

## Concept and Basis of Sharia Law for Distribution of Zakat in the Form of Microfinance with Qard Hasan Contract

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### ABSTRACT

*The complexity of the economic problems caused by the Covid-19 outbreak has changed so many circumstances. The household budget deficit has prompted a proliferation of institutions offering online loans. However, in practice, online loans often do not work according to the SOP of the OJK and are far from sharia values. Baznas issued a breakthrough in the form of zakat microfinance in the form of qard hasan as an alternative to problematic online loans. Because this is still relatively new, an in-depth explanation of the concept and sharia law related to this is needed. This problem is researched with a library research approach and presented in a qualitative form. From this research, it was found that the practice of qard hasan in zakat microfinance can be used as an alternative to existing problems, both conceptually and in sharia law.*

*Keywords: Zakat, Microfinance, Qard*

### INTRODUCTION

The Covid-19 outbreak that has spread in the last three years has had a serious economic impact on society. The economic turnaround was forced to slow down due to policies that required restrictions on social interactions to control the spread of the Covid-19 virus. This makes it difficult for the industry to market their products so that it will have an impact on producer policies and people's income.

Layoffs are an example of policies that must be taken by producers in order to save money in order to survive in the face of the economic storm that occurs. According to data from the West Java Indonesian Employers Association (Apindo), as of November 2022, as many as 37 shoe factories have laid off 25,700 employees because from July to October 2022 there has been a decrease in orders by 45 percent and for production from November to December 2022 it has decreased by 51 percent. This policy will

certainly have a direct impact on reducing people's income which will result in a budget deficit in their households. Seeking a loan is one of the short-term ways that can be done to overcome the budget deficit.

Seeing this phenomenon, institutions have emerged that provide financing in the form of loan funds even in the form of technology-based services. The ease of accessing capital with light requirements makes online loan services recorded to continue to grow with an increasing number of customers. According to OJK data during the period from June 2022 to September 2022, the number of loan customers increased by more than 55,000 customers and was at 455,000 customers. The high demand for online loans is also illustrated in OJK data which recorded a total *outstanding* loan as of July 2022 reaching 45.72 trillion rupiah.

But behind the ease of accessing online loans, there are several serious problems that arise. The standard operating

procedures (SOPs) that are applied are often not in accordance with the formulation of the Financial Services Authority (OJK) such as the way of collection with threats and terror by third parties as *debt collectors*, excessively high interest amounts and access to customer personal data. The Investment Alert Task Force (SWI) in August 2022 has found 71 illegal online loans (pinjol) that have the potential to harm the public. This figure has increased the number of illegal loan data that was closed from 2018 to August 2022 to as many as 4,160 illegal loans.

Not only that, the majority of online loans use an interest system which is included in the practice of usury which is prohibited in Shari'a law. Muslim communities in Indonesia need alternatives to the problems that occur, such as secure, safe and sharia-compliant loans. As we know that a true Muslim will always view sharia values as principles and ways of life (the way of life). Seeing this, the Indonesian national amil zakat agency (Baznas) tried to offer an alternative breakthrough in the form of borrowing funds from collected zakat funds and managing them with sharia principles. According to Baznas chairman Mr. Noor Achmad, "the basis of his work is that there is no interest, but we ask those who borrow later the return is better or he promises that in the future it will be in accordance with the scheme we expect, this year we give a loan but the next year it can be muzakki, our hope is so."

Zakat microfinance in the form of loan funds or qard hasan is considered a contemporary breakthrough. It requires a deeper understanding of this in order to maximize its application and implications for society. This research is aimed at explaining the concept of zakat microfinance through the use of qard Hasan and exploring the basis of sharia law. The research method used is library research with a qualitative approach. The data sources used in this literature research are

research journals, books, mass media, and internet media.

