

## **IMPLEMENTATION OF THE FATWÁ OF INDONESIAN ULEMA COUNCIL ON SHARĪAH-COMPLIANT FINANCIAL TECHNOLOGY SERVICE PRODUCTS IN INDONESIA**

**Didik Adji Sasongko, Nissar Ahmad Yatoo**

International Open University

### **ABSTRACT**

*As the largest Muslim population in the world, Indonesia has the potential to become a leading Sharīah-compliant financial country. With the technological development in Information Technology, more IT financial service products are introduced to the Muslim market. One of them is peer-to-peer lending financial technology (fintech) service. Sharīah-compliant fintech company has been developed due to some factors, namely: the rise of middle-class Muslims, increasing Muslim awareness of Sharīah-compliant financial products, and increasing number of smartphone users in Indonesia. DSN-MUI fatwá no. 117/DSN-MUI/II/2018 provides guidance on the implementation of information technology-based financing services based on Sharīah principles in Indonesia. This research aims to study the concept of fatwá and its implementation in Sharīah-compliant fintech product. In addition, this research also determines the problems and challenges of the fatwá implementation. Dana Syariah as one of the Sharīah-compliant fintech that has obtained an operational license by OJK, Dana Syariah uses wakkālah bil ujah contracts and murābahah sale and purchase contract. According to the results of this study, the two contracts are in accordance and comply with the DSN-MUI fatwá no. 117/DSN-MUI/II/2018. However, this fatwá is not legally binding and cannot be enforced by law enforcement. While the operational and legality of fintech uses regulations from OJK. The challenge in implementing the fatwá is the differences of opinion among scholars regarding the*

*concepts of qabḍu haqīqī (actual possession) and qabḍu ḥukmī (constructive possession) in murābahah contract.*

**Keywords:** DSN-MUI fatwá, financial service, fintech, implementation.

**Corresponding author:** Didik Adji Sasongko can be contacted at [didik@bahasa.iou.edu.gm](mailto:didik@bahasa.iou.edu.gm)

## 1. INTRODUCTION

Indonesia is a country with the largest Muslim population in the world. As a developing country, Indonesia's economy is still supported by the existence of Small and Medium Enterprises (SME). The current development of advanced information technology has facilitated funding for SME businesses to access funding quickly, easily and efficiently. In the past two years, there have been many alternative non-bank financing services based on crowdfunding or peer to peer lending, better known as financial technology (fintech) start-up companies.

Indonesia is arguably the most stable country compared to other Muslim majority nations from the economic, social, and political viewpoint. Despite inter religious as well as intra religious conflicts reported in the region, most of them can be resolved in peaceful ways to prevent prolonged conflicts. The middle class drive economic growth with their increased purchasing power, while Muslims encourage the formation of social values based on religious beliefs and norms (Ali & Purwandi, 2017).

According to the Indonesian Shari'ah Economic Society (MES), Indonesia has the potential to become the leading Shari'ah finance country in the world. It is expected that stakeholders can work together to make Islamic finance the first choice. The government's encouragement is also in line with the Shari'ah financial conditions in Indonesia which includes banks, the nonbank financial industry, and the capital market. As of February 2020, total Shari'ah financial assets (not including Shari'ah shares) reached Rp 1.4 trillion or USD 104.45 billion (Republika, 2020).

It is expected that economic actors, individuals and institutions related to Islamic economics can build synergies and partnerships. This is to encourage the development of Islamic economic activities so that Islamic economy and finance become the main choice for the community in business activities including investment and financing.

Although financial services can be the backbone of the national economy, Indonesian residents do not yet have full direct access to financial services. According to a recent survey conducted by the Financial Services Authority (Otoritas Jasa Keuangan - OJK), only 60 percent of Indonesia's population has direct access to financial services and is trying to increase to 75 percent of the population this year.

From 230 million Muslims in Indonesia, there are only 8.11 percent experienced in Sharī'ah economics in 2016. The Vice-President of the Republic of Indonesia, Ma'ruf Amin, believes that the existence of a Sharī'ah-compliant fintech company will help provide easier access to financial services and can also introduce innovative products in the Islamic economy in Indonesia.

Islamic finance in Indonesia is still struggling to penetrate the market. OJK data also shows that the market share of Islamic financial services stood at 8.47 percent of the total financial services market in June 2018, marking a slight increase from 8.24 percent in December 2017 (The Jakarta Post, 2019).

