

## **NADZAR AS AN EFFORT TO GAIN PROFIT AND ITS IDEAL IMPLEMENTATION IN *AL-QARDH* FINANCING IN ISLAMIC FINANCIAL INSTITUTIONS**

**Parmujianto; Musataklima**

Hukum Ekonomi Syariah, STAI AL-Yasini Pasuruan, Indonesia;  
Fakultas Syariah, UIN Maulana Malik Ibrahim Malang, Indonesia

Email: [parmujianto008@gmail.com](mailto:parmujianto008@gmail.com)

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### ***Abstract***

*Qardh, or interest-free lending, is one of the financial instruments employed by Islamic Financial Institutions (IFIs). However, in contemporary practice, a phenomenon has emerged involving the use of the nadzar (vow) concept as a means of gaining profit, fundamentally contradicting the intrinsic nature of al-Qardh. This study examines the integration between al-Qardh and nadzar, its legal foundation, juridical consequences, and an ideal model of implementation within IFI practices. The research employs an empirical legal method with a sociological approach, collecting primary data through interviews with informants and relevant stakeholders and secondary data through document and literature studies. All data were analysed using a qualitative-descriptive approach. The findings indicate that nadzar can be voluntarily and temporarily combined within the al-Qardh scheme based on*

*interpretations of the DSN-MUI fatwa that permits non-binding profit arrangements. Although nadzar is not legally binding, it holds a morally binding force as a religious commitment from the customer. Ideally, this model should be applied to productive rather than consumptive financing, with returns contingent upon the success of the financed venture rather than the mere disbursement of funds. This study offers practical contributions to the development of innovative and Sharia-compliant financing schemes while also enriching the theoretical discourse on legal engineering in Islamic economics.*

*Qardh, atau pinjaman tanpa bunga, merupakan salah satu instrumen keuangan yang digunakan oleh Lembaga Keuangan Islam (LKI). Namun, dalam praktik kontemporer, muncul fenomena penggunaan konsep nadzar (janji) sebagai sarana untuk memperoleh keuntungan, yang secara fundamental bertentangan dengan sifat intrinsik al-Qardh. Penelitian ini mengkaji integrasi antara al-Qardh dan nadzar, landasan hukumnya, konsekuensi yuridisnya, serta model ideal implementasinya dalam praktik IFI. Penelitian ini menggunakan metode hukum empiris dengan pendekatan sosiologis, mengumpulkan data primer melalui wawancara dengan informan dan pemangku kepentingan terkait, serta data sekunder melalui studi dokumen dan literatur. Semua data dianalisis menggunakan pendekatan kualitatif-deskriptif. Temuan menunjukkan bahwa nadzar dapat secara sukarela dan sementara diintegrasikan dalam skema al-Qardh berdasarkan interpretasi fatwa DSN-MUI yang memperbolehkan pengaturan keuntungan yang tidak mengikat. Meskipun nadzar tidak mengikat secara hukum, ia memiliki kekuatan mengikat secara moral sebagai komitmen agama dari pelanggan. Idealnya, model ini harus diterapkan pada pembiayaan produktif daripada konsumtif, dengan pengembalian bergantung pada kesuksesan usaha yang dibiayai daripada sekadar pencairan dana. Studi ini memberikan kontribusi praktis bagi pengembangan skema pembiayaan inovatif dan sesuai syariah, sekaligus*

*memperkaya diskursus teoretis tentang rekayasa hukum dalam ekonomi Islam.*

*Keywords: ideal implementation, legal consequence, sharia financial institution, al-Qardh-based lending.*

## Introduction

Baitul Maal wa Tamwil (BMT) is a community-based financial institution established and managed by local communities, utilising resources and capital sourced from their immediate surroundings. The concept of *maal* in BMT has evolved from the practice of collecting and productively distributing Zakat, *Infaq*, and *Sadaqah* (ZIS) funds within the Muslim community. Meanwhile, the concept of *tamwil* refers to productive economic activities aimed at providing benefits for economically disadvantaged groups, particularly those in the microeconomic sector. In terms of regulation, Law Number 1 of 2013 concerning Microfinance Institutions, as partially amended by Law Number 4 of 2023 concerning Financial Sector Development and Reinforcement, requires all Microfinance Institutions (MFIs), including BMTs, to align their operations with the provisions of the prevailing legislation. This law provides a one-year transitional period for BMTs and similar institutions to obtain a business licence from the Financial Services Authority (OJK). Accordingly, BMTs are recognised as part of the MFI system, and all their activities must comply with the relevant legal requirements.

As a Sharia-based MFI, BMT offers comprehensive financial services. In its function as a *baitul maal*, BMT manages funds from zakat, *infaq*, and *sadaqah*; whereas in its role as a *baitul tamwil*, it mobilises and distributes funds to and from its members. One form of such distribution is through *qardh* or *al-qardhul hasan* financing, a non-interest-bearing loan agreement provided to members who meet specific eligibility criteria.<sup>1</sup> In practice, borrowers are obliged to repay the loan in full within the agreed period without any additional gain for

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<sup>1</sup> Nurjannah S & Setiaji, B. Law Enforcement on Sharia Compliance: a Case Study on The Murabahah Consumptive Financing Agreement of Bank A Syariah. *Jurnal IUS Kajian Hukum Dan Keadilan*, 9(2) 2021, 299–309 . <https://doi.org/10.29303/ius.v9i2.895>

the BMT. This type of contract is designed as a financial solution for individuals in need of urgent funds or for other social purposes, with no interest or yield.

Nevertheless, in practice, certain Sharia-based Microfinance Institutions (MFIs) have witnessed a deviation from the fundamental principles of the *qardh* contract, particularly through the integration of the *nadzar* system as a form of *'aqd at-taba'i* (subsidiary contract). Within this system, clients voluntarily express a commitment to donate a portion of their profits to the Sharia MFI if their business venture succeeds as an expression of gratitude. This phenomenon underscores the need for an in-depth examination of the *nadzar* practice from the perspective of internal MFI actors (insiders), as well as an assessment of the extent to which such practices promote mutual benefit for both institutions and clients. Given that public welfare (*maslahah*) is a core objective of Islamic law, such an inquiry is both relevant and necessary to develop a model of Islamic financing that adheres to Sharia principles while also responding to evolving community needs.

Previous studies have explored the integration of *nadzar* within *al-Qardh* financing. For example, Saifuddin Syuhri,<sup>2</sup> examined the application of the *nadzar* contract at BMT *Maslahah* and found that this model provided members with both convenience and comfort. The flexibility of the *nadzar* arrangement is seen as an appealing alternative that diversifies BMT financing products. Meanwhile, Abdullah Shodiq<sup>3</sup>, through his engagement with religious scholars, concluded that the *nadzar* system in *al-Qardh* financing is religiously permissible and serves as an ethical solution that avoids elements of *riba* (usury), *gharar* (uncertainty), and *maysir* (gambling). Furthermore, the system is regarded as having a positive effect on member loyalty and helps reduce dependence on loan sharks. In contrast, Bernad Hananto's study<sup>4</sup> focused on the issue of late payment penalties at BMT UGT Sidogiri Cikarang, linking it to

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<sup>2</sup> Saifuddin Syuhri, "Evaluasi Penerapan Aqad Nadzar Pada Pembiayaan Qardh (Studi Pada Koperasi Baitul Maal Wa Al Tamwil (Bmt Maslahah)," *Jurnal Manajemen Dan Keuangan Syariah* Vol. 4, no. No. 2 (2023): 56.

