

Analysis of Conversion of *Mudharabah Akad* to *Akad Qardh Dsn-Mui Fatwa* Perspective Number: 07/Dsn-Mui/IV/2000 Concerning *Mudharabah (Qiradh)* Financing

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ABSTRACT: Developments in the world of financial institutions have also led to various developments in the financing products offered by each sharia bank. This is marked by the birth of new products, one of which is the *mudharabah* contract, but what is interesting to study is that it is found that there is a transfer of a *mudharabah* contract to a *qardh* contract without the consent of the customer, this of course violates the principles of *bermuamalah*. The purpose of this study was to determine the legal position of contract conversion using *mudharabah* and *qardh* theories and then analyzed based on the DSN-MUI fatwa. The results showed that the conversion of a *mudharabah* contract to a *qardh* contract should not be done and it is against the principles of sharia because it is detrimental to one of the parties with the contract.

KEYWORDS: *Mudharabah*; *Qardh*; Conversion of contracts; Legal Position

INTRODUCTION

Sharia Financial Institutions (LKS) are facilitators that bridge communities that have capital with communities that need capital. LKS can collect funds and then distribute them so that the funds are productive. In terms of LKS's task of distributing funds, this activity is not just about providing capital to customers. However, furthermore it will be seen what the quality of distribution or the allocation of funds will be. In distributing funds based on the principle of profit sharing, LKS has various forms of contracts, including those in the form of *mudharabah*, *musyarakah* or *ujrah financing contracts* (Wiroso, 2009, p. 24).

Of the several LKS products, *mudharabah contracts* are among the contracts that are most popular with the

public. A *mudharabah* agreement is an agreement to cooperate between the capital owner and the capital manager. LKS as the capital owner will provide 100% of the funds to the customer as the manager to make these funds productive in the form of business/investment. At the beginning of the formation of this contract, the value will be agreed profit sharing to be received between the parties along with the financing period. In capital management, if the customer succeeds in making a profit, the status of the profit is joint property. So it is obligatory to share between both parties according to the agreed amount of profit. On the other hand, if the customer is in a loss condition, the loss is the responsibility of the customer if it is proven that the loss was the result of the customer's error.

The practice that occurs in the field is that many LKS do not want to be responsible for bearing customer losses. After learning of the loss, LKS will transfer the *mudharabah*

contract to a *qardh contract* even though the transfer of this contract was not agreed upon from the start. So it appears that LKS is hands-off and does not enforce the provisions that prohibit LKS from imposing losses on customers. Motivated by these problems, the author is interested and feels the need to further analyze the conversion of *mudharabah contracts* to *qardh contracts*. based on DSN-MUI Fatwa Number: 07/DSN-MUI/IV/2000 concerning *Mudharabah Financing (Qiradh)*.

This research is very important to carry out considering the high level of public interest in the use of *mudharabah financing* but does not pay attention to how sharia principles must be enforced in this financing. Then this problem is very important to analyze by considering the legal position regarding the conversion of *mudharabah contracts* to *qardh contracts* as a form of legal development and enforcement of sharia principles in sharia financial activities.

Basically, this research has also been discussed by previous researchers, namely Harfi Dwi Zulita, in the form of scientific work with a study focus on the implementation of the contract *take over* namely seeing changes to the *qardh contract*. The research results show that the transfer of the contract was carried out to pay off the remaining financing. Based on this, it can be understood that the research that will be carried out by the author is different from previous research. The author focuses on the legal position of *mudharabah contract conversion* to the *qardh contract*.

METHODS

The research method used in this study is library research by collecting various related literature, then analyzing the data using a legal-formal approach because the focus of the analysis is on the legal position of contract conversion. Apart from that, this research also includes economic law research which is descriptive analysis in nature. The data analysis method

is carried out in several stages, starting from the data processing stage which is carried out with preliminary research, the data processing stage by processing information as data, the data validity checking stage by looking at confirmation between data so that the data obtained is considered appropriate and complete, the final stage is data analysis in answering research questions.

RESULT

BASIC CONCEPTS

1. *Mudharabah*

a. Definition and Terms of *Mudharabah*

In Islamic law, the linguistic definition of *mudharabah* is ضَارِبٌ with the synonym اِتِّجَرَ as in the sentence ضَارِبٌ لِفُلَانٍ فِي مَالِهِ which means an injection of funds as business capital to Fulan . Meanwhile, in terms of terms, *mudharabah* is defined:

Wahbah Zuhaili *Mudarabah* is an agreement to hand over capital by the owner to the manager for trading and the profits are shared between the two in accordance with the conditions they make. Sayid Sabiq " *Mudarabah* is a contract between two parties in which one party gives money (capital) to another party for trading with the condition that the profits are shared between the two of them according to their agreement" (Muslich, 2013 , p. 45).