In 1998, several middle-class Indonesian Muslims decided to enter politics and democracy because of the national reform movement. In other groups, numerous Muslim businessmen built up their business from scratch. They managed to come to the fore by exploiting the growing urban middle-class Muslim who have a modern lifestyle and are adaptive with the development of information technology (Rozaki, A., et al, 2019).

The increasing number of wealthy Muslims in Indonesia followed by growing Sharī'ah compliance awareness has resulted in the rapid development of Sharī'ah investment. Currently, there are many alternatives to Sharī'ah investment in Indonesia, either banking or non-banking based products, such as: deposits, mutual funds, stocks and precious metals. However, people tend to choose investment products which have bigger advantage and greater value for humanity.

The Shari'ah Division of the Indonesian Ulema Council (MUI) and the Financial Services Authority (OJK) prepared a fatwá to function as a legal basis for the operation of Islamic financial technology lending institutions (fintech). MUI's Shari'ah division reviewed a number of contractual agreements to serve as a reference for Shari'ah-based fintech transactions before the fatwá was issued. Following the advent of conventional fintech lenders, people have begun to target the potential of the Shari'ah-based fintech industry (The Jakarta Post, 2018).

The Indonesian Ulema Council (Majelis 'ulamā Indonesia – MUI), as an independent institution consisting of Islamic scholars in Indonesia, has issued a fatwá on information technology-based financing services based on Shari'ah principles (Number 117 / DSN-MUI / II / 2018). This fatwá is expected to be used as a guideline by Shari'ah-based fintech creators and can assure the Shari'ah compliance of a fintech product. The fatwá explains the legal provisions and limitations related to information technology-based financing services based on Shari'ah principles. Shari'ah compliance or Halál certification makes Indonesian Muslims feel safe and protected in using it. Therefore, the author considers that there is a need for studies or research related to the implementation of the fatwá.

The objectives of this research are to determine the DSN-MUI fatwá concept No: 117 / DSN-MUI / II / 2018 concerning Information Technology-based financing services based on Shari'ah principles, and the implementation of peer to peer (P2P) lending products. This research aims to find problems and challenges of the implementation DSN-MUI fatwá No. 117 / DSN-MUI / II / 2018 concerning Shari'ah financial technology services product.

The significance of this research is expected to contribute to many parties related to the use of Shari'ah investment in fintech products. For Shari'ah financial institutions, this research provides an overview of the DSN-MUI fatwá concept and provides solutions to problems and challenges that may

arise. For consumers of fintech products, this research is expected to simplify understanding the concepts and workings of Islamic fintech, so that more Muslims move to invest in Islamic financial institutions. For researchers and academics, this research will add academic references and provide input on the development of Islamic economics in Indonesia.

The subsequent sections are organized as follows: section two consists of a literature review of existing research regarding financial technology which was implemented in various countries, the definition of Shari'ah financial technology, and history of the Indonesian Ulema Council (MUI). Section three discusses the methodology utilized for this research, which includes research design, sources of data, analysis and interpretation, and research instruments. Section four presents the results of this research and is followed by a discussion comparing the result with related literature. Finally, section five concludes the main points of this research in the form of conclusion.

## **2. REVIEW OF LITERATURE**

The rapid development of financial technology has had significant impacts, both on technological and regulatory factors, on the financial sector. Legal issues and challenges posed by fintech are identified and discussed to provide insight into the legal and regulatory aspects of fintech applications. Miskam, Shahwahid, and Sholehuddin (2018) examined the regulatory approach taken by Bank Negara Malaysia by using qualitative methods and analyzing relevant literature on the subject and data to respond to the rapid progress introduced by fintech. Saad and Fisol (2019) found that the level of consumer awareness in Malaysia is still low with respect to fintech because the fintech market in Malaysia is only dominated by fintech applications for payments and virtual wallets, while there are many other fintech service applications on the market.

Finocracy and Mirakhor (2017) provide views on how fintech can accelerate the adoption of Islamic financial risk sharing. In their research, the Islamic

view of finance supports real sector transactions and suggests a way forward to model a more global Islamic financial system.

In case study research in Malaysia and Brunei Darussalam, Ali and Zaini (2019) showed that fintech has a large potential impact on the conventional and Islamic financial industry in both positive and negative terms. The response and reaction of the Islamic financial industry to the emergence of fintech and its potential impact seems to be very slow compared to their conventional partners. Another study from Azman et al. (2020), crowdfunding, mobile money and peer-to-peer lending play an important role in ensuring income sustainability for micro-entrepreneurs. This study also discusses both theory and managerial implications in understanding the determinants of sustainable income growth in Malaysia.