<sup>3</sup> Abdullah Shodiq, "Perspektif Kiai Pesantren Terhadap Penerapan Sistem Nadzar Sebagai Media Perolehan Keuntungan Dalam Pembiayaan Akad Al-Qardh Di Lembaga Keuangan Mikro Syariah Pasuruan" (Universitas Islam Negeri Maulana Malik Ibrahim Malang, 2023).

<sup>4</sup> Bernad Hananto, Iin Masriah, and Rahadian Sa, "Implementasi Sanksi Denda (Nadzar) Dalam Transaksi Pembiayaan Murabahah," *JPIES: Jurnal Pelita Ilmu Ekonomi Syariah* 01, no. 02 (2024): 62–70.

DSN-MUI Fatwa No. 17/DSN-MUI/IX/2000 concerning sanctions (*ta'zir*). However, this remains a subject of scholarly debate regarding its legitimacy.

Unlike previous research that has largely focused on the legality, general benefits, and scholarly perspectives concerning the *nadzar* practice in *al-Qardh* financing, this study adopts a more critical and contextual approach, focusing on the legal implications and ideal implementation model of the *nadzar* system within Islamic Microfinance Institutions (BMTs). In particular, it examines how *nadzar*, as *at-taba'i* (subsidiary contract), is situated within the legal framework of contemporary Islamic banking and finance and how its morally binding, though not legally enforceable, nature may be ethically and strategically integrated into productive rather than consumptive financing schemes. Additionally, this study centres on the insider perspective—the direct actors within BMTs—which has not been thoroughly explored in previous research. As such, the study offers a novel contribution by proposing a normative and practical framework for the development of *al-Qardh* financing based on *nadzar*, aligned with Sharia principles and responsive to both institutional and socio-economic needs of the community.

## Methods

This study is an empirical,<sup>5</sup> or non-doctrinal,<sup>6</sup> legal research employing a socio-legal and conceptual approach<sup>7</sup> and examining the phenomenon of using *nadzar* as a means of generating profit within the *al-Qardh* contract, classified as a *tabarru'* (benevolent) contract in Islamic Financial Institutions (henceforth referred to as IFIs). The primary data were collected through interviews with financial service practitioners at IFI-BMT Masalahah Pasuruan. In addition to primary data, this research also utilised secondary data relevant to the legal issues studied. Secondary data were obtained through document and literature reviews. These data consisted of several laws and regulations, such as

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<sup>5</sup> M Syamsuddin, *Mahir Meneliti Permasalahn Hukum* (Jakarta: Prenada Media Group, 2021).

<sup>6</sup> Soetandyo Wignjosoebroto, *Hukum: Paradigma, Metode, Dan Masalahnya*, ed. Ifdhal Kasim (Editor Utama) et al. (Jakarta: Elsam dan Huma, 2002). Soetandyo Wignjosoebroto, *Hukum Konsep Dan Metode* (Malang: Setara Press, 2013).

<sup>7</sup> Soerjono Soekanto dan Sri Mamudji, *Penelitian Hukum Normatif* (Jakarta: Rajawali Press, 1985). Soerjono Soekanto dan Sri Mamudji, *Penelitian Hukum Normatif Suatu Tinjauan Singkat* (Jakarta: PT Rajagrafindo Persada, 2006). Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Prenada Media Group, 2010).

Law No. 21 of 2008 concerning Islamic Banking, Law No. 17 of 2012 concerning Cooperatives, Law No. 6 of 2023 concerning the Enactment of Government Regulation in Lieu of Law No. 2 of 2022 concerning Job Creation into Law, Regulation of the Financial Services Authority of the Republic of Indonesia No. 29/POJK. 03/2019 on the Quality of Productive Assets and the Formation of Provisions for the Write-off of Productive Assets of Islamic Microfinance Banks and Fatwa of the National Sharia Council of the Indonesian Ulema Council No. 19/DSN-MUI/III/2001 on al-Qardh. The document review method was employed to access secondary data that was not publicly available, such as the IFI's financial reports, whereas the literature review was applied to secondary data that is publicly accessible. In light of current trends in digital data management, internet searches were also employed as a method for collecting secondary data. The collected data was then analyzed descriptively using contract law theory and justice theory to provide an illustrative picture of the phenomenon under study.

## Discussion

### The Concept of *Nadzar*, *Al-Qardh* Contract, and its combination in Lending by the Sharia Financial Institution (IFI) BMT Maslahah Pasuruan, Indonesia

*Nadzar*, in its literal sense, refers to a personal vow or self-imposed promise to undertake a particular act. Terminologically, it is defined as an obligation voluntarily assumed by an individual to perform or refrain from a specific act to draw closer to Allah (SWT).

A *nadzar* is a personal declaration made to fulfil a specific action should a desired objective or goal be achieved. Its fulfilment is governed by several principles: (a) it must originate from one's own volition and be expressed verbally, not merely held as an internal intention; (b) it must be made solely for the sake of Allah; (c) it must not involve any action prohibited by Islamic teachings; and (d) if a person passes away before fulfilling their *nadzar*, the obligation transfers to their family.

One particular form of *nadzar* is *nadzar mu'allaq*,<sup>8</sup> which is conditional upon the attainment of some benefit or the avoidance of harm. This is supported by a hadith narrated by Ibn 'Abbas, recounting how Sa'ad bin 'Ubadah sought the Prophet's (peace be upon him) guidance regarding a vow his mother had not fulfilled before her death. The Prophet instructed Sa'ad to fulfil the vow on her behalf (as agreed upon by Bukhari and Muslim). Accordingly, someone who says, for example, "If Allah cures my illness, I will worship Him," is obligated to fulfil that vow upon recovery. However, if the phrase "*Insha Allah*" (God willing) is added to the vow, it releases the individual from that obligation.

The concept of al-Qard, derived from Arabic "قرض," refers to a distinctive Islamic financial practice: an interest-free loan grounded in benevolence. *Qard*, often translated as a "benevolent loan,"<sup>9</sup> entails providing financial assistance without expecting any form of interest or return. Such loans are offered without collateral, purely motivated by goodwill and generosity, and based on mutual trust to assist clients in need without imposing additional financial burdens.<sup>10</sup>

In the Islamic financial system, *Qardh* plays a vital role in fostering social cooperation and meeting the community's financial needs. Unlike conventional interest-bearing loans, *Qardh* aligns with Islamic principles that aim to promote economic growth, alleviate poverty, and enhance overall social welfare. The Qur'an encourages the practice of *Qardh* as a noble act, symbolising obedience to Allah through selfless assistance to others without any profit motive.<sup>11</sup>

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<sup>8</sup> Imtiyaz Wizni Aufa, Anugrah Muhtarom Pratama, Umi Khaerah Pati, Cash Waqf Linked Sukuk Through Securities Crowdfunding in Indonesia, *Jambura Law Review*, VOLUME 5 NO. 1 JANUARY 2023.

