعْ

Meaning: "Delaying payment of a debt by one who is able is an injustice. And if one of you is transferred to someone who is able, then let him accept it (i.e. accept the al-Hawaalah contract)".

In this Hadith, the Prophet instructs the individual who gives the debt, if he is unable to repay it, then the debt can be transferred to a rich person, so that he can accept this transfer and easily pay his rights.²⁴ The hadith presented also outlines an explanation if the settlement of debts and credits can be carried out through the placement of the transfer route to another individual. The transfer is based on a reason, in the hadith presented is interpreted as

²⁰Bambang Lesmono, sri sudiarti "Interpretation of the first verse in Surah Al-maidah, Mubeza: Islamic Legal and Economic Thought", Vol. 11. No. 1. (2021), pp 30-34.

²¹Djazuli, "Fiqh Principles: Rules of Islamic Law in Resolving Practical Problems, (Jakarta: Kencana Prenada Media Group, 2011), pp. 10"

²²Rusdan, "the basic principles of fiqh muamalah and its application to economic activities." *El-Hikam Journal: Journal of educational and religious studies*: Vol.15 No.2 (2022). pp. 207-237".

²³Wahbah Zuhaili, "al-Fiqih al-Islamy wa Adillatuhu, (Transl: Abdul Hayyie al-Kattani), ild VI, (Jakarta: Gema Insani, 2011), pp. 85".

²⁴Abdul Rahman Ghazaly, "Ghufron Ihsan, Sapiudin Shidiq, *Fiqh Muamalat*, (Jakarta: Prenadamedia Group, 2010), pp. 255".

using the reason in accelerating payment. This is the basis for an individual who is for paying a debt to another individual to transfer the debt to another individual, if that is the best way to do so. This is also how the *hawalah* contract works.²⁵

The majority of scholars are of the opinion that the command in the above Hadith, namely the word is a *فليتبع* command that has the nature of a *sunnah* and is recommended. Therefore, it is not obligatory to accept the *Hilawah* contract. However, Imam Daud and Imam Ahmad are of the opinion that the command in the Hadith is obligatory, so it is obligatory for the *Muhal* (also called *al-Muhtal*) to accept the related *Hirwalah*.²⁶

It is also based on *ijma'* so that the majority of scholars agree that the *hiwalah* contract is permissible.²⁷ The *hiwalah* agreement is allowed to be carried out *onad-dain* (property that is still in the form of debt), not *onal-ain* (the opposite of *ad-dain*, namely property in the form of concrete goods, generally defined as goods), or it can be said that the *hiwalah* agreement is valid *ifuhul bihi* (the amount of debt transferred by *muhil* to *muhal 'alaihi*) is in the form of debt, not in the form of goods (*al-ain*).²⁸

From several arguments and interpretations that have been described above, it explains that the transfer of debt is a contract based on the law that can be implemented by Islamic banking, but in its application it must still be based on *sharia* law and the DSN-MUI fatwa, the fatwa provides clear guidance on debt transfer. the purpose of this *hiwalah* contract is to make it easier to do *muamalah* and there are no parties who are made to lose.²⁹

C. The pillars and conditions of debt transfer

1. The pillars of *Hiwalah*

According to the majority of scholars other than the Hanafiyyah, *hiwalah* has six pillars or elements, namely:

²⁵Muhammad Nawawi Al-jawi, "*Qut al-Habib al-Gharaib*, (Beirut: Dar al-kutub, 2004), p.236".

²⁶Wahbah Zuhaili, p. 86.

²⁷Imam Ash-Shan'ani, "*Subulus Salam*, (Terj: Abu Bakar Muhammad), jld III, (Surabaya: Al-ikhlas, 1995), pp. 61".

²⁸Wahbah Zuhaili, p. 87.

²⁹Chairul Fahmi, "Revitalisasi Penerapan Hukum Syariat Di Aceh (Kajian Terhadap UU No.11 Tahun 2006)," *TSAQAFAH* 8, no. 2 (2012), <https://doi.org/10.21111/tsaqafah.v8i2.27>.

