

Analysis of Take Over Financing With Reference To DSN-MUI Fatwa No.31/DSN-MUI/VI/2002 Concerning Hiwalah and DSN-MUI Fatwa No.31/DSN-MUI/VI/2002 Concerning Debt Transfer (Case Study at BSI KCP Sigli Madjid Ibrahim)

Muhammad Kharazi¹, Saparuddin², Sugianto³

^{1,2,3}Universitas Islam Negeri Sumatera Utara, Indonesia

muhammadkharazi471@gmail.com

Abstract

The purpose of this research is to determine the implementation of take over financing at BSI KCP Sigli Madjid Ibrahim and its relevance to the DSN-MUI fatwa No.31/DSN-MUI/VI/2002 regarding hiwalah and DSN-MUI fatwa No.31/DSN-MUI/ VI/2002 regarding debt transfer. The research method used in this research is field research. This research is also included in the category of qualitative descriptive research. The results of the research show that in applying for take over financing at BSI KCP Sigli Madjid Ibrahim, the customer submits a debt transfer request, fills out a form, then analyzes and surveys. After it was approved, then the BSI KCP Sigli Madjid Ibrahim used the al-qardh wa al-murabahah contract and also the al-qardh wa al-ijarah al-muntahiyah bi al-tamlik contract. Then the disbursement of financing funds was made by the BSI KCP Sigli Madjid Ibrahim to pay off the remaining customer debt at the previous bank. The implementation of take over financing at BSI KCP Sigli Madjid Ibrahim in the settlement of debt transfers is in accordance with the DSN-MUI fatwa.

Keywords

Take Over; Indonesian Islamic Bank; MUI Fatwa



I. Introduction

One type of financing that is widely practiced in Islamic banking is take-over financing. Take over financing is a form of sharia banking services in the form of helping the public to transfer transactions. There are several factors that encourage customers to take over financing in Islamic banks. In general, take over occurs due to the reason that the loan ceiling provided by the initial bank (original creditor) is not sufficient for business turnover, both for increasing business volume and business investment.

Financial statements are basically a source of information for investors as one of the basic considerations in making capital market investment decisions and also as a means of management responsibility for the resources entrusted to them (Prayoga and Afrizal 2021). Financial performance is a measuring instrument to know the process of implementing the company's financial resources. It sees how much management of the company succeeds, and provides benefits to the community. Sharia banking is contained in the Law of the Republic of Indonesia No.21 of 2008 article 5, in which the Financial Services Authority is assigned to supervise and supervise banks. (Ichsan, R. et al. 2021)

Meanwhile, the debtor does not have or does not want to use other assets (generally fixed assets) to be used as additional collateral to obtain additional ceilings from the bank. Therefore, the debtor will look for another bank that can provide credit facilities with a higher ceiling but with the same guarantee as the previous credit. Another reason is

because credit interest rates are high and previous bank services did not support the debtor's business development.

Development is a systematic and continuous effort made to realize something that is aspired. Development is a change towards improvement. Changes towards improvement require the mobilization of all human resources and reason to realize what is aspired. In addition, development is also very dependent on the availability of natural resource wealth. The availability of natural resources is one of the keys to economic growth in an area. (Shah, M. et al. 2020)

Take over basically can happen, either because of the initiative of the customer himself or because of the initiative of the bank. Meanwhile, the initiative of the bank itself can also occur because of the initiative of the credit provider or from the bank that is the new credit provider. Take-over, whose initiative comes from customers, is mostly because they are disappointed with the facilities and services provided by credit-giving banks. For example, the customer in question asks for additional credit because the potential business volume can still be developed and increased. However, the creditor bank has a different opinion, so that the customer's request or expectation cannot be accommodated, finally the customer is disappointed and looks for another bank that is willing to provide a larger credit limit, most of the requests are with the same credit guarantee as the previous bank.

Another example is disappointment about service. For example, the bank's debtor customer asked for a check/bilyet giro book containing 40 sheets, citing the increasing financial activity, thus requiring more check/bilyet giro sheets than usual. However, according to the creditor's opinion, the approval of the customer's need to be given an additional check/bilyet giro will only be given after 6 months from the opening of the checking account. Meanwhile, the customer in question only opened an account 4 months ago and he objected to waiting another 2 months. Finally he was disappointed and looked for another solution by going to another bank to do a take over.

