Fulfillment of the Principle of Transparency Due to the Transfer of Receivables with Wakalah Al-Mutlaqah Without the Customer's Knowledge in Islamic Banking

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Abstract
This study discusses the fulfillment of the principle of transparency in the practice of transferring receivables through the wakalah al-mutlaqah contract carried out by Islamic banking without the knowledge of customers. Transparency is a fundamental principle in Islamic banking activities as a form of protection of customer rights. However, in practice, the transfer of receivables originating from financing contracts is often carried out through the granting of general power of attorney (wakalah al-mutlaqah) to a third party without notification or explicit consent from the customer as an interested party. The purpose of this study is to analyze the compliance of this practice with Islamic principles and applicable laws and regulations, and to assess the extent to which the principle of transparency is fulfilled. This study uses a normative juridical method with a statutory approach, a conceptual approach, and a case approach. The results of the study indicate that although the transfer of receivables through wakalah al-mutlaqah is permitted under Islamic jurisprudence, its implementation without notification to the customer has the potential to ignore the principle of transparency and can lead to disputes. Therefore, it is necessary to strengthen internal regulations in Islamic banking so that the receivables transfer process continues to prioritize the principles of transparency and consumer protection in the Islamic financial system in Indonesia.

1. Introduction

Banking institutions have a very important role in encouraging the growth and progress of a country. This is reflected in the main function of banks as financial intermediary institutions, namely collecting funds from the public through deposits, then channeling them back in the form of financing or other mechanisms aimed at improving people's lives.[1] In the context of today's legal and financial system, the principle of transparency is one of the basic principles that guarantees openness, honesty, and justice in every legal relationship, especially in the banking sector. This principle plays an important role in protecting the rights of all parties involved in a contract or transaction, including receivables transfer transactions.[2]

Islamic Bank is a bank that was established to avoid the issue of interest on money which continues to be a prolonged debate which is feared to contain elements of usury. Every activity of the Islamic Bank must avoid concerns about the element of usury. Efforts to avoid this concern are carried out, among others, by replacing interest institutions with legal institutions resulting from the thoughts of classical Islamic legal scholars. The development of Islamic banks initially emerged in response to the economic community and Muslim banking practices by trying to meet the demands of various parties who have the desire for financial transaction services in harmony with various moral values and various Islamic sharia principles. Islamic banking is present as an alternative financial system that is not only profit-oriented, but also upholds sharia principles, one of which is the principle of transparency (al-shafwah wa al-shuruh). In practice, transparency requires disclosure of information and understanding between the bank and the customer for all forms of agreements and legal actions related to the financing contract.[3]

Islamic banking business activities in channeling funds to customers through the principle of buying and selling (bai') which is based on contracts, among others murabahah. If a bai' almurabahah transaction is carried out, there is a transfer or transfer of ownership of rights to an item or object from the bank (hereinafter referred to as Ba'i) to the customer (hereinafter referred to as Musytari). In some practices in the field, Islamic banking transfers receivables (hiwalah) or assigns third parties to collect receivables through a wakalah al-mutlaqah contract, which is a form of general power that gives full discretion to the party receiving the

[1] Arqam, M., Saputra, M. A., Rifaldi, A., Kahfi, A. A., & Syarif, M. (2024). Bank dan Lembaga Keuangan. Nas Media Pustaka.

[2] Ichsan, N. (2014). Pengantar perbankan. Referensi (Gaung Persada Press Group).

[3] Anugrah, Y. D. Y., & Laila, M. (2020). Analisis Konsep Penerapan Pembiayaan Murabahah pada Perbankan Syariah. *Muhasabatuna: Jurnal Akuntansi Syariah*, *2*(2), 1–12.

power. The problem arises when the transfer is made without the knowledge or explicit consent of the customer as a party with a direct interest. This raises questions regarding the fulfillment of the principle of transparency and the suitability of this practice with sharia principles and positive legal provisions in Indonesia.[4] In accordance with the definition of wakalah in FATWA DEWAN SYARI'AH NASIONAL NO: 10/DSN-MUI/IV/2000 About WAKALAH Jo. POJK No.31/POJK.05/2014, through Article 1 onwards., an Islamic finance company can act as a power of attorney (muwakkil) or as a power of attorney (representative). If the shria finance company acts as a power of attorney, the consumer acts as a power of attorney and vice versa. The position of the parties will determine their respective rights and obligations. An example of the implementation of a wakalah contract with an Islamic finance company as the authorizer is in financing with a murabahah contract. Murabahah is the sale and purchase of an item by confirming its purchase price (acquisition price) to the buyer and the buyer pays more (margin) as profit in accordance with the agreement of the parties.

