

The Mechanism of Avoiding *Riba* in Islamic Financial Institutions: Experiences of Indonesia and Malaysia

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Abstract: The issue of discrepancy between business goals and sharia principles related to debt raises a problem. Financial institutions seek profit, but lending and borrowing money (*qardh*) in Islam is not for profit. This has the potential to generate usury (*riba*), and must be avoided by Islamic Financial Services (IFS). This article examines several Islamic legal opinions (*fatwa*) from the Indonesian National Sharia Council and the Malaysian Sharia Authority Council utilizing a normative and descriptive legal study approach, in conjunction with the science of Islamic jurisprudence (*ushul fiqh*). The results of the study outline that Islamic financial institutions must create products to avoid *riba* practices on unlawful debts. Two models for the creation of anticipatory *riba* were found by tracing and testing Islamic financial products using a credit schemes (*qardh*), namely entering into a service contract (*ijarah*) and conducting several transactions (*bay' al-'inah*) for one object. This product highlights the repetition of an old practice long-debated in classical *fiqh* because it is prohibited in a hadith of the Prophet Muhammad. This finding has implications for Sharia compliance as long as Sharia financial products do not shift to profit-sharing or buying and selling-based financial products.

Keywords: Credit (*Qardh*); *Ijarah*; Usury (*Riba*), *Bay' al-'Inah*, Legal Creation (*Hilah*).

Introduction

Usury (*riba*) is a serious and complex problem in business transactions (*muamalah*). *Riba*, restructuring conventional products in Sharia terms, and avoiding prohibited (*haram*) goods and services are prominent Sharia identities in Islamic financial institutions (Ellouz, 2004). Studies have assessed that Islamic banking is believed to contain hidden usury practices such as the practice of *bay' al-'inah* and *Tawarruq* (same-item sale-repurchase to circumvent the prohibition of interest-based lending) (Asni & Sulong, 2018). Islamic banking has become more focused on fulfilling legal aspects and is failing to reform economic values because bank ethics, bank responsibility, and social responsibility cannot be fully translated into the banking system (Riwanto & Suryaningsih, 2022; Saeed Mohammed & Mansor, 2021; Utama, 2020).

According to Choudhury (2018), *riba* or interest is prohibited in Islam because usury in loans is an addition to debt without effort and does not align with the loan's purpose (Bayindir & Ustaoglu, 2018; Cindy et al., 2022). The prohibition of *riba* is based on several reasons; namely, that the additional cost has no moral basis, food obtained through the use of usury is prohibited, and there is no risk that justifies that financing can be guaranteed to be successful. The funder and customer relationship involves sharing risks and benefits (Ellouz, 2004).

Islamic banking has emerged as an alternative to bank services that avoids usury. The purpose of Islamic banking is not to maximize profits, as practiced by conventional banking, but to provide financing to obtain socio-economic benefits from the progress of Muslims (Ahyani, 2021). Islamic banking uses religious values as the basis and indicator for preparing company goals and policies. Islamic financial institutions harmonize law, ethics, and business (Ishak, 2020; Hidayah & Azis, 2023; Triasari & de Zwart, 2021). Therefore, the source of income in Islamic banking is based on the principle of the Islamic rate, not the profits, namely from halal transactions (Yusoff, 2013; Dahlan et al., 2023; Mulazid, 2022). This seems

similar to conventional banks, but Islamic banks hold values of spirituality, socio-economic justice, and brotherhood that do not exist in conventional banks (Ahmad & Hassan, 2009; Ningsih & Dise, 2019). This uniqueness is one factor in customer decisions to choose an Islamic institution (Sadallah, 2022; Ahmed, 2021; Al-Taffi, 2021).

Riba is a complex issue because it was not completely explained by the Prophet Muhammad. Furthermore, the practice of usury existed before Islam's arrival. A concept or model similar to usury emerged, known as interest, and other additional forms practiced personally or through financial institutions (Jefferis et al., 2020; Mustofa et al., 2023). However, after the liberalization period, interest rates (usury) were determined by looking at the inflation rate in a region or country (Koech, 2019; Nampewo, 2021), and then followed the question of the status of the interest and whether the addition is the same as usury or not. In modern times, *riba* has served as a monetary policy tool, the amount of which can be adjusted and will have implications for bank interest rates and have a broad impact on a country's banking system (Angori et al., 2019). In this ambiguous state of affairs, Islamic financial institutions face risks to sharia (Mustapha, 2021; Basiruddin, 2020; Usman, 2022; Suzuki, 2021; Ginena, 2014; Saqib, 2016; Shaikh, 2019).

