

SHARIA ISSUES IN ISLAMIC CREDIT CARD BASED ON INDONESIA PRACTICE

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Abstract: Sistem Perbankan Syariah mengalami inovasi yang sangat beragam dan perkembangan yang sangat cepat. Kartu kredit Syariah adalah salah satu bentuk inovasi dalam produk perbankan Syariah. Penggunaan Kartu Kredit Syariah masih menjadi perdebatan di kalangan ulama. Tulisan ini bertujuan untuk mengkaji tentang persoalan dalam penggunaan kartu kredit Syariah di Indonesia, atau sering dikenal dengan Kartu Syariah. Permasalahan yang dibahas adalah seputar adanya upah yang digunakan dalam akad kafalah dan ijarah yang merupakan kontrak yang digunakan dalam kartu kredit Syariah di Indonesia. Metodologi yang digunakan adalah dengan mempelajari penggunaan kartu Syariah di Indonesia berdasarkan fatwa DSN-MUI tentang Kartu Syariah dan merujuk kembali persoalan ini kepada pendapat para ulama. Penggunaan upah pada kafalah di Kartu Syariah hukumnya adalah boleh, di sisi lain penggunaan upah pada akad ijarah dalam kartu kredit Syariah masih dipertanyakan dan perlu pembahasan lebih lanjut karena dekatnya praktik ini kepada riba. Penjelasan lebih lanjut terkait fatwa DSN-MUI tentang Kartu Syariah juga dibutuhkan untuk melihat bagaimana penggunaan Kartu Syariah di Indonesia.

Keywords: Islamic Credit Card; Sharia Card; Indonesia

INTRODUCTION

The entire aspects of human life experience the development and enlargement, including the economic system. Long time before, to meet their needs, people exchange a commodity to another commodity as a form of trade. Since this method is not effective to fulfil the demand, this condition triggers the existence of the money or currency as the mean of exchange. As time goes by, as a result of technology advancement and high mobility of the human activities, the demand to the mode of payment which is more efficient, simple and safe arose. Those conditions cause the existence of the first modern credit card introduced by Western Union in 1914 with the scheme to charge and settle up at the end of the month (Kahf & Mohomed, 2016).

Credit card in some condition has replaced the function of money. The card which is usually issued by the banks or particular institution can be an alternative to the mode of the payment. Credit card has been a phenomenon in finance and economy of Indonesia. In 2022, there are more than 17 million credit cards spreading among Indonesian society with the transaction value around IDR 315 trillion (Asosiasi Kartu Kredit Indonesia, 2023). The value of the credit cards transaction is increasing gradually. The amount of credit card in Indonesia reduces since the middle of 2017, however, the value of transaction keeps increasing since the reason of the reducing in credit card is merely based on the regulation from Indonesian Central Bank that limits the ownership of credit card for the consumer (Simorangkir, 2017). In addition, based on the data from Indonesia Credit Card Association, nearly 70% of the credit card holder make the payment through instalment which can give big amount of profit to the bank (G Zhahir, 2020).

Islamic banking which is relative new compare to the conventional as its counterpart has to develop the innovative products to answer the need of its customers. As the conventional banking system has the interest component which is accounted to *riba* that is strongly prohibited in Islam, Islamic banks should come with inventive products that provide the efficiency, effectiveness and protection for its customers. Indeed, the most important thing is that the products should be shariah-compliant. As credit card has become an indispensable tool for effective payment, Islamic bank should offer the alternative product for credit card that is sharia compliant since the conventional credit card has the component of *riba* which is strictly prohibited.

Indonesia, as a country with the most Muslim population, realize that the demand on the credit card which has the business operation according to Islamic principles is high. However, credit card which is based on giving loan or making the costumer in indebtedness is really close to *riba*. Based on this reason, Dewan Syariah Nasional (National Sharia Council) of Indonesian Ulema Council issued the *fatwa* on Syariah Card. This *fatwa* stated the permissibility of Islamic credit card which is called by Syariah Card. There are some terms and conditions mentioned together with this regulation to be followed by the banks or other finance institutions. (Syariah Card, 2006)

The issues on Islamic Credit card have been discussed since its early age. Some discussions focus on the permissibility of the Islamic credit card by looking in to the underlying contracts and models used. The debate on the Islamic credit card is also triggered by the impact of the credit card that can elicit the consumerism lifestyle and *tabzir* which is not accordance to Islamic principles.