Hui, Abdulmanaf and Shakri (2019) studied the phenomenon of Islamic fintech globally with an emphasis on Malaysia through analytical research methods by utilizing existing facts and findings in fintech to make proposals for possible problems identified. Existing legal frameworks are studied and researched to determine if they can accommodate the fast-growing fintech.

With a literature study, Hasan, Hassan and Aliyu (2020) contributed by providing insights into the challenges faced by the Islamic finance industry towards integrating Fintech-based solutions with references to past studies and showing areas for future studies that can reduce gaps in the Islamic fintech literature. Islamic fintech can pose challenges for Islamic Financial Institutions in terms of operational efficiency, customer retention, transparency, and accountability.

According to Biancone, Secinaro and Kamal (2019), combining the principles of Islamic finance, crowdfunding, technological progress, and fintech is an opportunity to significantly contribute to the improvement of entrepreneurial ecosystems in the Islamic world and the promotion of social and economic development.

Hasnan Baber (2020) compares the performance of countries that follow the Islamic and conventional financial systems in terms of financial inclusion and fintech using data from the World Bank and the Global Islamic Financial Report. According to his study, Islamic finance countries are more inclined in terms of financial inclusion. In contrast, countries with conventional finance have a higher number of fintech users.

In Egypt, crowdfunding or P2P lending has grown in recent years. According to research by Al-Ajlouni (2018) general societal trends are generally positive for financial cooperative societies participants. They clearly agree that such societies are an extremely successful way to help themselves and others solve financial problems. The majority of the participants worked by organizing the Society and expanding the premise for more people. The survey also shows that the public can become a substitute for banks in providing personal credit.

In Turkey, Ahmad and Al-Mamun (2020) showed two or three of the leading participating banks place more importance on Islamic financial technology, while other Turkish participating banks established in recent years have not taken serious steps. Turkey's position can also enable it to become practically a hub of Islamic technological and financial capacity in recent years considering its operational activities.

According to research in Jordan, the principle of mutual *qarḍ al-ḥasan*, which is called Personal Cooperatives (PC), represents a substitute for the traditional banking system. The Jordanian attitude was very positive towards the PC model. They clearly agreed that PCs were a successful way to help themselves and others in solving financial problems. The majority of participants were in favor of regulating PC societies and expanding their reach and services so that they are accessible to more people (Al-Ajlouni, 2015).

According to research in Oman, fintech is still operating below potential. This may be due to the general lack of interest in this area by Omani start-ups. This situation may also be due to the lack of financing opportunities by local



financial institutions, including Islamic and conventional financial institutions (Echchabi et al., 2020). Andaleeb and Mishra (2016) studied the scope of Equity Crowdfunding as an alternative source of financing for small and newly established businesses that have limited access to institutionalized financial sources in Middle Eastern countries.

## **2.1 Sharī'ah Financial Technology**

The term “financial technology” (or fintech) refers to the application of technology for the provision of financial services. Fintech companies are attracting the interest of both financial services users and investment firms, which see them as the future of the financial sector (Anyfantaki, 2016). Fintech brings a new paradigm where information technology drives innovation in the financial industry. Fintech is touted as a game that transforms disruptive innovations that can shake the traditional financial markets.

In the book “Blockchain, Fintech and Islamic Finance”, Mohammed and Ali (2019) said “Fintech in the etymological and general perspective is the portmanteau of financial technology, refers to an emerging financial services sector that is fast becoming indispensable to financial institutions, and is constantly impacting the way technologies support or enable banking and financial services”.

Fintech's innovations have largely emerged outside the traditional financial and banking system and are driven by non-bank entities. The fintech start-up is supported by venture capital and emerging companies, as well as non-traditional providers. These non-bank entities can experiment in environments that are not regulated by the government and often focus their operations narrowly on providing a new set of financial and banking services (Lee & Shin, 2018).

Islamic fintech is defined as “the amalgamation of technology and Islamic finance, which means that any product or service that spawns from fintech must abide by the rules extracted from the Qur’an and Sunnah known as the Sharī’ah” (Mohamed & Ali, 2019). While according to the National Sharī’ah Board – Indonesian Ulema Council (2018), Information Technology Based Financing Services Based on Sharī’ah Principles is “the provision of financial services based on Sharī’ah principles that bring together or connect a Funder with a Beneficiary in the framework of conducting a financing contract through an electronic system using the internet network”.