- a) The second party (*muhal*) is the person who has the receivable or can be said to be the party who transfers the collection to another individual, namely the individual who has the receivable.
- b) The third party (*muhal 'alaihi*) is the individual who accepts the responsibility to pay the debt to the party who has the debt).
- c) The right that is transferred is the debt (*muhal bih*),
- d) Receivables of *muhil* against *muhal 'alaihi*.
- e) Shighat (*ijab qabul*).³⁰

2. Terms of *Hiwalah*

A number of conditions of *hiwalah*, the contract or transaction of *hiwalah* is then valid if a number of conditions are achieved that relate to the first, second, and third parties, and relate to the debt. Without the parties involved as explained above, the *hiwalah* is not valid. A number of conditions must be achieved by the three parties involved above. The conditions of the parties are:

1) First party (*muhil*)

Muhal is the individual who transfers the debt.

A number of conditions required by the first party, namely :

- a) Capable of carrying out legal actions in the form of a contract, namely *baligh* and have a mind. *Hiwalah* is not valid if it is done by children even though they have understanding (*mumayyiz*), or if it is done by people who have mental retardation.
- b) There is a statement of consent or willingness. If the first party is coerced in carrying out the *hiwalah*, the contract is invalid. This provision is based on the consideration that some individuals feel heavy and humiliated if the payment of debt is transferred to another party.³¹

2) The second party (*muhal*)

Muhal is the individual who accepts the debt owed to *Muhal*.

A number of conditions required by the second party (*muhal*) are :

- a) Capable of carrying out legal actions, i.e. being of age and having the same intellect as the first party.

³⁰Daeng Naja, "Take Over Financing by Islamic Banking, (Sidoarjo: Uwais Inspirasi Indonesia, 2019, p. 40".

³¹Fitriana Syarqawie, "Fikih Muamalah, (Banjarmasin: IAIN Antasari Press, 2015), p, 35".

- b) There is a second party's consent to the first party executing the *hiwalah*. This stipulation is based on the calculation that the habit of individuals to make debt payments varies, there are easy and difficult ones, while accepting the repayment of the debt is the right of the second party.³²
- 3) Third party (*muhal 'alaihi*)
Muhal 'alaihi is the party responsible for repaying the debt of the muhil party in a *hawalah* contract.
A number of conditions required by the third party (*muhal 'alaihi*) are:
 - a) Capable of carrying out legal actions, i.e. being of sound mind like the first and second parties.
 - b) There is a statement of consent from the third party. This is necessary because *hiwalah* is a legal act that creates a transfer of responsibility to a third party for the payment of a debt owed to a second party, whereas the responsibility for the payment of a debt can only be transferred to him, if the individual owes the debt to the second party. Based on this, the responsibility can only be imposed on him if the *hiwalah* contract is agreed upon.
 - c) Imam Abu Hanifah added the condition that the *qabul* or declaration of acceptance of the contract must be done completely by a third party at a contract meeting.
- 4) The existence of debt (*muhal bihi*)
This is a debt that is transferred from *muhil* to *muhal alaihi*.
A number of conditions are required on the debt that is transferred (*Muhal bihi*), namely:
 - 1) What the transfer does is a thing that has been in the form of a clear debt and credit.
 - 2) The payment of the debt must be at the same time of maturity. If there is a difference in the due dates of the two debts, then the *hiwalah* is not valid.
 - 3) The debt owed by the first party to the second party or the third party to the second party must be of the same amount and quality. If there is a difference in the amount of the two debts, for example a debt in the form of money, or a difference in quality, for example a debt in the form of goods, then the *hiwalah* is not valid.³³

³²Muhammad Sauqi, "Fikih Muamalah, (Purwokerto: Pena Persada, 2020), p. 132".

³³Nasrun Haroen, "Fiqh Muamalah (Jakarta: Gaya Media Pratama, 2000), pp. 224-226".

