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Learning Models in Sharia Economic Department in Forming Student Career Options in the Sharia Financial Industry

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Abstract

This study identifies a learning model in the sharia economics department in shaping student career choices in the sharia finance industry. This research was conducted at the State Islamic Institute Campus, Ponorogo East Java. This research was conducted because the number of workers in the sharia finance industry, especially those who have Islamic economic scientific competence, has decreased. On the other hand, conditions in the sharia financial industry and sharia financial institutions have developed quite rapidly. Likewise, interest in sharia economics at various Islamic religious universities continues to increase. This type of research uses descriptive research methods equipped with qualitative and quantitative data, both primary and secondary data. This study uses a Likert scale to determine the results of the study. The independent variable analysis uses Theory of Planned Behavior, while the dependent variable uses Social Cognitive Career Theory (SCCT). The purpose of this study is to determine the learning model in the Islamic economics department in shaping student career choices in the sharia finance industry. The results of this study indicate an increase in the number of sharia financial institutions, enthusiasts of the Islamic economics major after market demand and special attention from the government with its various incentive policies, but there is a decline in student career choices in the sharia finance industry. The conclusion of this study shows that the decline in student career choices in the sharia finance industry is caused by many factors. In order to provide solutions to the above problems, efforts to improve several designs or learning models on campus need to be improved and enhanced. The most dominant learning model with a percentage of 83.5% is the integration model of religious and general sciences. Next followed by the supervisory teacher motivation intensity model with a percentage of 86.4%.

Keywords: *Learning Models, Department of Sharia Economics, Career, Sharia Financial Industry*

Introduction

The fact that the rapid development of the Islamic economy and the Islamic financial industry and other Islamic financial institutions is certainly very encouraging, especially for Muslims in Indonesia. This development is an encouraging thing because Muslims can transact economically calmly and comfortably according to the teachings of the Islamic religion and can also be considered as worship.

This development must of course be in line with the availability of qualified human resources (HR), both in quantity and quality. If there is a shortage of qualified HRs, it is unlikely that these institutions can carry out their roles and functions properly.¹

In the current era of *sharia* economic development, the presence of an institution is needed to become the center of Islamic economic study and development and also the active role of all components of the Muslim community, especially academics. In this case, what is expected to be able to study and develop Islamic economics is a university that has a vision and mission for the study and development of Islamic economics.²

The tertiary institution in question is certainly not an “*ivory tower*”, but must play an active role in bringing prosperity to the community. Higher education institutions must have clear references both to their vision and mission, the qualifications and competences of their lecturers, the curriculum and the resulting output qualification profiles. The scientific specifications of Islamic religious higher education basically must prioritize aspects of their scientific methodology and be agreed upon by the intellectuals (the intellectual’s community).³

Human resources in the Islamic financial industry are Islamic-based entities to comply with the principles and rules of Islamic law, so human resources required specifications and knowledge between personnel in Islamic financial institutions.⁴ In order to

¹Syed Nawab Haider Naqvi, *Menggagas Ilmu Ekonomi Islam* (Yogyakarta: Pustaka Pelajar, 2003), 139.

²Lukman Fauroni, *Arah dan Strategi Ekonomi Islam* (Yogyakarta: Magistra Insania Press, 2006), 58.

³*Ibid.*, 59.

⁴Marai A. D. Abdalla, et.al., “*Human Requirement for the Success of the Islamization of Conventional Banks*”, *Asian Journal of Management Sciences and Education*, Vol. 4 No. 1, 2015, 82-91.

fulfill the human resources required by the Islamic financial industry and other Islamic financial institutions, the department of Islamic economics comes with a vision and mission that is centered on the status of institutions that are superior, have quality and make their best contribution to support the development of the Islamic economy in Indonesia and in order to provide as much the number of benefits for the nation and state.

Sharia economics is one of the most popular study programs in Islamic religious colleges. This discipline emerged as an answer to the growing development of Islamic financial institutions, as well as the increasing interest in realizing Islamic economics in society. The high growth of the Islamic financial industry certainly requires the support of professional human resources. *Sharia* economics graduates can work in the Islamic Financial Industry (IFI), both in Islamic financial institutions in the form of banks or non-banks.

The Islamic financial industry in this study includes Islamic banking and non-Islamic banks such as *sharia* insurance, Islamic pension funds, Islamic finance companies, Islamic bonds (*sukuk*), Islamic mutual funds, and other Islamic capital market activities.⁵ A career at Islamic financial industry means working at one of these *sharia* financial institutions, both banks and non-banks, including establishing micro *sharia* financial institutions such as *sharia* cooperatives or *Baitul Mal Wattamwil* (BMT) themselves. Being an employee or owning a *sharia* financial institution is a form of contribution in developing the Islamic financial industry.

Tracing data related to the background of the workforce in Islamic banking according to the results of research at the University of Indonesia in 2003, that 90% of the workforce of Islamic banks do not have a background in economic education or Islamic banking.⁶ Based on the *Sharia* Financial Development Report in 2017, the number of workers has increased from 2013 to 2016, then decreased until 2018.⁷ This decrease in the number of workers indicates the fact that the proportion of workforce in Islamic financial industry is dominated by graduates from non-Islamic economic study programs.

The predicate of *alumni* of Islamic economics does not guarantee that graduates can dominate the labor market at Islamic financial

⁵Otoritas Jasa Keuangan, *Laporan Perkembangan Keuangan Syariah Indonesia*, 2017.

⁶Nurul Huda, et.al., "*Daya Serap Lulusan Program Studi Ekonomi Keuangan Islam: Pendekatan Alignment Index dan Exploratory*", *Tsaqafah*, Vol. 12 No. 1, 2016, 139.