Islamic fintech provides the opportunity for the adoption and application of a risk sharing model in Islamic financial institutions through small innovative start-ups who want to contribute to the Islamic finance industry. The modus operandi of the Islamic fintech should be highly congruent with the asset-backed, interest-free, risk sharing, under-leveraged real sector model of the ideal Islamic economy (Mohamed & Ali, 2019).

## **2.2 History of Indonesian Ulema Council (MUI) and National Sharī’ah Board (DSN)**

Indonesian Ulema Council (Majelis ‘ulamā Indonesia – MUI) is a non-governmental organization that houses Islamic scholars (‘ulamā) in Indonesia to guide, foster and protect Muslims throughout Indonesia. The Indonesian Ulema Council was established on the 7th, Rajab 1395 Hijri, to coincide with the 26th July 1975 in Jakarta, Indonesia.

MUI was established as a result of a deliberation of ‘ulamā who came from various parts of the country, including twenty-six scholars representing 26 provinces in Indonesia at that time. From the deliberations, an agreement was reached to form a forum for the Muslim scholars, which is contained in a "Charter of the Establishment of the Indonesian Ulema Council". The Charter was signed by all the participants of the deliberations which came to be called

the 'ulamā National Conference I. The momentum of the establishment of the MUI coincided when the Indonesian nation was in a phase of revival, after 30 years of independence, during which the nation was embroiled in the political struggle of the group and less concerned with the issue of the spiritual welfare of the people.

In its journey, the Indonesian Ulema Council as a forum for deliberation of Muslim scholars has objectives to:

- Provide guidance to Indonesian Muslims in religious and social life blessed by Allāh The Almighty.
- Providing advice and edicts on religious and community issues to the Government and the community, increasing activities for the realization of the Islamic Brotherhood and inter-religious harmony in strengthening the unity and integrity of the nation.
- Liaising between the scholars ('ulamā) and government ('umarā) and the reciprocal translator between the Ummah and the government in order to promote national development.
- Improve relations and cooperation between organizations, Islamic institutions and Muslim scholars in providing guidance to the community, especially Muslims, by holding mutual consultation and information. (Majelis Ulama Indonesia, 2019).

### **2.3 Fatwá on Information Technology-Based Financing Services Based on Sharī'ah Principles**

Fatwá on Information Technology-Based Financing Services Based on Sharī'ah Principles (Fatwá No: 117 / DSN-MUI / II / 2018) regulates the general provisions of Sharī'ah principles in fintech activities and a variety of

products that can be run, among others, Information Technology-based Financing Services may not be contrary to the principles of Shari'ah, namely avoiding Ribā, Gharar, Maysir, Tadhī, Ḍarar, Ḍulm, and Ḥarām.

The contracts used by the parties in providing information technology-based Financing Services can be in the form of contracts that are in line with the characteristics of financing services, including the contract of al-bay', ijārah, muḍārabah, mushārahah, wakkālah bi al-ujrah, and qarḍ.

Various products that can be implemented by technology-based financing service providers include Factoring financing; Financing for the Procurement of Goods ordered by Third Parties (Purchase Order); Procurement Financing of goods for business actors who sell online (online seller); Financing the procurement of goods for business actors selling online with payment through payment gateway operators; Funding for Employees, and Community-based Financing (Majelis Ulama Indonesia, 2018).

### **3. RESEARCH METHODOLOGY**

#### **3.1 Research Design**

The design of this research is qualitative research which is a procedure that produces descriptive data in the form of written or oral words from people and observed behaviour. This research method tends to look for a meaning from the data obtained from the results of a study. The objective of this methodology is to reveal events or facts, circumstances, phenomena, and variables that occur during the research by presenting what actually happened.

One of the approaches from qualitative research is the case study approach. This approach is used to investigate and understand an event or problem that has occurred by collecting various kinds of information which are then processed to get a solution so that the problems revealed can be resolved.

### **3.2 Sources of Data**

There will be 2 (two) data sources: primary and secondary data sources. Primary data sources include direct information and interview to related parties, such as from representatives of Sharī'ah-based fintech start-up companies. Secondary data sources include field research, literature review, reputable national news or websites, or other Indonesian governmental regulations.