<sup>9</sup> Hasan KAZAK and Hasan Basri ALIM, "Qard Al-Hassan Model as an Institutionalised Method of Islamic Finance," *Islamiyyat* 44, no. 1 (2022): 203–20, <https://doi.org/10.17576/islamiyyat-2022-4401-18>.

<sup>10</sup> Moilim El and Azhar Mdawhoma, "Qard The Good , The Fair , & The Ugly: From an Islamic Finance Perspective" 5 (2024).

<sup>11</sup> Tin Yuliani, "Resolution of Tort Disputes in the Implementation of Akad Al-Qardh in Sharia Banking," *Journal of Islamic Business and Economic Review (JIBER)* 3, no. Vol 3, No 2 (2020): July, 2020 (2020): 93–100.

The *al-Qardh* contract possesses several main characteristics.<sup>12</sup> First, it is entirely interest-free. Unlike standard loans that incur interest, *al-Qardh* requires the borrower to repay only the original loan amount with no additional charges. Second, any additional repayment is voluntary. Borrowers are not obligated to return more than they received but may choose to repay early or offer extra as a gesture of gratitude or goodwill. This practice resembles a gift, wherein the borrower may give more than the amount borrowed. Third, certain conditions must be met for the *al-Qardh* contract to be valid. Both parties—the lender and the borrower—must have the legal capacity to enter into an agreement. Furthermore, the loan amount must be disbursed to the borrower, who must also be capable of receiving the funds for the contract to be binding.

The implementation of *al-Qardh* schemes in IFIs is stipulated in the National Sharia Council Fatwa No. 19/DSN-MUI/IV/2001. The fatwa generally stipulates that (1) *al-Qardh* refers to the provision of loans to those in need; (2) the borrower is obligated to repay the principal amount within the agreed time frame; (3) the borrower bears administrative costs; (4) the MFI may request collateral if necessary; (5) the borrower may voluntarily provide additional funds (donations) to the MFI, provided such payments are not stipulated in the contract; and (6) if the borrower is unable to repay part or all of the loan by the agreed time, and this has been confirmed by the IFI, the repayment period may be extended or part or all of the debt may be written off.

For clients who have the ability to fulfil their obligations but show no willingness to do so, the aforementioned DSN Fatwa allows IFIs to impose sanctions. These may include, but are not limited to, the sale of collateralised assets. If the proceeds from the sale of such collateral are insufficient, the client remains liable to settle the full outstanding amount. Additionally, the DSN-MUI stipulates that funds for *al-Qardh* financing may be sourced from the institution's capital, retained earnings, or from other institutions and individuals who entrust their *infaq* to the IFI for distribution.

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<sup>12</sup> Muhammad Yusuf Saleem, "The Contract of Loan (Al-Qard)," in *Islamic Commercial Law* (Singapore: John Wiley&Sons Singapore Pte. Ltd., 2012), 79–86, <https://doi.org/10.1002/9781119198956.ch5>.

According to Syafi'i Antonio,<sup>13</sup> funding sources for *al-Qardh* financing are categorised into two: internal and external. External sources consist of *al-Qardh* funds obtained from third parties, such as *infaq*, *sadaqah*, and other community-based contributions. Internal sources, on the other hand, are derived from the repayments of previous *al-Qardh* loans made by borrowers. The process operates as follows: firstly, for short-term financing needs, Islamic financial institutions utilise internal funds, as the *al-Qardh* contract is designed to benefit the client more than the institution. Secondly, for financing small businesses and social welfare activities, IFI draws upon external funds such as *infaq*, *sadaqah*, and grants.

*Al-Qardh* financing in Islamic Financial Institutions offers several benefits, including (1) facilitating financial access for the community, (2) fostering compassion and mutual care, (3) alleviating hardship, and (4) providing tangible advantages to borrowers. The objectives of *al-Qardh* include (1) providing rapid financial assistance to clients in urgent need, (2) distinguishing Islamic banks from conventional ones by incorporating a social mission alongside commercial goals, and (3) enhancing the positive image and public loyalty towards Islamic banks through such socially oriented practices.<sup>14</sup>

Not only is *al-Qardh* financing noble in purpose and rich in spiritual wisdom, but it also generates a range of practical benefits, including<sup>15</sup> (1) offering solutions for members in need of quick funds to address capital shortages, (2) serving as a defining feature that differentiates Islamic financial institutions from their conventional counterparts through their social mission, (3) strengthening public trust and loyalty toward Islamic financial institutions due to their social values, (4) supporting small traders, micro-entrepreneurs, and MSMEs in developing their businesses as a reflection of institutional care for the underprivileged, (5) liberating small traders from predatory lenders through interest-free loans, and (6) assisting members who have experienced bankruptcy

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<sup>13</sup> Muhammad Syafi'i Antonio, *Bank Syariah: Dari Teori Ke Praktek* (Jakarta: Gemas Insani Press, 2001).

<sup>14</sup> Muhammad Syafi'i Antonio.

<sup>15</sup> Shodiq, "Perspektif Kiai Pesantren Terhadap Penerapan Sistem Nadzar Sebagai Media Perolehan Keuntungan Dalam Pembiayaan Akad Al-Qardh Di Lembaga Keuangan Mikro Syariah Pasuruan."

to recover and grow their businesses, eventually transforming them into *muzakki*—those eligible to give zakat.

In the current era of Islamic financial development, certain IFIs have begun to integrate the concepts of *nadzar* and *al-Qardh* when providing financing to their clients. However, this integration is not absolute but rather relative, as the inclusion of *nadzar* is based on the client's voluntary initiative and does not constitute a legal obligation. Therefore, not every *al-Qardh* agreement necessarily gives rise to a *nadzar*. The underlying purpose of incorporating *nadzar* in this context is to create a mechanism for generating returns within *al-Qardh* financing, even though *al-Qardh* itself is fundamentally a *tabarru'* (benevolent) contract in Sharia-based financial institutions.

The *nadzar*, in this context, is nothing more than a unilateral commitment made by the client, contingent upon the success of their financing application with the IFI. Viewed through the lens of *nadzar* classifications, this falls under the category of *nadzar mu'allaq*, which is made conditionally—based on the attainment of a benefit (approval of financing by the IFI) or the avoidance of harm (rejection of the financing application).

*Nadzar* does not constitute a contract, whether principal or *accessoir*, within the *al-Qardh* agreement, as it does not fulfil the objective and subjective elements required of a legally binding contract.<sup>16</sup> The implementation of *nadzar* is based on an internal fatwa issued by the Sharia supervisory board of BMT Maslahah, grounded in Sharia principles and various internal policies and considerations of the institution. This practice applies specifically to *al-Qardh* financing and includes:<sup>17</sup> (1) special treatment for members who meet criteria set by the BMT; (2) decisions regarding the use of *nadzar* within *al-Qardh* financing; (3) positioning *al-Qardh* as a complementary product to other financing schemes such as *murābahah*, *muḍārabah*, *mushārah*, *ijārah*, and pawn-based contracts; (4) offering the *nadzar* agreement to interested

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<sup>16</sup> Syamsul Anwar, *Hukum Perjanjian Syariah: Studi Tentang Teori Akad Dalam Fiqih Muamalat* (Jakarta: Rajawali Press, 2007).