Take overs that occur due to initiatives from banks (potential) new lenders are the most common and this is the excess of competition between banks which is quite tight and tough, especially in the financing sector. This can happen, for example, because the bank or bank staff (prospective) new lenders know that this person is a growing entrepreneur and has the potential to continue to grow and develop, even though he has become a mentor and has obtained credit facilities from other banks. So, usually this new bank offers financing facilities with more value, which can be in the form of a larger ceiling plus order draft facilities, lower/cheaper interest rates than the previous bank, and with other conveniences that are really needed by the customer concerned in developing his business.

The needs of the community and practitioners were answered with the issuance of the Fatwa of the MUI DSN Number: 31/DSN-MUI/VI/2002 regarding debt transfer. Where the emergence of this fatwa provides an alternative pattern of debt takeover financing that can be applied to Islamic banking products. MUI (2002) provides an alternative debt transfer process with a hybrid contract model.

Based on the alternatives offered in the DSN MUI fatwa no. 31 of 2002, at least there is an amalgamation of contracts in each alternative, including: (a) Alternative 1 provides an alternative to a combination of qardh and Murabahah contracts. (b) Alternative 2 provides an alternative to a combined Syirkah al-milk contract with Murabaha. (c) Alternative 3 provides an alternative to a combination of qardh and Ijarah contracts. (d) Alternative 4 provides an alternative to the combination of the qardh contract with Ijarah Muntiyah bit tamlik.

Based on the alternatives offered, some people have doubts about the suitability of the take over financing practice at Bnak Syariah with the DSN MUI fatwa above. On the basis of this condition, researchers are encouraged to conduct an analysis of the suitability of the implementation of take over financing by referring to the DSN-MUI fatwa NO.31/DSN-MUI/VI/2002 on hiwalah and DSN-MUI fatwa NUMBER 31/DSN-MUI/VI/2002 concerning the transfer of debt at BSI KCP Sigli Madjid Ibrahim.

II. Review of Literature

2.1 Hiwalah Definition

Hiwalah etymologically means Intiqal (displacement). In terms of Khatib Syarbini defines hiwalah with a contract that requires the transfer of rights from muhil dependents (who transfer debt) to muhal 'alaih dependents (who accept debt transfer obligations). Syafi'i Antonio defines hiwalah as the transfer of debt from the person who owes it to another person who is obliged to bear it.

Judging from the type of contract, hiwalah is divided into two types, namely:

1. Hiwalah Muqayyadah (Conditional Transfer), which is a transfer in exchange for paying muhil (first party) debt to muhal (second party). For example: A gives a receivable to B for 10 million, while B gives a receivable to C for 10 million. Then, B transfers his right to claim his receivables that are in C to A, in exchange for payment of B's debts to A. Thus, hiwalah muqayyadah on one hand is hiwalah al-haq because it transfers the right to demand his receivables from C to A (transfer of rights). On the other hand, hiwalah muqayyadah is also a hiwalah dain because B's obligation to A is transferred to C's obligation to a (debt transfer).
2. Hiwalah Muthlaqah (Absolute Transfer), namely the transfer of debt that is not confirmed as compensation for paying muhil (first party) debts to muhal (second party). For example, A owes B 5 million. Then, A transfers his debt to C so that C is obliged to pay A's debt to B, without mentioning that the transfer of the debt is as compensation for paying C's debt to A. Thus, hiwalah muthlaqah only contains hiwalah dain because what happens is only A's debt to B is transferred be owed by C to B.

2.2 Legal basis

Hiwalah is one of the forms of engagement in transactions between others which was legalized by the Messenger of Allah, through his words, namely:

"Slowing down debt payments by rich people is an act of injustice. If one of you is transferred to someone who is easy to pay his debts, then let him switch."