### **3.3 Analysis and Interpretation**

Analyzing the problems and data interpretation is required to gain the solution and objectives of this research. In the case study approach, data analysis can be conducted as follows:

- Organizing information/data.
- Read the entire information/data and give the code.
- Make a detailed description of the case and its context.
- Establish the patterns and look for relationships between several categories.
- Interpret and develop a natural generalization of the case.
- Presenting narratively in the report.

### **3.4 Research Instruments**

Research instruments are the tools needed or used to collect data. In principle, the research instrument has dependence on the required data. Therefore, each study chooses a research instrument that is different from one another. Various forms of research instruments in general can be questionnaires, interviews, observations and documentation.

In this research, the data collection used was interviews which were usually conducted in qualitative research. The structured or unstructured interview has its own level of convenience compared to the questionnaire because even if the interview does not calculate statistically, even so the weaknesses in the interview require a relatively long research time compared to research using a questionnaire.

## **4. RESULTS AND DISCUSSION**

### **4.1 Result of Research**

#### **4.1.1 Regarding DSN-MUI Fatwá no. 117/DSN-MUI/II/2018**

DSN-MUI Fatwá no. 117 / DSN-MUI / II / 2018 is a fatwá that provides guidance on the implementation of information technology-based financing services based on Shari'ah principles. This fatwá was issued by considering the increasing number of Islamic financial institutions based on information technology (fintech). The existence of this fintech is expected to be able to assist small and medium enterprises in obtaining access to funding quickly and efficiently in accordance with Shari'ah principles.

Based on positive law in Indonesia, this DSN-MUI fatwá is not binding on citizens and cannot be enforced through law enforcement. The fatwá can be binding if it has been given a certain legal form by a competent institution, for example, it is made into law or regional regulation so that it becomes positive law. Muslims who want to carry out the fatwá do so as a personal religious awareness, not as a legal obligation.

In its development, several fatwás issued by the National Shari'ah Board of the Indonesian Ulema Council (DSN-MUI) constitute binding positive laws. This is because its existence is often legitimized through statutory regulations by government agencies, so that Shari'ah economic actors must comply with it (Hasanah, 2016).

In the case of fintech, the operational and legal basis is the regulation of the financial services authority (OJK) regarding information technology-based lending and borrowing services, no. 77/POJK.01/2016. This OJK regulation states that operators are required to apply for registration and licensing to OJK. This OJK regulation regulates the status of fintech legal entities, risk mitigation, data confidentiality, periodic reports, and sanctions for violating obligations and prohibitions (OJK, 2016).

The subjects of this fatwá are operators (fintech companies), which provide and manage fintech, and users, namely funders and beneficiaries. The business contracts stipulated in this fatwá include: sale and purchase agreement (*al-ba'y*), *ijārah*, *mushārah*, *muḍārah*, *qarḍ*, and *wakkālah bil ujrah*.

In fatwá no. 117 / DSN-MUI / II / 2018, general guidelines that must be obeyed by the parties are:

1. The operational of information technology-based Financing Services must not conflict with Sharī'ah principles, namely, avoidance of *Ribā*, *Gharar*, *Maysir*, *Tadlīs*, *Ḍarar*, *ẓulm*, and *Ḥarām*.
2. The Standard Contract made by the Operator must comply with the principles of balance, justice and fairness in accordance with Sharī'ah and prevailing laws and regulations.
3. Contracts used by the parties in the provision of information technology-based Financing Services can be in the form of contracts that are in line with the characteristics of financing services, including contracts of *al-ba'y*, *ijārah*, *muḍārah*, *mushārah*, *wakkālah bi al ujrah*, and *qarḍ*.
4. The use of electronic signatures in electronic certificates carried out by the Operator must be carried out on the condition that its validity and

authenticity are guaranteed in accordance with the prevailing laws and regulations.

5. Providers may charge fees (*ujrah*) based on the principle of *ijārah* for the provision of systems and infrastructure for Information Technology-Based Financing Services.

6. If the financing information or services offered through electronic media or disclosed in electronic documents are different from the reality, then the aggrieved party has the right not to continue the transaction.

#### 4.1.2 Regarding Fatwá Implementation in Sharī'ah Fintech Company (Dana Syariah)

*Dana Syariah* is a Sharī'ah-based Peer to Peer Financing Fintech in Indonesia that has been licensed and supervised by the Financial Services Authority (*Otoritas Jasa Keuangan or OJK*). Apart from being supervised by the OJK, *Dana Syariah* also has a Sharī'ah Supervisory Board (*Dewan Pengawas Syariah or DPS*) which is recommended directly by the National Sharī'ah Board - Indonesian Ulema Council. *Dana Syariah* provides services for lenders to produce their assets and funds with Sharī'ah and secure principles.