<sup>17</sup> Syuhri, "Evaluasi Penerapan Aqad Nadzar Pada Pembiayaan Qardh ( Studi Pada Koperasi Baitul Maal Wa Al Tamwil (Bmt Maslahah)."

members; (5) BMT's initiative to propose the *nadzar* agreement; (6) discretion in determining the contribution amount; and (7) execution of the commitment either orally or in writing.

When *nadzar* is used as a means to generate financial returns in *al-Qardh* financing schemes, it may be seen as a form of *hilah* (engineering) within Islamic law<sup>18</sup> developed in response to a provision in the DSN-MUI fatwa that allows borrowers to make voluntary contributions to the IFI. The fatwa states: "*Borrowers (clients under al-Qardh) are permitted to make voluntary contributions to Islamic financial institutions, provided that no prior agreement exists regarding such contributions in the initial contract.*" However, since the fatwa does not elaborate on the system for such voluntary giving, IFI authorities have resorted to the *nadzar* mechanism.

The *nadzar* is documented in a letter bearing the header "*Statement of Nadzar,*" beginning with the *basmalah* ("Bismillahirrahmanirrahim"), and includes declarations such as: "The undersigned, Full Name, Identification (ID Card), Last Educational Qualification, Residential Address, Home Ownership Status, Occupation/Business, Business Address, hereby declare a *nadzar*: 'Should BMT MASLAHAH be willing to grant me a loan in the amount of ..... (.....), I will donate/render service to BMT Maslahah in the amount of Rp..... for the duration of the loan until it is fully repaid.' This statement is made truthfully and without any coercion from any party.

Furthermore, the *nadzar* letter is signed by the client, an IFI officer, and designated witnesses or guarantors. However, the roles of the witnesses and IFI officers are not as legal subjects within a contract, since the statement does not constitute a binding contract or agreement. The presence of sanctions and witnesses serves as evidentiary support in case the client later denies the content or existence of the statement. The guarantor acts as a *kafalah* (a personal

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<sup>18</sup> Edib Smolo and Abubakar Muhammad Musa, "The (Mis)Use of Al-Hilah (Legal Trick) and Al-Makhraj (Legal Exit) in Islamic Finance," *Journal of Islamic Accounting and Business Research* 11, no. 9 (2020): 2169–82, <https://doi.org/10.1108/JIABR-01-2020-0009>. Ainul Yakin, "Challenging the Practice of Hilah in Contract Engineering in Islamic Financial Institutions from the Perspective of Islamic Business Ethics," *Al-Iqtishad: Jurnal Ilmu Ekonomi Syariah (Journal of Islamic Economics)* Volume 16, no. October 2023 (2024): 109–24.

guarantor),<sup>19</sup> assuming responsibility for fulfilling the nadzar as declared in the statement.

### Legal Argumentation regarding the Implementation of *Nadzar* in Lending under the *al-Qardh* Contract in IFI BMT Masalah Pasuruan

The original intent of *al-Qardh* is to serve as a *tabarru'* contract—non-profit and oriented toward humanitarian missions.<sup>20</sup> A *tabarru'* contract refers to a form of donation agreement in which the donor does not expect compensation or material gain in return. In other words, *tabarru'* represents a selfless act of giving, not aimed at securing business profit or personal benefit. The essence of a *tabarru'* contract lies in fostering a willingness to share and support one another within a community.<sup>21</sup> This concept is central to Islamic economics, which prioritises social justice and collective welfare as foundational principles.

Interest-free lending, known as *al-Qardh*, is viewed as a manifestation of the *tabarru'* agreement—an arrangement of virtue and charity.<sup>22</sup> It is carried out as a form of mutual assistance, with no expectation of return or profit for the lender. At its core, *al-Qardh* is intended to alleviate an individual's financial difficulties rather than to generate business gains.

However, as previously noted, certain IFIs have integrated *nadzar* into their *al-Qardh* financing schemes as a means of deriving financial benefit for the institution. This integration raises the need to examine the legal reasoning that underpins such a mechanism, which effectively enables returns through a particular form of legal construction. Within the organisational framework of

<sup>19</sup> Aishath Muneza and Zakariya Mustapha, "Practical Application of Kafalah in Islamic Banking in Malaysia," *PSU Research Review* 4, no. 3 (2020): 173–87, <https://doi.org/10.1108/PRR-01-2019-0001>. Subaidi and Subyanto, "Personal Garansi Dalam Produk Qardul Ahsan," *Jurnal Lisan Al-Hal* 15, no. 1 (2021): 10.

<sup>20</sup> N Naisabur and H M Putra, "Tabarru Contracts in The Form of Self Guarantee and Providing Something," *Journal of Nusantara Islam* 09, no. 02 (2021): 22–32, <https://doi.org/10.15575/ijni.v9i2.14301>.

<sup>21</sup> Ilda Hayati, "Aplikasi Akad Tabarru' Wadi'ah Dan Qard Di Perbankan Syariah," *Al Falah: Journal of Islamic Economics* 1, no. 2 (2016): 188–90, <http://journal.iaincurup.ac.id/index.php/alfalah/article/view/100>.

<sup>22</sup> Nurul Hidayati and Agus Sarono, "Pelaksanaan Akad Qardh Sebagai Akad Tabbaru," *Notarius* 12, no. 2 (2019): 931–47. Farid Budiman, "Karakteristik Akad Pembiayaan Al-Qardh Sebagai Akad Tabarru'," *Yuridika* 28, no. 3 (2013), <https://doi.org/10.20473/ydk.v28i3.354>.

IFI, the Sharia Supervisory Board plays a critical role in overseeing the compliance of institutional practices with Sharia principles, thereby ensuring that the spiritual rights of clients are fulfilled.

According to the Sharia Supervisory Board (DPS) of IFI-BMT Maslahah Sidogiri, the implementation of *al-Qardh* refers to Fatwa No. 19/DSN-MUI/III/2001 issued by the National Sharia Council of the Indonesian Ulema Council (DSN-MUI), which permits clients to make voluntary contributions to IFIs without any agreement being stipulated in the contract. The institution holds the view that incorporating the *nadzar* system into *al-Qardh* financing offers an alternative for clients in need of funds without resorting to usurious practices. The existence of urgent circumstances or the difficulty in accessing interest-free loans does not justify engaging in *riba*, but rather can be addressed through the *nadzar* mechanism, which allows for the possibility of added benefit.<sup>23</sup>

In line with this perspective, scholars of Islamic boarding schools involved in formulating internal fatwas for IFI-BMT consider *nadzar* a viable solution to avoid *riba*-based transactions, particularly in emergencies. Abd Ghofur<sup>24</sup> and Ilham Wahyudi argue that additional returns in *al-Qardh* contracts, whether through *nadzar*, *ṣadaqah*, or *hibah*, are permissible. However, Imron Mutamakkin<sup>25</sup> maintains that such practices remain haram (impermissible) from the standpoint of *taṣawwuf* and *fiqh bāṭin* (esoteric jurisprudence) and, therefore, should not be recognised as legitimate income.