DSN-MUI Fatwa No.115/DSN-MUI/IX/2017 provides the definition of *mudharabah* contained in general provisions number 1 that *mudharabah* is a business cooperation agreement between capital owners (*malik / shahib al-mal*) which provides all capital with the manager (*mudharib*) and profits are divided between the parties based on the distribution agreed in the contract (DSN-MUI Fatwa No.115/DSN-MUI/IX/2017

concerning Mudharabah Agreements). *Shahib al-mal* is a fund provider in the form of a person or institution with a legal entity or non-legal entity. *'Amil /mudharib* is a capital manager in a collaborative business of both people and institutions with legal or non-legal entities.

From the definition presented by the author above, it can be understood that *mudharabah* is a cooperative partner agreement with the pattern of one party providing capital and the other party providing services, be it energy or expertise. With the rules all profits are divided between them according to the agreement. In simple terms, it can be stated that *mudharabah* is a cooperation agreement between a capital owner and a capital manager.

The *mudharabah* contract also regulates the terms and conditions of the *mudharabah* itself. According to Syafi'iyah, there are five pillars of *mudharabah*, namely:

a. *Shigat* contract

Shigat contract has several provisions, namely:

- 1) *mudharabah* agreement must be firm and clear.
 - 2) *Mudharabah* contracts may be carried out verbally, in writing, with gestures and deeds/actions, and must comply with sharia and statutory regulations.
- b. The parties entered into an agreement.

In detail the provisions of the parties are explained as follows:

- 1) *Shahib al-mal* and *mudharib* can be institutional persons with legal entities or not.
- 2) *Shahib al-mal* and *mudharib* must be competent in law based on the provisions of sharia and positive law.

3) *Shahib al-mal* has capital that can be transferred to *the mudarib*.

4) *Mudharib* must have the skills to carry out business in order to make a profit.

c. Capital (*ra's al-mal*)

The capital requirements that must be met are:

- 1) Funds can be given in installments or *in cash*.
- 2) Capital can be in the form of goods or money and can also be a combination of both.
- 3) capital must be explained.
- 4) The type of currency used must be agreed upon by the parties. If the currency used *shahib al-mal* is different then it must be converted according to the agreement.
- 5) Capital is not permitted in the form of receivables (Muslich, 2013, p. 68).

Pay attention to DSN-MUI Fatwa Number:105/DSN-MUI/X/2016 concerning Guarantee of Return of Capital for *Mudharabah*, *Musyarakah Financing* and *Wakalah bill Istitsmar*, Special provisions for return of capital related to *mudharabah* financing agreements have been regulated, namely:

- a) Managers are not obliged to return business capital in full when a loss occurs, except for losses due to *ta'addi*, *tafrith*, or mukhlafat al-syuruth.
- b) Capital owners may not ask managers to guarantee the return of capital.
- c) Managers may guarantee the return of capital at their own will without a request from the capital owner.
- d) Capital owners may ask a third party to guarantee the return of capital.

- e) In the event that the business experiences a loss while the capital owner has a different opinion regarding the loss, the manager is obliged to prove that the loss experienced was not due to *ta'addi* , *tafrith* or *mukhlafat al-syrut*.
- d. *Ratio* or profit

The provisions for a benefit are:

- 1) The method for sharing profits must be clearly agreed in the agreement. This aims to avoid disputes between the parties.
 - 2) Profits are agreed upon at the start of the contract. Profit sharing on profits is adjusted to income
 - 3) At the beginning of the contract, LKS and the customer may only agree on a profit sharing *ratio* . The *ratio* cannot be in the form of a percentage or nominal.
 - 4) *ratio* may be changed according to agreement.
 - 5) profit sharing *ratio may be expressed in the form of a multi-ratio* .
- e. Business activities
- Business activities carried out must comply with the provisions below:
- 1) The form of business must be a business that does not conflict with Islamic sharia and positive legal provisions.
 - 2) *The mudarib* in running the business must be in the name of the *mudaraba entity* , it is not permitted in his own name.
 - 3) Costs arising as a result of business activities may be charged to the *mudharabah entity* .
 - 4) *Mudharib* is not allowed to use funds for any purpose without the permission of the capital owner.