Wakalah is one of the Islamic banking contracts. Wakalah is practiced in Indonesia, where Islamic banks appoint a company as an agent to perform services to “customers” “end users” on behalf of the bank.[5] Wakalah, in terms of language, means handover. The Hanafiah group defines wakalah as handing over a job that can be done by oneself to another person. From the above formulation, it can be said that wakalah means a person's request to another person to be his representative on work or affairs that can be represented.[6] A wakalah contract can be executed with or without remuneration. If the wage is not clearly stated in the contract, then the representative is entitled to ujrah al-mitsl (commensurate wage) or according to prevailing customs. However, if the custom does not apply to the provision of wages, then the contract returns to the original contract which is tabarru' (charity program).[7]

Wakalah or wikalah means handover, delegation, or mandate. In Arabic, this can be understood as at-tafwidh. For example, the sentence “I leave my affairs to Allah” means to represent in the sense of the term. The application of wakalah in the context of tabarru" contracts in sharia banking takes the form of services, where the sharia bank provides wakalah services, as a representative of the customer as the authorizer (muwakil) to do something (taukil). In this case the bank will get a fee or administrative fee for its services. For example, the bank can

[4] Harahap, M. A., & Sudiarti, S. (2022). Kontrak Jasa pada Perbankan Syariah: Wakalah, Kafalah dan Hawalah. *Reslaj: Religion Education Social Laa Roiba Journal*, *4*(1), 42–53.

[5] Rizal, R. (2015). Implementasi Wakalah pada Lembaga Keuangan Mikro Syariah. *Equilibrium: Jurnal Ekonomi Syariah*, *3*(1), 125–139.

[6] Abdullah, T., Sukardja, A., Azra, A., Effendy, B., Munawar-Rachman, B., Syamsuddin, D., Prasetyo, H., Ali-Fauzi, I., Meuleman, J. H., & Hidayat, K. (2002). Ensiklopedi tematis: Dunia Islam. Ichtiar Baru Van Hoeve.

[7] Zainul Arifin, M. B. A. (2012). Dasar-dasar manajemen bank syariah. Pustaka Alvabet.

be a representative to pay electricity or telephone bills to the electricity company or telephone company.[8] Wakalah can be the assignment of legal actions and the safeguarding of something to another person who becomes a representative. These legal actions include spending on property, such as buying and selling, or other things that can be represented by Shara', such as giving permission for someone else to enter the house.[9]

However, in some cases, the transfer of receivables is carried out without notice or explicit consent from the customer as a party who has a direct legal relationship with the bank. Such practices raise serious questions regarding the fulfillment of the principle of transparency in the Islamic banking system. In the context of Islamic banking, transparency is not only seen in terms of financial information, but also concerns the clarity of the contracts used, the structure of financing, and the halalness of transactions. This is in line with maqashid sharia which emphasizes the protection of wealth (hifzh al-mal) and justice in muamalah. Therefore, every Islamic transaction must avoid elements of gharar (uncertainty), tadlis (deception), and maksiat, which are contrary to the principles of justice and honesty.[10] Transparency is a basic principle that is not only rooted in national banking regulations, but is also an integral part of the ethics of muamalah in Islam. The absence of information to customers can lead to legal uncertainty, losses, and potentially disputes between customers and banks.[11]

This research is important because it concerns two crucial aspects in Islamic banking, namely the fulfillment of sharia principles and the protection of customer rights. In the context of the wakalah al-mutlaqah contract, there is still a lack of detailed arrangements regarding the limitations and notification mechanisms to customers in terms of transferring receivables. This lack of clarity has the potential to create information inequality, legal conflicts, and distrust of Islamic financial institutions.