The permissive stance on deriving benefits from *al-Qardh* financing aligns with the view of *Syafi'iyah* scholars, who recommend that borrowers may voluntarily provide additional benefits as long as these are not stipulated in the contract; such actions are even regarded as commendable. This view is also consistent with the Ḥanafī position, which prohibits stipulated profit at the outset of the agreement but allows it if voluntarily given and not customary. In

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<sup>23</sup> Abdullah Mun'im Kholili (Sharia Supervisory Council of LKS BMT Maslahah), *Interview*, 28 August 2024

<sup>24</sup> Abd.Ghofur (the Member of DPS BMT UGT Nusantara, Vice Chairman of Tanfidziah PCNU Bangil), *Interview*, 29 August 2024

<sup>25</sup> Imron Mutamakkin, (the Chairman of Tanfidziyah PCNU Pasuruan Regency) *Interview*, 28 August 2024

contrast, this opinion diverges from the Mālikī school, which prohibits any gain in loan transactions, deeming it inherently linked to *riba* (usurious practices).

The essence of the foregoing views is that the provision of compensation by members to IFI-BMT within the *al-Qardh* financing scheme in Indonesia is permissible, provided that such compensation is not stipulated as a condition in the loan agreement. The mechanisms used include *nadzar*, *ṣadaqah*, or *hibah*, whereby any financial benefit received is treated as a token of gratitude for the loan extended and subsequently becomes a source of income for IFI-BMT.

The President Director<sup>26</sup> and the Head of the Financing Division at IFI-BMT<sup>27</sup> Maslahah Sidogiri contend that the implementation of *al-Qardh* financing using the *nadzar* system yields positive outcomes for the institution, including enhanced member loyalty and the ability to help clients avoid *riba* (usurious practices). Furthermore, members (clients) perceive the *al-Qardh* financing process under the *nadzar* system as both simple and practical, offering a prompt and suitable solution for those in need of funds.

The above discussion implies that the *al-Qardh* practice at IFI-BMT Maslahah Sidogiri is governed by the MUI Fatwa, which permits clients to offer voluntary contributions without such terms being embedded in the initial agreement. The *nadzar* system is regarded as a helpful tool for those requiring funds without falling into *riba*. Even in urgent circumstances, *riba* is not considered justifiable. *Al-Qardh* financing with *nadzar* has demonstrated positive effects, such as fostering member loyalty and providing alternatives to predatory lending. Members regard the financing process as practical. Any additional compensation offered is viewed as an expression of loyalty and must not be contractually required. This financing scheme also positively contributes to BMT's revenue.

The emergence of this legal engineering innovation reflects IFI's efforts to provide modern financing products and services that are relevant to the needs of its members. In practice, clients voluntarily commit through a *nadzar* agreement as a sign of sincerity and caution, thereby contributing to

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<sup>26</sup> Abdullah Shodiq, (President Director of LKS-BMT Maslahah Sidogiri), *Interview*, 28 August 2024

<sup>27</sup> Mambaul Ulum (the Head of Lending Department of LKS-BMT Maslahah Sidogiri), *Interview*, 29 August 2024

IFI-BMT's income by allocating a portion of their business proceeds—at a significantly lower percentage than the interest rates typically applied by conventional banks or moneylenders.

The combination of the *al-Qardh* contract with *nadzar* has emerged as an excellent product favoured by members, ranking third after *murābahah* and *muḍārabah* among the offerings of IFI-BMT. Data indicate a significant increase in uptake between 2020 and 2022, despite a slight decline in 2022 due to the COVID-19 pandemic. The accumulated assets reached Rp791,259,894.32, a figure influenced by the economic restrictions imposed during the pandemic. As post-pandemic recovery progresses, members have resumed economic activity and increasingly opted for the *nadzar* system within *al-Qardh* financing, viewing it as a means to avoid transactions involving elements of *riba*, *maysir*, and *gharar*.<sup>28</sup>

The strict application of the *al-Qardh* and *nadzar* combination is genuinely initiated by the clients themselves, aligning with the objectives of Maqashid Syariah.<sup>29</sup> Regarding the protection of wealth (*hifz al-mal*), *nadzar* may enhance the lender's motivation to allocate funds to those in need, thereby preventing idle capital and promoting broader economic utility. Because *nadzar* is voluntary and initiated by the client, it ensures that the *al-Qardh* contract remains free from *riba*. The promised benefit expressed through *nadzar* is not a condition of the loan but a voluntary act of goodwill.

In terms of life and welfare protection (*hifz al-nafs*), *al-Qardh* provides financial assistance to clients in distress, while *nadzar* facilitates easier access to interest-free loans, thereby safeguarding livelihoods and well-being. By relieving borrowers of interest burdens, *al-Qardh* allows them to focus on meeting basic needs without financial strain. Regarding the protection of intellect (*hifz al-'aql*), this system encourages clients to act responsibly and honour their *nadzar* commitments, cultivating both rational and ethical conduct. Freed

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<sup>28</sup> Shodiq, "Perspektif Kiai Pesantren Terhadap Penerapan Sistem Nadzar Sebagai Media Perolehan Keuntungan Dalam Pembiayaan Akad Al-Qardh Di Lembaga Keuangan Mikro Syariah Pasuruan."

<sup>29</sup> Jasser Audah, *Maqashid Al-Shariah A Beginners Guide* (London Washington: the INTERNATIONAL INSTITUTE of ISLAMIC THOUGHT, 2014).

from the burden of *riba*, clients can plan their finances with a clear mind, free from anxiety.

In the scope of religious protection (*hifz al-dīn*), the use of *al-Qardh* reinforces Islam's prohibition of *riba*, and the voluntary nature of *nadzar* further strengthens its alignment with Sharia principles. *Nadzar* is regarded as an act of worship that enhances one's faith and piety. Lastly, in terms of the protection of lineage and society (*hifz al-naṣl*), this system fosters social cohesion and mutual assistance. Interest-free access to capital promotes equity, ensuring that financial support is available not only to those who can afford to pay interest but also to those in genuine need.

The fulfilment of *maqashid syariah* can be achieved comprehensively if the implementation of the *al-Qardh* and *nadzar* combination adheres to several fundamental principles. First, the act of *nadzar* must be entirely voluntary and initiated by the borrower, and must not be a condition within the *al-Qardh* contract. Second, the IFI must not exert pressure on the borrower to make a *nadzar*. Third, *al-Qardh* must be recognised as a non-remunerative form of financing, while *nadzar* must be treated as a separate, independent act. By upholding these principles, the integration of *al-Qardh* and *nadzar* may serve as an innovative and beneficial Sharia-compliant financial instrument, one that promotes mutual assistance and ethical conduct within society according to the objectives of *Maqashid Syariah*.

### The Legal Consequence of *Nadzar* and its Ideal Implementation in Lending under an *al-Qardh* System an Islamic Financial Institution (IFI)

*Al-Qardh* financing combined with *nadzar* has brought positive implications for both IFIs and their members or clients in terms of economic benefits as well as other aspects. For IFI, the impacts include:<sup>30</sup> (1) *Al-Qardh* accompanied by a *nadzar* declaration letter can be utilised for various products, such as business capital, multifunctional services, Hajj cost advances and financing extensions; (2) this financing model has the potential to increase

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<sup>30</sup> Shodiq, "Perspektif Kiai Pesantren Terhadap Penerapan Sistem Nadzar Sebagai Media Perolehan Keuntungan Dalam Pembiayaan Akad Al-Qardh Di Lembaga Keuangan Mikro Syariah Pasuruan."

the financing portfolio and revenue of LKMS-BMT; (3) its implementation can enhance member trust in LKMS-BMT; (4) member loyalty to LKMS-BMT is expected to grow; (5) the financing scheme is compliant with Sharia principles; and (6) LKMS-BMT is better positioned to meet member needs, particularly by helping clients avoid un-Islamic lending practices (e.g. moneylenders).