In this hadith it appears that the Messenger of Allah (saw) told the person who owes the debt, if the debtor transfers his debt to a party who can afford it, he should accept the hiwalah and let him collect it from the party who is dihiwalah (muhal 'alaih). Thus, their rights can be fulfilled.

Philosophically, the practice of hiwalah includes ease of transaction, where for parties who have debts and have difficulty paying their obligations (debts), but they still have assets on other parties, they can use this hiwalah contract as a solution to shift the obligation to pay debts with assets that are on the other side. In other conditions, the muhal party (the person who owes the muhil) can ask a third party (muhal 'alaih) to pay the debt with a guarantee that it will pay it in addition to the agreed fee.

Thus, the purpose of sharia contract hawalah in muamalah is to realize the principle of ta'awun (help each other) in conducting business transactions. This ta'awun attitude can be reflected, which help each other between the parties involved in the hawalah can

contract in order to realize the smooth running of the business to get convenience (taisir) from the other party.

2.3 Pillars and Hiwalah Terms

Shaykh Ibrahim Bajuri stated that the pillars of hiwalah are six kinds, namely:

1. The first party (muhil) is the person who transfers the debt to another person. The conditions required by the first party are:
 - a. capable of carrying out legal actions in the form of contracts, namely baliqh and reasoning. Hiwalah is invalid if it is done by a child, even if he understands it (mumayyiz), or if it is done by a crazy person.
 - b. There is a statement of approval (rida). If the first party is forced to perform hiwalah then the contract is invalid. The existence of this requirement is based on the consideration that some people object and are insulted by their dignity, if their obligation to pay debts is transferred to another party, even though the other party is indeed indebted to him.
2. The second party (muhal), that is, the party who has a debt to the first party (muhil). The conditions that must be met by both parties are as follows:
 - a. Capable of taking legal action, namely baliq and reasonable, as the first.
 - b. There is agreement from the second party to the first party who performs hiwalah. This requirement is based on the consideration that people's habits in paying debts are different, some are easy and some are difficult to pay, while accepting debt repayment is the right of the second party. If the hiwalah act is carried out unilaterally, the second party may feel disadvantaged, for example, if it turns out that the third party is having difficulty paying the debt. The reason for the necessity of this requirement is because the command sentence in the hadith above shows that the act of hiwalah is only circumcision, not mandatory. Thus, the second party cannot be forced to accept the hiwalah contract. Meanwhile, Hanbali scholars do not set this requirement on the second party, because they are of the opinion that the imperative sentence in the hadith above shows that Hiwalah is obligatory, so there is no need for approval from a second and third party. If the second party and the third party do not agree to the action, they can be forced to do so, as long as they are aware of the action of the first party.
3. The third party (muhal 'alaih) is the party who receives hiwalah. The requirements for third parties are:
 - a. Capable of taking legal action in the form of a contract, as required by the previous two parties.
 - b. Hanafi scholars require a statement of approval from a third party. While the other three schools do not require it. The reason for the Hanafi scholars is that the act of hiwalah is a legal action that gives birth to the transfer of obligations to a third party to pay a debt to a second party, while the obligation to pay a debt can only be imposed on him if he himself owes a debt to a second party. On this basis, the obligation can only be imposed on him, if he agrees to the hiwalah contract. Viewed from the other side, there may be more severe payment terms from the second party, compared to the payment terms set by the first party previously, so that it will be detrimental to him. The reason for the Maliki, Shafi'i, and Hanbali scholars is that in hiwalah contracts, third parties are seen as objects of the contract, because of that their approval is not a condition for the validity of hiwalah. Viewed from the other side, the contract made by the first party and the second party is seen as the act of a debtor who delegates his rights to his representative to demand payment of debt

against the debtor. In this case, the second party seems to be the representative of the first party, because there is no need for approval from a third party.

4. Debt of the first party to the second party
5. Third party debts to the first party, and
6. Shighat (statement hiwalah).