2. Research Method

The type of research used is normative legal research, which is research focused on reviewing positive legal literature, legal principles, legal rules, as well as doctrines and opinions of relevant legal experts.[12] Normative research aims to

[8] Ichsan, N. (n.d.). SISTEM DAN OPERASIONAL DASAR BANK SYARIAH. UIN Jakarta Press.
[9] Paujiah, S., Kunci, K., & Muamalat, F. (2022). Implementasi Akad Wakalah Dalam Bank Syariah. Universitas Darussalam Gontor, Mantingan, 12.
[10] bin Marra, A., & Semaun, S. (2024). Kajian Aspek Transparancy, Validity dan Profesionalism pada Pengelolaan Dana Qardul Hasan Perspektif Ekonomi Syariah.
[11] bin Marra, A., & Semaun, S. (2024). Kajian Aspek Transparancy, Validity dan Profesionalism pada Pengelolaan Dana Qardul Hasan Perspektif Ekonomi Syariah.
[12] Abdussamad, H. Z., & Sik, M. S. (2021). Metode penelitian kualitatif. CV. Syakir Media Press.

find clarity on legal norms or principles that apply in resolving a legal issue.[13] This research uses several complementary legal approaches, namely the Conceptual Approach which is used to explore basic concepts regarding the principles of transparency, customer rights, and prudential principles in Islamic banking. This approach is also used to understand sharia doctrines related to wakalah al-mutlaqah as well as the philosophical and theological foundations of transparency in muamalah fiqh. Furthermore, the Statute Approach is used to analyze relevant laws and regulations, such as Law Number 21 of 2008 concerning Islamic Banking, the Consumer Protection Law, as well as regulations of the Financial Services Authority (OJK) and DSN-MUI fatwas governing wakalah contracts and the principle of transparency, and the Case Approach This approach is used to analyze concrete cases or jurisprudence relating to the transfer of receivables in Islamic banking using a wakalah contract without notification to the customer. With this approach, the author can identify the reality of the practice and the conformity between the practice and the ideal legal norm. The data collection technique is done through library research.[14] The legal materials used include primary legal materials, namely laws and regulations, DSN-MUI fatwas, and court decisions. Secondary legal materials, such as legal literature, scientific journal articles, textbooks, and previous research results and tertiary legal materials, in the form of legal dictionaries, legal encyclopedias, and indexes. Data analysis is carried out using a qualitative normative analysis method, namely by examining and interpreting legal materials obtained systematically, logically, and argumentatively.[15] Researchers will interpret the applicable legal norms by linking them to legal theories, principles of sharia law, and relevant fiqh rules to provide solutions to the legal issues raised. The results of this analysis will provide an overview of whether the practice of transferring receivables with a wakalah al-mutlaqah contract without notification to the customer has fulfilled the principle of transparency which is a fundamental principle in Islamic banking law, as well as its legal impact on customer protection.

3. Results and Discussion

The Legal Position of Transfer of Receivables in Islamic Banking Through the Wakalah Al-Mutlaqah Akad

Islamic banks have a very important role in national development because the function of banks is financial institutions whose main business is to raise funds from the public and provide financing, as well as other services whose operations are adjusted to sharia principles. In providing financing, one of the forms provided by Islamic banks is murabaha financing. There is also another

[13] Zed, M. (2004). Metode peneletian kepustakaan. Yayasan Obor Indonesia.
[14] Ali, Z. (2009). Metode Penelitian Hukum. Sinar Grafika.
[15] Jonaedi Efendi, S. H. I., Johnny Ibrahim, S. H., & Se, M. M. (2018). Metode penelitian hukum: normatif dan empiris. Prenada Media.

form provided by Islamic banks in the form of al-wakalah. One of the muamalah activities is debt and credit. In debt and credit, Islam teaches to pay it off immediately because delaying payment for people who are able is an act of oppression. However, there is a mercy for people who owe debts can transfer their debts to other parties. This is called hiwalah in Islam. However, we must understand the hiwalah contract in Islam.[16]

The legal basis of hiwalah itself is based on the book of Al-Quran and hadith. O you who believe, when you do business not in cash for a fixed time, you should write it down, and let a writer among you write it down correctly." (Q.S. Al-Baqarah: 282) and in the Hadith "Delaying the payment of debt by a capable person is an injustice. So, if one of you transfers the right to collect his debt (hiwalah-kan) to a capable party, then accept it." (HR. Bukhari).