For members or clients, the model offers the following benefits:<sup>31</sup> (1) it provides clarity on the Sharia-compliant nature of *al-Qardh* combined with *nadzar*; (2) it offers a simple, flexible, and halal contractual process; (3) funds can be used for business capital to enhance economic activity across sectors, cover Hajj registration fees, or meet urgent needs without cumbersome procedures; (4) members may receive *barakah* (spiritual benefits) through *sadaqah* (charitable giving); (5) transactions are convenient and practical; (6) members experience a sense of *barakah* due to compliance with Sharia; and (7) the *al-Qardh* with *nadzar* arrangement serves as a practical solution for members seeking to avoid the trap of usurious loans.

The use of *nadzar* in *al-Qardh* financing at BMT Maslahah began in 2007.<sup>32</sup> The data on BMT Maslahah's income from *al-Qardh* financing from 2000 to 2022 is as follows:<sup>33</sup>

**Table 1. Total Lending under *Al-Qardh* from 2020 to 2022**

No.	Contract/ Product	2020 (in Millions)	%	2021 (in Millions)	%	2022 (in Millions)	%
1	MRB	29.427	66.76	27.809	67.38	29.135	66.22
2	IJARA	12.760	28.95	12.199	29.56	13.920	31.64
3	MSA	2	0.01	-	-	-	-

<sup>31</sup> Shodiq.

<sup>32</sup> Saifuddin Syuhri dan Abd Ghafur, "Penerapan Akad Nadzar Pada Pembiayaan Qardh (Studi Pada Koperasi BMT Maslahah Jawa Timur)," *Jurnal Ar Ribhu Manajemen Dan Keuangan Syariah* 02 No.1 (2022).

<sup>33</sup> Shodiq, "Perspektif Kiai Pesantren Terhadap Penerapan Sistem Nadzar Sebagai Media Perolehan Keuntungan Dalam Pembiayaan Akad Al-Qardh Di Lembaga Keuangan Mikro Syariah Pasuruan."

4	MDA	126	0.29	74	0.18	48	0.11
5	RAHN	56	0.13	75	0.18	101	0.23
6	QARDH	1.705	3.87	1.110	2.69	791	1.80

Source: Abdullah Shodiq's Thesis

Based on the data in Table 1, it is evident that *al-Qardh* financing ranks third as a contributor to the revenue portfolio of the Islamic Microfinance Institution–Baitul Tamwil al-Qardh (LKMS-BMT), following other types of financing. This confirms that the implementation of *al-Qardh* financing combined with *nadzar* has had a positive impact on LKMS-BMT, including increased client loyalty and the prevention of client engagement with interest-bearing loans. Furthermore, clients perceive the *al-Qardh* with *nadzar* financing process as straightforward, facilitating quick and accessible funding for those in need. This has encouraged members to opt for financing schemes based on Sharia principles light in burden, satisfactory in service, and promising *barakah*, welfare, and economic justice, underpinned by a spirit of cooperation.

IFI BMT Maslahah sets certain requirements for membership or client eligibility for *al-Qardh* financing, which include<sup>34</sup> (1) being a small-scale trader, (2) operating a business either within a traditional market or in surrounding areas, (3) engaging in daily or weekly saving habits, (4) a maximum loan limit of Rp2,000,000 for small traders, and (5) for Hajj advance loans, a maximum loan limit of Rp24,000,000. Repayment of the *al-Qardh* loan to BMT may be accompanied by an additional amount over the principal, with varying percentages. For loans below Rp 2,000,000, the additional amount ranges from 1% to 10%, whereas for Hajj advance loans between Rp 2,000,000 and Rp 24,000,000, an additional 15% per annum is applied. These arrangements significantly contribute to BMT's revenue.

The *nadzar* is formalised in written form using a format provided by the Islamic Financial Service Provider (PUJK), and clients who make such declarations are religiously obliged to fulfil them. In Islam, *nadzar* is a solemn

<sup>34</sup> Ghafur, "Penerapan Akad Nadzar Pada Pembiayaan Qardh (Studi Pada Koperasi BMT Maslahah Jawa Timur)."

promise made to and for the sake of Allah, and such a promise carries the consequence of binding obligation. Therefore, anyone who undertakes a *nadzar* is required to fulfil what has been vowed, including those made in the context of an *al-Qardh* agreement. This obligation arises solely from the religious commitment inherent in the *nadzar*, which involves divine accountability—not from the PUJK or the presence of witnesses.

The *nadzar* described above is, in essence, a promise made to Allah, not to the Islamic Financial Service Provider (PUJK). The PUJK merely acts as a third party in relation to the client's vow to Allah through the act of *nadzar*. Accordingly, the *nadzar* should not be regarded as a contract with the PUJK, and thus it would be inaccurate to classify it as an *akad*. A promise represents an individual's expression of willingness to perform or refrain from a particular action, whereas a contract is a mutual agreement between two or more parties regarding what will or will not be done. A promise may be made unilaterally by one party, while a contract necessarily requires the consent of at least two parties. Promises are often made in the form of declarations or assurances, whereas contracts are typically formalised in writing or verbally expressed as legally enforceable agreements.

Fulfilling a promise in the form of a *nadzar* constitutes a universal moral obligation (morally binding), though not all promises carry legal force (legally binding). A promise may be legally enforceable if the promisee has incurred significant reliance or derived benefit from reasonably trusting in the promise.<sup>35</sup> A promise does not automatically acquire legal enforceability unless it forms part of a contract that includes the necessary elements of legal obligation. A promise may become legally binding if it creates a reasonable expectation of reliance that results in financial harm to the promisee.<sup>36</sup>

For a promise to become legally enforceable, it must satisfy certain primary elements. It is not sufficient to simply say, "I promise." There must be structure, intent, and the **exchange** of something of value. The four essential elements that render a promise enforceable are: (a) offer—one party proposes an agreement; (b) acceptance—the other party agrees to the terms; (c)

<sup>35</sup> Charles J. Goetz and Robert E. Scott, "Enforcing Promises: An Examination of the Basis of Contract," *The Yale Law Journal* 89, no. 7 (1980): 1261, <https://doi.org/10.2307/795967>.