⁷Otoritas Jasa Keuangan, *Laporan Perkembangan Keuangan Syariah Indonesia*, 2017.

industry. *Sharia* economics graduates must compete with non-Islamic economics *alumni* and in the end, Islamic financial industry is filled with more non-Islamic economics *alumni*.

Student career choices are closely related to the learning process. Therefore, the learning model is a major factor in this study. The aim is to prove whether the learning content in its entirety promotes Islamic economic values including Islamic financial industry, so that students really have the confidence to be involved in Islamic financial industry. If the learning varies, especially with the large role of the lecturer in it, then career plans can vary depending on the lecturer and the learning model.

Thus, this study intends to determine the factors that influence students in choosing a *sharia* economics study program and whether it is related to future career opportunities, how learning can support or change student career choices, and how learning is in line with the development of Islamic economics. This research carries the title "*Learning Models in Sharia Economic Department in Forming Student Career Options in the Sharia Financial Industry*".

This study adopts a quantitative research design, where the main objective is to identify the factors that influence the selection of study programs, career choice plans, the role of learning in career choices, and the suitability of learning with the needs of developing Islamic financial industry.

This research will use a quantitative method, namely the theory of planned behavior, which requires quantitative data from the respondents to determine their high school background, parent's occupation (social status), and desired career plans. For correspondence analysis, the primary data required in this study were obtained from a field survey, where the samples were selected from students in semester 5 and 7 at the state Islamic religious college which has an undergraduate program in Islamic economics in east java, namely IAIN Ponorogo and has carried out an apprenticeship program.

The practical urgency of this research is expected to be a contribution of thought for parties interested in this research, especially academics. One of them can provide input for study programs regarding learning that can encourage the choice of the profession of Islamic economics students in the world of work. The world of work is the final place or goal for scholars to devote

themselves after graduating from college in carrying out social responsibility to society.⁸

Literature Review

A. Background Theory

Definition of learning according to Constitution Number 20 of 2003 concerning the National Education System states that learning is a process of interaction of students with educators and learning resources in a learning environment.⁹ While the definition of the learning model according to Regulation of the Minister of Education and Culture Number 103/2014 is a conceptual and operational learning framework that has a name, characteristics, logical sequence, arrangement, and culture.¹⁰

To analyze the relationship between student beliefs and behavior in the learning model in the Islamic economics department, the researcher used the Theory of Planned Behavior (TPB) and to analyze the role of the learning model on self-confidence and interest and career decision making, the researcher used the Social Cognitive Career Theory (SCCT).

The theory of planned behavior is a theory that connects a person's beliefs and behavior. The theory states that attitudes, subject norms, and perceived behavioral control together shape individual intentions and behavior. This concept was proposed by Icek Ajzen to increase the predictive power of the theory of reasoned action by including perceived behavioral control.¹¹

The social cognitive career theory was developed by Lent, Brown and Hackett.¹² Social Cognitive Career Theory (SCCT) which is based on Albert Bandura's sociocognitive theory is a theory that explains the career decision-making process. According to this theory, which determines career selection and development is a combination of three main variables, namely self-confidence, expected results, and

⁸Muhammad Syafi'i Antonio, *Bank Syariah dari Teori ke Praktik* (Jakarta: Gema Insani Press, 2001), 255.

⁹Pasal 20, UU No. 20/2003.

¹⁰Pasal 2 Ayat 5, Permendikbud No.103/2014.

¹¹Icek Ajzen, "The Theory of Planned Behavior", *Journal of Organizational Behavior and Human Decision Processes*, Vol. 50 No. 2, 1991, 179-211.

¹²Steven D. Brown and Robert W. Lent, *Career Development and Counseling: Putting Theory and Research to Work* (New Jersey: John Wiley & Sons Inc, 2012), 412.

personal goals. According to SCCT, the success of career counseling lies in the ability of the counselor to help individuals predict a good type of career. Of course, the role of a counselor or motivator in each university is carried out by the academic community, namely the Chancellor, Dean, Head of Departments, and in particular by academic supervisors in their respective majors.

B. Previous Studies

The career choices of Islamic economics students have actually been researched in previous studies. Among them is research by Daharmi Astuti and Deswita Maharani entitled "*Competencies of Graduates of Sharia Economics in the World of Work (Urgency and Hope)*".¹³ This study aims to determine to what extent the level of ability and competence possessed by graduates/*alumni* of the Riau Islamic University (UIR) Islamic economics degree and what efforts have been made by Islamic religion faculty of UIR of the *sharia* economics study program in preparing quality graduates. The research method used is quantitative. The results of his research show that *first*, the competence of *sharia* economics graduates in the world of work shows good results. *Second*, the efforts made by the Islamic faculty of Islamic University of Riau in preparing the competence of *sharia* economics graduates include compiling a curriculum in accordance with the demands of the world of work, providing relevant lecturers to the department, developing strategic plans, and other supporting efforts such as providing facilities and infrastructure proven to be useful and effective for the competence of *sharia* economics graduates in the world of work.

Research conducted by Astuti and Maharani shows that *sharia* economics graduates are able to compete well in the world of work and FAI UIR has proven to be able to contribute to the competence of *sharia* economics graduates who are absorbed in the world of work. However, the results of Astuti and Maharani's research have not been able to explain the motivating factors for students to form career choices in the Islamic finance industry, so further research is needed to determine the causes of this phenomenon.