Islamic banks have a very important role in national development because the function of banks is financial institutions whose main business is to raise funds from the public and provide financing, as well as other services whose operations are adjusted to sharia principles. In providing financing, one of the forms provided by Islamic banks is murabaha financing. There is also another form provided by Islamic banks in the form of al-wakalah. Wakalah according to this Shafi'iyyah provides an understanding that the action of a person who has the authority to hand over a job to another person so that the other person does the job according to his will from the one who represents it is still alive to issue an understanding that wakalah is not included in the will. If the person who delegates is dead, then the authority to do the work rests with the heirs.

An important aspect in the implementation of debt transfer in Islamic banks is its compliance with sharia principles, especially in terms of the prohibition of usury (interest). According to Zainul Arifin, debt transfer is when a debt or receivable from one party is transferred to another party. In this process, three parties are involved, namely the debtor (muhil or madin), the party giving the debt (muhal or da “in), and the party receiving the new debt (muhal ”alaih). In particular, the transfer of receivables in Islamic banking refers to DSN-MUI Fatwa No. 58/DSN-MUI/V/2007 concerning Hawalah which provides guidance that the transfer of receivables is valid if:

1. There is an agreement from all related parties;
2. Does not contain usury or uncertainty;
3. It is clear who is the new debt bearer.

The fatwa explains that hawalah is the transfer of debt from the debtor to another person who is obliged to bear it. This fatwa regulates the terms and conditions of hawalah that are valid according to sharia, such as the willingness of both parties, the clarity of the amount of debt transferred, and the absence of

[16] Usanti, T. P., & Shomad, A. (2022). Transaksi bank syariah. Bumi Aksara.

elements of usury and uncertainty (gharar).

The wakalah agreement is the legal basis for the transfer of receivables to third parties (such as asset management companies or investors) in the context of financing restructuring or asset securitization. Terms of Wakalah include:[17]

1. The condition of the delegatee (Al-Muwakkil)

   The delegatee must be an owner who can act on the thing he is delegating. If he is not an owner who can act, his representation is not valid. A mentally ill person or a child who is not yet able to distinguish between options cannot be represented by another. Both have lost, ownership, he does not have the right to act.

2. Terms of the representative (Al-Wakil)

   Similar to the representative, the party who can represent is a person of reason. A person who is mentally ill, an idiot, or a child who is unable to distinguish is not eligible to represent. There is a difference of opinion regarding the validity of representation by a young child who can distinguish. The Hanafi view is that it is permissible if the representative is a child who has reached the age of puberty and is dealing with issues that he understands. Others are of the view that puberty is not a requirement.

3. Requirements for the thing being represented (muwakkal fih)

   The main requirement for the thing being represented (muwakkal fih) is that it is not a bad act. In addition, the ins and outs of the muwakkal fih must be known exactly by the person who represents him, unless the matter is fully entrusted to him.

4. Wakalah According to the Views of Scholars

   Wakalah has several different meanings according to the views of the scholars, the following are each of the views of the scholars, namely:
   a. According to Hasbi As Shiddieqy, Wakalah is a power transfer contract in which someone appoints another person as his successor in acting (bertasharruf).
   b. According to Sayyid Sabiq, Wakalah is the delegation of power by one person to another in matters that can be represented.
   c. According to the Maalikis, Wakalah is the substitution by one person for another in his rights where he performs legal actions like his actions, without linking the substitution to what happens after death.
   d. According to the Hanafis, Wakalah is the placement of a person over another person in his place in a permissible and certain tasarruf, provided that the person who represents the person who has the right to

[17] Wardi, M. A. (2010). Fiqh Muamalat. Jakarta: Amzah.

tasarruf.

e. According to the Shafi'iyah, Wakalah is the transfer by one person to another of something that he has the right to do and that can be replaced, to be done during his lifetime.