5) *Mudharib* is not permitted to carry out actions that should not be carried out, not carry out actions that should be carried out, or violate the contents or clauses that have been agreed upon in the contract.

b. Legal basis for *Mudarabah*

QS Al-Muzammil verse 20.

Meaning: *and people Which walk in advance earth look for part gift Allah.*

Hadith narrated by Imam Malik

عَنِ الْعَلَاءِ بْنِ عَبْدِ الرَّحْمَنِ عَنْ أَبِيهِ عَنْ جَدِّهِ :
 أَنَّ عُشْمَانَ بْنَ عَفَّانَ أَعْطَاهُ مَالًا قِرَاضًا يَعْمَلُ
 فِيهِ عَلَى أَنَّ الرِّبْحَ بَيْنَهُمَا

Meaning: *From 'Ala' son Abdurrahman from his father from his grandfather that 'Uthman son 'Affan gave him treasure with method Qiradh Which managed, with provision profit shared in between they together.* (HR Imam Malik) (Muslich, 2013, p. 56).

The argument above explains that *mudharabah activities* are permitted in Islam to be practiced in daily life, especially in muamalat activities. Even during the time of friends, they used to carry out this activity, namely by giving property to other friends to manage and the profits were divided between them.

All sharia banking products based on *mudharabah contracts* offered to the public refer to the fatwas that have been produced by DSN-MUI, Financial Services Authority (OJK) regulations and are also based on provisions in the Compilation of Sharia Economic Law (KHES). Several provisions based on applicable regulations regarding *mudharabah contracts* are:

In KHES there are 24 articles that regulate *mudharabah contracts* ,

namely in Chapter VIII Part One, starting from article 231 to article 254. This KHES provides signs for the implementation of *mudharabah* which must be applied to *mudharabah financing products*. For example, rules regarding capital and the rights and responsibilities of the parties.

DSN-MUI Fatwa Number: 07/DSN-MUI/IV/2000 concerning *Mudharabah Financing (Qiradh)*, in the legal provisions of financing in this fatwa it is stated that *mudharabah* may be carried out and is limited to certain periods according to the agreement of the parties. Furthermore, in *mudharabah* products there is no compensation system, because basically this contract is a trust unless it is a result of intentional error, negligence or breach of agreement (DSN-MUI Fatwa Number: 07/DSN-MUI/IV/2000 Concerning *Mudharabah Financing (Qiradh)*).

DSN-MUI Fatwa Number: 15/DSN-MUI/IX/2000 Concerning Principles of Distribution of Business Results in Sharia Financial Institutions, in general provisions it is stated that LKS are permitted to use the principles of profit sharing or profit sharing in sharing profits with their partners. On the current benefit side, DSN-MUI calls for profit sharing for capital owners and business actors to use the principle of profit sharing.

c. *Mudharabah* distribution

In terms of types of *mudharabah contracts*, they are divided into 2 types, namely:

1) *Mudharabah mutlaqah*, namely, the owner of the capital surrenders it completely to the customer by allowing the customer to manage the capital without any restrictions. This means that the customer has the authority to choose the form of

business according to the customer's expertise as a capital manager. Capital owners do not participate in capital management. If LKS and the customer agree to use a *tafrith contract* then the capital manager has the authority to use *mudharabah capital* (Wangsawidjaja, 2012, p. 14).

2) *Mudharabah muqayyadah*, namely the capital owner sets limits on the type of business to be run. For example, restrictions on certain places or types of investment (A Wangsawidjaja, 2012, p. 39). If the contract used is a *mudharabah contract muqayyad*, the owner of the funds may not carry out actions outside the agreement with the customer. When a customer does this, the capital manager will receive legal consequences, namely that the customer will share in bearing the losses experienced (Mauludin, nd, p. 40)

Mudharabah contract has undergone many transformations to date. Judging from the development in the LKS, there are at least three types of *mudharabah* that are currently being implemented, namely:

a) *Mudharabah Musytarakah* is a form of cooperation agreement where the customer includes funds according to the agreement. *Mudharabah* agreement This *musytarakah* is contained in the DSN-MUI fatwa Number: 50/DSN-MUI/III/2006. The provisions for distributing funds in this fatwa are as follows: 1) The contract used is a combination of the *mudharabah contract* and the *musytarakah contract*. 2) Customers include their capital or funds in investing with LKS. 3) The share of profits becomes joint property based on the amount of funds included. 4)