Furthermore, there is research by Nurul Huda, Nova Rini, Desti Anggraini, Khamim Hudori, and Yosi Mardoni entitled

¹³Daharmi Astuti dan Deswita Maharani, "*Kompetensi Lulusan Sarjana Ekonomi Syariah dalam Dunia Kerja (Urgensi dan Harapan)*", *Jurnal al-Hikmah*, Vol. 12 No. 2, 2015, 132.

“Absorption Power of Graduates of the Islamic Financial Economics Study Program, Alignment Index and Exploratory Approaches”.¹⁴ This study aims to determine the absorption capacity of graduates of Islamic economics and finance study programs and practitioners of Islamic financial economics about SDI with the Alignment Index (AI) and exploratory approaches. The research method used is qualitative with the Alignment Index model and exploratory research approach. The results of their research indicate that there are differences in perceptions between *sharia* financial industry practitioners and academics of Islamic economics and finance study programs regarding human resources. Islamic finance industry practitioners have the perception that human resources are highly competent as seen from their great soft skills. Meanwhile, academics in the Islamic economics and finance study program have the perception that human resources are resources who understand the high concepts of Islamic economics and Islamic finance, so that the curriculum implemented is not based on a competency-based curriculum.

Research conducted by Nurul Huda, et. al. shows that the synergy between practitioners of the Islamic finance industry and managers of Islamic economics and finance study programs can be realized in the form of a competency-based curriculum. The competency-based curriculum focuses on soft skills and hard skills for students, so that graduates of Islamic economics and finance study programs not only have good hard skills, but also have high soft skills. However, the results of Nurul Huda, et. al. research have not been able to explain the driving factors for students to form career choices in the Islamic finance industry, so further research is needed to determine the causes of this phenomenon.

Furthermore, a research from Suryani entitled *“The Significance of Islamic Economics Study in Discipline of Modern Economics”*.¹⁵ This study aims to determine the importance of a *sharia* economic curriculum that can optimize graduate competencies. The research method used is qualitative exploratory. The results of his research indicate that the appropriate learning method to improve the quality of *sharia* economics graduates is a competency-based curriculum that combines text and context approaches.

¹⁴Nurul Huda, et.al., *“Daya Serap Lulusan Program Studi Ekonomi Keuangan Islam”* ..., 131.

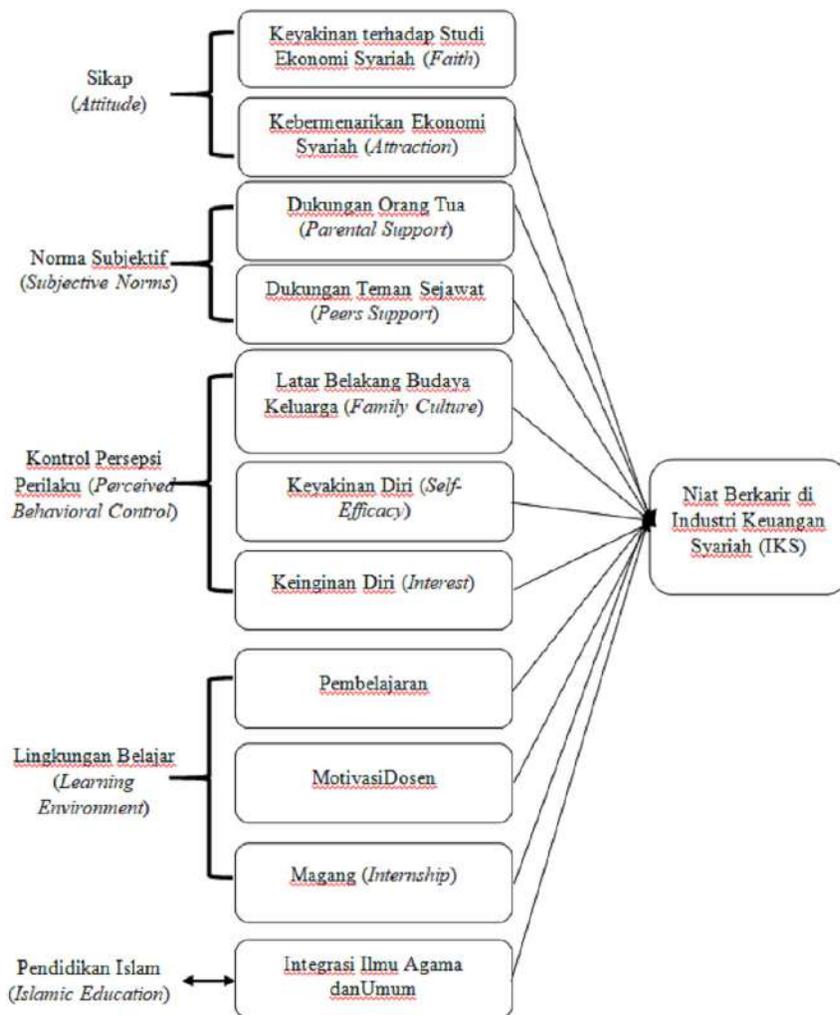
¹⁵Suryani, *“The Significance of Islamic Economics Study in Discipline of Modern Economics”*, *Journal of Indonesian Economy and Business*, Vol. 27 No. 1, 2012, 111.

The research conducted by Suryani shows that the Islamic economics study program which has a competency-based curriculum will be very ready and adequate to produce qualified human resources in the Islamic economic and financial industry. However, Suryani's research results have not been able to explain the causes of student career choices in the Islamic finance industry, so further research is needed to determine the causes of this phenomenon.

C. Conceptual Framework

This research is different from previous research, because several previous studies discussed more about the distribution of graduates (Astuti and Maharani; Huda, et. al.) and the importance of a *sharia* economic curriculum that combines text and context to optimize graduate competence (Suryani). This research was conducted to identify the factors that influence student career choices in the Islamic finance industry. This study describes all internal and external factors of students that involve components of attitudes, subjective norms, control of perceived behavior, learning environment and Islamic education.