2.4 Hiwalah Law Consequences

If the hiwalah contract has occurred, then the legal consequences of this contract are as follows:

1. Jumhur scholars are of the opinion that the obligation of the first party to pay the debt to the second party automatically becomes waived. Meanwhile, according to some Hanafi scholars, among others, Kamal ibn al-Hummam, the obligation still exists, as long as the third party has not paid off its debt to the second party, because as previously mentioned, they view that the contract is based on the principle of mutual trust, not mutual trust the principle of transfer of rights and obligations.
2. Hiwalah contract, causes the birth of the right for a second party to demand payment of debt to a third party.
3. The Hanafi school which justifies the occurrence of al-hiwalah al-muthlaqah is of the opinion that if the hiwalah al-muthlaqah contract occurs because of the will of the first party, then the rights and obligations between the first and third parties that they determined when entering into the previous debt contract still apply, especially if the amount the accounts payable between the three parties are not the same.

2.5 The end of the Hiwalah contract

The fiqh scholars argue that the hiwalah contract will end if the following things happen:

1. One of the parties carrying out the contract has faskh (cancelled) the hiwalah contract before the contract is permanently valid, with the cancellation of the contract, the second party has the right to demand payment of the debt to the first party. Likewise the rights of the first party to third parties.
2. The third party pays the debt transferred to the second party.
3. If the second party dies, while the third party is the heir who inherits the property of the second party.
4. The second party grants or donates assets which are debts in the hiwalah contract to a third party.
5. The second party releases the third party from its obligation to pay the transferred debt.
6. The rights of the second party, according to Hanafi scholars, cannot be fulfilled because of at-tawa, namely: the third party experiences muflis (bankruptcy), or dies in a state of muflis, or in a state where there is no strong evidence of the hiwalah contract, the third party denies the contract. Meanwhile, according to the Syafi'i, Maliki and Hambali scholars, as long as the hiwalah contract is in effect, because the specified requirements have been met, the hiwalah contract cannot end because of laughter. In other words, the second party cannot demand the return of the right to request payment of debt from the first party, on the grounds that he has not succeeded in getting the debt repaid from the third party. The demands of the second party also cannot be fulfilled, if the third party is in a state of muflis when the hiwalah contract is carried out, while the second party does not know the situation. The reason is that the second party is considered careless because it does not examine the condition of the third party first, before the contract is carried out. However, if the contract states that it is easy for a third party to pay the

debt, then it turns out that it is difficult for him to pay it. then the second party has the right to demand the return of the right to demand payment of the debt to the first party. The reason is the words of the Prophet Muhammad "Muslims are bound by the conditions that have been set". (HR at-Tirmizi and al-Hakim from Abdillah ibn Mas'ud). If the second party has received payment from a third party, then the first party requests the payment that has been received, on the grounds that he denies the existence of hiwalah between them, and states that the function of the second party when requesting payment from the third party is only as a representative of the first party, and at the same time, there is no strong evidence to show that a hiwalah contract has taken place between them, so the scholars agree to say that in deciding this case the judge asked the first party to take an oath to strengthen his statement. If the first party has taken an oath, then the statement of the first party is the defendant, and the second party is the plaintiff. If the plaintiff cannot show evidence, while the defendant declares his oath, then the defendant's confession is accepted. This provision is based on the words of the Messenger of Allah, "The plaintiff is obliged to submit evidence, while the defendant takes an oath (if the plaintiff is unable to present evidence)". (Narrated by al-Bukari, at-Tirmizi and Ibn Majah). This provision is based on the words of the Messenger of Allah, "The plaintiff is obliged to submit evidence, while the defendant takes an oath (if the plaintiff is unable to present evidence)". (Narrated by al-Bukari, at-Tirmizi and Ibn Majah). This provision is based on the words of the Messenger of Allah, "The plaintiff is obliged to submit evidence, while the defendant takes an oath (if the plaintiff is unable to present evidence)". (Narrated by al-Bukari, at-Tirmizi and Ibn Majah).

III. Results and Discussion

In the practice of Islamic banking, hiwalah facilities are usually used to help suppliers get cash capital so that they can continue their business. The bank gets reimbursed for fees for debt transfer services. To anticipate losses that will arise, the bank needs to conduct research on the ability of the debtor and the correctness of the transaction between the debtor and the debtor. Because the supplier needs liquidity, he asked the bank to transfer the receivables. The bank will receive payment from the project owner.