Contemporary Islamic scholars and *fatwa* institutions have prohibited bank interest. Dar al-Ifta' of Egypt, Majma' al-Buhus al-Islamiyah at Al-Azhar University, Majma' al-Fiqh al-Islami, Rabithah al-Alam al-Islami, the Fatwa Commission of Saudi Arabia, and the Indonesian Ulema Council are institutions which have prohibited bank interest (Ghazali, 1994). The scholars' debates show that the practice of usury is extremely complex. This debate can be found in *fiqh* books and Aġatay differentiates between the issue of usury and interest rates (Weerasinghe & Jayasena, 2021).

Some scholars have conducted research on usury such as Jauhari & Ghoni (2020), Elimartati & Purwasih (2021), Nurhalizah & Fageh (2022), Bayindir & Ustaoglu (2018), and Choudhury (2018). These researchers revealed that usury is still an important theme in Islamic finance. Elimartati said that the product of security-based financing potentially utilizes usury. The imposition of security fees is based on money loans that do not follow Sharia principles. Nurhalizah concluded that the non-cash sale of gold through Islamic banking is also problematic. Saudi scholars prohibit it because it contains usury, while Indonesian scholars allow it because gold has the status of a commodity that can be traded on credit. Another potential for usury occurs in the buying and selling of *'inah* (Asni & Sulong, 2018). The status of usury has attracted public attention. The findings of Jauhari and Ghoni conclude that 88.6% of respondents in their research stated that they did not utilize usury. *Riba* is explicitly discussed in Christian and Islamic Scriptures even though Christian and Islamic scholars fail to improve benevolence than still focus on usury (Bayindir & Ustaoglu, 2018; Choudhury, 2018). In Izmuddin's notes, a *fatwa* legalizes the return of Islamic financial institutions but these violates religious provisions (Izmuddin et al., 2023). This research aims to reveal how Islamic law, as constructed in *fatwas* which serve as the standard for Sharia, provides methods for avoiding usury and, at the same time, provides opportunities for profit. *Fatwas* are considered a source of law to fill the gap in Sharia finance law (Renie, 2021; Sholihin, 2020). The growth of Islamic finance has not been accompanied by the creation of positive legal norms (Santika et al., 2023). *Fatwas* are an alternative to the applicable sharia standards (Alfitri, 2020).

Literature Review

The Loan Financing Gap (Qardh) and the Prohibition of Riba

Usury literally refers to excess or increase (Khan, 2003). The word "usury" is mentioned eight times in four different verses of the Qur'an (*surah*) (Rivai et al., 2010). *Riba* is also seen as morally wrong because humans can make multiple debts (Kafabih & Manzilati, 2018). This is also in line with the interpretation of Ibn al-Arabî al-Mâliki in his book *Ahkâm al-Qur'ân*, which includes usury in the sense of vanity because additional *riba* is required without a replacement or balancing transaction that is justified by sharia (Nurhidayah, 2018). Chapra (1997) mentions that *riba* is divided into two types, *riba al nasi'ah*, which is related to debt or borrowing money, where the person who lends money increases the loan principal that

the borrower must pay because the lender provides additional time. Second, *riba al-fadl*, which is related to trade, especially trade in goods.