4. Types of debt transfer

Hiwalah, which is commonly known as debt transfer, is divided into several types, namely:

1. In terms of the object of the contract, it is divided into two, namely:
 - a) *Hiwalah Haqq*, which is a transfer if what is being transferred is the right to give a debt claim.
 - b) *Hiwalah Dain*, which is a transfer when what is transferred is an obligation to pay a debt.³⁴

hiwalah ad-Dain is separated into two types, namely:

- a) *Hiwalah Muqayyadah* (conditional transfer), which is a transfer in exchange for the payment of a debt from the first party to the second party.
- b) *Hiwalah Muthlaqah* (absolute transfer), which is a transfer of debt that is not emphasised to be a substitute for the first party's debt to the second party. However, *hiwalah muthlaqah* will only apply if the individual who has a debt (first party) to the debtor (second party) transfers his transfer rights to another party (third party) with no basis on the third party having a debt to the first party so that this *hiwalah* is said to be *hiwalah muthlaqah based* on the Hanfi school of thought, while according to the majority of scholars, this *hiwalah* is better known as *kafalah*.

Hiwalah Muqayyadah will be experienced when the *muhil* transfers the collection to the *muhal alaih* because the latter has a debt against the *muhal*. This is a permissible *hiwalah* according to what is agreed upon by a number of scholars.³⁵

All three madhhabs (Maliki, Shafi' and Hambali) except the Hanfi madhhab agreed to allow and provide a *muqayyadah* shariathiwalah on the condition that the *muhal*'s debt to the *muhil* must be the same, both in amount and nature. If it is the same amount and type, then the related *hiwalah* is valid. If there is a difference in either the amount or the nature, then the *hiwalah* is invalid.

³⁴Sutan Remy Sjahdaeni, "Sharia Banking: Products and Legal Aspects", (Jakarta: Kencana, 2015), pp. 384.

³⁵Rozalinda, "Fiqh of Sharia Economics: Principles and Implementation in the Islamic Financial Sector, (Jakarta: Rajawali Press, 2016), p. 173".

D. The Concept of Debt Transfer in Islamic Banking According to Fatwa DSN

Fatwa is an answer (judgement or opinion) given by a mufti on an issue. Fatwa is a term for an opinion or interpretation of a problem related to Islamic law. Fatwa in Arabic means advice, advice, answer or opinion. It means an official decision or advice determined by an institution or individual whose authority is recognised, delivered by an individual as a mufti or scholar, a partial response or answer to a question posed by an unrelated *mustafti*.³⁶

Based on DSN-MUI fatwa No.31/MUI/VI/ 2002 regarding debt transfer, the related fatwa stipulates and decides on four provisions in providing financial services for customers of Islamic financial institutions who will transfer their debts from LKK to LKS, namely:

The first alternative, LKS provides loans to customers in repaying their debts to LKK. After the debt is paid off, so that the assets purchased on credit belong to the customer intact. Then in repaying the loan (*qardh*), the customer sells the asset that has been obtained to the Islamic financial institution. then the Islamic financial institution sells the asset back to the customer in instalments.³⁷

The second alternative is for the LKS, with the permission of the LKK that previously provided credit to the customer, to purchase some of the customer's assets. The amount of assets purchased is equivalent to the amount of the customer's remaining debt to LKK. After the relevant assets are purchased, the LKS then sells the assets again in *murābahah* to the customer.³⁸

The third alternative, in order to manage perfect ownership of assets, LKS provides *ijarah* contracts to customers. If necessary, the LKS is able to bail out the management of the ownership, but the *ijarah* contract and the bailout (*qardh*) must be separate and the amount of service fee (*ujrah*) obtained by the Islamic financial institution is also not allowed to be based on the amount of bailout provided to the customer.

As for the fourth alternative, LKS provides loans (*qardh*) to customers to pay off their debts to LKK. Furthermore, the customer sells the assets

³⁶Fitri Yona, Wahyu akbar, "implementation of the DSN-MUI fatwa in debt transfer financing at bank riau kepri syariah capem duri. *Finest Journal: Islamic economic research and development*, Vol. 5 No. 2 (2021), pp. 167-169".