The products offered on this P2P Sharī'ah platform are Sharī'ah Funding and Sharī'ah Financing. Funders choose the businesses that are being carried out by raising funds by the *Dana Syariah* and place the funds in the businesses according to the preferences of the funders. On each predetermined date, Funders will receive the profit and principal loan repayment according to the agreed upon principal loan repayment schedule and the project and the accounts payable are completed.

The cooperation between *Dana Syariah*, as fintech company and platform Operator, and funder is using *wakkālah bil ujrah* contract. *Dana Syariah* acts as *wakīl*, and funder acts as *muwakkil*. Both parties agree to take certain legal



actions related to the provision of Sharī'ah-based financing to the beneficiary, in return for a fee (*ujrah*) which is paid according to the agreed time period. It aims to help individuals or groups to provide financing to other people or companies who need a profitable form of financing in accordance with Sharī'ah principles within an agreed period of time.

According to Dana Syariah Supervisory board, the principles used in the *wakkālah bil ujrah* contract are:

1. The funder acts as *muwakkil* and the operator of Sharī'ah P2P financing as *wakīl*, and performs certain legal actions related to the provision of Sharī'ah financing to beneficiary, in return for a fee (*ujrah*) which is paid according to the agreed upon period.
2. The contract must be stated explicitly, clearly and understood by all parties and stated in writing and electronically according to Sharī'ah and applicable regulations.
3. The parties must be legally competent in accordance with the Sharī'ah and applicable regulations.
4. The *muwakkil* must have the authority to give the power of attorney to other parties and have the ability to pay *ujrah*.
5. The *wakīl* must have the ability to carry out legal actions that are authorized to him.
6. The object of *wakkālah* must not conflict with Sharī'ah principles, in the form of work that is clearly known by the parties.
7. *Wakkālah* objects can have a period of time.
8. The *wakīl* is not obliged to bear the risk of losses arising from his actions, except because of *al-ta'ādi*, *al-taqṣīr*, or *mukhālafat al-shurūt*.

9. The amount of the fee must be clear, either in the form of a nominal number or a certain percentage.
10. The method of payment of *ujrah* must be agreed upon by the parties.
11. The agreed *ujrah* may be reviewed for the benefits that have not been received by the *muwakkil* according to the agreement.

The cooperation between *Dana Syariah* and funding recipient or beneficiary is a *murābahah* contract. This *murābahah* contract is in the form of providing funds for buying and selling goods at the cost plus a profit margin based on an agreement between *Dana Syariah* as *wakīl* funder and beneficiary. Beneficiaries are required to pay off their obligations in instalments according to the agreed upon period.

This contract aims to help the community to obtain financing in the context of property procurement with payments in instalments according to the agreed time period. *Murābahah* objects are property goods, including building materials that are the beneficiary's needs and do not conflict with Sharī'ah principles.

According to the *Dana Syariah* Supervisory board, the principles used in the *murābahah* contract are:

1. As a funder *wakīl*, *Dana Syariah* acts as a provider of funds in order to purchase goods and the recipient of financing as a buyer.
2. If *Dana Syariah* represents the purchase of goods to the prospective financing recipient based on the *wakkālah* principle, the *murābahah* contract must be executed after the goods in principle become the property of *Dana Syariah*.
3. Goods that are the object of financing do not conflict with Sharī'ah principles and must be clearly identified in terms of quantity, quality, cost and

specifications. The goods must be in existence, available or ready stock at the time of the contract.

4. *Dana Syariah* may finance the partial or complete amount of the purchase price of goods.

5. The acquisition price of the *murābahah* object must be notified by *Dana Syariah* to the beneficiary.

6. After becoming the owner of the goods ordered by the beneficiary, *Dana Syariah* sells the goods to the beneficiary at the agreed upon selling price.

7. The profit margin agreement must be determined once at the beginning of the contract and does not change during the contract period.

8. *Dana Syariah* may ask the beneficiary to pay a down payment or *urbūn* at the time of ordering goods.

9. The term of the agreement and the payment method of the beneficiary's obligations are determined based on the agreement.

10. *Dana Syariah* and the beneficiary shall state the agreement in a written agreement electronically or in other mutually agreed forms in accordance with applicable regulations.