## LITERATURE REVIEW

### *Basic Concepts of Zakat Fund Distribution*

Linguistically, zakat can be interpreted as accretion (az-ziyadah, an-numu), it can also be interpreted as sanctification (at-thaharah), and can also be interpreted as praise (al-madh). It is called zakat because in it there are blessings, increased goodness, and sanctification of the soul. In terms of terms, zakat is a certain property that is issued if it has reached the conditions regulated according to religious regulations, issued to 8 asnaf recipients of zakat. The eight asnaf are the objects of zakat distribution which are mentioned in Q.S. At-Tawbah verse 60,

إِنَّمَا الصَّدَقَتُ لِلْفُقَرَاءِ وَالْمَسْكِينِ وَالْعَمَلِينَ عَلَيْهَا وَالْمَوْلَاةِ  
فُلُوهُنَّ وَفِي الرِّقَابِ وَالْغُرْمِينَ وَفِي سَبِيلِ اللَّهِ وَأَبْنِ السَّبِيلِ  
قَرِيضَةً مِّنَ اللَّهِ وَاللَّهُ عَلِيمٌ حَكِيمٌ

*"Indeed, the zakats are, only for the wicked, the poor, the administrators of zakat, the mu'allaf who are persuaded by their hearts, to (set free) slaves, those who are in debt, for the way of Allah and for those who are on the way, as a decree which Allah requires, and Allah is All-Knowing again All-wise."*

According to Al-Zuhaili's explanation, this verse begins with the word (إِنَّمَا) which has the function of limiting the object of distribution of zakat to only the asnaf mentioned in the verse. The letters Alif and Lam at the beginning of the word (الصدقات) indicate that the intended sadaqah is a mandatory sadaqah. The meaning of mandatory sadaqah is zakat which includes zakat fitrah and zakat mal. According to the Shafi'i school, the distribution is carried out using the concept of tamlik or transfer of ownership because the object of receiving zakat begins with lam at-tamlik (لِلْفُقَرَاءِ). So when the verse is reviewed based on a textual approach, it will be found that the distribution of zakat must be in the form of a transfer of full ownership.

Al-Qardawi emphasized that the process of disbursing zakat funds must be carried out immediately. The majority of clerics including Imam Shafi'i, Imam Maliki, Imam Ahmad, and some clerics of the Hanafi sect have agreed that the process of distributing zakat funds should be carried out immediately (al-Faur wa at-Ta'jil). Among the reasons they put forward was that the mustahiks needed these funds to fulfill their *hajah* so that the obligation of the command was clearly written (Shareh) in the Qur'an. In addition, promoting goodness is also a command of Allah Almighty in Q.S. Al-Baqarah verse 148, "then compete (in making) goodness". But on the other hand, the majority of hanafi schools still hold that the period of distribution can be expanded because the order comes *mutlaq* or without time-related details so that there is no specific time specification in it.

The distribution of zakat funds can also be done in various forms. Arif Mufraeni classifies the form of distribution of zakat funds into four forms. *First*, in the form of "traditional consumptive", that is, zakat that is distributed to be used directly. *Second*, in the form of "creative consumptive", namely zakat which is distributed in the form of other goods such as scholarships and school tools. *Third*, in the form of "traditional productive", namely zakat which is distributed in the form of productive goods such as livestock, barbershop tools, and other tools that can be used as instruments to run a business. *Fourth*, in the form of "creative productive", namely zakat which is distributed in the form of capital for MSME entrepreneurs or building strategic projects that benefit the community. Amil zakat has the authority to regulate the mechanism for distributing zakat based on *maslahah* (public benefit), *hajah* (need) and *maqashid 'ammah* (the general objectives of shariah).

## RESULTS AND DISCUSSION

### *Productive Zakat Distribution*

Basically, zakat distribution is carried out in the form of transfer of ownership which is generally only a short-term consumptive fulfillment of the mustahiks. Substantially, the use of zakat funds with a consumptive approach does not solve the root of the problem of the mustahiks, because the benefits of the zakat funds can only be felt in a short time. This method will indirectly impoverish the mustahik or build a poor mentality. In fact, according to Al-Qardhawi, Islam is a religion that encourages its adherents to have a prosperous life. The Prophet once advised in the history of Ibn Hibban, "four things from (the source of) happiness: a shalihah wife, a spacious place to live, good neighbors and a comfortable vehicle". He also asked for welfare in his popular (famous) *do'anya*, "O Allah I ask you for *hidayah*, devotion, kindness and well-being". Al-Qardawi even concluded that the grateful rich are better than the patient *faqir*.