Akad Wakalah al-Mutlaqah is absolute representation without time limit and for all matters. In positive law, it is often known as broad power of attorney, which is usually used to represent all the needs of the power of attorney and usually only for acts of management (beheren).[18] The use of the Wakalah al-Mutlaqah contract authorizes the third party as a representative to take legal action including collection or transfer of receivables, but its implementation must still be guided by the principles of transparency and protection of customers. The application of the DSN-MUI fatwa in practice shows that the bank remains within the sharia corridor. Although customers are not always given explicit notice, the bank argues that it has been authorized in general in the wakalah contract signed when the financing contract is made. However, if examined more deeply, this practice can raise legal issues related to the fulfillment of the principles of transparency and prudential principles, which are part of good corporate governance in Islamic banking.

DSN-MUI Fatwa No. 10/DSN-MUI/IV/2000 concerning Wakalah, which states that Islamic banks can use a wakalah contract for the delegation of power to other parties, as long as it does not conflict with sharia principles. The wakalah agreement is used for the delegation of power by someone as the first party to another person as the second party in matters that are delegated (in this case the second party) only carries out something to the extent of the power or authority given by the first party, but if the power has been carried out as required, then all risks and responsibilities for carrying out the order are fully the first party or the authorizer. So wakalah is not related to goods but to the authority or authority of one person to another.[19]

Wakalah al-Mutlaqah is a general authorization contract, without detailed specifications regarding the type of action, object, or method of implementation. In this contract, the deputy is given the freedom to make decisions or act according to his judgment, as long as it is considered beneficial and does not violate sharia principles or violate the mandate given by the muwakkil. To be carried out properly, there are several conditions that must be met in the wakalah contract, including: The ability of the deputy is very important in a wakalah contract. This ability includes the ability of the deputy to carry out the tasks assigned by the authorizer. The ability of the deputy in a wakalah contract

[18] Ansil, P. I. (n.d.). Analisis Kesesuaian Akad Pengalihan Hutang Menurut Fatwa DSN-MUI (Studi Kasus: Bank Nagari Syariah Cabang Payakumbuh). Fakultas Syariah dan Hukum Universitas Islam Negeri Syarif Hidayatullah Jakarta.

[19] Toyyibi, A. M. (2022). Prinsip Fiqh Ekonomi Kontemporer. Pengantar Ekonomi Islam, 35.

can be interpreted as the ability possessed by a deputy to carry out the tasks assigned by the authorizer properly and in accordance with the wishes of the authorizer.[20]

For a wakalah al-mutlaqah contract to be valid according to sharia, it must fulfill several conditions:

a. Clarity of the parties giving and receiving the power of attorney;
b. The object of the power of attorney is a legal action that may be performed and may be represented;
c. The power of attorney is based on trust and does not contain elements of gharar, riba, or maisir;
d. Not contrary to the interests or maslahat of muwakkil.

Although the wakalah al-mutlaqah contract authorizes the bank to act, the transfer of receivables involves legal rights and obligations that directly affect the customer, so it should still be notified. The absence of notification can lead to elements of gharar (uncertainty), and is contrary to the principles of al-shafafiyyah (transparency) and 'is (justice).[21] Financing mechanisms and receivables management are important aspects that need to be managed while adhering to sharia principles. One mechanism that is widely used is the transfer of receivables through the Wakalah al-Mutlaqah contract, in which the bank as muwakkil gives general power to third parties to take legal action on customer receivables.[22]

Application of the Transparency Principle in the Practice of Transferring Receivables by Islamic Banking through Wakalah Al-Mutlaqah

The principle of transparency is one of the fundamental principles in the legal system and institutional governance, including in the Islamic banking sector. The principle of transparency is a key principle in realizing fair, responsible and trustworthy Islamic banking practices.[23] Transparency refers to openness, honesty, and clarity of information between parties involved in a legal relationship or financial transaction.[24] In the context of Islamic banking, this principle not only meets administrative accountability standards, but is also a reflection of sharia values, such as shidq (honesty), amanah (responsibility), and 'is (justice). The application of the principle of transparency is expected to be very important in the practice of transferring receivables by Islamic banking