Profits after being taken by the customer as *musytarik* are then shared with the customer according to the agreement *ratio* . 5) If there is a loss beyond the customer's control, the customer as *musytarik* will be responsible based on the portion of capital included.

b) *Mudharabah wal Murabaha* is a financing scheme with *two forms steps financing* . The meaning here is that the investor is *the shahib al-mal* invests its funds in LKS using a *mudharabah contract* . Furthermore, LKS forwards funds to customers using a *murabahah contract* in the form of financing. In simple terms, investors share profits with LKS, then LKS buys and sells with customers and gets a profit margin from the results of the sale and purchase (Sharia Banking Product Standard Series 5: Mudharabah Product Standards) .

d. *Mudharabah* in Sharia Financial Institutions

As a bridge between customers and donors, LKS processes funds by providing financing in the form of *mudharabah*. Financing carried out by LKS is the provision of funds so that they can be used to meet business needs. The distribution of funds is carried out with the aim of supporting investment plans based on sharia financing contracts which are based on the principle of profit sharing (Ningrum, 2018, p. 10) . Banking Law no. 10 of 1998 states that financing is the provision of money or bills that can be equated with it based on agreements and agreements between banks and other parties (Law No. 10 of 1998 concerning Banking) .

mudharabah agreement in the LKS is applied to the products of collecting and distributing public funds. Fund collection is carried out by withdrawing funds, collecting funds from the community, then distributing funds by offering financing products (Rozali, 2020 , p. 20) . On the fund collection side, *mudharabah* is applied to:

a. Giro is a savings fund that can be disbursed at any time using a check, a giro bill, other means of disbursement order or through book transfer. In this transaction a customer is in his capacity as *shahibu al-mal* while LKS acts as *mudharib* . As a *mudharib* , LKS has the capacity to manage customer funds in accordance with sharia provisions and make these funds productive through *mudharabah* with other parties. Profit sharing must be included and written down at the time of the account opening agreement along with *the ratio* . In fact, LKS is not allowed to reduce the profit sharing value without agreement from the customer.

b. Savings are the disbursement of savings funds which can only be done with certain conditions that have been agreed upon (National Sharia Council Fatwa No. 02/DSN-MUI/IV/2000 Concerning Savings) . Withdrawals from this savings are not permitted using giro bills, checks or other similar means. This type of savings involves ordinary savings or term savings. The *mudharabah* type of savings basically aims to ensure that customers receive profits from the funds they have saved in LKS. However, legally speaking, apart from getting the opportunity to make a profit, the customer will also be responsible for the risk of loss in the form of loss of capital.

c. Deposits are withdrawals of savings funds that can only be made at certain times (Fatwa of the Sharia Supervisory Board No. 3/DSN-MUI/IV/2000 concerning Deposits) . The types of deposits that can be used for *mudharabah* contracts are ordinary deposits and special deposits. Where the funds that have been entrusted to LKS are intended for certain businesses. *Mudharabah*, in terms of collecting public funds or funding, is an investment. This means that customers as capital owners invest their capital in LKS as capital manager, then LKS has the right to utilize this capital to obtain greater profits.

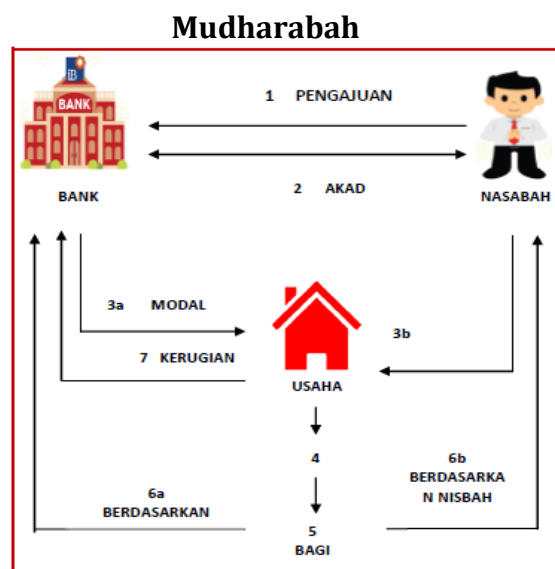
In the fund management or *financing sector* at LKS, the *mudharabah contract* is applied to the *mudharabah type of financing* . Both working capital financing and certain investments. In financing using a *mudharabah contract* , LKS will provide 100% capital for the needs of a project (business) while the entrepreneur acts as *mudharib* or manager. Capital managers can determine the type of business and of course it must comply with sharia principles.