Qardh is included in the *tabarru'* (benevolence) contract, which does not aim to seek profit. The addition of the *qardh* loan principal is included in the prohibited category of usury. *Riba qardh* is classified as *usury jahiliyah* (usury which is practiced by ignorant people and has been prohibited in the Qur'an), i.e., have to pay more as a fine if someone cannot pay the debt (Siddiqi, 2004:37). The prohibition of usury, according to Bal'abbas, is the foundation of the Islamic economic system (Bal'abbas, 2008). According to Lewis, if the principle of Islamic financing is in the form of debt (*qardh*), it must be free from interest and aim at virtue (*qardh al-hasan*) (Alhusban, 2021; Binti Nazmi, 2022; Abdullah, 2015). As for financing for business purposes, the contract uses a profit-sharing system. Problems arise because financing in financial institutions does not match Sharia contract models. According to Saeed, *fatwas* on bank interest pose difficulties for Islamic financial institutions (LKS), whose main product is providing loans. *Qardh* loans applied in Islamic banks are *qardh al-hasan* (benevolent loans), which do not bear interest ('Ali & Al-Banna, 2006).

However, in reality, *qardh* loans are widely used in LKS. Some *qardh* loan products are combined with other contracts, such as lease contracts (*ijarah*), and sharia authorities approve these products. The Fatwa of the National Sharia Council (DSN) of the Indonesian Ulema Council (MUI) (Hidayah, 2011), for example, circumvent the prohibition of interest on *qardh* loans by combining *qardh* contracts with other contracts (such as *ijarah*) so that additional *qardh* loans are taken from *ijarah* contracts rather than *qardh* (Hasanudin & Yaqin, 2019). This is a form of income innovation to sidestep the prohibition on usury.

To avoid usury, the National Sharia Council (DSN), as the sharia authority on financial *fatwa*, classifies the use of loans (*qardh*) into two contract schemes. First, are standalone *qardh* contracts. Independent sources of *qardh* financing may not come from third-party funds or customer deposits. Second are *qardh* contracts that complement other business contracts (*mu'awadhat*), such as buying and selling, leasing, *wakalah bil ujarah* (agency with lease), and others. The source of *qardh* financing can come from third-party funds or customer funds. An example of this scheme is the blended contract of *ijarah*, *qardh*, and *wakalah* as a product of health financing (Busni et al., 2022).

Method

The valid data was obtained through field study with a qualitative approach using the means of observation, interviews, and documentation (Yusuf et al., 2022). Generally, it aims to explore the current phenomenon through direct observation. The study location focused more on the La Tansa Islamic Boarding School, Banten, with the primary informants, such as KH. Adrian Mafatihullah Karim and KH. Enceh Sholeh, along with the other *asatidz*. Data processing started with editing, followed by classification, and data verification as a form of truth checking, before analysis and conclusion (Moleong, 2005, p. 6). This study used descriptive analysis by providing an overview of the data (Moleong, 2005) and then obtaining a complete explanation of the answers to the problems.

Results and Discussion

Sharia Loopholes (*Hilah*) to Avoid Riba

To avoid the practice of usury, several Islamic legal tools are used, such as the *hilah syar'iyah* (sharia loopholes). The *hilah* method is manifested in the form of buying and selling '*inah*. The concept of buying and selling '*inah* can be described as follows: someone sells a commodity at a certain price with a cash payment, and then the buyer resells the commodity to the first seller at a higher price with a deferred payment. The practice of buying and selling '*inah* was founded in 1298 A. D. (697 A. H.) (Cagatay, 1970). This *hilah* practice was even adopted and practiced in Western Europe. The "Les Provinciales" agreement adopted a kind of *hilah* called 'mohatra contracts.' A mohatra contract is a way of borrowing money at interest without violating usury provisions.

Modern transactions and financial activities also attempt to modify contracts to avoid usury. *Murabahah* homeownership (Hidayah et al., 2022) and sharia security products are formulated with *hilah*. *Hilah* on *murabahah* products is justified because of technical obstacles, while security products with *ijarah* are included as *hilah*, which is frowned upon. *Hilah murabahah* was reformulated after the removal of various technical barriers. On the other hand, sharia securities must be reformulated immediately to align with sharia provisions and not resemble the interest system in conventional securities. This is concluded based on the non-fulfillment of one *hilah* parameter, *wasail*, namely because of the addition of the *al-ijarah* contract into the *al-rahm* contract, which obscures and alters the characteristics of the *rahm* contract, which was initially a non-profit social contract, turning it into a commercial contract by imposing withdrawals (Mardhiah, 2017). Another *hilah* is the practice of *ijarah* multiservice contracts that combine *qardh* and *ijarah* contracts. (Busni et al., 2022) The *hilah* method is carried out by modifying the agreement and sidestepping the *muamalah fiqh* format.

