



**ANALYSIS OF THE CONCEPT OF BILL DISCOUNTING
IN SHARIA BANKING
(DSN-MUI Fatwa Study No. 58/DSN-MUI/V/2007)**

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Abstract

This research examines the analysis of the DSN-MUI fatwa No. 58 / DSN-MUI / V / 2007 concerning Hiwālah practice which is currently being applied in Islamic Financial Institutions. Bill discounting is a contract for providing services to a Sharia (Islamic) Bank in the form of takeover of customer debt by the Bank. Bill discounting is not intended to seek profit, but to facilitate the implementation of financing because Bill Discounting includes multi-service financing. The main objective of DSN-MUI in implementing the contract is to maintain the common good. Thus allowing for quick and simultaneous debt settlement. In this article, the main problem is how the concept of bill discounting in Islamic Banking according to the DSN fatwa No. 58 / DSN-MUI / V / 2007. The research method used is library research with the uşūlī approach. The conclusion of this study is that one of the principles of DSN is hifz al-māl (safeguarding assets) with financial institutions obliged to safeguard (amānah) customers' funds as well as possible.

Keywords : Bill Discounting, Sharia banking, DSN-MUI

INTRODUCTION

One form of muamalah activity is accounts payable. In debt, Islam teaches to pay off immediately because delaying payments for people who can afford it is an act of injustice. People who owe (debtor), can transfer the debt to another party. Likewise with people who have debts (creditors), they can transfer their receivables to other people. In Islamic law, it is called *iwālah* (Neni Hardiati 2021).

Hiwālah is the transfer of dependents with other dependents with the same debt (Andziri, n.d.). The Hanafiyah and Malikiyah groups argue that *iwālah* is an exception in buying and selling transactions, namely selling debt with debt. This is because humans really need it. This is also the opinion that is most considered authentic among the Shafi'iyah and also according to one of the narrations among the Hanabilah. The basis is a hadith which means: if one of you is transferred his debt to a rich person, then accept it. (Narrated by Bukhari and Muslim).

The form of *iwālah* application in Islamic banking is bill discounting. Bill discounting is one of the Islamic bank products where the customer has a debt to a third party transferring the debt to the bank, the bank then pays the debt and the bank collects it from a third party, so, here bill discounting includes multi-service financing. In principle, multi-service financing of Islamic banking (fee based service) in bill discounting services refers to the concept of *ijarah (ujrah)*, namely payment for a service. In this multi-service financing, Islamic banks will determine direct *ujrah* in the form of Rupiah (Khoirina 2018).

Bill discounting is not only used to solve debt problems, even more than that it also acts as a transfer of funds from individuals to other individuals, companies or firms as has been used by half the banking system. (Nizaruddin 2013). In its application, bill discounting is used in domestic and international transactions aimed at supporting the smooth running of business and attracting the distribution of corporate transactions to the bank concerned, which in turn can increase the credibility of customers towards counterparties (brokers/bank parties). Not only that, with financing from the banking sector, it can improve the efficiency of working capital management for customers/exporters through the provision of debt financing facilities (Ismail 2017). In principle, bill discounting is similar to *iwālah*, but in bill discounting, the customer must pay a fee (Y. T. Cahyani 2018).

Fee in muamalah fiqh is called *ujrah* (wages). (Buchori 2010). *Ujrah*/Fees are defined as incentives or bonuses, namely payments received either up front or behind and or between the two, for certain services provided in accordance with an agreement or contract. However, the mechanism of bill discounting is the same as *iwālah bil ujrah*, which according to the meaning of *iwālah bil ujrah* is *iwālah* with the imposition of *ujrah*. (A. T. Cahyani 2020). The National Sharia Council of the Indonesian Ulema Council (DSN-MUI) has issued Fatwa DSN No. 58/DSN-MUI/V/2007 on *hiwālah bil ujrah*, that *hiwālah bil ujrah* only applies to *hiwālah muṭlaqah* i.e. *hiwālah* where *muhil* is a person who owes, but does not owe to *muhāl'alaih*.

Departing from the background of the problem, a deeper study is needed on the concept of bill discounting in Islamic Banking, because basically the operation of Islamic Banking in Indonesia is based only on the DSN-MUI fatwa and banking authority regulations. But basically the mechanism of DSN-MUI in making a fatwa is not to override the opinions of imams maḏhab, while in this DSN-MUI does not follow the view of Imam Maḏhab.