In the case of a business being run, the capital owner is not allowed to participate in the operations of the business. However, it has the right to supervise and provide guidance for business evaluation. However, *mudharibs* can mix their wealth if there is a mutual agreement, this refers to articles 244-246 of the Compilation of Sharia Economic Law.

Mechanism *mudharabah* The contemporary Islamic financial institutions that exist today are different from the classic *mudharabah mechanisms* of the past. In the classic type of *mudharabah*

there is no payment method in installments or installments of the principal capital managed by *the mudarib* . Principal capital payments are made only once at the end of the contract period. Likewise for the profit sharing payment mechanism in *mudharabah contracts* , where profit sharing payments are only made once at the end of the contract period. Meanwhile, in contemporary *mudharabah* , payment activities can be carried out in installments (Sharia Banking Product Standard Series 5: *Mudharabah Product Standards*, nd).

Below the author describes the mechanism for applying for *mudharabah financing* on the LKS:



Financing Agreement Mechanism Scheme

In the scheme above it can be understood that:

- 1) Customers submit business financing applications to sharia banks to obtain business capital.
- 2) Sharia banks and customers enter into financing agreements or contracts using *mudharabah contracts* .
- 3) Sharia banks as *shahib al-mal* provides financing capital to customers according to the amount of capital submitted, then

LKS will provide the capital after going through the verification stages and applicable procedures. This capital is intended for customers to be managed according to the agreed type of business.

- 4) The business you run makes a profit.
- 5) The profits obtained are then shared according to a mutually agreed *ratio*.
- 6) If there is a loss in the business that has been carried out, not due to the customer's fault or negligence, then the loss is borne by LKS as the owner of the capital.

All businesses carried out will certainly experience ups and downs in development, including *mudharabah contracts* which have a profit sharing system as the main principle. In a business there will always be profits or losses. The profits obtained are not always large, sometimes the profits obtained do not match the projected targets. This is what is then called when *mudharabah* is fluctuating. If during the course of the business there are losses, LKS as the fund provider bears all losses resulting from *mudharabah* unless the customer makes an intentional mistake, is negligent or violates the agreement.

As a form of anticipation for LKS in minimizing customer negligence in managing business capital. Therefore, LKS asks customers to provide collateral, which can be in the form of movable or immovable objects. Even though in principle there is no guarantee in a *mudharabah* financing agreement, to ensure that *the mudharib* does not make any deviations and also to avoid risks that will occur in the future, the LKS can ask for a guarantee from *the mudharib* or a third party (DSN-MUI Fatwa

NO:07/DSN-MUI/IV /2000
Concerning Mudharabah Financing (*Qiradh*)).

DSN-MUI as one of the supervisory institutions for LKS products has issued DSN-MUI Fatwa Number: 92/DSN-MUI/IV/2014 concerning Financing which was accompanied by *Rahn*. This fatwa provides provisions regarding collateral that must be valuable assets, both movable and immovable, that can be traded, including financial assets in the form of sukuk, sharia securities or other sharia securities. The guarantee provided can only be disbursed if *the mudharib* is proven to have violated the clauses mutually agreed upon in the contract. Based on the provisions for the execution of collateral contained in the fatwa above, collateral can only be executed if:

- a. *Ta'addi (ifrath)*, namely doing something that is not allowed/should be done.
- b. *Taqshir (tafrith)*, namely not doing something that can/should be done; or
- c. *Mukhlafat al-syuruth*, namely violating the provisions (which do not conflict with sharia) agreed upon by the contracting parties (DSN-MUI Fatwa Number: 92/DSN-MUI/IV/2014 Concerning Financing Accompanied by *Rahn*)

If the customer has completed all his obligations, LKS is obliged to return the collateral to the customer. However, if the customer is unable to complete his obligations at the agreed time, LKS has the right to remind and notify the customer. Furthermore, if the customer does not complete his obligations after being reminded, then taking into account the principles of justice and the benefit of the parties, LKS may forcefully sell the collateral or ask the customer to hand over the collateral.

2. Qard

a. Definition and terms of *qardh*

Etymologically, القرض is called debts and receivables which comes from the word *qaradha* meaning to cut (Ahmad Wardi Muslich, 2013, p. 66) . *Qard* in the understanding of the term experts quoted by Ahmad Wardi Muslich in his book *Fikih Muamalah* as follows:

Hanafiah believes:

"al- qardh is treasure Which given to person other from mall mitsli For Then paid or returned. Or with expression Which other, al- qardh is something agreement Which special For deliver treasure (mall mitsli) to person other For Then returned exactly like Which accepted."