The practice of *hilah* is approved by scholars through sharia opinions and *fatwas*. *Fatwas* are a form of living Islamic law because they can answer practical needs and economic development. *Fatwas* need to be seen from the context of the sources used (the background of the person asking the question, the background of the question, the background of the mufti), the substance of the *fatwa* (the content of the *fatwa*, the *ijtihad* method used), and the impact of the *fatwa* (legal subjects, both individual and public, legal implications), social, political, economic) (Hakim, 2019).

Anticipation of Riba Loans (*Qardh*)

1. Service Contract Injection (*Ijarah*)

Loans (*qardh*) can be found in *qardh* financing regulated in Fatwa No. 19 of 2001, securities (*rahm*) and gold securities which are regulated in Fatwas 25 and 26 of 2002, financing products for *hajj* management (Fatwa 29 of 2002), debt transfer products (Fatwa 31 of 2002), Fatwas 34 and 35 of 2002 concerning sharia import and export letters of credit, sharia debit card products (Fatwa number 42 of 2004), compensation and fines (Fatwa 43 of 2004), sharia credit cards (Fatwa 54 of 2006) (Alhusban, 2021; Husni, 2023), receivables settlement products in exports (Fatwa 60 of 2007), sharia factoring products (Fatwa 67 of 2008), *rahm tasjili* (Fatwa 68 of 2008), products that use *qardh* from customer funds (Fatwa 79 of 2011), Financing Accompanied by *Rahn* (*al-Tamwil al-Mautsuq bi al-Rahn*) (Fatwa 92 of 2014). In Malaysia, *qardh* contracts are used for Malaysian Bank Negara Certificate products (Resolution 33), benevolence loans, and hybrid products of *qardh* and *mudharabah* savings. The hybrid savings product is a scheme to divide customer savings into two accounts, *qardh* and *mudharabah*. Customers will obtain profit-sharing from *mudharabah* savings (Elvia et al., 2023; Hayati & Mujib, 2022; Hidayatullah & Fadillah, 2022).

The argument for using *qardh* loan products is based on the provisions of Surah al-Baqarah [2]: 245, 280, 282, al-Ma'idah [5]: 1, a hadith cited by Muslim on facilitating other people's difficulties, the hadiths of al-Nasai, Abu Dawud, Ibn Majah, and Ahmad about postponing debt payments as a heinous act, Bukhari's hadith on doing good in paying debts, and the Tirmidhi hadith about the permissibility of making peace. Another hadith is from al-'Asqalani on taking advantage of *qardh* and al-Nasai's hadith about the prohibition of combining *salaf* and *bay'*. The opinion of al-Shawkani is used as the basis for this approach (Bank Negara Malaysia, 2010). However, the issue of usury in *qardh* loan products is unavoidable.

Islamic jurists recognise the vulnerability and potential of usury on *qardh* loan products as a significant issue. Therefore, in almost all sharia opinions and *fatwas* containing *qardh* loans, there is a prohibition on determining returns. The National Sharia Council (DSN) of the Indonesian Ulema Council Fatwa Number 19 of 2001 stipulates several clauses: administrative fees are charged to the customer, and compensation for the debt can be provided at the customer's discretion (DSN-MUI, 2001). This means that in *qardh* loans, there are only administrative costs. Even if there is a return, this is provided voluntarily by the borrower and is not agreed upon.

In a *qardh* loan product with a guarantee dissertation or security (*rahm*) in fiqh terms (Al-Shakhanabah, 2011). Fatwas 25 and 26 of 2002 mentioned that the prohibition of *qardh* returns is also regulated. As an alternative, a lease agreement (*ijarah*) is entered into, in which the borrower (*rahin*) pays

for the maintenance and storage of the pledged goods. If the contract used for *murabahah* is accompanied by *rahn*, then the profit comes from the sale and purchase of the *murabahah*. When the contract used is *ijarah* or *syirkah*, then the opinion of LKS comes from rent or profit-sharing. The Sharia Advisory Council (MPS) *fatwa* regarding *rahn* only places the object of security (*marhun*) as collateral for debt. It does not mention the costs of managing *marhun* (Bank Negara Malaysia, 2010). The DSN *fatwa* emphasized that the lender should remind the borrower to pay off their debt because it was due. The excess proceeds from the sale over the debt must be returned to the borrower. The object of the security can be sold for the benefit of the lender even though the object is still a guarantee (*rahn*) (Al-Shafi'i, 2005).