REVIEW OF LITERATURE

Basic Concepts of *Hiwālah*

Hiwālah by reading the fathah of the letter *hā'* or reading it kasrah where this sentence comes from the word *al-taḥawwul* which means transfer. Arabs used to say *ḥāla 'anil 'ahdi*, i.e. departing from responsibility. The explanation in question is to move debt from dependents *muhil* (people who owe) to dependents *muhāl'alaih* (people who make debt payments). According to sharia also is to transfer the responsibility of paying debts to others (Romana 2016).

Hiwālah there are three parties involved, namely the party in debt (*muḥīl*), the party who owes (*muḥāl*), and the party responsible for the payment of debt (*muḥāl'alaih*). Thus, *hiwālah* is the transfer of debt dependents from the first party (*muḥīl*) to a third party (*muḥāl'alaih*) who has a debt to the second party (*muḥāl*) (Nizaruddin 2013).

Sometimes the payment of *ḥiwālah* debt is limited by the payment of debts from *muḥīl*'s property to *muḥāl'alaiḥ* or property in the dependents of *muḥāl'alaiḥ*, and sometimes also the payment of unlimited debts. In the initial state it is called *ḥiwālah muqayyadah*, while the second state is called *ḥiwālah muṭlaqah*. Therefore, *maẓhab Hanafī* divides *ḥiwālah* into 2 (two) types, namely (Azizah 2021):

Ḥiwālah Muqayyadah

Ḥiwālah muqayyadah is *ḥiwālah* which is limited by *muḥīl* debt to *ḥiwālah*, or limited to *muḥīl* debts that are in *muḥāl'alaiḥ* in the form of trust or dependents. *Ḥiwālah muqoyyadah* occurs if *muḥīl* transfers the billing rights of *muḥāl* to *muḥāl'alaiḥ* because the latter has a debt to *muḥāl*. This is the *ḥiwālah* that can be (*jāiz*) based on the agreement of the scholars. Because *ḥiwālah* is the process of transferring debt payment responsibilities where A has debt to C and at the same time B has a debt to A by mutual agreement B pay off debt A to C (Romana 2016).

Ḥiwālah Muṭlaqah

Ḥiwālah muṭlaqah is *ḥiwālah* who is not limited to anything (debt), although the *muḥīl* party has something (debt) on the *muḥāl'alaiḥ* that allows for the payment of something (debt). *Ḥiwālah muṭlaqah* occurs if the person who owes (the first person) to another person (the second person) transfers his billing rights to a third party without being based on this third party owed to the first person. If A owes B and A transfers B billing rights to C, while C has no debt relation to B, then this *ḥiwālah* is called *muṭlaqah*. This is only in the *Hanafī* and *Shia Maẓhabs* while *jumhur* scholars classify this type of *ḥiwālah* as *kafālah*.

The three *Maẓhabs* besides *Maẓhab Hanafī* argue that it is only possible for *ḥiwālah muqayyadah* and to refer to *ḥiwālah muqayyadah* so that *muḥāl*'s debt to *muḥīl* and *muḥāl'alaiḥ* debt to *muḥīl* must be the same, both in nature and number. If it is the same type and number, then it is valid *ḥiwālahnya*.

In addition to the two kinds of contract *ḥiwālah* also known as contract *ḥiwālah bi al-ujrah*, namely *ḥiwālah* with the imposition of *ujrah* or fee. This ability is based on the Hadith of Abu Hurayrah and Abu Sa'id al-Khudri, which states that the Prophet (peace be upon him) said.:

مَنْ أَسْتَأْجَرَ أَجِيرًا فَلْيُعَلِّمَهُ أَجْرَهُ

"Whoever hires a worker, tell him his wages".

Sharia banking is one of the micro Islamic financial institutions that have products to collect and distribute public funds (Fathudin, Wibowo, and Dewi 2020). *Ḥiwālah* as one of the products of Islamic Banking in the field of services has obtained a legal basis in Law No. 10 of 1998 on changes to Law No. 7 of 1992 on Banking. The position of *ḥiwālah* is stronger after the enacting of Law No. 21 of 2008 on Islamic Banking. In Article 19 of the Islamic Banking Law mentioned that the business activities of BUS (Sharia Commercial Bank) include taking over debt based on *ḥiwālah* or other agreements that do not conflict with sharia principles (Maulana 2013).