Understanding *al-qardh* according to Hanabilah it is

القرض دفع مال لمن ينتفع به ويرد بدله

" Qardh is give treasure to person Which take advantage of it And Then return replacement."

Meanwhile, according to Syafi'iyah *al-qardh* is

الشافعية قالوا: القرض يطلق شرعا بمعن

الشيء المقرض

"Shafi'iyah opinion that qardh in term sharia' interpreted with something Which given to person other Which on something moment must returned".

Based on the meaning of *qardh* above, it can be explained that *qardh* is an asset given to another party, either a person or a legal entity, with the legal consequence being that the person in debt is obliged to pay the debt at the agreed time. Clearly, *al-qard* or debt and receivable is a certain contract between two parties, one party

surrenders its property to another party with the condition that the party receiving the property returns it to the owner with the same value.

Qardh contract including the type of contract named. This means all the provisions relating to *qardh* has been regulated in the Koran and/or contained in the book of fiqh. Likewise with the pillars and *qardh requirements* which is also something that is very important to know. *Qardh* contract and conditions includes:

1) ' *Aqid* , namely *muqridh* and *muqtaridh*. For '*aqid* you must be a person who is allowed to do *tasaruff* or have an *expertyatul There is'* namely a legal capability of the parties to act legally so that they are able to be accountable for their decisions. The '*aqid requirements* are as follows:

- a) Sensible
- b) Of your own free will.
- c) Baligh
- d) Not under guardianship (Basjar, nd, p. 77)

2) *Ma'qud 'alaih* , namely the object of the contract, whether in the form of money or goods (Muslich, 2013, p. 48).

3) *Shigat* , namely *consent* and *qabul* . *Shigat* is *consent* and *qabul* . *Consent* is a statement that shows willingness. Meanwhile *qabul* is something that is mentioned later as a form of acceptance (Rozalinda, 2017, p. 89) .

b. Legal Basis

It is found in Surah QS al-Baqarah verse 245. Which means: *"Who Which Want to give loan to Allah SWT, loan Which Good (spend his property in road Allah SWT), so Allah SWT will fold double payment to her with fold double Which Lots. And Allah SWT narrow And expand (good fortune) And to Him You returned"* (QS al-Baqarah: 245) (Department of

Religion of the Republic of Indonesia, 2013).

The verse above explains who wants to provide loans, where all good loans will be repaid well. The loan words used in this verse are so that people can understand them more easily. As Allah SWT equates the sacrifice of life and wealth to obtain heaven.

Furthermore, the person who asks for a loan is obliged to return the loan, because Allah SWT explains that whoever donates in the way of Allah SWT will not be in vain in the sight of Allah SWT, in fact Allah SWT will return it in the form of a reward and satisfactory reward. The reward from this loan is very large, because it contains an element of providing convenience and comfort for other people (Shaykh Imam Al-Qurthubi, 2007, p. 120).

Furthermore, QS at-Taghabun verse 17, which means: *"If You lend to Allah SWT loan Which Good, definitely Allah SWT fold double the reply to you And forgive You. And Allah SWT Maha avenger Service Again Maha Sustainer."*

Furthermore, QS al-Hadid verse 11. Which means: *who Which Want to lend to Allah SWT loan Which Good, So Allah SWT will multiply (reply) loan That for him, And He will obtain reward Which many* (Department of Religion of the Republic of Indonesia, 2013)

The two verses above explain the essence of giving loans that are done for the sake of Allah SWT, namely lending sincerely even though part of the wealth is in the hands of other people. *Qard* said means lending assets with the condition that they will be returned. If the property lent is a good loan then Allah SWT will reward it with a double reward (Sabiq, 2002, p. 88).

c. Wisdom and Purpose of *Qardh*

As for what is included in the wisdom of *qardh* are as follows :

1) Strengthen the sense of family

Providing loans to other people is one way to lighten the burden they bear. The help given is a noble attitude because it does not expect rewards or benefits from what is done except for the blessing of Allah SWT. By providing loans, even without realizing it, it will grow and strengthen the feeling of family.

2) Get closer to Allah SWT

In Islam it is highly recommended to help each other. Remembering that humans are social creatures who cannot live without other people. It is important to know that for every good fortune that Allah gives, there are other people's rights in it, so we are obliged to fulfill it by providing loans to other people who need it. Apart from that, providing loans is a form of implementing sharia provisions as a means of getting closer to Allah SWT (Sabiq, 2002, p. 89).