Entering the *ijarah* contract in the *qardh* loan product is also found in *hajj* management products. The combination of *ijarah* and *qardh* contracts is used to accommodate *hajj* management services carried out by Islamic banking. To avoid the existence of *qardh* usury, provisions for the separation between *ijarah* and *qardh* contracts are made in the contract document. The determination of the cost of managing *hajj* (*ujrah*) is not based on the size of the loans provided by Islamic banks to customers (DSN & BI, 2006). Fixed fees on *hajj* loans is prohibited in Syria (DSN-MUI, 2009). The *ijarah* contract is modified with another contract. (Hasanudin & Yaqin, 2019)

The debt transfer product (Fatwa 31) also uses a *qardh* loan agreement. The financing assets financed by the conventional financial institutions (LKK) become the full property of the customer, and then the assets are sold to the LKS to pay off the *qardh* loan provided by the LKS. Asset ownership shifts from the customer to the LKS. The next stage is LKS, which leases the assets to customers. The profit obtained by LKS comes from the rental fee. The transfer product uses a *qardh-bay'*-IMBT contract (*ijarah muntahiyah bi tamlik*/lease, which ends with the transfer of ownership) (DSN & BI, 2006). Other products that use *qardh* loan contracts are sharia import and export letters of credit (LC). In this product, the contracts used are *wakalah bil ujrah* (contract of agency) and *qardh* loans. In sharia export LC products, a clause is added to the ability to take *ujrah* from the loan according to the agreement, and there is no link between the *wakalah bil ujrah* contract and the *qardh* contract (DSN-MUI, 2002). This product combines *qardh* with *kafalah* (guaranty) and *ijarah* contracts and normatively regulates the separation of these contracts. These contracts cannot be mutually dependent (*ta'alluq*) (DSN & BI, 2006). The Majma' Fiqh al-Islamy (MFI) decision only allows membership fees and merchant fees. Membership fees are fixed (Al-Islami, 2011).

The export receivables settlement product (Fatwa 60) and factoring (Fatwa 67) also include a *wakalah bil ujrah* contract to avoid compensation for *qardh* loans. *Wakalah* contracts are used for document management and collection to debtors residing abroad. *Qardh* is carried out to cover several customer receivables. For the role performed by the LKS, the LKS will receive a reward, the amount of which must be agreed upon at the time of the contract and stated in nominal terms, not in the form of a percentage calculated from the principal receivables. *Wakalah* is not a condition for the existence of *qardh* (*ta'alluq*) (DSN-MUI, 2007).

The provisions governing the separation of loan products (*qardh*) and *ijarah* are an attempt to sidestep prohibited practice of usury. MPS prohibits the combination of *qardh* and buying and selling contracts (Bank Negara Malaysia, 2010). Prohibition of the combination of *qardh-bay'* because a hadith of the Prophet prohibits the combination of *salaf* (loans) and buying and selling (Al-Nasa'i, n.d.). MPS also prohibits all forms of *qardh-mu'awadhat* combination (business contracts including *ijarah*) because it is a way to avoid falling into the practice of usury (*sadd dhari'ah*). According to MPS, the combination of the contract is justified as long as it meets the requirements; there is no combination of *bay'-salaf* and *qardh-mu'awadhat* (business contracts including *ijarah*) (Bank Negara Malaysia, 2010).

Combining *qardh* and *murabahah* contracts in one transaction is not permitted in Malaysia. MPS *fatwas* reject products proposed by Islamic financial institutions that combine *qardh* initial payments with *murabahah* contracts (Bank Negara Malaysia, 2010). As mentioned above, the DSN *fatwa* justifies the income from *qardh* transactions taken from the combination contract, including products in which the *qardh* contract is dominant, such as debt transfer, *hajj* management, and *rahn*.