The contract used in the take-over financing scheme in Islamic banks, with reference to the DSN-MUI fatwa Number 12/DSN-MUI/IV/2000 concerning Hiwalah and the DSN-MUI fatwa Number 31/DSN-MUI/VI/2002 concerning Debt Transfer , among others can be described as follows:

- a. Islamic banks provide qardh to customers which are then used by customers to pay off (credit) their debts to conventional banks. Thus, the assets that have been purchased by the customer become his/her full ownership. Then the customer sells the asset to a sharia bank. And from the sale proceeds, the customer pays the qardh to the Islamic bank. Then the sharia bank sells the assets that have become its own to the customer with payment in installments.
- b. Shari'ah banks buy some of the customer's assets with the permission of conventional banks, so that there is syirkah al-milk between Islamic banks and customers on these assets. The assets that have been purchased by the customer are part of the asset which is equivalent to the remaining debt or outstanding credit of the customer at a conventional bank. Then the Islamic bank sells the part of the assets that belong to him murabaha to the customer, with installment payments. In the scheme, the DSN fatwa Number 04/DSN-MUI/IV/2000 applies. Then, Islamic banks sell under the scheme regarding Murabahah.

- c. Islamic banks provide qardh to customers which are then used by customers to pay off (credit) their debts to conventional banks, and thus the assets that have been purchased by customers become their full ownership. Then the customer sells the asset to the Islamic bank. Then the Islamic bank rents out the asset to the customer with an ijarah vomiting bittamlik contract. In this scheme, the DSN fatwa Number 19/DSN-MUI/IV/2001 concerning Qardh and the DSN Fatwa Number 27/DSN-MUI/III/2002 concerning Ijarah al-Muntahiyah bi al-tamlik was applied.
- d. In managing to obtain full ownership of assets, the customer concerned can enter into an Ijarah contract with a sharia bank in accordance with DSN Fatwa Number 09/DSN-MUI/IV/2002. And if needed, Islamic banks can help bail out the customer's obligations by using a Qardh contract in accordance with DSN Fatwa Number 19/DSN-MUI/IV/2001. Then the Ijarah used by Islamic banks must be separated from the bailouts based on the Qardh contract. The amount of the Ijarah service fee may not be based on the number of bailouts provided by Islamic banks to their customers.

Analysis of the Relevance of the Implementation of Take Over Financing at BSI KCP Sigli Madjid Ibrahim with DSN-MUI Fatwa No. 31/DSN-MUI/VI/2002 and DSN-MUI fatwa No. 31/DSN-MUI/VI/2002

The development of the world of sharia banking today demands product development innovation through a combination of various existing contracts while maintaining conformity with sharia principles. In line with this need, DSN MUI has issued a fatwa for DSN MUI Number: 31/DSN-MUI/VI/2002 regarding debt transfer and provides several alternatives with several combinations of contracts that can be applied.

In practice, the transfer of debt at BSI KCP Sigli Madjid Ibrahim was carried out with several alternatives, namely the first alternative by using an al-qardh contract and an al-murabahah contract. This is as stated by BSI KCP employee Sigli Madjid Ibrahim "The implementation of the take over financing carried out at KCP Sigli Madjid Ibrahim begins with submitting a request for take over financing by the customer. Once approved, the Bank analyzes and then issues a Letter of Confirmation of Approval for take over financing, then proceeds with the binding of al-qardh, namely a financing contract between KCP Sigli Madjid Ibrahim and the customer to take over financing from another bank to BSI KCP Sigli Madjid Ibrahim, and followed by the signing of the al-KCP contract. - murabaha". This is in line with the DSM-MUI Fatwa No. 31/DSN-MUI/VI/2002 concerning Debt Transfer.