3) Keeping the faith

4) Developing the economy

The concept of debt and receivables is to provide relief to other people through borrowing funds. The purpose of these loans varies, some are for business development and some are for investment. By providing loans, it will certainly help other people improve their economic situation. Even without realizing it, it will also have an impact on reducing the unemployment rate.

3. Analysis of *Mudharabah Agreement Conversion to Qardh Agreement*

Conversion comes from English which is called *conversion*. *Conversion* has a meaning which means the process of changing from a certain system or type of instrument to another system or

instrument. Contract conversion is a change in a contract from a previously agreed contract to a new contract. In this study what is meant is the conversion of *mudharabah contracts* into *qardh* is the process of changing from a *mudharabah contract* to a *qardh contract*. In the scope of the discussion of muamalat fiqh, *mudharabah* is included in the contract *tijarah* and *qardh* is a *tabarru contract* (Siti Zulaikah, 2017, p. 12).

It is commonplace that when a business is undertaken, it turns out that it experiences losses and customers end up having difficulty making installment payments for the financing they have taken, so in such circumstances, LKS will carry out a review of the causes of the losses experienced. After carrying out an inspection, the cause of the loss was found. Losses in business can occur due to various reasons, they can be caused by the negligence of the business actor and some are caused by compelling circumstances that are beyond the control of the business actor. Settlement of financing installments for losses caused by negligence on the part of the business actor will be borne by the business actor as well as the customer. Meanwhile, losses caused against the will of the business actor will be borne by the company as a Sharia Financial Institution (Jamani, 2020, p. 10).

In the case of losses that are not caused by the customer, LKS will determine that the *mudharabah financing contract* is converted to a *qardh contract*, even though in its provisions losses that are not caused by the customer will be borne by LKS. The practice of contract conversion is a method used by LKS to overcome LKS losses in *mudharabah financing*. This contract conversion aims to ensure that LKS does not bear the costs of losses experienced by customers. By converting the contract, the loss will still be borne by the customer. This

contract conversion will be carried out for customers who experience losses in their business. For example, LKS implements contract conversion for customer financing in the name of Anugrah Pratama. Financing was agreed using a *mudharabah agreement* for the type of business making Crispy Chicken. Mr. Anugrah Pratama and LKS have agreed that the financing profit sharing is 2%. Then the capital will be paid in installments every month along with profit sharing. The agreed period is 24 months or 2 years. Every month Mr. Anugrah Pratama will pay installments of Rp. 416,700 plus a profit sharing of 2% which is equivalent to Rp. 200,000,- so the total amount that must be paid by Mr. Anugrah Pratama is Rp. 616,700,-. However, after paying the installments ten times, the Crispy Chicken business he was running suffered losses due to a fire in Mr Anugrah Pratama's house. This caused Mr Anugrah Pratama to be unable to pay his installments to LKS. By LKS, Mr Anugrah Pratama's *mudharabah financing* was transferred to the distribution of *qard funds*. So Mr Anugrah Pratama still has the obligation to pay the installments every month.

A financing product using a *mudharabah contract* is a financing contract offered by LKS. The contract is in accordance with sharia principles. Because the entire system and procedures for implementing the contract are in accordance with DSN-MUI Fatwa Number: 07/DSN-MUI/IV/2000 concerning *Mudharabah Financing (Qiradh)*. The interesting thing is when the *mudharabah contract* is converted to a *qardh contract*. This transfer is carried out when the customer or capital manager experiences business losses and the contract conversion agreement is not included in the contract agreement. These losses are caused by things beyond the customer's wishes, such as fire, flood or other natural disasters. This means that the loss was not caused

by negligence or error on the part of the capital manager.

In the event that the business being run experiences losses due to the customer's negligence, the amount of the loss is borne by the owner of the funds, namely LKS. The maximum loss borne by LKS is the amount of financing provided to customers. LKS as the capital owner fully bears these losses and is not permitted to pass on losses to customers. However, in the event that the loss is caused by the customer's negligence, the customer is obliged to bear the losses experienced (Sharia Banking Product Standards Series 5: Mudharabah Product Standards).