11. *Dana Syariah* may ask the beneficiary to provide additional collateral other than the goods financed by *Dana Syariah*.

In Shari'ah financing, business owners are required to make a proposal to find financing on the *Dana Syariah* portal. The business owner submits a fundraising proposal to *Dana Syariah* according to the Template. *Dana Syariah* team conducts a location survey (project location, office and / or place of business). If deemed appropriate, the Project Owner and *Dana Syariah* shall bind themselves to the initial agreement.

According to interview session with *Dana Syariah* representatives, the challenge for implementation of *Fatwá* No. 117/DSN-MUI/II/2018 is regarding the definition of *Qabḍ* or possession in *murābaḥah* contract. *Dana Syariah* was criticized by some *‘ulamā* about its *murābaḥah* contract, which focuses on buying and selling building goods. The *‘ulamā* have a difference of opinion about the building material (goods) must be in the possession of *Dana Syariah* first by moving it to *Dana Syariah* premises (such as warehouse, etc), before sending to buyers. According to DPS, this is an *ikhtilāf* (scholarly difference of opinion) of *qabḍu haqīqī* (actual possession) and *qabḍu ḥukmī* (constructive possession). Contract taken by *Dana Syariah* is *qabḍu ḥukmī*, before the transfer of possession is completed by documentation while goods do not have to be moved to its premises before other contracts are being made.

## 4.2 Discussion

### 4.2.1 *Murābaḥah* Contract

*Dana Syariah* financing scheme between Operator and Beneficiary uses *murābaḥah* contract. *Murābaḥah* is a contract of financing to which the Operator can act as a mediator between interested parties, namely beneficiary and goods owner. If the Beneficiary wants to own or buy something and does not have sufficient funds, the Operator helps in the form of financing by buying goods in advance. Then, the Operator resells the item to the beneficiary at a price and agrees upon profit margin using the instalment method.

The advantage of *murābaḥah* contract is that the Beneficiary can buy something according to his need and economic capacity. Financing in instalments does not burden the Beneficiary. The Operator and Beneficiary agree upon a sale-purchase transaction and stipulated price based on mutual

agreement, so in this case there is no element of *Ribā* and wrongdoing one another.

The *murābahah* contract should fulfil the conditions of trade transactions related to the seller and buyer, such as: mutual consent; free legal status, above the age of puberty, legally accountable, and sane; being the owner or representative of the commodity. While conditions related to the commodity should also be fulfilled, such as: lawful to use; price and commodity must be available and known to both parties, with no hidden fraud (Al-Fauzan, 2009).

Due to the importance of the guidelines for the sale-purchase *murābahah* contract, the Indonesian Ulema Council (MUI) has issued a *fatwá* regarding the *murābahah* sale-purchase contract, no. 111/DSN-MUI/IX/2017. In this *fatwá*, it is stated that *al-bay' al-murābahah* contract is a sale and purchase contract of an item by confirming the purchase price to the buyer and the buyer pays it at a higher price as profit.

Sellers and buyers must be legally competent in accordance with the Sharī'ah and applicable regulations. This *murābahah* sale-purchase contract must be stated clearly, and understood by the seller and the buyer. If the sale and purchase agreement is made in writing, there must be information regarding the acquisition price, profit and selling price (Majelis Ulama Indonesia, 2017).

#### **4.2.2 Wakkālah bil Ujrah Contract**

*Dana Syariah* financing scheme between Operator and funder uses *wakkālah bil ujrah* contract. A *wakkālah bil ujrah* contract in Sharī'ah financing is where one party authorizes another party to take the necessary actions on behalf of *muwakkil*. And for *wakkālah*, the Operator (representative) will receive an *ujrah* or fee.

In the book "Al-Wajīz fi Fiqh as-Sunnah", the meaning of *wakkālah* is to submit or represent, meaning that someone represents another in matters that can

be represented. *Wakkālah* is regulated in Islamic Sharī'ah because there is a need for it and not everyone can handle their own affairs. Under certain conditions, a person needs the help of others to represent himself.

*Wakkālah* is a valid transaction if it fulfils the pillars of *ijāb qabūl*. It is not required to edit certain words, but it is valid if there are signs that indicate it, both in words and actions. The condition for *wakkālah* is a person who is represented (*muwakkil*), a person who represents (*wakīl*) and the object of *wakkālah* (*muwakkal fīhi*). *Wakīl* can be trusted in the matter represented to him, does not bear any loss except due to fraud or neglect (Al-Faify, 2009).