In this case, MPS distinguishes between *qardh* and *qardh al-hasan* loans. Loans in LKS that must be returned are of the *qardh* type. *Qardh al-hasan* is providing wealth to other parties for the purpose of kindness and seeking God's favour. The term *qardh al-hasan* is defined as charity in the way of God (Al-Shawkani, 2000). To avoid the confusion of the term, the MPS *fatwa* stipulates the use of the term *qardh* and avoids the term *qardh al-Hasan* (Bank Negara Malaysia, 2010). The DSN *fatwa* equates the two terms as *qardh* that must be returned. The source of *qardh* funds in the DSN *fatwa* comes from the LKS capital, LKS profits set aside, or other institutions and individuals who entrust the distribution of infaq to LKS (DSN & BI, 2006). Incorporating *ijarah* and *wakalah bil ujah* contracts in transactions and financing containing *qardh* is a loophole to avoid the prohibition on *qardh* usury. According to Hasanudin, the combination of *qardh* and other contracts is based on contracts other than *qardh*, while *qardh* contracts are only additional (Hasanudin, 2012).

On the other hand, MPS prohibits the combination of *qardh-murabahah* contracts based on the hadith of the Prophet narrated by al-Nasai (Al-Nasa'i, n.d.) and Bukhari (Al-Bukhari, 1982). As a result, there is a discrepancy between the *fatwa*'s provisions and the product's purpose. Products based on *qardh* debt, such as hajj arrangements, debt transfer, *rahn*, and factoring, are justified by DSN to be charged service fees. Even though the product is formally legal, its implementation encounters obstacles in avoiding the additional imposition on loans (*qardh*), which are prohibited.

2. *Bay' al-'Inah*

In addition to including *ijarah* contracts in loan products, the longstanding practice of *bay' al-'inah* is also adopted in modern transactions. To avoid borrowing, the practice of double buying and selling, such as *bay' al-'inah* transactions, is used as an alternative. The seller sells an item to the buyer at a cash price. Then, the buyer resells the goods to the seller at a higher price with a deferred payment. The *bay' al-'inah* contract was also modified into other forms, namely *Tawarruq*, and sale and lease back. *Tawarruq* is actually a contract created to avoid the practice of *bay' al-'inah*, whose validity is disputed. In *bay' al-'inah*, a commodity is sold to another party at a cash price, and then the commodity is resold to the first seller at a higher price. After the commodity is sold to another party at a cash price in a sale and leaseback, the commodity is leased to the first seller. When the transaction is made, the seller and the buyer promise that at the end of the lease term, the first buyer/seller will own the commodity either by grant or purchase. In practice, multiple transactions for one object give rise to the impression that it is not sharia, namely loans with additional benefits (Saeed, n.d.).

Bay' al-'inah is explicitly justified in the MPS *fatwa*. The legitimacy was agreed upon at the inaugural meeting of MPS members in 1997 based on the Qur'an regarding the permissibility of buying and selling transactions and the opinions of Imam Syafi'i, al-Subki (Syafi'iyah), and Abu Yusuf (Hanafiyah). Imam Shafi'i is of the opinion that if someone has sold an item within a certain time and the buyer has received it, then the seller is justified in buying back the object of sale at a lower price (Al-Shafi'i, 2005). In Resolution Number 69, the MPS regulates the separation between the first sale and purchase and the second sale and stipulates the completion of a sale and purchase marked by the receipt of goods (*qabdh*) (Bank Negara Malaysia, 2010). In addition, the MPS *fatwa* requires that there are no resale conditions in the contract, and there has been a legal and generally accepted transfer of ownership and control over the object of the contract (*qabdh* and *hiyaz*) ('urf) (Bank Negara Malaysia, 2010).

The existence of conditions for the resale of the object will cancel the *bay' al-'inah* contract (Al-Nawawi, n.d.). Although *bay' al-'inah* contracts are permitted in Malaysia, the sharia supervisory board at Malaysian Islamic financial institutions differs on the validity of the contract. The DSN *fatwa* does not regulate the terms of sale and the separation of the first sale and purchase contract from the second sale, so there is an opportunity to carry out two rounds of buying and selling in one contract (DSN & BI, 2006).