The big idea of distributing zakat is actually to get mustahik out of poverty. In other words, how to make zakat as an instrument for the welfare of those who were originally mustahik so that they can subsequently become *muzakki* in the future. Caliph Umar ibn Khattab once said, (إذا أعطيتم فاعنوا)

*"If you give (to people in need) then get them rich."*

It is said that once there came a man who told him about the difficulties he faced, then the caliph gave him three camel econ. The caliph advised the employees who escorted the three camels to implement this kind of distribution practice. He chose to give the mustahik capital in the form of a farm animal of three camel econs. The use of the three camels is expected to be the starting point for the increase in mustahik income. Umar ibn Khattab was indeed famous as a caliph with innovative thoughts

and breakthroughs. For him, zakat is not only used to treat the hunger of the mustahiks but also to prevent famine in the future. Inspired by the words and stories of caliph Umar bin Khattab, Al-Qardawi said that for mustahiks who are still able to be productive, it is mandatory to distribute zakat to them in the form of productive zakat.

*Zakat Microfinance with Qard Hasan*

Human and all his potential are the most valuable resources. Zakat should be used as an instrument to empower these resources. The distribution of zakat in the form of microfinance can stimulate the entrepreneurship mentality of the Muslim community. The mentality that awakens is not just a poor mentality with a hand below but a rich mentality with a hand on top.

Since the beginning, microfinance has been considered the most popular instrument to improve people's welfare. Zakat microfinance is the distribution of productive zakat in the form of financing that is distributed to mustahik who are still able to be productive. Later Zakat microfinance was raised by Baznas Indonesia as an alternative solution to the proliferation of illegal online loans which has caused various problems in the community.

There are several non-profit instruments in Islam, such as zakat, shadaqah, waqf and qard hasan. Like zakat in general, qard hasan was chosen as the basic instrument in microfinance zakat because it was in the form of non-profit distribution. Qard hasan is a loan given to a borrower (muqtaridh) who needs it. In Islamic religious literature it is mentioned that helping in the form of qard hasan is better than shadaqah. It is told in the hadith of Ibn Majah's history that the Messenger of Allah SAW once said: "On the night of Isra' I saw above the door of heaven written the reward of shadaqah is 10 and the reward of qard is 18, then I asked: Jibril what causes

qard to be better than shadaqah? Then Jibril replied: Because it is impossible for a borrower to apply for a loan unless it is (very) necessary."

The main theory of zakat microfinance is joint liabilities and decentralization. Joint liabilities contract can reduce transaction cost and decentralization is used to make sure that zakat transfer continuously flows for the welfare of the poor. Through this basic theory, it is hoped that zakat microfinance can contribute to the provision of capital for mustahiks so that they can have income and jobs while potentially opening up job opportunities which is broad from the business units he is engaged in.

Zakat Microfinance have the following features:

Table 1. Feature of Zakat Microfinance

| Zakat Microfinance     |   |
|------------------------|---|
| Source of Funds        | Zakat   |
| Usage of Funds         | Economic Production and Development                         |
| Type of charges        | Interest free   |
| Nature of Funds        | Charity and Obligation                                      |
| Nature of recovery     | Only Community  |
| Type of Contributors   | Pressure  |
| Type of Empowerment    | Obligatory  |
| Type of Motivation     | Family or Individual  |
| Level of Participation | Taqwa, Obligation, Brotherhood                              |
|                        | Compulsory participation by every individual of the society |

*Ulama's View of Zakat Microfinance with Qard Hasan and Addressing the Differences in It*

In the Qur'an, the word az-Zakat is mentioned 30 times and the word shadaqah with the meaning of zakat is mentioned 12 times. However, none of these verses explain in detail about the distribution and

the conditions that must be met in the distribution process. In the hadith literature there is also no detailed explanation of this. So it can be concluded that the understandings obtained are still at the level of *dzanny* and not *qath'i*. Thus, the *ijtihad* space inside is still very wide open and dissent in it is a necessity.

One form of difference in the results of the *ijtihad* is on the issue related to whether it is permissible to distribute zakat in the form of microfinance with the *qard hasan* contract. The Scholars have different opinions on this subject. The first opinion says that Zakat microfinance with *qard hasan* is prohibited under sharia law. This opinion was expressed by the majority of classical scholars and some contemporary scholars such as Shaikh Jad al-Haq, Shaikh Sayid al-Tantawi and Rafiq Yunus al-Misri. There are several arguments on which the practice is prohibited.