The Indonesian Ulema Council (MUI) has issued a fatwā regarding *wakkālah bil ujah* contract, namely the MUI fatwā no. 113/DSN-MUI/IX/2017. This contract is mostly carried out in Islamic financial institutions, such as Islamic banks, for various transaction purposes. According to the MUI fatwā, the *wakkālah bil ujah* contract must be stated explicitly, clearly and understood by the *wakīl and muwakkil*.

According to Ibn Qudāmah, quoted by the MUI fatwā, *wakkālah* contracts may be carried out, either with or without a fee. Prophet Muḥammad (ﷺ) ordered Unays ibn Zuhaq al-Aslamī to carry out punishment (stoning to death) to a woman who committed adultery. This statement is mentioned in Ṣaḥīḥ Muslim, Book 17, Number 4209.

Prophet Muḥammad (ﷺ) asked Urwah al-Bāriqī to buy a goat/sheep with a Dīnār. He (Urwah) bought two sheep with it, sold one of them for a Dīnār and came back to him (the Prophet ﷺ) with a goat and a Dīnār. This statement is mentioned in *Bulūgh al-Marām*, Book 7, Ḥadīth 48. The Prophet (ﷺ) once sent his employees to collect zakāt and gave them a fee (Majelis Ulama Indonesia, 2017).

#### 4.2.3 *Qabd* or Possession

According to Islamic Finance, “*Qabd* or possession means taking possession of an object of sale or exchange, an amount of money, a financial instrument, etc” (Fincyclopedia, 2013). Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI) defines possession as “the gathering of a thing or what takes its rule, according to the requirement of customary practice” (AAOIFI, 2015).

*Qabd* depends on Islamic directions as to a specific category of transaction, ‘*urf*, or the common business practices prevalent in a specific market. The possession of goods is recognized as having taken place either through actual or constructive delivery of those goods.

*Qabd* can be classified into 2 (two) categories, namely as *qabd haqiqi* and *qabdu hukmi*. *Qabd haqiqi* or physical possession refers to a state where a person has actual possession and the rights to control. *Qabd hukmi* or constructive possession refers to a state where a person does not have actual possession but has the legal rights to control an asset (Islamic Markets, 2021).

AAOIFI recognizes both categories, actual possession and constructive possession. According to AAOIFI Sharī’ah Standard No. 18 about Possession (*Qabd*), “Actual possession takes place in movables through physical corporeal delivery. Constructive possession takes place by relinquishing (releasing) the thing for the person entitled to it enabling him to deliver it without any obstacle even when no transportation or transmission has taken place”. Mode of possession in things is based on custom (‘*Urf*). Possession of things differs in accordance with the nature of things and differences among people with respect to things (AAOIFI, 2015).

## 5. CONCLUSION

DSN-MUI Fatwá no. 117 / DSN-MUI / II / 2018 is a fatwá that provides guidelines for Sharī'ah fintech implementation in Indonesia. This fatwá emphasizes transactions that are not permitted by Sharī'ah principles, standard contracts, the use of electronic signatures and collection of fees by fintech operators. This fatwá is not legally binding and cannot be enforced by law enforcement. While the operational and legality of fintech uses regulations from OJK.

Dana Syariah as one of the Sharī'ah-based fintech that has obtained an operational license by OJK, under guidance from the DSN-MUI fatwá no 117 / DSN-MUI / II / 2018. Dana Syariah offer Sharī'ah-based financing for property businesses. *Dana Syariah* uses *wakkālah bil ujah* contracts to collect funds from investors. Meanwhile, in financing the beneficiary, Dana Syariah uses a *murābahah* sale and purchase contract. According to the results of this study, the two contracts are in accordance and comply with the DSN-MUI fatwá no. 117 / DSN-MUI / II / 2018 and two others specific fatwás which giving guidance on *wakkālah bil ujah* and *murābahah* contracts. To guarantee Sharī'ah compliance in fintech operations, the role of the Sharī'ah Supervisory Board is extremely crucial.

The challenge in implementing the fatwá is the differences of opinion among scholars regarding the concepts of *qabḍu ḥaqīqī* (actual possession) and *qabḍu ḥukmī* (constructive possession) in *murābahah* contracts. These two categories of possession are recognized by Islamic fatwá institutions, such as MUI in Indonesia and AAOIFI.



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