Figure 1: Conceptual Framework of Theory of Planned Behavior (TPB)



Source: Data Processing Results.

From several previous studies that examined the factors that influence career intentions in the Islamic financial industry, the following conceptual framework can be described: (1) Attitude, how a person judges something pleasant or not; (2) Subjective norms, social pressure obtained to take an action or no; (3) Control perceptions of

behavior, one's perception of the ease or difficulty of taking action; (4) Learning environment, an environment that allows students to learn and achieve goals; (5) Islamic education, Islamic education has different characteristics that do not only emphasize aspects of knowledge.

In this study, the five factors were developed into eleven factors studied, namely: (1) Belief in *sharia* economic studies (faith); (2) Attractiveness of the *sharia* economy (attractiveness); (3) Parental support; (4) Support from friends (peers support); (5) Family culture background; (6) Self-efficacy; (7) Self-interest; (8) Integration of religious and general knowledge; (9) Teaching; (10) Lecturer motivation; (11) Apprenticeship (internship).

Table 1: Factors Affecting Student Career Choices at Islamic Financial Industry

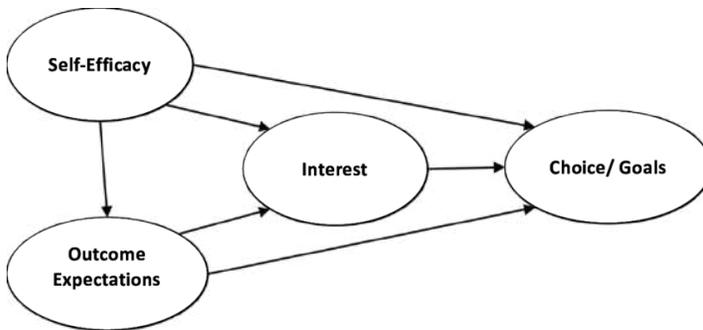
No	Code	Factors
1.	X1	Belief in <i>Sharia</i> Economic Studies (Faith)
2.	X2	Attraction of <i>Sharia</i> Economy (Attractiveness)
3.	X3	Parental Support
4.	X4	Peers Support
5.	X5	Family Cultural Background (Family Culture)
6.	X6	Self-Confidence (Self-Efficacy)
7.	X7	Self-Desire (Interest)
8.	X8	Integration of Religion and General Sciences
9.	X9	Teaching
10.	X10	Lecturer Motivation
11.	X11	Apprenticeship (Internship)
12.	Y	Career Intentions in the Islamic Finance Industry

In this attitude factor, students' rate something as pleasant or not. This attitude is represented by two factors, namely *first*, the belief in the study of Islamic economics with indicators of what is its use, what is good, and what is its value. *Second*, the attractiveness of *sharia* economics with indicators of convenience and pleasure in taking *sharia* economic studies. On the subjective norm factor, students feel social pressure when pursuing Islamic economic studies. This subjective norm is represented by two factors, *first*, parental support with indicators of how the parents' thoughts, hopes and opinions are when students pursue *sharia* economics studies. *Second*, peer support

with indicators of how friends think and opinions when students study Islamic economics.

In the behavioral perception control factor, students perceive the ease or difficulty arising from studying Islamic economics. This behavioral perception control is represented by three factors, *first*, cultural background with indicators of the possibility of *sharia* economics being applicable and ease of implementation. *Second*, self-confidence with indicators of self-confidence and ease of application. *Third*, self-desire with indicators of purity of self-desire and attraction. In the learning environment factor, what is meant is the environment that allows students to learn and achieve their goals. This learning environment is represented by three factors, *first*, teaching with indicators of transfer of Islamic values and planting of morals and Islamic principles in *mu'amalah*. *Second*, lecturer motivation with indicators of lecturer encouragement related to the application of *sharia* economics, lecturer motivation to work in the Islamic financial industry, positive/negative attitudes of lecturers towards the development of the Islamic finance industry in Indonesia, and lecturer experience in the practical world in the Islamic finance industry. *Third*, internships with indicators of the success history of others in the internship, and the experience and knowledge gained from the internship.

Figure 2: Social Cognitive Career Theory (SCCT) Framework



Source: Refereed papers from the 38th HERDSA Annual International Conference.¹⁶

¹⁶Sophie McKenzie, et. al., "Developing Career Aspirations of Information Technology Students at Deakin University", in T. Thomas, et. al. (Eds.), *Research and Development in Higher Education: Learning for Life and Work in a Complex World*, Vol. 38 (Melbourne: HERDSA Inc, 2015), 334.

Regarding the factor of Islamic education, all students at Islamic religious colleges both public and private should get the message and the impression that Islamic education has different characteristics from general education, namely not only emphasizing aspects of general knowledge but also on the cultivation of *sharia* morals or values become the character of Islamic economics students. This Islamic education means the integration of religious and general knowledge with indicators of the integration of general science and religion in the curriculum, the weight of basic subjects of religion/*sharia* (Arabic, *fiqh*, etc), the weight of general basic subjects (introduction to microeconomics, etc), and the weight of practical integration courses in general and religion (Islamic financial management, Islamic economics, etc). However, there is not only an integration of religious and general sciences, but rather the realization of a balance of content between the two in the learning process of students majoring in Islamic economics in the classroom.