³⁷National Sharia Council of MUI, "Fatwa of Sharia Council No. 31/DSN-MUI/VI/2002 on Debt Transfer, p. 3".

³⁸*Ibid.*

obtained to the LKS. Then, LKS leases related assets to customers using an *ijarah muntahiyah bi tamlik* contract.³⁹

Based on the alternatives described above, the author argues that the third and fourth alternatives are recommended because they are easy to understand and in accordance with Shari'ah. Because the first and second alternatives are more likely to approach buying and selling *'inah (bai' al-'inah)*.⁴⁰

If one of the parties fails to fulfil its obligations or there is a dispute between the parties involved, the settlement will first be carried out through deliberation, if the deliberation is unsuccessful, then the settlement will be carried out through the Sharia Arbitration Board. This process reflects the principle of dispute resolution that prioritises deliberation and consensus before involving third parties.

Basically, the transfer of debt from conventional banks to Islamic banks can be carried out, this is based on the MUI national sharia council fatwa number 31/DSN-MUI/VI/2002 regarding debt transfer, which in its decision states that "one form of financial service that has become a public need is to help people to transfer transactions that are not based on sharia that have been running into sharia-compliant transactions".⁴¹

The transition from credit agreements to Islamic banking contracts certainly causes legal effects for a number of parties involved in it. The meaning of legal consequences is all things that are experienced from all legal actions carried out by the subject of law on the object of law or other consequences caused by an event by the law concerned that has been determined or judged to be a legal result that can take the form of sanctions, compensation, or revocation of rights.⁴² It can be said, it can be concluded if the legal consequences arise after the action is carried out on one legal subject against another legal subject. This also applies to the legal consequences of customers and Islamic banking which then give rise to legal consequences as well as the two parties agreeing to do a debt transfer contract on the implemented credit agreement. Before transferring debt, Islamic banking requires customers to fulfil several requirements, namely:

³⁹*Ibid.* p.3.

⁴⁰ Chairul Fahmi, Audia Humairah, and Ayrin Sazwa, "MODEL OF LEGAL DISPUTE RESOLUTION FOR BUSINESS CONTRACT DEFAULT," *JURISTA: Jurnal Hukum Dan Keadilan* 7, no. 2 (December 23, 2023): 242–63, <https://doi.org/10.22373/JURISTA.V7I2.228>.

⁴¹Pipin Syafrin, *Introduction to Legal Science*, (Jakarta: Pustaka Setia, 1999), pp. 7.

- 1) "Submitting an application".
- 2) "Applicant is a member of BMT-UGT with a minimum balance of 5 thousand rupiah"
- 3) "Filling out the *Murabahah* financing form".
- 4) "Photo copy of ID card, for those who are married".
- 5) "Photo copy of KK (Family Card)".
- 6) "Photocopy of marriage certificate (for those who are married)".
- 7) "Photo copy of Guarantee as a binder".
- 8) "BMT surveyed the customer's business".
- 9) "Signing the *murabaha* financing agreement".⁴³

Takeover financing at BTN Syariah using a *hiwalah* contract researched by juwita anggraini, debt transfer is a financial service of Islamic banks in helping the public to transfer non-sharia transactions to Islamic banks at the request of customers, switching financing from conventional banks to Islamic banks is usually based on the customer's desire to avoid the uncertain nature of interest. Settlement of customer debt at Conventional Banks uses a *hiwalah* contract by lending funds and then BTN Syariah Bank sells the asset again to the customer using a *Murabahah* contract.⁴⁴

Based on the practice of debt transfer financing above, it can be concluded that the mechanism implemented is in accordance with Islamic law and DSN-MUI fatwa No.31/VI/2002 concerning debt transfer, while banks before providing debt transfer first check the customer's background, so that unexpected things do not happen, for example, the customer defaults.