Fatwa DSN MUI No. 12/DSN-MUI/IV/2000 on *Ḥiwālah*

In Islamic banking activities, contract *ḥiwālah* is an agreement to provide services to Islamic banks in the form of bank expropriation of customer debt. In this case, sometimes a person cannot pay his debts directly. So the Fatwa on *ḥiwālah* provides the following provisions:

The pillar of *ḥiwālah* is *muḥīl*, I am the one who owes and at the same time owes, *muḥāl* or *muḥtāl*, i.e. the person who owes to *muḥīl*, *muḥāl'alaih*, i.e. the one who owes to *muḥīl* and is obliged to pay debts to *muḥāl*, *muḥāl bih*, i.e. *muḥīl* debt to *muḥāl*, and *ṣīgah* (*ijāb* and *qabūl*). The statements of *ijāb* and *qabūl* must be stated by the parties to show their intention to enter into a contract.

Contract is poured in writing, through correspondence, or using modern means of communication. *Ḥiwālah* must be done with the consent of *muḥīl*, *muḥāl*, and *muḥāl'alaih*. The positions and obligations of the parties shall be expressly stated in the agreement. If the transaction of *ḥiwālah* has been made, the parties involved are only *muḥāl* and *muḥāl'alaih*, and the billing rights of *muḥāl* transfer to *muḥāl'alaih*. If one of the parties does not fulfill its obligations or if there is a dispute between the parties, then the settlement is done through the Sharia Arbitration Board after no agreement has been reached through deliberation..

The majority of scholars say that the law of *ḥiwālah* may be based on *ijmā'*. With the permissible *ḥiwālah* then, this makes it easier for those who have debts to settle their debts. This contract *ḥiwālah* will end when the following things happen: Because it was cancelled

or phased. This happens if one of the parties to the contract cancels the *ḥiwālah* agreement before the contract takes effect on a regular basis. Under these circumstances the billing rights of *muḥāl* will return to *muḥīl*.

Loss of *muḥāl'alaih* rights due to death or bankruptcy or he denies the existence of contract *ḥiwālah* while *muḥāl* cannot present evidence or witnesses. If *muḥāl'alaih* has fulfilled his duty to *muḥāl*, this means that the *ḥiwālah* contract has truly been fulfilled by all parties.

The death of *muḥāl* while *muḥāl'alaih* inherited the property of *ḥiwālah* because inheritance is one of the causes of ownership. If this contract is *ḥiwālah muqoyyadah*, then it is over that *ḥiwālah* according to *Mazhab Hanafi*. If *muḥāl* grants or grants *ḥiwālah* to *muḥāl'alaih* and he receives the grant. If *muḥāl* frees *muḥāl'alaih* from the obligation to pay the diverted debt (Firdaus 2020).

In islamic banking practice facilities *ḥiwālah* is usually to help suppliers get cash capital in order to continue their business. The bank gets reimbursed for debt transfer services. To anticipate the losses that will arise the bank needs to conduct research on the ability of the debtor and the correctness of the transaction between the moving debt and the debtor. Because the supplier's needs will be investigated, he asked the bank to transfer debt. The bank will receive payment from the project owner.

Service activities in the form of contract of *ḥiwālah* apply the requirements to *ḥiwālah muqayyadah* which means transactions that serve to ser-off receivable debt between three parties who have a *muamalat* relationship (receivable debt) through debt transfer transactions, and do not cause cash out. But at the end of this, on a practical level, contract of *ḥiwālah* in the Islamic Bank, contract of *ḥiwālah* which is used that is *ḥiwālah muṭlaqah* which means *ḥiwālah* where *muḥīl* is a person who owes but does not owe to *muḥāl'alaih*. It has been implemented in the form of a discounting bill in which customers who have debts to third parties transfer the debt to the bank (Hardiati, N., & Januri 2021). Bill discounting or *ḥiwālah bil ujah* is actually not much different from *ḥiwālah* in general. However, here there is an obligation of *muḥīl* to give *ujrah* to *muḥāl'alaih*, as stipulated in Fatwa DSN-MUI No.58/DSN-MUI/V/2007.

RESEARCH METHOD

The research method that the researcher used was library research with the *uṣūlī* approach. A qualitative approach was used in this study. It was used to analyze the concept and look for relevant reference sources, such as using books, journals, theses, articles, magazines and so on. The analysis used was in the form of descriptive analysis which describes an explanation of the analysis and connected it with the literature having been obtained (Azizah 2021).