Fatwa of DSN-MUI on sharia card stated the permissibility of the Islamic credit card which is based on underlying contracts: *kafalah*, *qard* and *ijarah*. Based on these three contracts, there are some fees originated: membership fee, merchant fee, fee in withdrawing the cash and *kafalah* fee. Islam really concern on the additional amount that originated from the loan or credit, since it can be fallen under *riba*. This is the reason why the appropriate contract which is compliant to the sharia should be implemented to obtain one of the *maqashid sharia*, protection toward the wealth from the *riba*.

This paper aim to discuss on the contracts used in Islamic credit card in Indonesia. The objectives of this paper are: 1. to discuss on the *kafalah* contract used in Islamic credit card, and 2. to evaluate *ijarah* contract used in Islamic credit card

This issue is important to be observed since the use of credit card is inevitable in today's banking transaction. There should be the discussion on the permissibility of it so that the product can be widely used by the public without any doubt.

This paper is started with the introduction to the issue and followed by the overview of the Islamic credit card. The next part will discuss on the Islamic credit card in Indonesia and how it is applied. After that, the discussion on the issue of *kafalah* and *ijarah* will be discussed after the legitimacy of the Islamic credit card. Lastly will be the conclusion and suggestions.

METHOD

This research is a qualitative research by explaining the application of Islamic Credit Card in Indonesia. The study continuous by the description on how Islamic Scholars see the underlying contracts used in Islamic Credit Cards. The regulation on Islamic Credit

Cards in Indonesia which is Fatwa DSN-MUI also used to see how Islamic Credit Cards applied in Indonesia.

RESULTS

An Overview of Islamic Credit Card

Together with the advancement of technology and high mobilization of human life, the method of payment also changed a lot. People start to look for the mode of payment which is more effective, efficient and secure. To do the transaction, they do not need to bring much money; it can be replaced by a small square plastic called credit card. The first credit card was issued by the Bank of America in 1958 (Mudd, 2007). The credit card became the fixture in American economy at the end of 1980s not only in personal loan but also used by the corporate. It is depicted in the possession of the credit card which is seven out of ten households had at least one credit card.

According to AAOIFI (2010), there some main characteristic of credit card:

1. Credit card provide the revolving credit facility within the credit limit and credit period determined by the issuer of the card. It is also mean of effecting payment.
2. The holder of the credit card is able to pay for purchases of goods and services and to withdraw cash, within the approved credit limit.
3. When purchasing goods and services, the card holder is given a credit period, during which the amount due should be paid and no interest is chargeable during this period. The cardholder is also allowed to defer paying the amount due and is charged interest for the duration of the credit. In the case of cash withdrawal, there is no fee credit period.

The credit card gives benefit for all the parties involving: cardholders, issuers and merchants. This reason makes credit card becomes popular and widely used in economy system (Kahf & Mohamed, 2016). From the cardholders' point of view, by having the credit card, their purchasing power is increasing. They can do the transaction easily and more secure since they do not need to bring much cash which can increase the risk of being theft. Another benefit is that the cardholders can withdraw the cash in ATM or other machines. In addition, the cardholders can maximize the advantage of the credit card if they can provide the good use of the credit card, so they have the probability to get the reward and by borrowing and repaying on time they do not need to pay any additional charges. The benefits for the merchant are that they can enhance the competitiveness and increase the sale, fraud protection and cash balance safety and security. From the issuer side, they can originate the profit from credit card and also can enhance customer's loyalty.

The need toward Islamic credit cards in the Muslim word was started with the first interest-free credit card "al-Buraq" by the Bahrain-based ABC Islamic Bank in 2002. The card was backed by MasterCard which had the similar features to normal credit cards in term of settlement and international recognition (Derhally, 2001). Almost in the same time, AmBank Malaysia launched an Islamic credit card under the name of al-Taslif, followed by two other banks; Bank Islam Malaysia Berhad and Bank Simpanan Nasional issued their Islamic credit cards under the names of Bank Islam Card (BIC) (2002) and al-Amin Card (2006), respectively (Mansor & Mat, 2009). Initially the model used in Islamic credit card in Malaysia is under I'nah contract, in 2008, Bank Rakyat introduced the Islamic credit card based on tawarruq model and

followed by the issuing of Islamic credit card based on *ujrah* by HSBC Amanah and EON CAP Islamic Bank in 2009 (Noor & Azli, 2009).