The second alternative, as stated by Mr. Muhammad Iqbal namely by using the al-qardh contract and the al-ijarah al-muntahiyah bi al-tamlik contract. This practice was carried out by BSI KCP Sigli Madjid Ibrahim in accordance with points 1,2 and 3 in alternative IV of the DSN-MUI fatwa Number 31/DSN-MUI/VI/2002 regarding debt transfer which reads "LKS provides qardh to customers. With this qardh, the customer pays off his credit (debt); and thus, the asset purchased with the credit becomes the full property of the customer (كُلِّمِلَا مَاتِلَا), then the customer sells the asset referred to in number 1 to LKS, and with the proceeds of the sale the customer pays his qardh to LKS. Then the LKS rents out the assets that have become its own to the customer, with the al-ijarah al-muntahiyah bi al-tamlik contract. This is in accordance with the DSN Fatwa number: 19/DSN-MUI/IV/2001 regarding al-Qardh and the DSN Fatwa number:

From the explanation above, it can be seen that the alternatives used in financing take over at BSI KCP Sigli Madjid Ibrahim are of two kinds, namely the first and fourth alternatives when we refer to the MUI fatwa. The use of these two alternatives can make it easier for customers to repay their obligations to BSI KCP Sigli Madjid Ibrahim and later the assets that have been paid off can be owned by the customer.

IV. Conclusion

From the explanation that has been stated above, it can be concluded that the implementation of take over financing at BSI KCP Sigli Madjid Ibrahim, namely the customer submits a request for transfer of debt (take over), fills out forms, conducts analysis and surveys. If approved, a financing agreement is made with several alternatives, namely by using the al-qardh wa al-murabahah contract and the al-qardh wa al-ijarah al-muntahiyah bi al-tamlik contract. Then the disbursement of financing funds was made by the BSI KCP Sigli Madjid Ibrahim to pay off the remaining customer debt at the previous bank. Furthermore, the customer pays off his debt to Bank BSI KCP Sigli Madjid Ibrahim in installments according to the agreement at the beginning of the agreement. The implementation of take over financing at BSI KCP Sigli Madjid Ibrahim is in accordance with the DSN-MUI fatwa No. 31/DSN-MUI/VI/2002.

References

- Abdul Ghafiur Anshori, Islamic Banking in Indonesia, Yogyakarta: Gadjah Mada University Press.
- Al-Kasani, al-Bada'i'u ash-Shana'i'u, Jld VI, Beirut: Dar Al-Fikr, tt
- Daeng Naja. (2019). Take Over Financing by Islamic Banks, East Java: Indonesia's Inspirations.
- Harun, Fiqh Muamalah. (2017). Sukarta: Muhammadiyah University Press.
- Hasbiyallah. (2014). Is your muamalah already syar'ikah? Guide to Understanding the Intricacies of Fiqh Muamalah, Yogyakarta: Salma Idea.
- Ibn Qasim Al-Ghazi. (1999). Fath al-Qarib al-Mujib fi Al-fadzi al-Taqrib, Jld I, Bairut: Dar Al-Kutub Al-Silmiah.
- Ibrahim Al-Bajuri. (1999). Hasyiyah al-Shaykh Ibrahim al-Baijuri ala Fath al-Qarib al-Mujib lil Allamah Ibn Qasim al-Ghazi, Jld I, Bairut: Dar Al-Kutub Al-Silmiah.
- Ichsan, R. et al. (2021). Determinant of Sharia Bank's Financial Performance during the Covid-19 Pandemic. Budapest International Research and Critics Institute-Journal (BIRCI-Journal). P. 298-309.
- Khatib Syarbini. (1997). Mughni al-Muhtaj fi Ma'rifati Ma'ani al-fadh al-Minhaj, Jld II, Bairut: Dar al-Ma'rifah.
- Moh. Mufid. (2021). Philosophy of Sharia Economic Law: A Study of Ontology, Epistemology, and Axiology of Contemporary Muamalah Contracts, Jakarta: Kencana.
- Muhammad Syafi'i Antonio. (2001). Islamic Banking, Jakarta: Gema Insani.
- Shah, M. et al. (2020). The Development Impact of PT. Medco E & P Malaka on Economic Aspects in East Aceh Regency. Budapest International Research and Critics Institute-Journal (BIRCI-Journal). P. 276-286.
- Sunarto Zulkifli, Practical Guide to Islamic Banking, Jakarta: Zikrul Hakim