To find out the learning model of the Islamic economics department in shaping student career choices in the Islamic finance industry, the researcher designed a conceptual framework with a combination of the two theories above as follows:

Table 2. Indicators of Factors Affecting Career Choices in the Islamic Financial Industry

Initial Construct	Definition	Indicator		New Construct	Indicator	Previous Studies
Attitude	The rate at which someone judges something pleasant or not	<ol style="list-style-type: none"> Useful Comfortable Good Value Fun 		Belief in Sharia Economic Studies (Faith) (X1)	<ol style="list-style-type: none"> Useful Good Value (Ajzen, 1991)	Duffy and Blustein (2005)
				Attraction of Sharia Economy (Attractiveness) (X2)	<ol style="list-style-type: none"> Comfortable Fun (Ajzen, 1991)	Mochi (2017)
Subjective Norms	Social pressure obtained to take an action or not	<ol style="list-style-type: none"> The thoughts of others Other people's expectations Opinions of others 		Parental Support (X3)	<ol style="list-style-type: none"> Parental thinking Parents' expectations Opinions of parents (Ajzen, 1991)	Farrukh (2017)
				Peers Support (X4)	<ol style="list-style-type: none"> Thought of friends Opinions of friends (Ajzen, 1991)	Auyuang and Sands (1997)
Perceived Behavioral Control	A person's perception of the ease or difficulty of taking action	<ol style="list-style-type: none"> Maybe Right Convenience Self-confidence Self-desire 		Family Cultural Background (X5)	<ol style="list-style-type: none"> Perhaps, it is applicable Right (Ajzen, 1991)	Wong and Liu (2010)
				Self-Efficacy (X6)	<ol style="list-style-type: none"> Self-confidence Convenience (Ajzen, 1991)	Ahmad et al. (2015)
Learning Environment	An environment that allows students to learn and achieve goals	<ol style="list-style-type: none"> Physical (buildings, learning facilities) Assignments (material, learning methods) Psychological (behavior, motivation) 	→	Integration of Religion and General Sciences (X8)	<ol style="list-style-type: none"> There is an integration of general science and religion in the curriculum The weight of basic subjects of religion / sharia (Arabic, Jurisprudence, etc.) General basic course weight (Introduction to Microeconomics, etc.) The weight of general and practical religious integration courses (Islamic Financial Management, Islamic Economics, etc.) (Bahroni, 2014)	Lamb and Ball (1999)
				Teaching (X9)	<ol style="list-style-type: none"> Transfer of Islamic values Cultivation of morals and sharia principles in muamalah (Bahroni, 2014)	Naidoo et al. (2017)
Islamic Education	Islamic education has different characteristics which do not only emphasize the knowledge aspect.	<ol style="list-style-type: none"> Integration of religious and general knowledge Cultivation of sharia morals or values The teacher's role in shaping the character of students 		Lecturer Motivation (X10)	<ol style="list-style-type: none"> Encouragement from lecturers related to the application of Islamic economics Motivation of lecturers to work at Islamic Financial Industry; Positive / negative attitudes of lecturers towards the development of Islamic Financial Industry, in Indonesia Lecturer experience in the practical world at Islamic Financial Industry. (Leung, 2008)	Leung (2008)
				Apprenticeship (Internship) (X11)	<ol style="list-style-type: none"> The success of others at the internship Experience and knowledge gained from internships. (Leung, 2008)	Leung (2008), Tong and Tong (2012)
Choice/ Intention	Motivational factors that will influence behavior			Career intentions in the Islamic finance industry (Y)	<ol style="list-style-type: none"> Purpose Try Plan (Ajzen, 1991)	

Methodology

A. Data

The State Islamic Religious College/PTKIN is under the responsibility of the Ministry of Religion. There are three types of

tertiary institutions that fall into this category, namely: State Islamic University (UIN), State Islamic Institute (IAIN), and State Islamic Religious College (STAIN). Currently PTKIN may be 58 consisting of 17 UIN, 34 IAIN, and 7 STAIN. The number of majors of *sharia* economics study programs reached 58 at PTKIN, while nationally the total number of *sharia* economics study programs reached 220.

The number of students in the Department of Islamic Economics, Faculty of Economics and Islamic Business, IAIN Ponorogo, is recorded as 1220 students.¹⁷ To facilitate data analysis, students who are the object of research are only in semester 5 and 7, which amounted to 258 people.

B. Model Development

This research uses quantitative methods with the Theory of Planned Behavior (TPB) approach which requires quantitative data. The learning model is analyzed using the Social Cognitive Career Theory (SCCT) approach. This study does not intend to examine the relationship between conceptual frameworks, but to conduct interviews regarding the role of the three constructs of determinants of behavior, namely attitudes, subjective norms, and behavioral perception control on the choice of *sharia* economics study program. Indicators include attitudes (assessments) such as whether *sharia* economics courses are useful, valuable (subjective norms such as the role of others in the selection of Islamic economics study programs, as well as behavioral perception control such as whether studying in Islamic economics is possible for oneself), and so on.

The data was collected by using quantitative methods, namely through questionnaire surveys, interviews, and observations. In preparing the questionnaire, researchers used a Likert scale to make it easier to measure respondents on a scale of approval or disagreement with the object of the statement, the levels of which are, Strongly Agree (SS), Agree (S), Neutral (N), Disagree (TS), and Strongly Disagree (STS).

Interview according to Sugiyono,¹⁸ *“The interview is used as a data collection technique if you want to conduct a preliminary study to find problems that must be investigated and also if the researcher wants to*

¹⁷Retrieved from <https://forlap.kemdikbud.go.id/prodi/detail/MzdFODMwRjAtMjExOC00ODU4LTg3MEUtRjM5OUFDMzM5RDcx>, accessed on September 30, 2020.