[20] Toyyibi, A. M. (2022). Prinsip Fiqh Ekonomi Kontemporer. Pengantar Ekonomi Islam, 35.
[21] Paujiah, S., Kunci, K., & Muamalat, F. (2022). Implementasi Akad Wakalah Dalam Bank Syariah. Universitas Darussalam Gontor, Mantingan, 12.
[22] Paujiah, S., Kunci, K., & Muamalat, F. (2022). Implementasi Akad Wakalah Dalam Bank Syariah. Universitas Darussalam Gontor, Mantingan, 12.
[23] Maradita, A. (2014). Karakteristik good corporate governance pada bank syariah dan bank konvensional. Yuridika, 29(2).
[24] Yanti, R. (2024). Transparansi dan Akuntabilitas Pengelolaan Laporan Keuangan Desa Polewali Kabupaten Pinrang (Perspektif Akuntansi Syariah). IAIN Parepare.

through the wakalah al-mutlaqah contract can run fairly, efficiently, and in accordance with sharia principles. This will also increase customer and third party trust in Islamic banking.[25]

The implementation of the Wakalah al-Mutlaqah contract in Islamic banking basically aims to provide flexibility to financial institutions to take certain legal actions, including the transfer of receivables to third parties, such as asset management companies or investors. However, when the delegation of power is carried out without notification or knowledge of the customer, it can have serious legal consequences, both at the level of sharia and positive law in Indonesia.[26]

The use of wakalah al-mutlaqah in the transfer of receivables without notification to the customer has the potential to obscure the principle of transparency. Although formally the bank has the authority to act, substantively there is an imbalance of information between the bank and the customer.[27] Transparency in sharia principles is part of the values of al-shidq (honesty) and al-amanah (responsibility). When the bank acts on behalf of the customer without involving or informing the customer, there is an element of gharar (uncertainty) in the contract, which can cause the contract to be flawed shar'i. From a positive legal perspective, the bank's actions that do not notify the transfer of receivables violate the principle of good faith in the contract as stipulated in Article 1338 of the Civil Code, as well as OJK Regulation No. 1/POJK.07/2013 concerning Consumer Protection in the Financial Services Sector which requires the delivery of clear and honest information to consumers.[28]

The practice of wakalah al-mutlaqah without notice also has the potential to reduce public confidence in the Islamic banking system.[29] Customers who feel disrespected in the legal process concerning their rights and obligations will doubt the bank's commitment to the principles of justice and consumer protection. In the long run, this may impact the bank's reputation and operational stability.[30] The lack of transparency in the transfer of receivables

[25] Fanola, Y. (2021). Perkembangan Penelitian Kinerja Keuangan Perbankan Syariah Di Indonesia. UIN Ar-Raniry.

[26] Harahap, M. A., & Sudiarti, S. (2022). Kontrak Jasa pada Perbankan Syariah: Wakalah, Kafalah dan Hawalah. *Reslaj: Religion Education Social Laa Roiba Journal*, *4*(1), 42–53.

[27] ASIS, N. (n.d.). MAKSIMALISASI KONSEP GOOD CORPORATE GOVERNANCE DALAM KINERJA KEUANGAN; PERSPEKTIF SHARIAH COMPLIANCE.

[28] Ramadhan, R. (n.d.). KONTRAK BAKU PEMBIAYAAN MURABAHAH DALAM PERSPEKTIF UNDANG-UNDANG NO. 8 TAHUN 1999 TENTANG PERLINDUNGAN KONSUMEN (Studi pada Bank DKI Syariah). Fakultas Syariah dan Hukum Universitas Islam Negeri Syarif Hidayatullah Jakarta.

[29] Zainul Arifin, M. B. A. (2012). Dasar-dasar manajemen bank syariah. Pustaka Alvabet.

[30] Syauqi, M. (n.d.). BAB 7 PRODUK JASA LEMBAGA KEUANGAN SYARIAH. Lembaga Keuangan Syariah, 121.

has several impacts:[31]

1. Legal loss for the customer because they do not know the status of their receivables;
2. Potential default or objection to collection by unknown parties;
3. Distrust of Islamic financial institutions, which can reduce customer loyalty and bank reputation;
4. Violation of consumer protection principles, both in sharia and national law.