Islamic credit card is not similar to conventional credit card in terms of its concept, mechanism and operation. Credit card to be easily understood is buying first and paying later. OIC Fiqh Academy defined credit card as, “a document given by its issuer to a mutual or juridical person on the basis of a contract between them enabling it to buy goods or services from a vendor who approves the document, without paying the price immediately as the document include the issuer’s commitment to pay”.

Nuradli Ridzwan & Hanifah Abdul Hamid (2007) concluded that customers concern about the usage of Islamic credit cards. Not only because it is interest-free, but there are no profit charges if full payment is made before the due date. Customers also can pay zakat online and to have Islamic *takaful*. In short, the features and benefit of Islamic credit card: based on sharia contracts which are free from *riba* and *gharar*, have fixed profit margin, impose zero percent interest on easy payment plan, give balance transfer facility and charge low profit rate on the outstanding balance, encourage Muslim and non-Muslim customer to embrace Islamic credit card.

Islamic Credit Card in Indonesia (Fatwa DSN-MUI No. 54 2006 on Sharia Card)

In Indonesia the activity of Islamic banking is under the Act No. 7 year 1992 about banking and then completed by Act no. 10 year 1998 about Islamic banking. Since Islamic banking has its own regulation under the Act, the Islamic banks experienced the rapid growth. The growth of Islamic banking is in line with the increasing in customers’ demand toward Islamic bank products and also the complexity of the obstacles and problems.

To answer the demand of the customers that request the Islamic banking products that can give more benefits to support their transaction, Islamic credit card is one of the products to meet their need. Since the credit card is widely used, it is inevitable to provide the products that have similar features and objective but compliant to the sharia principles. PT Bank Danamon, to support Muslim in transaction, launched the Dirham card in cooperation with Mastercard, the first sharia card in Indonesia with the similar features with conventional credit card but in accordance to sharia principles (antaranews.com, 2007). The dirham card is one of the reason that encourage the fatwa on Islamic credit card in Indonesia. However, there are still debates on the permissibility and the practice of Sharia card in Indonesia.

Based on Fatwa Dewan Syariah Nasional (National Sharia Council) of Indonesian Ulema Council (DSN-MUI) No. 54/DSN-MUI/X/2006, there are some contracts in the sharia card, they are:

1. *Kafalah*: in this case the card issuer is the guarantor (*kafil*) for the cardholder toward the merchants on all the cardholders’ liability from the transaction between cardholder and the merchant. Another situation where the card issuer is a guarantor is when the cardholders withdraw the cash not from the bank or ATM issuing card. Card issuer can get the fee which is called by *ujrah kafalah*.
2. *Qard*: in this case, card issuer is the lender (*muqridh*) to the cardholders (borrower) through the cash withdrawal made by the cardholders from the card issuer’s bank or ATM.
3. *Ijarah*: in sharia card, the card issuer is the one who provide the service in the payment system and service to the cardholders.

The DSN-MUI also put some terms and conditions on sharia card:

1. Free from *riba*
2. Not used for the prohibited transaction in Islam
3. Not encourage customers to have the consumerism lifestyle (*israf*) by giving the limit in transaction.
4. The main cardholder should have financial ability to make the payment.
5. Not give the prohibited facility

Some contracts used in sharia card generate some fees, which are:

1. Membership fee: Card issuer may get contribution from the cardholder as the membership fee. The fee for the extension of the membership also includes in this fee. It is counted as the *ujrah* for providing the card facility.
2. Merchant fee: card issuers may get the fee which is taken from the price of the object of transaction or service as the *ujrah* for being the intermediaries, marketing role.
3. Fee in cash withdrawal
Card issuers may get the fee from the cash withdrawal made by the cardholders as the fee for the service and the facility. The amount of the fee is not according to withdrawal amount.
4. *Kafalah* fee
Card issuers may get the fee from the cardholders as guarantee provider or guarantor.
5. All of the fees (from 1 to 4) should be determined at the beginning of the contract with the certain and exact amount, except for merchant fee.