<sup>36</sup> Comitz Law Firm, LLC "How a Promise Becomes Legally Binding" accessed 01 June 2025, <https://comitzlaw.com/2023/11/how-a-promise-becomes-legally-binding/>.

consideration—something of value is exchanged; and (d) intention to create legal relations—both parties must share a mutual intent to be legally bound. If any of these elements are absent, fulfilling the promise remains a moral or ethical duty, but it does not yet constitute a legal obligation.<sup>37</sup>

According to Islamic legal thought, a promise (*wa'd*<sup>38</sup>) is a declaration of one's willingness to do or refrain from doing something.<sup>39</sup> It is viewed as a moral obligation that ought to be fulfilled. A promise may carry legal implications if the promisee has relied upon it, incurred expenses, or taken certain actions based on the promise. A promise is inherently unilateral and grounded in the promisor's voluntary intent. Morally, Islam places strong emphasis on fulfilling promises and upholding one's word, considering it a virtuous value. Breaking a promise is condemned and may carry spiritual consequences.<sup>40</sup> While not every promise is legally enforceable, it may become binding if the promisee reasonably relies on it and suffers a loss or incurs costs as a result. Such reliance can be treated as consideration, thereby transforming the promise into a legally binding agreement.

A *nadzar* to donate to an IFI in return for receiving *al-Qardh* financing does not constitute a promise with legal consequences. Its fulfilment constitutes a moral obligation (*morally binding*), not a legal one (*legally binding*) since the essential legal elements of an enforceable promise are not satisfied: the promisee does not rely on the promise, nor does the promisee suffer financial loss or expend resources as a result. The *nadzar*, in this context, is not an independent act but rather a voluntary supplement to the *al-Qardh* financing—wherein the client is already subject to administrative fees and remains obligated to repay the principal amount of the loan.

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<sup>37</sup> Maxwell Ampong, "What makes a Promise legally binding?" accessed 01 June 2025, <https://www.linkedin.com/pulse/what-makes-promise-legally-binding-dr-maxwell-ampong-dba-mba-q3wve/>

<sup>38</sup> Fadziani Yaakub and Ahmad Hidayat Buang, "The Application of Promise (Wa'D) in Islamic Banking Contracts in Malaysia: A Maslahah Perspective," *International Journal of Banking and Finance* 19, no. 1 (2024): 39–56, <https://doi.org/10.32890/ijbf2024.19.1.2>.

<sup>39</sup> Muhammad and Hisyam Mohamad, "Promise (Wa'Ad) and Contract ('Aqad) According To Islamic Law: A Comparative Study," *Online Journal of Research in Islamic Studies* 1, no. 1 (2011): 2–20, <https://doi.org/10.15364/ris14-0101-04>.

<sup>40</sup> Faruk Md Abdullah and Asmak Ab Rahman, "The Theory of 'promise' (Wa'd) in Islamic Law," *Arab Law Quarterly* 29, no. 2 (2015): 168–89, <https://doi.org/10.1163/15730255-12341298>.

Although a *nadzar* to provide a voluntary contribution in *al-Qardh* financing is not legally binding, it is essential to note that the DSN-MUI fatwa permits such voluntary donations, with the initiative expected to come from the client or member, rather than the IFI. If the IFI initiates the proposal—even under the pretext of merely offering—it raises concerns that the institution may be seeking profit from the financing, effectively placing the client in a “take it or leave it” position.

A *nadzar* formalised through a declaration letter in a template provided by the IFI serves as strong evidence that the initiative originated from the institution. In principle, a *nadzar* should arise from the client’s pure intention and sincerity, ideally pledged internally, before the financing application is approved or rejected by the IFI. It would be more appropriate for the IFI to refrain from initiating or offering the *nadzar*, as this could create psychological pressure on the client to accept the proposal, especially once the financing has been approved, thus undermining the client’s *free will* in making the decision. In such circumstances, the decision to make a *nadzar* may be tainted by undue influence.

Therefore, the *nadzar* should be entirely left to the client’s discretion, free from any form of IFI intervention, so that it truly arises from sincerity and wholehearted consent, whether as a *nadzar* in itself or as an expression of gratitude for having received a temporary financial solution. Such an approach would be far more genuine, allowing for a purer expression of sincerity and a greater potential for *barakah* to be realised, as the *nadzar* would be made through an act of free and conscious will.

If the practice of *nadzar* is to be maintained within the *al-Qardh* financing scheme, its implementation must be strictly regulated. Otherwise, it risks undermining the very essence, objectives, and intended benefits of *al-Qardh*, which are primarily aimed at providing immediate assistance to clients in need, fulfilling a social role by supporting the underprivileged and demonstrating ease, compassion, and mutual care—ultimately alleviating burdens and generating *maslahah* (public benefit) for the borrower. Additionally, the benefits of *al-Qardh* are expected to support small traders and MSMEs by enabling them to access funding from IFIs for business development while also protecting them from exploitative lending practices

through interest-free loans.<sup>41</sup> In this way, members who have previously faced bankruptcy can revive their enterprises and are expected to eventually become *muzakki*. However, the inclusion of a *nadzar* element may compromise these objectives, rendering them less pure and potentially artificial in practice.

A crucial part of this strict regulation involves carefully selecting the areas in which *nadzar* may be applied, regardless of the source of funds used. Theoretically, financing can be divided into two typologies: consumptive and productive.<sup>42</sup> In the productive sector,<sup>43</sup> *al-Qardh* may serve as working capital to generate profit. Meanwhile, in the consumptive sector, *al-Qardh* can be used to meet daily needs while still adhering to prudential principles in line with Islamic financial regulations.

The utilisation of *al-Qardh* for productive financing is intended to support business activities,<sup>44</sup> including starting or expanding a business. The resulting profits may help individuals or entrepreneurs generate income and improve their economic conditions. For instance, a small business owner may use *al-Qardh* to purchase raw materials or production equipment, thereby increasing production capacity and profitability.

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<sup>41</sup> Dwi Fidhayanti, Urgensi Pembentukan Regulasi Shadow Banking Pada Layanan Pinjam Meminjam Berbasis Teknologi Finansial Di Indonesia. *Jurnal IUS Kajian Hukum Dan Keadilan*, 8(2) (2020), 381–404. <https://doi.org/10.29303/ius.v8i2.722>

<sup>42</sup> Muhammad Hilmy Khoirun Nafi dan Ahmad Fawaiq Suwanan, “The Impact of Islamic Banks Productive and Consumptive Financing on Indonesia Economic Growth,” *Al-Ammwal: Jurnal Ekonomi Dan Perbankan Syariah* 16, no. 2 (2024): 111–25, <https://doi.org/10.70095/alamwal.v16i2.17061>.

<sup>43</sup> Wahyu Wibisono Wahid et al., “The Impact of Productive and Consumptive Financings on Indonesian Islamic Banking Profitability: Markov Switching Dynamic Regression,” *Jurnal Ekonomi Dan Bisnis Islam (Journal of Islamic Economics and Business)* 9, no. 1 (2023): 216–32, <https://doi.org/10.20473/jebis.v9i1.45639>.

<sup>44</sup> Dkk. Widiyanto, “Effectiveness of Al Qard Al Hasan Financing As a Poverty Allevation Model,” *Economic Journal of Emerging Market* 3, no. 1 (2011).

The use of *al-Qardh* for consumptive financing<sup>45</sup> is intended to meet basic needs such as food, shelter, or educational expenses.<sup>46</sup> Its benefit lies in providing financial assistance for necessities without imposing any profit burden, in alignment with Islamic teachings that seek to avoid *riba*. For example, a family may use *al-Qardh* to finance their children's education or to purchase essential household items.