CONCLUSIONS

Based on the above description, we can draw some conclusions that :

1. Debt transfer according to the MUI national sharia council fatwa number 31/DSN-MUI/VI/2002 concerning debt transfer, is the transfer of debt from conventional financial institutions (LKK) to Islamic financial institutions (LKS) by providing a *qardh* contract, *murabahah syirkah* milik,

⁴³Abdul Majid Toyyibi, "Implementation of Hawalah on Troubled Financing Case Study of Sharia Financial Services Kopersi Integrated Joint Business Bmt Sidogiri Kcp Omben Fiscal Year 2018, *Profit : Journal of Economic and Banking Studies*. Vol. 3. No. 2, (2019), pp. 38-50".

⁴⁴Juwita Anggraini, "Analysis of Take Over Financing Performance at BTN Syriah in 2014-2015, *I-Finance: a Research Journal on Islamic Finance*, Vol. 2. No. 1 (2016), pp. 99-109".

ijarah *muntahiyah* bi *tamlik*. Debt transfer can be done if it is in accordance with the provisions that have been regulated by Islamic law.

2. Not all alternatives to the DSN-MUI fatwa can be used in debt transfer transactions carried out by customers and Islamic financial institutions, the lack of in-depth fatwas issued by the DSN-MUI fatwa has caused difficulties for academics, so that new contracts that are not in accordance with sharia appear in the field.
3. Without the provisions of the DSN-MUI fatwa, banks cannot carry out their activities unilaterally, so the position of the DSN-MUI fatwa is important for products in Islamic banking. indirectly, the DSN-MUI fatwa has a very important position in the sustainability of the business operational system in Islamic financial institutions.

REFERENCES

- Abdul Majid Toyyibi, Implementation of Hawalah on Problem Financing Case Study of Sharia Financial Services Kopersi Integrated Joint Business Bmt Sidogiri Kcp Omben Fiscal Year 2018, *Profit: Journal of Economic and Banking Studies*. Vol. 3. No. 2, (2019).
- Abdul Rahman Ghazaly, Gufron Ihsan, Sapiudin Shidiq, Fiqh Muamalah Jakarta: Prenadamedia Group, 2010.
- Adiwarman Karim, *Islamic Bank Fiqh and Financial Analysis*, (Jakarta: PT Raja Grafindo Persada 2006), p. 248. 248.
- Ahmad Antoni K Muda, Complete Campus of Economics, Jakarta: PT Raja Grafindo Persada, 2006.
- Akhmad Faozan, "Patterns and Urgency of Positivisation of Fatwas of the National Sharia Council of the Indonesian Ulema Council on Islamic Banking in Indonesia". *Al-Manahij: Journal of Islamic Law Studies*, Vol.10 No.2 2016.
- Amir Hamzah, Library Research Methods: Philosophical, Theoretical, Application, Process, and Research Results, Malang: Literasi Nusantara Abadi, 2020.
- Andi Fariana, "The Urgency of Fatwa Mui in the Development of Islamic Economic Law System in Indonesia", *Al-Ihkam: Journal of Law and Social Institutions*, Vol. 12, No. 1 2017.
- Daeng Naja, Take Over Financing by Islamic Banking, Sidoarjo: Uwais Inspirasi Indonesia, 2019
- Djazuli, Fiqh Principles: Rules of Islamic Law in Resolving Practical Problems, Jakarta: Kencana Prenada Media Group, 2011.
- Fahmi, Chairul. "Revitalisasi Penerapan Hukum Syariat Di Aceh (Kajian Terhadap UU No.11 Tahun 2006)." *TSAQAFAH* 8, no. 2 (2012).