The Legitimacy of Islamic Credit Card

1. Al-Quran

In the fatwa of DSN-MUI, there are some verses and hadith from prophet Muhammad that can be taken as the sources of the permissibility and the limitation of the use of Islamic credit card:

- a. The suggestion to help each other in surah Al-Maidah verse.2:

يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَحْلُوا شَعَائِرَ اللَّهِ وَلَا الشَّهْرَ الْحَرَامَ وَلَا الْهَدْيَ وَلَا الْقَلَائِدَ وَلَا آمِينَ الْبَيْتِ الْحَرَامَ يَبْتَغُونَ فَضْلًا مِنْ رَبِّهِمْ وَرِضْوَانًا وَإِذَا حَلَلْتُمْ فَاصْطَادُوا وَلَا يَجْرِمَنَّكُمْ شَنَاَنُ قَوْمٍ أَنْ صَدَّوْكُمْ عَنِ الْمَسْجِدِ الْحَرَامِ أَنْ تَعْتَدُوا وَتَعَاوَنُوا عَلَى الْبِرِّ وَالتَّقْوَىٰ وَلَا تَعَاوَنُوا عَلَى الْإِثْمِ وَالْعُدْوَانِ وَاتَّقُوا اللَّهَ إِنَّ اللَّهَ شَدِيدُ الْعِقَابِ

"O you who have faith! Do not violate Allah's sacraments, neither the sacred month,¹ nor the offering,² nor the necklaces, nor those bound³ for the Sacred House who seek their Lord's grace and [His] pleasure. But when you emerge from pilgrim sanctity you may hunt for game. Ill feeling for a people should not lead you, because they barred you from [entering] the Sacred Mosque, to transgress. Cooperate in piety and Godwariness, but do not cooperate in sin and aggression, and be wary of Allah. Indeed Allah is severe in retribution."

- b. Surah Yusuf, verse 72 described about the *kafalah*

قَالُوا نَفَقْدُ صُوعَ الْمَلِكِ وَلِمَنْ جَاءَ بِهِ حِمْلُ بَعِيرٍ وَأَنَا بِهِ زَعِيمٌ

"They said, 'We miss the king's goblet.' 'Whoever brings it shall have a camel-load [of grain],' [said the steward], 'I will guarantee that.'"

- c. Surah al-Qashash verse 26 about giving fee/*ujrah* for the service

قَالَتْ إِحْدَاهُمَا يَا أَبَتِ اسْتَأْجِرْهُ إِنَّ خَيْرَ مَنْ اسْتَأْجَرْتَ الْقَوِيُّ الْأَمِينُ

"One of the two women said, 'Father, hire him. Indeed the best you can hire is a powerful and trustworthy man.'"

- d. Surah al-furqan verse 67 on the prohibition of excessive in spending

وَالَّذِينَ إِذَا أَنْفَقُوا لَمْ يُسْرِفُوا وَلَمْ يَقْتُرُوا وَكَانَ بَيْنَ ذَلِكَ قَوَامًا

"Those who, when spending, are neither wasteful nor tightfisted, and moderation lies between these [extremes]"

- e. Surah al-baqarah verse 75 about the prohibition to consume or having riba

الَّذِينَ يَأْكُلُونَ الرِّبَا لَا يَقُومُونَ إِلَّا كَمَا يَقُومُ الَّذِي يَتَخَبَّطُهُ الشَّيْطَانُ مِنَ الْمَسِّ ۚ ذَٰلِكَ بِأَنَّهُمْ قَالُوا إِنَّمَا الْبَيْعُ مِثْلُ الرِّبَا ۚ وَأَحَلَّ اللَّهُ الْبَيْعَ وَحَرَّمَ الرِّبَا ۚ فَمَنْ جَاءَهُ مَوْعِظَةٌ مِنْ رَبِّهِ فَانْتَهَىٰ فَلَهُ مَا سَلَفَ وَأَمْرُهُ إِلَى اللَّهِ ۚ وَمَنْ عَادَ فَأُولَٰئِكَ أَصْحَابُ النَّارِ ۖ هُمْ فِيهَا خَالِدُونَ