Under the rules, LKS as the capital owner has full responsibility to bear all losses. This expression is clearly regulated in the DSN-MUI Fatwa Number: 07/DSN-MUI/IV/2000 concerning Mudharabah Financing (Qiradh) in the pillars and financing conditions number 4 letter c which reads "Provider fund bear all loss consequence from mudharabah And manager No can bear loss whatever except caused from error Which deliberate, negligence, or violation agreement". More firmly in the Compilation of Sharia Economic Law in article 252 it states:

Article 252

Business losses and damage to merchandise in *mudharabah collaborations* that occur not due to negligence of the *mudharib*, are borne by the owner of the capital.

However, in reality, customers still bear losses by converting the contract, which was originally a *mudharabah contract*, into a *qardh contract*, such as the case experienced by Mr. Anugrah Pratama. *Qardh contract* This is done so that customers still have the obligation to pay off the initial capital payment previously provided by LKS. This is a solution implemented by LKS so that these losses do not impact LKS. Despite the fact that the loss was not caused by the

customer. By converting the *mudharabah contract* to a *qardh contract* it can be said that LKS no longer bears any losses at all.

This unilateral rescue solution certainly causes losses to the customers themselves. Moreover, in its implementation, some LKS parties did not notify customers about the conversion. However, it is also possible that some LKS will notify their clients of contract transfers. Unfortunately, not all customers understand and understand contract conversion and even its legal position. So many customers accept and agree to the contract conversion.

Converting a contract certainly means making changes to the contract that was mutually agreed upon at the beginning of the contract. Making changes to the contract without the agreement of the other party violates one of the general principles in muamalat, namely that a muamalat activity must be carried out by upholding the values of justice (Muchlis Bahar, 2014).

Mudharabah contracts and *qardh contracts* are two very different contracts. Starting from general provisions to special provisions. In the *mudharabah contract* there are provisions for profit sharing because this contract is a business cooperation agreement. Meanwhile, the *qardh contract* is a debt and receivable contract, so if the cooperation agreement is transferred to a debt and receivable contract, it is the same as changing all the clauses contained in the contract. In a *qardh contract*, there is an obligation on the part of the customer to return the funds lent by LKS, whereas in a *mudharabah contract*, if a loss is experienced by the customer which was not caused by himself, the customer is not charged with covering the loss. Because the losses experienced will be borne by the LKS itself in accordance with applicable regulations.

By looking at and paying attention to the practice of converting *mudharabah contracts* to *qardh contracts* So, based on DSN-MUI Fatwa Number: 07/DSN-MUI/IV/2000 concerning *Mudharabah Financing (Qiradh)* and the provisions as contained in the Compilation of Sharia Economic Law, this practice is not in accordance with the provisions of the *mudharabah agreement* so it cannot be carried out by LKS. All sharia financial products and services on LKS in Indonesia are required to comply with all DSN-MUI fatwas and all provisions relating to the implementation of LKS activities (Abbas Arfan, 2017).

The practice of converting *mudharabah contracts* to *qardh is not permissible* It is also strengthened by the word of Allah SWT in the Qur'an, namely based on QS An-Nisa verse 20 which reads. Which means : "Hi people Which believer, don't you each other eat treasure your neighbor with road Which vanity, except with road commerce Which applies with Like both like in between You. And don't You kill yourself[287]; Truly Allah is Maha Caring to you."

CONCLUSION

Based on the explanation above, it can be concluded that based on the provisions of the DSN-MUI Fatwa NO: 07/DSN-MUI/IV/2000 concerning *Mudharabah Financing (Qiradh)* and the provisions in the Compilation of Sharia Economic Law, the practice of converting *mudharabah contracts* to *qardh contracts* cannot be done because it is not in accordance with the provisions in the fatwa and KHES. Apart from that, converting *mudharabah contracts* to *qardh contracts* This is the same as charging the cost of losses to customers even though the losses experienced are beyond the customer's negligence and error. So by converting the contract, LKS can be said to have changed all the clauses in the initial contract agreement.

Solutions that the author can offer in overcoming the problem of converting *mudharabah contracts* to *qardh contracts* It is necessary to have a policy from DSN-MUI as an institution that has the authority to issue a fatwa regarding the inability of LKS to convert *mudharabah contracts* to *qardh*. Apart from that, it is necessary to increase supervision over the implementation of traffic flow of economic activities in LKS. For this reason, it is also hoped that the OJK will provide a policy against LKS that convert contracts that are not in accordance with sharia principles.

The author realizes that in the preparation of this paper there are many shortcomings and errors as well as imperfections in the material that the author has presented, therefore it would be better if readers provide constructive corrections that can be used as motivation in writing the next paper.

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