Although the wakalah contract gives the bank broad authority, transparency must still be maintained because the legal actions taken must not neglect the rights of the authorizer. So that the practice of wakalah al-mutlaqah does not conflict with the principle of transparency, the following steps are required:[32]

1. Add an explicit clause in the financing contract that the transfer of receivables can be done and the customer has understood this;
2. Make a written notification before the transfer, even though the wakalah contract has been signed;
3. Involving the Sharia Supervisory Board (DPS) to ensure that all processes are in accordance with sharia principles;
4. Educate customers about their rights and obligations in complex sharia contracts such as wakalah.

Therefore, its implementation without notification to the customer is contrary to the principle of transparency, which is the main foundation of Islamic banking. This is because every transaction, especially those involving contracts or delegation of authority such as wakalah, must be carried out with the principle of transparency to all parties involved. Transparency is not only related to products and fees, but also includes changes in the legal status of rights and obligations, including the transfer of receivables (hawalah or through wakalah) to third parties.

Legal Implications and Risks to Customers and Sharia Financial Institutions as a Result of Not Fulfilling the Principle of Transparency in the Process of Transferring Receivables

In accordance with the mandate of Law Number 21 of 2008 concerning Islamic Banking and the Fatwa of the National Shari'ah Council of the Indonesian Ulema Council, the business of financing companies with sharia principles must always comply with Islamic sharia principles, including fatwas stipulated by the

[31] Sasmita, B. S. I. (2024). Proses Pengalihan Cessie Dan Dampaknya Terhadap Hak Debitur Dalam Perjanjian Kredit Perbankan. *UNES Law Review*, *7*(1), 485–493.
[32] Usanti, T. P., & Shomad, A. (2022). Transaksi bank syariah. Bumi Aksara.

National Sharia Council of the Indonesian Ulema Council. In accordance with the definition of wakalah in Article 1 point 22 of the Financial Services Authority Regulation Number 31/POJK.05/2014, an Islamic finance company can act as a power of attorney (muwakkil) or as a power of attorney (representative). If the sharia finance company acts as a power of attorney, the consumer acts as a power of attorney and vice versa. The position of the parties will determine their respective rights and obligations. An example of the implementation of a wakalah contract with an Islamic finance company as the authorizer is in financing with a murabahah contract. Murabahah is the sale and purchase of an item by confirming the purchase price (acquisition price) to the buyer and the buyer pays more (margin) as profit in accordance with the agreement of the parties. The fatwa on murabahah states that Islamic financial institutions can authorize customers to purchase the goods needed with a wakalah contract.

In a wakalah al-mutlaqah contract, the position of the Islamic finance company is as muhal'alaih. Consumers as muhil, parties who have debts to muhal or third parties who are in debt. If constructed, it is as follows:[33]

a. There is a debt and credit relationship between muhil and muhal or a consumer and a third party, or if in a sale and purchase, it is possible that muhil is the buyer, while muhal is the supplier of goods. The buyer has a debt that is in accordance with the price of the goods purchased from the supplier / muhal.
b. The buyer/muhil/consumer/party who has a debt, transfers the debt to the Islamic finance company, so that the company then pays the debt of the consumer/buyer/muhil to the third party/supplier/muhal.
c. Funds used by Islamic finance companies can come from the funding schemes they obtain.
d. Loan funds to cover consumer/buyer/muhil debts using a qardh (money lending) contract with the qardh value equal to the consumer/buyer/muhil debt.
e. For the transfer of debt, the Islamic finance company can obtain ujrah/fee.
f. In accordance with the haw alah contract between the Islamic finance company as muhal alaih and the consumer as muhil, the Islamic finance company is obliged to pay off the muhil's debt to the muhal. On the other hand, the Islamic finance company has the right to get ujrah from the services it has provided and has the right to collect debt payments from muhil according to the qardh contract that has been signed.
g. The consumer as muhil is obliged to give ujrah to the Islamic finance

[33] Nugraheni, D. B. (2017). Analisis Fatwa Dewan Syariah Nasional Tentang Wakalah, Hawalah, dan Kafalah Dalam Kegiatan Jasa Perusahaan Pembiayaan Syariah. *Jurnal Media Hukum*, *24*(2), 124–136.

company and pay his debt based on the qardh contract.