As described previously, the sale and leaseback products are indirect *bay' al-'inah* products practiced in sharia refinancing. The seller sells an object to a second party in a sale and leaseback. Then, the second party leases the object. After the lease is over, the second party sells the object to the seller. The resale of this object is bound by a promise (*wa'ad*) that was agreed upon during the first sale contract (DSN & BI,

2006). The difference between *bay' al-'inah* and sale and leaseback shows that the profit obtained from LKS in the form of sale and leaseback comes from the rental price of the object, while the profit from *bay' al-'inah* comes from the difference in selling and buying prices on a cash basis.

In the product of State Sharia Securities (SBSN), the government sells assets to certain parties. The party will sell assets to investors' customers. Assets sold are leased to the state for a certain period of time. The state can buy back the assets. The assets are leased to the government, and at or before maturity, the government can purchase the *ijarah* object (DSN & BI, 2006). In resolution number 14, MPS opens the possibility of using third-party assets obtained under the IMBT contract for *sukuk ijarah* products (Bank Negara Malaysia, 2010).

The difference in elevated cash prices in buying and selling is justified because of the difference in the value of money in the present and future. The principle of the time value of money emphasizes the decreasing value of a currency due to time. According to MPS, this principle can be applied in special financial statements for difficult exchange contracts. This principle cannot apply to loan contracts (Bank Negara Malaysia, 2010) because the lender is rewarded for his kindness in helping others. Meanwhile, the value of cash today tends to be different in value in the future (Siddiqui, 2010). Debt and buying and selling are different. Debt motivation is for virtue while buying and selling is for profit.

The difference between these scholars is that the prohibition on *bay' al-'inah* lies in the binding conditions between the first and second rounds of buying and selling. If the two trades are executed separately, then both trades are justified. In the first sale and purchase, ownership and rights attached to the buyer are transferred to the object of sale and purchase. Is the legal certainty over the second sale and purchase acceptable to the first seller because, basically, the *bay' al-'inah* contract, sale, and leaseback, or Tawarruq, the first seller, does not actually transfer ownership of the object of the contract? DSN and MPS allow income from *bay' al-'inah* based transactions. MPS opens a *bay' al-'inah* contract space with limitations. Notably, there is no resale condition, and the two contracts are executed separately. DSN opens the contract space in a limited way but does not stipulate the terms of contract separation. DSN approved the alternative sale and leaseback to avoid *bay' al-'inah*.

Conclusion

The practice of paying interest has not disappeared in Islamic financial transaction activities. This is because the provision of loans is still widely found in Islamic financial products. On the other hand, Islamic financial institutions aim to increase profits to benefit business development and provide profit sharing to savers/depositors. There are at least two methods to avoid usury in loans (*qardh*) in Islamic financial institutions. They are adding an *ijarah* contract or service in a *qardh* product to determine the advantages of a *qardh*. Islamic financial institutions provide loans and at the same time, provide services. Another mechanism is buying and selling *'inah*. The injection model for the *ijarah* contract in the loan is commonly found in Islamic financial products in Indonesia. Buying and selling *'inah* is used in Malaysia and is very limited in certain products in Indonesia.

The validity of the *ijarah* and *bay' al-'inah* in loan products emphasizes the formal aspects and the fulfillment of the technical requirements of the contract. From the point of view of the purpose of the contract, this practice can lead to the interest of prohibited debt. Especially if the aim of the loan is to obtain profits by ignoring how much the services provided by LKS are compared to the rewards they receive. *Fatwa*, as a sharia standard in Islamic banking, should consider the sharia objectives (*maqashid al-syari'ah*) of justice and social economy. The *fatwa* indicators cover sharia aspects, morals, and ethics. Such *fatwa* will encourage Islamic banking to develop innovative solutions and increase profit-sharing products that can improve actual economic performance and cause an increase in social economy and as well as responsibility.

Conflict of Interest

This article has not a conflict of interest

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