Syafi'i Antonio has noted that for short-term financing, IFIs typically use internal funds, as the *al-Qardh* contract is meant to benefit the client more than the institution itself. Conversely, for financing clients involved in small-scale business or social activities, IFI may draw upon external sources such as *infaq*, *ṣadaqah*, or *hibah*. Ideally, the implementation of *nadzar* in *al-Qardh* financing should be limited to productive financing only.

*Nadzar* may be fulfilled if, within the productive financing arrangement, the client has earned a certain level of profit—regardless of the source of the *al-Qardh* funds. However, if the financing is derived from the IFI's internal capital, the resulting gain can be considered the institution's profit. If sourced from third-party funds such as *infaq* or *ṣadaqah*, any additional amount should be recorded as an increase in third-party funds. This process forms part of the utilisation strategy for *infaq* and *ṣadaqah*, where the returns are intended to support social missions, such as education, healthcare services, and broader improvements to community well-being.

By contrast, for consumptive financing—regardless of the funding source—*nadzar* should not be proposed. This is because such financing is used to cover essential needs, such as children's education or basic household

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<sup>45</sup> Rosyeni Rasyid, Erni Masdupi, and Muthia Roza Linda, "The Impact of Qardh Financing on Micro Waqf Banks on the Development of Micro-Businesses in the Pesantren Environment," in *Proceedings of the Ninth Padang International Conference On Economics Education, Economics, Business and Management, Accounting and Entrepreneurship (PICEEBA 2022)*, ed. Susanto et Al. (Padang: Atlantis Press International BV, 2023), 373–80, [https://doi.org/10.2991/978-94-6463-158-6\\_33](https://doi.org/10.2991/978-94-6463-158-6_33). Cinantya Sriyono Putri et al., "Relationship between Islamic Bank Consumptive Financing and Gross Regional Domestic Product in Indonesia, 2016-2020," *Journal of Islamic Economics Lariba* 9, no. 1 (2023): 97–114, <https://doi.org/10.20885/jielariba.vol9.iss1.art6>.

<sup>46</sup> Nuriyah Thahir, "Qardh Al-Hasan as an Alternative Solution In Poverty Alleviation," *SALAM: Jurnal Sosial Dan Budaya Syar-I* 10, no. 2 (2023): 345–56, <https://doi.org/10.15408/sjsbs.v10i2.31504>.

expenses, which are crucial for survival and dignity. Since no financial gain is generated by the client from this type of consumption, offering a *nadzar* as a form of profit for the IFI becomes illogical and unreasonable.

According to the DSN-MUI fatwa, IFI has the authority to provide relief in the form of payment extensions, partial reductions, or even full waivers of the *al-Qardh* principal for clients who are verified to be experiencing financial hardship. This provision underscores that determining the appropriateness of *nadzar* as a source of gain in financing—whether for consumption or production—requires careful deliberation. The fatwa allows for debt cancellation in cases of genuine inability to repay, which highlights that rather than pursuing profit, IFI may even be expected to forgive obligations in support of clients facing difficulty.

Based on the arguments presented above, it becomes unreasonable to require a client to make a *nadzar*—intended to generate profit for the IFI—when the client may not even be confident in their ability to repay the principal of the financing. If the *nadzar* is deemed necessary for the sustainability of the IFI, then its implementation must be tied to profits generated specifically from *productive al-Qardh* financing.

Referring to the above explanation, the ideal application of *nadzar* lies in *productive*, not *consumptive*, *al-Qardh* financing. Applying the *nadzar* equally across both types of financing without distinction overlooks their fundamental differences. This represents the legal maxim *summum ius summa iniuria*<sup>47</sup>-- the highest form of justice may become the highest form of injustice. Applying *nadzar* uniformly (as a commutative principle),<sup>48</sup> although voluntarily, may appear just on the surface. However, it is, in fact, unjust because it disregards the principle of proportionality<sup>49</sup> (distributive justice) and fails to consider the socio-economic context of *al-Qardh* clients.

<sup>47</sup> F.Z., "Summum Ius Summa Iniuria by J. Stroux," *Journal of Roman Studies* 18, no. May (2014).

<sup>48</sup> Peter Koslowski, *Principles of Ethical Economy* (Singapore: Springer Nature Singapore, 2001). Mark J. Bonica and Daniel B. Klein, "Adam Smith on Reputation, Commutative Justice, and Defamation Laws," *Journal of Economic Behavior and Organization* 184 (2021): 788–803, <https://doi.org/10.1016/j.jebo.2020.08.028>.

<sup>49</sup> Saparyanto Abdul Rahman, Annisa Khusnur Rosyida, Nur Afifah Aminuddin, "Principle of Proportionality as a Reflection of the Theory of Justice and Its Application by Judges in the Resolution of Business Contract Disputes," *DE LEGA LATA: Jurnal Ilmu Hukum* 7, no.

Therefore, *nadzar* should ideally not be offered in consumptive financing arrangements but rather in productive financing since, as outlined in the considerations of the DSN-MUI fatwa, IFIs are not merely commercial entities—they are also expected to fulfil a social role in advancing economic growth. IFI can contribute to economic development by channelling funds through the *al-Qardh* principle—a loan scheme that obliges the client to return the amount received within an agreed-upon timeframe without imposing any profit burden.<sup>50</sup>

## Conclusion

In conclusion, *al-Qardh* financing combined with *nadzar* may be applied on a voluntary and temporary basis according to the will and initiative of the client or member of the IFI. This constitutes a form of legal engineering aimed at generating returns from *al-Qardh* financing. The implementation of this combined scheme is stipulated in DSN-MUI fatwas as well as internal IFI fatwas and is viewed as having positive implications for both IFI and its clients. However, *nadzar* is not legally binding—neither upon the client nor the IFI—and therefore cannot be enforced by the institution. Nevertheless, it carries moral force for the client, as it represents a religious commitment. Ideally, the combination of *al-Qardh* and *nadzar* should be applied in productive, not consumptive, financing, such that the *nadzar* is contingent upon the client's success in the business venture financed by *al-Qardh* rather than upon the mere disbursement of funds by the IFI.

Based on the findings of this study, it is recommended that IFIs selectively apply the *al-Qardh* and *nadzar* financing scheme within the productive sector, emphasising the voluntary nature and moral responsibility of the client as its foundation. To reinforce its legitimacy and ensure legal certainty, more detailed operational guidelines should be developed by relevant authorities, such as the Financial Services Authority (OJK) and DSN-MUI, to prevent potential misuse or violations of Sharia principles. Furthermore, additional research is needed to

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1 (2022): 163–69, <https://doi.org/10.30596/dll.v7i1.7816>. Agus Yudha Hernoko, “Asas Proporsionalitas Sebagai Landasan Pertukaran Hak Dan Kewajiban Para Pihak Dalam Kontrak Komersial,” *Jurnal Hukum Dan Pembangunan* 5, no. 3 (2016): 248–53.

<sup>50</sup> Sylvia Janisriwati, Responsibilities of Financial Technology Company Due To Failure to Pay By Loan Recipients, *Jambura Law Review*, VOLUME 3 NO. 2 jULY 2021.

assessthe the effectiveness of this model in enhancing clients' moral compliance and improving the financial performance of IFI, as well as comparative studies with similar practices in other countries to broaden the scope of sustainable Sharia-compliant financial innovation.

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