"Those who exact usury will not stand but like one deranged by the Devil's touch. That is because they say, 'Trade is just like usury.' While Allah has allowed trade and forbidden usury. Whoever, on receiving advice from his Lord, relinquishes [usury], shall keep [the gains of] what is past, and his matter shall rest with Allah. As for those who resume, they shall be the inmates of the Fire and they shall remain in it [forever]"

2. Al-Hadith

- Hadith from Bukhari on that Islam does not encourage Muslim to be in indebtedness
- Hadith from Abu Daud, turmudzi and ibn hibban about kafalah
- Hadith from Abd Razzaq from Abu Hurairah on the command to acknowledge the fee
- Hadith from Jama'ah about the prohibition to suspend paying the debt for the capable person.

3. Legal Maxim

الأصل في المعاملات الإباحة إلا أن يدل الدليل على تحريمه

This legal maxim said that the very nature of *muamalah* is permissible except there is the prohibition of it from the sources of law according to Islam. As long as the product of Islamic banking is not breach the principles of Islam, it is still considered as permissible.

المشقة تجلب التيسير

This concept of Islamic credit cards that give the benefits to the all contracting parties are in line with this legal maxim. In this era, it is considered as hardship and danger for the people to bring cash wherever they go to do the transaction. Some transaction in this modern era also needs the mode of payment with credit card. The existence of Islamic credit card can give the benefit without fall in to riba.

DISCUSSION

Discussion on the *kafalah* contract in Islamic Credit Card

Kafalah refers to a contract where the guarantor conjoins the guaranteed party in assuming the latter's specified liability (Kafalah, 2017). There are some terms used to say *kafalah*: *hamalah*, *dhamanah*, *zi'amah*; the guarantors are called *kafil*, *qabil*, *hamiil*, *za'im* or *shabir* (Zuhailly, 1985).

Wahbah Zuhailly mentioned the definition of *kafalah* based on Hanafiy School of law:

الكفالة هي ضم ذمة الي ذمة في المطالبة مطلقا أي ضم ذمة الكفيل الي ذمة المدين في المطالبة بنفس أو بدن أو عين

The point of this definition that the debt is still on the obligation of the cardholder or the debtor.

In Islamic credit card, the card issuer is a guarantor on the liability made by the cardholder to the merchant. The position of the contracting parties related to the pillars of the *kafalah* is:

1. *Kafil or dhamin* which is the guarantor. In Islamic credit card the card issuer is the guarantor.
2. *Makful, madhmun*, the debt made by the cardholder to the merchant (liability)
3. *Madhmun anhu, makful anhu*, the cardholders
4. *Ijab*, the agreement
5. *Madhmun lah*, Syafi'I school of law add this as the pillar of the *kafalah* which is the merchant in the case of Islamic credit card.

There are several issues discussed by Ulama and Islamic scholars regarding *kafalah*. In this paper will only focus on *kafalah* on the debt that is not yet in existence and the presence of *ujrah* or fee in *kafalah*.

Imam Dimyathi in kitab *I'anah Thalibin* mentioned that *kafalah* is not permissible on the debt which is not yet in existence. For example, *kafalah* on the debt which will occur in the future. This issue is also discussed in *fiqh Islam wa adillatuh* about the conditions of the *dhamanul majhul*. In this case, the majority of Islamic scholar stated that there is no condition on the debt should be known in the beginning. *Kafalah* is valid when a guarantor said that I am a guarantor for his debt RM 1000. Same goes to if the guarantor said that I am guarantor for him, whatever his debt.

The reason behind this permissibility is that the *kafalah* is the contract based on charity or *tabarru'*. So there is the component of unknown in it. Different from sale contract which is the price should be known by two parties in the beginning of contract.

The second issue is on the fee on *kafalah*. Wahbah Zuhailly mentioned that *kafalah* is a charity or *tabarru'* based contract. For this, the guarantor is given the reward from the Creator as he helps his muslim brother. Based on this Wahbah Zuhailly mentioned that it is better for the guarantor to do not have the *ujrah* or fee for *kafalah* to avoid the *syubhat*. However, the guarantor may receive the reward or *hibah* from the guarantee on their discretion.