*First*, the basic concept of distributing zakat funds has been explained in Q.S. at-Tawbah paragraph 60 that the distribution is carried out in the form of *tamlik* or transfer of ownership so that *qard hasan* is considered still unable to fulfill the concept of *tamlik*. *Secondly*, zakat must be distributed immediately (*al-Faur wa at-Ta'jil*), so that *qard hasan* is considered contrary to that principle. *Third*, the *sadd al-dzara'i* postulate approach, which is that when the borrower failed to pay, it will cause a deficit in zakat funds and will result in other *asnaf* who are more in need of not getting their rights. *Sadd al-dzara'i* is the prevention of everything that leads to forbidden things (because) they contain damage or danger.

The second opinion says that this can be done under sharia law. This opinion is preferred by contemporary scholars, such as Abu Zahra, Wahab Khalaf, and Yusuf al-Qardhawi. This opinion is built on the foundation of several postulates. *First*, the *qiyas aulawy* approach, namely if zakat can be distributed to *gharimin* (persons in debt) to pay off their debts then the use of zakat

in the form of *qard* should be more complicated. *Qiyas aulawy* is used when the law of *furu'* is more main of the law of *ashl*. Like the prohibition of saying "uf" to both parents which is to hurt both. When *qiyas aulawy* are used then hurting them with more deeds than that like yelling or hitting them should be more forbidden in religion. *Secondly*, the explanation of the concept of zakat distribution in Q.S. st-Tawbah verse 60 does not clearly explain the concept of *tamlik*.

*Third*, the practice in the time of the Prophet Muhammad SAW. A friend of the Prophet Muhammad SAW once borrowed money from *baitul mal* to be used to buy goats. When you have made a profit, the loan is returned in the form of a goat of better quality. In the historical hadith of Imam Muslim, the Messenger of Allah once gave zakat to a friend of his and then ordered him to develop and alms the zakat.

It was explained by Abdul Wahab Khalaf that in the responseto a difference in the results of *ijtihad* there are three *ushul* rules that must be held. *First*, *Ijtihad* must be done with a thorough and comprehensive understanding. *Secondly*, *Ijtihad*, which is done with the right methods and processes, will still get rewards. This suggests that no *ijtihad* can be blamed when the results are different. *Third*, the result of an *ijtihad* cannot be reversed with the result of another *ijtihad*. When both are carried out with the correct *ijtihad* method, then the position is the same in the eyes of sharia law. From Khalaf's explanation, it can be understood that both scholars' opinions regarding zakat microfinance are equally correct and should not delete one of the opinions because it considers the opinion of the other to be more just right. Tolerance in dissent is a must. Then, how to decide which opinion to take? We return to thebig idea of *maqashid shari'ah*. Khalaf says that,

المقصود العام للشارع من تشريع الأحكام هو تحقيق مصالح الناس بكفالة ضرورياتهم وتوفير حاجياتهم وتحسينياتهم

"The general purpose when God established his laws was to bring about the benefit of man by meeting the needs of dharuriyat, hajiyat, and tahsiniyat."

One of the main parameters used to measure the opinions taken is the benefit parameter. How much impact can be realized from the application of these opinions? Furthermore, Shaikh 'Ali Jum'ah said that in taking fatwas, it must also bring convenience to humans. When there are differences of opinion, it is recommended to take opinions more easily according to the circumstances and environment so that the benefits and benefits of the religious process will be more pronounced.

### CONCLUSION

Based on the description above, it can be concluded several important points, namely:

1. The basic concept of distributing zakat funds is the transfer of ownership, raiding and in the form of proper distribution. The form of distribution will be measured based on the parameters of *maslahah* (public benefit), *hajah* (need) and *maqashid 'ammah* (the general objectives of shariah).
2. In poverty alleviation, Islam has a big idea. Zakat funds are not only used in a consumptive but also productive form. Caliph Umar once exemplified this during his reign.
3. Zakat Microfinance is a form of productive zakat. Qard hasan as a non-profit instrument is used in practice. The main theory of zakat microfinance is joint liabilities and decentralization. Joint liabilities contract can reduce transaction cost and decentralization is used to make sure that zakat transfer continuously flows for the welfare of the poor.

4. There are differences of opinion of scholars in responding to zakat microfinance with the qard hasan contract, some prohibit it and some allow it. Dissent can be addressed with a benefit and ease approach according to circumstances and the environment. However, if you look at the current situation with the proliferation of illegal interest-based online loans and so many Muslims who are bound by usury, then it is very appropriate for zakat microfinance to be launched as an alternative solution to the existing problems. Non-profit loans will also certainly be very difficult to find, especially in the midst of the economic storm that occurred due to the Covid-19 outbreak.

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