RESULTS AND DISCUSSION

Bill Discounting or *Ḥiwālah Bil Ujrah* in Islamic Banking

Bill Discounting is one of the products of Islamic banks where customers who have debts to third parties then transfer the debt to the bank, the bank then pays the debt and the bank collects it from a third party (Y. T. Cahyani 2018). Discounting bill is not only used to solve the problem of receivable debt, even more than that it also acts as a transfer of funds from individuals to other individuals or companies or companies or firms as has been used by half the banking system. Bill discounting/*ḥiwālah bil ujrah* includes multi-service financing. In principle, multi-service financing of Islamic banking (fee based service) in bill discounting services refers to the concept of *ijārah* (*ujrah*), which is payment for a service. In contrast to *musyārahah* and *mudharabah* which use the ratio distribution in the form of percentages (count on a percent basis), in this multi-service financing Islamic banks will set direct approval in the form of Rupiah.

In its application, discounting bills are used in domestic and international transactions. In accordance with the Decree of the Minister of Finance No. 172 / KMK.06 /2002, that the discounting bill is a business entity that conducts financing activities in the form of transfer and management of debt receivable financing transactions at home and abroad. With the existence of financing activities and management of receivable debt or short-term bills from domestic or foreign financing increasingly provide convenience and efficiency of the performance of the companies concerned. The benefits of the discounting bill activity itself are: overcoming working capital difficulties, overcoming credit burdens, helping to overcome the obstacles faced by banks or financial institutions in providing

financing that is commercially quite potential and important in indonesia's economic development, underwriting, and insurance for development.

The discounting bill transaction is contract of amānah also tabarru', where the parties must trust each other and commit to the agreement in the transaction. Muḥāl 'alaih entrusted to muḥīl, that muḥāl 'alaih can manage the property that muḥāl 'alaih depends on according to agreement. So here muḥāl 'alaih acts as an amīn (trusted person). Thus, as an amīn, muḥāl 'alaih has the consequence of being obliged to fulfill his amānah in managing the property well.

Legal Basis of Bill Discounting

QS. Al-Ma'idah (5): 1:

يَا أَيُّهَا الَّذِينَ ءَامَنُوا أَوْفُوا بِالْعُقُودِ..

“O you who believe, fulfill the aqads.”

The Prophet's hadith narrates Imam Baihaqi from Abu Hurayrah and 'Abd ar-Razzaq from Abu Hurayrah and Abu Sa'id al-Khudri, Prophet (peace be upon him):

مَطْلُ الْغَنِيِّ ظَلَمٌ فَإِذَا أَتَيْتَ أَحَدَكُمْ عَلَى مَلِيٍّ فَلْيَتَّبِعْ

“Slowing down legal payments made by the rich is an unjust act. If one of you is transferred to a person who is easy to pay the debt, then let him switch (accepted the transfer)”.

According to the exegetes, this Hadith basically explains that the Prophet (peace be upon him) commanded the one who gave the debt, if the person who owed it to the one who was capable, let him receive the ḥiwālah and let him follow (charge) to the one who is ḥiwālah (muḥāl'alaih), thus his rights can be fulfilled (paid).

Ijmā'

The opinion of the scholars, quoted by Shaykh 'Athiyah Shaqr in the book ahsān al-Kalam fi al-Fatāwa wā al-Ahkam, volume 5, p. 542-543 that: “Bill discounting which contains a stipulation that the bank promises to the exporter to pay his (exporter) rights to the importer is permissible. Wages received by the bank in return for the transfer of debt are permissible. This "permissible" law according to the Shafi'i School, is permissible (Jawaz) although according to some other opinions it is unlawful or makruh. Therefore, it is based on the characteristics of the muamalah bill discounting which revolves around the hiwālah

contract as well as daman (kafālah) and wakālah in exchange for (ujrah) not haram, as well as (not haram) iwālah in return.”

Fiqh Rules

الأصلُ في المعاملاتِ الإباحةُ إلا أن يدلَّ دليلٌ على تحريمها

“Basically, all forms of muamalah can be done unless there is a proposition that prohibits it.”