- <https://doi.org/10.21111/tsaqafah.v8i2.27>.
- — —. "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 (May 30, 2023): 667–86. <https://doi.org/10.26811/PEURADEUN.V11I2.923>.
- Fahmi, Chairul, Audia Humairah, and Ayrin Sazwa. "MODEL OF LEGAL DISPUTE RESOLUTION FOR BUSINESS CONTRACT DEFAULT." *JURISTA: Jurnal Hukum Dan Keadilan* 7, no. 2 (December 23, 2023): 242–63. <https://doi.org/10.22373/JURISTA.V7I2.228>.
- Fitriana Syarqawie, *Fikih Muamalah*, Banjarmasin: IAIN Antasari Press, 2015.
- Fitri Yona, Wahyu akbar, 'implementation of the DSN-MUI fatwa in debt transfer financing at bank riau kepri syariah capem duri'. *Finest Journal: Islamic economic research and development*, Vol. 5 No. 2, 2021.
- Harun, *Fiqh Muamalah*, Surakarta: Muhammadiyah University Press, 2017.
- Irfan Fadillah, Arief Widyananto, Implementation of Fatwa DSN MUI Number 31/DSN-MUI/VI/2002 on Debt Transfer in Islamic Banks. At-Tamwi: Journal of Islamic Economics and Finance. Vol 3 No.1 2024.
- Ismail, *Islamic Banking*, cet-1 Jakarta: Kencana, 2011.
- Juwita Anggraini, Analysis of Take Over Financing Performance at BTN Syariah in 2014-2015, *I-Finance: a Research Journal on Islamic Finance*, Vol. 2. No. 1 (2016).
- Lutpi Sahal. Implementation of Fatwa Dsn-Mui Number 31 of 2002 concerning Debt Transfer in Islamic Financial Institutions, *Al-Iqtishadiyah: Islamic Economics and Sharia Economics*, Vol. 3. No.2. 2019.
- Nia Darmawati, Muhammad Zein, Wadiah and Hawalah and their Implementation in Syarih Banking, Setyaki: Journal of Islamic Religious Studies, Vol. 2 No. 4 2024.
- Ruchhima, 'Fatwa Dsn/Mui About Debt Transfer Fatwa DSN-MUI No. 21/DSN-MUI/VI/2002 About Take Over Financing or Debt Transfer'. *Islamika Journal: Journal of Islamic Sciences*. Vol 19. No 2 2019.
- Khotibul Umam, "Legislation of Fiqh Economic Banking: Synchronising the Roles of the National Sharia Council and the Sharia Banking Committee" *Mimbar: Law Journal of Gajah Mada University*, Vol. 24, No. 2 2012.
- Imam Ash-Shan'ani, *Subulus Salam*, Transl: Abu Bakar Muhammad, jld III, Surabaya: Al-ikhlas, 1995.
- Karnaen A. *Perwataarmaatmadja, Islamic Banks Theory, Practice and Role*, Jakarta: Celestial Publishing, 2007.
- Muhammad Dustur, Syahrizal Abbas, & Sri walny Rahayu, "Conversion of Conventional Banking Credit Agreements into Agreements in Islamic Banking". *Al-Mashlahah: Journal of Islamic Law and Social Institutions*. Vol 9 No.2 2021.

Muhammad Nawawi Al-jawi, Qut al-Habib al-Gharaib, Beirut: Dar al-kutub, 2004.

Muhammad Sauqi, Fikih Muamalah, Purwokerto: Pena Persada, 2020.

Nasrun Haroen, Fiqh Muamalah Jakarta: Gaya Media Pratama, 2000.

Pipin Syafrin, Introduction to Legal Science, Jakarta: Pustaka Setia, 1999.

Rozalinda, Fiqh of Sharia Economics: Principles and Implementation in the Islamic Financial Sector, Jakarta: Rajawali Press, 2016.

Rusdan, "Basic principles of fiqh muamalah and its application to economic activities".El-Hikam Journal: Journal of educational and religious studies: Vol.15 No.2 2022.

Sutan Remy Sjahdaeni, Islamic Banking: Products and Legal Aspects, Jakarta: Kencana, 2015.

Sayyid Sabiq, Fikh Sunnah, Transl: Abdurrahman and Masrukhin, Jld V, Jakarta: Cakrawala Publishing, 2009.

Wahbah Zuhaili, Fiqh al-Islamy wa Adillatuhu, Transl: Abdul Hayyie al-Kattani, Volume VI, Jakarta: Gema Insani.