¹⁸Sugiyono, *Metode Penelitian Pendidikan Pendekatan Kuantitatif, Kualitatif dan R & D* (Bandung: Alfabeta, 2015), 194.

know the things of the respondents that are more in-depth and the number of respondents is small", in this study interviews are used to strengthen the results of the questionnaire/questionnaire.

The interview technique was conducted using a structured interview format between researchers and informants, which was then added to the data needed to complete the previous data through focus group discussions. The observations were made to obtain research data with the presence of the researcher at the research location. The researcher observed the learning process in the class 5 and 7 semesters of the Islamic economics department at IAIN Ponorogo.

C. Method

The data analysis method in this study was adjusted to the type of data that was collected at the time of the research. By using a Likert scale to measure attitudes, opinions, and perceptions of a person or group of people about social phenomena.¹⁹ A multiple choice questionnaire where each item of question is provided with five answers with each score as follows:

Table 3: Respondents' Answers Rating Scale

No.	Answer	Score	Percentage Value
1.	A	5	80% - 100%
2.	B	4	60% - 79,99%
3.	C	3	40% - 59,99%
4.	D	2	20% - 39,99%
5.	E	1	0% - 19,99%

Likert Scale Formula: $\Sigma (T x Pn) = N$

Information:

T = Total number of respondents who voted

Pn = Choice of Likert score

N = Total score

Interpretation of the calculation score: $Kategori = \frac{N}{Y} x 100\%$

Information:

Y = Highest score x Number of Respondents

¹⁹Sugiyono, *Metode Penelitian Administrasi* (Bandung: Alfabeta, 2012), 107.

Result and Analysis

A. Results

The data collection stage of this research was carried out for 2 months and sourced from 258 students majoring in Islamic economics at the State Islamic Institute Ponorogo in semester 5 and 7 to optimize the rate of return. Of the 258 questionnaires distributed, only 242 were collected by the research team. To explore data through questionnaires, researchers used a Likert scale on the questionnaire to determine the level of agreement with the statements provided by selecting one of the available options.²⁰

To strengthen the results of data analysis, researchers added secondary data obtained through the interview process and focus group discussion activities. The information obtained from interviews and Focus Group Discussion is scientific opinions, impressions, and objective suggestions from informants that can strengthen the initial hypothesis of this study.

According to Iza Hanifuddin, every individual human being has four learning houses that affect and cover his life from childhood to adulthood, namely: (1) Family, the influence of parents and other family members with all its dynamics; (2) Schools/*pesantren*/campuses, the influence of teachers, *kyai*, and lecturers with all their dynamics; (3) Society, the influence of social dynamics with everything in it; and (4) Dream/future, the influence of identity, imagination, ideals and orientation of life. In the learning process, the class is a picture of what is outside the classroom. Because learning in the classroom is formed by learning structures outside the classroom, namely: (1) Human resources with logical thinking and movement orientation; (2) Organizational structure; (3) Institutional structure; (4) The direction of state policy.²¹

The learning curriculum is recognized as having a role in shaping student career choices in the Islamic finance industry. The curriculum is not just tinkering with words, shifting sentences to become a document to fulfill the orientation and tendency of change, but it acts as a control device, anticipation, and solutions for change. Simply put, curriculum is the content of the great ideals of education.

²⁰*Ibid.*, 199.

²¹Interview with Dr. Iza Hanifuddin, M.Ag. on April 13, 2020, at Master Program Office of *Sharia* Economics Department, Pascasarjana IAIN Ponorogo building.

Unfortunately, the existing facts show that the organizational structure of education is still filled by those who are “cool and calm” with enthusiasm in educating and passionate about *sharia* economics. This means that it is still dominated by people who prefer to activate themselves at the administrative and formality levels.²²

Until now, the IAIN Ponorogo campus and almost all IAIN/ UIN already have a Faculty of Economics and Islamic Business (FEIB) which takes a position or is positioned as the biological mother of academic civilization, then the Department of *Sharia* Economics as a micro-economic thought movement (starting from the individual respectively), then the Department of Islamic Banking as a macroeconomic mindset (applied massively to the public with the support of legality), then the Department of *Zakat* and Waqf Management as a supporter of the invisible hand. All of these parties must be able to increase synergy in creating learning concepts or models that are expected to be able to make student career choices focused on the Islamic finance industry.

B. Robustness Test

The results of the data analysis obtained are as follows:

$$\text{Index Formula \%} = \frac{\text{Total Score}}{Y \times 100}$$

To find out the interval (range of distance) and interpretation of the percent in order to find out the assessment by the method of finding the percent score interval (I).

Interval Formulas:

$$I = \frac{100}{\text{Total Score (Likert)}} = 100/5 = 20, \text{ Result (I) = 20}$$

The score interpretation criteria are based on the interval:

Numbers 0% - 19.99% = Strong Disagree/Bad/Very Poor)

Numbers 20% - 39.99% = Disagree/Not Good

Numbers 40% - 59.99% = Fair/Neutral

Numbers 60% - 79.99% = Agree/Good/Like

Numbers 80% - 100% = Very Agree/Good/Like

²²*Ibid.*

Survey analysis results:

X1 = 49.2%. Fair or neutral category.

X2 = 52.3%. Fair or neutral category.

X3 = 64.5%. Category agree or good or like.

X4 = 52.3%. Fair or neutral category.

X5 = 64.8%. Category agree or good or like.

X6 = 73.6%. Category agree or good or like.

X7 = 57,7%. Fair or neutral category.

X8 = 83.5%. Categories strongly agree or good or like.

X9 = 65.8%. Category agree or good or like.

X10 = 86.4% Category strongly agree or good or like.