In managing a company, especially in Islamic financial and banking institutions, of course we will never be able to escape legal risks as well as the transfer of debt so that Islamic finance companies must really analyze the condition of the muhil so that the debt that has been paid can also be paid by the muhil in the future. In the practice of wakalah, of course, the one who benefits is the muhal/supplier/third party who is owed from the consumer. However, the contract that occurs is between the Islamic finance company as muhal ala'ih and muhil, so that Islamic finance companies are not allowed to ask for ujrah or fees from muhal. Although the legal basis for the permissibility of the hawalah bil ujrah contract is more from the point of view of the muhal, namely, the hadith of the Prophet "delaying the payment of debts by capable people is an injustice. So, if one of you is transferred the right to collect his debt to a capable party, then accept it. This risk plays an important role in the decision making. Islamic Financial Institutions will not be able to finance businesses in which there are things that are forbidden, projects that cause harm to the wider community, related to gambling, drug trafficking, illegal weapons, and projects that can harm the syiar of Islam. For this reason, in the structure of Islamic Financial and Banking Institutions, there must be a facilitating institution that guarantees the products and operations of these institutions.

If it is proven that the wakalah contract was used unilaterally for the transfer of receivables without clarity and without transparency, then the accompanying contract can be considered null and void or can be canceled, depending on the proof of the element of defect of will or injustice. In Islamic law, contracts that contain uncertainty (gharar) and are not accompanied by the pleasure (ridha) of all parties, do not meet the legal requirements.[34]

The legal implications and risks to customers due to the practice of wakalah al-mutlaqah without notice are very real and need to be a major concern in Islamic banking operations.[35] This not only potentially violates substantive sharia principles, but also undermines the national legal framework that guarantees the right to information and consent in contractual relationships. To avoid these consequences, Islamic banking institutions need to implement effective notification and communication mechanisms, despite the absolute nature of the wakalah contract. Commitment to Islamic consumer protection is not only a legal obligation, but also a moral and ethical responsibility in order to maintain the trust of the people and the integrity of the Islamic financial system.[36]

[34] Ishom, M., & Zaini, A. (2020). Sharia Contract Drafting: Merancang Akad Muamalat. Penerbit A-Empat.
[35] Ishom, M., & Zaini, A. (2020). Sharia Contract Drafting: Merancang Akad Muamalat. Penerbit A-Empat.
[36] Maulidya, D. (n.d.). Peran Etika Bisnis dalam Meningkatkan Kepercayaan Konsumen dalam Perspektif Syariah.

4. Conclusion

The practice of transferring receivables by Islamic banking through the Wakalah al-Mutlaqah contract without notification to the customer is contrary to the principle of transparency which is one of the fundamental principles in the Islamic banking system. Although legally the wakalah al-mutlaqah contract is recognized and justified both in muamalah fiqh and in Indonesian positive law, the implementation of the transfer of receivables that has a direct impact on the legal position and interests of customers must still be carried out with open and clear notification. In the context of sharia, actions without notification have the potential to create elements of gharar (uncertainty) and violate the values of 'is (justice) and amanah (responsibility), which are part of maqashid al-syariah. In terms of positive law, this practice is not in line with OJK Regulation No. 1/POJK.07/2013 on Consumer Protection, which requires every financial services business actor to provide information that is honest, transparent, and not misleading. Thus, the use of the wakalah al-mutlaqah contract as the legal basis for the transfer of receivables must be followed by strengthening the notification mechanism and information disclosure to customers. This is important to ensure the achievement of the principle of contractual fairness, increase public confidence in the Islamic banking system, and keep banking practices in line with sharia values and applicable national laws. The use of Wakalah al-Mutlaqah contracts by Islamic banks must be accompanied by strict limitations and procedures, including the obligation to provide explicit notice and consent from customers, especially in matters that have a direct impact on their legal position and financial obligations. Without fulfilling the principle of transparency, the bank's actions not only have the potential to violate sharia principles, but also open up space for adverse legal consequences, whether civil, administrative, or reputational.

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