الضررُ يزالُ

“Danger (heavy load) must be eliminated”

After seeing the legal basis more clearly when determined the terms and conditions of the discounting bill, including: a) The agreement that can be used in sharia discounting bill is *hiwālah muṭlaqah*. In *hiwālah muṭlaqah*, *muḥāl'alaih* may receive *ujrah* for his willingness and commitment to pay the debt. *muḥīl ujrah* must be agreed upon at the time of the contract and expressed in nominal form, not in the form of percentage calculated from the principal debt. *ijāb* and *qabūl* must be stated by the parties to show their will in entering into a contract in writing, through correspondence, or using modern means of communication. If a transaction of *hiwālah* has been made, the billing rights of *muḥāl* transfer to *muḥāl'alaih*. LKS (Islamic Financial Institution) which performs the discounting bill agreement may give some of the *ujrah* to *shahibul māl*; b) Technical application of bill discounting agreement as an Islamic banking product in the field of services can be guided by SEBI No. 10/14/DPbS dated March 17, 2008. SEBI (Bank Indonesia Circular Letter) provides provisions for the discounting bill/ *hiwālah bil ujrah* which is based on *hiwālah muṭlaqah*. *Hiwālah muṭlaqah* is a transaction that serves to transfer the debt of the parties that cause the existence of bank cash out funds.

In this case, exporter customers who owe to issuing Bank (opening bank) transfer their debt to the Sharia Division of Indonesia Eximbank. (AdriAn Sutedi 2014), This division will pay to negotiating banks, then this division will also charge exporter customers. The Sharia Division of Indonesia Eximbank obtains *ujrah* for the services provided by the Sharia Division of Indonesia Eximbank (as *muḥīl*) to the Customer in his position as an Importer (as *muḥāl'alaih*) for its availability and commitment to pay customer debts. The maximum *ujrah* is charged in accordance with the rate provisions applicable in the Sharia Division of

Indonesia Eximbank. Ujrah payments are made periodically or simultaneously when the customer makes debt payments to the Sharia Division of Indonesia Eximbank, as agreed.

The difference with what takes place in Islamic banks with conventional banks is: In conventional transactions, the bank pays the customer the value of the debt that has been discounted in advance, and the bank collects the acceptor in full. In Islamic banks, banks still pay full to customers, but customers are charged administrative fees.

At conventional banks, after payment is discounted in advance, customers are still charged an administration fee. In conventional banks, invoices that have matured can be traded with discounted. In Islamic banks such transactions are prohibited. Before maturity the debt can be traded again to other parties, (it can even change hands several times). In Islamic banks such transactions are also prohibited.

Conventional banking, this discounting bill technique uses interest by calculating the Future Value (the future value of money from the money received now taking into account the interest rate over a period of time) i.e. from the money used to pay debts / assets (assets that provide income) these receivables. In Islamic banking the bill discounting technique uses a rate of deposit revenue sharing.

CONCLUSION

Based on the description and analysis above, it can be concluded that the discounting bill is the same as *ḥiwālah bil ujrah* which is an agreement to provide services to Islamic banks in the form of bank debt expropriation by the bank. In this case, the constituents prefer that the discounting bill uses the concept of *ḥiwālah* not the concept of *kafālah* because the discounting bill is more precisely using the contract *ḥiwālah muṭlaqah* which has been adapted to the DSN Fatwa on *ḥiwālah bil ujrah* and this is different from the individual *ḥiwālah* (in society) which is not determined by the giving of *ujrah*. In LKS the bank obtains *ujrah* as a service fee that has been stipulated in the provisions (pillars and conditions) of the enactment of discounting bill financing, while in conventional, discounting bill is charged interest.

Bill discounting is prohibited in Islam, because it is interest-based. Therefore, the sharia option against the discounting bill is, the bank receives a commission for its responsibility to collect from interested parties, and the loans given by the bank to borrowers

are interest-free. The amount of commission may vary according to the amount of the bill on the bill, and not based on the period of payment. On the date of payment by interested parties, the bank loan to the attractor becomes paid off. But if the interested party does not pay then the attractor must pay the loan to the bank.

The purpose of bill discounting is not intended to seek profit, but to facilitate the implementation of financing. However, in this discounting bill is allowed to request reimbursement of costs incurred to carry out this agreement. The amount of reimbursement is only to cover the costs that actually arise. The principle of maqāṣidasy-sharīa especially in hifz al-māl (keeping treasure) means keeping the five main things in Islam which is the need of ḍarūriy. Here financial institutions are obliged to maintain amānah, which is the funds owned by customers as well as possible. And the thing that is one of the factors considered by DSN so it is feared that the capital will be perverted and will make it difficult for financial institutions, namely the existence of muḍarat or loss of capital. Because the risk to watch out for from discounting bill contracts is the existence of customer fraud by giving false invoices and defaults (broken promises) to fulfill the promises of the customer.

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