C. Analysis

Based on the calculation of the Likert scale to determine the factors that influence the learning model of the Islamic economics department in shaping student career choices in the Islamic finance industry, it can be seen that there are four factors that fall into the sufficient or neutral category, namely: X1, Belief in *Sharia* Economic Studies (Faith); X2, Attractive *Sharia* Economy (Attractiveness); X4, Peers Support; and X7, Interest.

There are four factors that fall into the agree or good or like category, namely: X3, Parental Support; X5, Family Culture Background; X6, Self-Efficacy; and X9, Teaching.

Meanwhile, two other factors fall into the category of strongly agree or good or like, namely: X8, Integration of Religion and General Sciences; and X10, Lecture's Motivation. The final hypothesis that can be concluded is that factor X8, the integration of religious and general knowledge and factor X10, the lecturer motivation has a very high level of approval from a total of 242 respondents.

Furthermore, it can be explained that the career choices of students majoring in *sharia* economics in the *sharia* financial industry or other Islamic financial institutions are largely determined by *first*, how the curriculum of the *sharia* economics department is designed to combine and equate the standard content of religious science (arguments about economics in the Holy Qur'an and al-Hadith) with a content of general science (conventional economics) so that students are able to filter the general economic concept with the limitations of *sharia* (*maqashid syariah*) so that all *sharia* economic theories that have been studied during college can be implemented

in the individual student's daily life. *Second*, how the IAIN Ponorogo academic community, starting from the elements of institutional leaders, faculty leaders, department leaders and in particular subject lecturers and academic supervisors, are able to provide intensive provision, encouragement, advice and motivation to students to focus on career choices according to science and their learning experiences.

Conclusion and Recommendation

A. Conclusion

Student career choices can be influenced by several factors, including belief in *sharia* economic studies, attractiveness in *sharia* economics, parental support, peer support, family cultural background, self-confidence, self-desire, integration of religious and general knowledge, teaching, lecturer motivation, and an internship. Of course, all these factors need to be continuously evaluated and improved to support the achievement of the CPL department. However, based on the results of data analysis, it can be seen that there are two factors that most dominantly influence student career choices, especially in the Islamic finance industry, namely *first*, integration and balance between religious and general knowledge. *Second*, intensive and substantive academic motivation from academic supervisors to students.

The results show that there are two models of learning models in the Islamic economics department that are able to shape student career choices in the Islamic finance industry, namely: *first*, the Islamic economics department must design a curriculum and its courses by integrating religious and general sciences, as well as balancing the percentage content of both. so as not to excess in just one science. Where in the four semesters at the beginning of the lecture, general science material is usually given first as basic knowledge. In the four semesters at the end of the lecture, religious science material is given to synchronize Islamic economic theory and practice as well as filter general economic theory and practice that are not in accordance with Islamic law. *The second*, learning model, the head of the *sharia* economics department and the academic supervisor must often provide motivation, support and experience sharing to students since they start studying at the beginning of the semester on campus. The motivation conveyed of course contains support for

connections, support for relations, support for work information, calls and directions to always be committed to their scientific discipline and is strengthened by religious advice which aims to spread Islam and as real evidence of student devotion to Allah SWT in the economic field.

B. Recommendation

Synergy and commitment between the leadership elements of higher education institutions, faculties, and departments can be realized in the form of providing facilities, facilities and infrastructure for the implementation of the two learning models that have been concluded in this study. Thus, the efforts made are expected to be able to answer problems or obstacles in student career choices in the Islamic finance industry.

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Strategy for Improving the Quality of Waqf Institutions Through Good Waqf Governance

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Abstract

The sustainability of the benefits of waqf is possible because of the implementation of productive waqf can support various social and religious activities. Even so, good and innovative management is still needed in order to achieve professional waqf management, namely good waqf governance. This paper aims to examine the concept of good governance, the potential of waqf in Indonesia, and the institutional problems and solutions of waqf in Indonesia. This is a library research using a qualitative method and descriptive analytic study. Data were collected using the documentary method, which comes from books, journals, internet, and papers. The results of this study indicate that the donated land assets in Indonesia are 52.245,41 hectares spread over 385.898 locations. Most of the use of the waqf land is still in the form of direct waqf (consumptive), dominated by the construction of mosques by 44,26% and musholla (a prayer room) by 28,43%. Meanwhile, the potential for cash waqf in Indonesia reaches 3 trillion per year with an estimated number of generous

Muslims of 10 million and an average monthly income of IDR 500.000 to IDR 10.000.000. Regarding problems in the development of waqf related to waqf management, including the management that is not optimal, even many are mismanaged which results in many waqf assets being neglected, some even missing. The solution lies in the existence of nadzir and a solid team work to maximize the expected results of waqf where waqf management requires good governance which can be used as a benchmark for whether performance in the organization is based on five principles, namely transparency, accountability, responsibility, independence and fairness or not.

Keywords: GCG, Waqf, Waqf Institution, Productive Waqf

Introduction

Currently, *waqf* has developed in the form of its management. Previously, *waqf* was limited to providing immovable physical objects, in the form of land for places of worship such as mosques, *mushalla*, and educational facilities,¹ the most recent is the provision of *waqf* for movable objects in the form of cash, shares and securities.² The sustainability of the benefits of *waqf* is possible due to the implementation of productive *waqf* to support various social and religious activities.³ Even so, good and innovative management is still needed in order to achieve professional management of *waqf*. In addition, *waqf* institutions as social institutions also need to maintain *waqf* trust and also the general public which will later affect the source of *waqf* funds received by the *waqf* institutions.⁴ In the end, good management of *waqf* will contribute maximally to the achievement of the objectives of *waqf*.⁵

Waqf in Indonesia is actually regulated in laws and regulations that specifically regulate *waqf*, namely Government Regulation No. 28 of 1977 concerning the Land Ownership Representation and Government Regulation No. 1 of 1978 concerning the Regulation on the Implementation of *Waqf* and the Compilation of Islamic Law

¹Bashlul Hazami, "Peran dan Aplikasi Wakaf dalam Mewujudkan Kesejahteraan Umat di Indonesia", *Analisis*, Vol. 16 No. 1, 2016, 173.