In banking practice, in which bank has no relationship with the customer, it is very risky for the bank to provide the guaranty without the fee. In other word, it is not applicable in the bank practice for not asking fee from the guarantee. Regarding this condition Bank Negara Malaysia permit the existence of the fee in *kafalah* in the form that the fee is an agreed fixed amount or percentage of the guaranteed amount. In DSN MUI fatwa of Indonesia it mentioned that the guarantor can get the fee in condition that the fee does not burdensome the cardholders as the guaranteed party.

Discussion on the *ijarah* contract in Islamic Credit Card

The meaning of *ijarah* in etymology is sale of benefit or usufruct. Hanafi School of law defined *ijarah* as the contract on the benefit with giving the *ujrah* or fee. Based on policy document from BNM, *ijarah* is a contract that transfer ownership of usufruct or service for a specified period in exchange for specified consideration (Ijarah, 2018).

There are four pillars on *ijarah*:

1. Contracting parties ; Lessee and Lessor
2. The agreement : Offer and acceptance
3. Fee/ *ujrah*
4. Benefit

In the case of Islamic credit card practiced in Indonesia, the card issuer as the lessor, that provide the service for the cardholder to use the facility of sharia card in which they can do the transaction without paying the cash in the beginning and also they can withdraw cash with the sharia card.

The issue on the Islamic credit card based on *ijarah* is when the customers as the cardholder pay the *ujrah* or fee to the card issuers as they have provide the facility, the question on what is the fee for arise (Pembiayaan Ijarah, 2000). If the fee is for the service that financial institution that they advancing money to the merchant when the cardholders do the transaction, so in one way it can be consider as *riba*. Because, in this case, the cardholder is considered as the debtor who has the loan to the merchant in buying an asset. Based on the agreement of sharia card the card holder can pay that loan through the bank in instalment or can pay all the amount before the due date. According to the information from sharia card association in Indonesia 70 % of the cardholder make the payment through the instalment. To sum up, when the cardholder pay more than the price of the asset they bought or their loan, it can be considered as *riba*.

In other condition, when the cardholders withdraw the money from the ATM, it is based on the qard, which means the card issuers lend their money to the cardholders. When the cardholders pay the fee, it can be thought as the *riba*. Hadith said that:

كل قرض جر منفعة فهو الربا

“Every loan that gives benefit considered as *riba*.”

CONCLUSION

Islamic credit card is an innovative product among Islamic bank's products. This product aim to meet the demand of the Islamic bank's customers who need the mode of payment that is more effective, efficient and secure to be suitable in the advancement of technology and global trading nowadays; the most important thing that that product should be compliant to sharia principles.

Indonesia, as the country with most Muslim population should consider about the application of Islamic credit card as one of the Islamic bank products. Based on this condition, DSN-MUI released the fatwa on Sharia card which contains the permissibility of Islamic credit card which is called by sharia card in Indonesia. The legitimacy of the sharia card based on the quran, hadith and legal maxim. The underlying contracts used in Sharia card applied in Indonesia are *kafalah*, *qard* and *ijarah*.

However, there are some issues in the application on sharia card in Indonesia. In this paper mentioned two of them which are the fee for *kafalah* contracts and the fee in *ijarah*. The fee in *kafalah* is considered permissible in Islam, considering the Islamic banking practice. The fee in *ijarah* in sharia card, should be discussed more since it is really close to the practice of *riba*. The fatwa of DSN-MUI in some conditions does not give the detail explanation that can be wrongly interpreted by the public.

The existence of Islamic credit card can be considered as a need for global financial transaction. Islamic credit card give more benefits to all parties and can save the people from the practice of credit card which contains *riba* element. However, since it is related to the loan and instalment it is worried to be fall under *riba*. Because of this reason, the underlying contracts should be structured carefully in order to avoid sharia non-compliant issue.

Besides the issue on the underlying contracts, the issue on consumerism and *tasrif* are still incorporated in Islamic credit card. In Indonesia, there are only three banks that issued Sharia card or Islamic credit card. The further discussion should be made to study this phenomenon. The structure of underlying contracts can be one of the reason of it

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