²Achmad Arief Budiman, "Akuntabilitas Lembaga Pengelolaan Wakaf", *Walisongo*, Vol. 19 No. 1, 2011, 76.

³Suhrawadi K. Lubis, *Wakaf dan Pemberdayaan Umat* (Jakarta: Sinar Grafika, 2010), 21.

⁴Ananto Triwibowo dan Rahmani Timorita Yulianti, "Penerapan Prinsip-Prinsip Good Corporate Governance dalam Pengelolaan Wakaf Tunai pada Badan Wakaf Tunai MUI Yogyakarta", *Tapis*, Vol. 4 No. 1, 2020, 2.

⁵Syamsuri, et. al., "Critic Analysis of Responsibility Practices of Waqf Institution: Reason Condition from Pondok Modern Darussalam Gontor", *Tsaqafah*, Vol. 16 No. 1, 2020, 2.

Book III on the Law of *Waqf*.⁶ In this Government Regulation only *waqf* of owned land is regulated. However, currently these laws and regulations can no longer accommodate the developments of society, especially those concerning *waqf*. Banks also do not want to accept land or other assets that are *waqf* assets to be used as collateral. Because *waqf* property is not a property right, but rather a right to use the benefits of the *waqf* property.⁷ The Indonesian *Waqf* Board (BWI) as an independent institution in charge of developing *waqf* in Indonesia, BWI is free, which means that it is not influenced by any power in carrying out its duties. In addition to managing and developing *waqf* assets on a national and international scale, BWI also plays a role in guiding *nazhir* so that the management of *waqf* potential is carried out professionally and productively. BWI is an embodiment of the mandate in Law Number 41 of 2004 concerning *waqf*.⁸

In order to show the position of this research, the researcher examined several previous studies, including research by Tantri Satriyaningtyas regarding “*The Implementation of Good Waqf Governance in the Management of Waqf Assets at Pondok Modern Darussalam Gontor Putri Mantingan*”. The difference between this research and Tantri Satriyaningtyas’ research is that this research is a library research on the concept of good *waqf* governance, while the research conducted by Tantri Satriyaningtyas is a field research on the implementation of good *waqf* governance conducted at Pondok Modern Darussalam Gontor Putri Mantingan.⁹ In addition, Indri Yuliafitri and Arie Indra Rivaldi’s research on the effect of applying the principles of good governance and promotion on cash *waqf* acceptance (in *waqf* management institutions in Indonesia). Compared with the research of Indri Yuliafitri and Arie Indra Rivaldi which links the principles of good governance with cash *waqf* acceptance, this study seeks to examine the relationship between good governance and the

⁶Ahmad Mu’is dan Binti Nur Hamidah, “*Penerapan Wakaf Uang Secara Profesional Menurut Hukum Islam (Application of Cash Waqf in Good Governance)*”, *Qawanin*, Vol. 4 No. 1, 2020, 124.

⁷Muhammad Alfin Syauqi, “*Optimalisasi Wakaf Uang untuk Kesejahteraan Umum*”, *Kanun*, Vol. 16 No. 3, 2014, 369.

⁸Indri Yuliafitri dan Arie Indra Rivaldi, “*Pengaruh Penerapan Prinsip-Prinsip Good Governance dan Promosi Terhadap Penerimaan Wakaf Tunai (Pada Lembaga Pengelola Wakaf di Indonesia)*”, *InFestasi*, Vol. 13 No. 1, 2017, 218.

⁹Tantri Satriyaningtyas, “*Implementasi Good Waqf Governance dalam Pengelolaan Aset Wakaf di Pondok Modern Darussalam Gontor Putri Mantingan*”, *JIMFEB*, Vol. 8 No. 2, 2016.

institutional problems and solutions of *waqf* in Indonesia.¹⁰ Finally, from some of the previous studies mentioned above, the researcher found that there were not many studies linking good governance with *waqf* institutions. Hence this research was conducted.

Furthermore, seeing the importance of good *waqf* management and in order to improve *waqf* institutions, good governance is absolutely necessary. Therefore, the authors are interested in examining more deeply about good *waqf* governance and its role in increasing the institutional *waqf*. The discussion includes the concept of good governance, the potential of *waqf* in Indonesia, as well as *waqf* institutional problems and solutions in Indonesia.

Methodology

This research is a library research that used a qualitative method then analyze it by a descriptive analysis,¹¹ this is to describe and analyze good *waqf* governance and its role in improving *waqf* institutions. This paper will discuss about the concept of good governance, the potential of *waqf* in Indonesia, as well as *waqf* institutional problems and solutions in Indonesia. Data were collected using the documentary method, which comes from books, journals, internet, and papers.

Result and Discussion

A. Potential of Waqf in Indonesia

Waqf institutions are one of the dominant economic factors outside the government in the Islamic state system,¹² where their role is included as a driver of socio-economic development.¹³ *Waqf* with such great potential can play a role in providing and improving the welfare of the people such as improving facilities for places of worship, educational institutions, as well as adequate health and social facilities such as what happened during the Ottoman

¹⁰Yuliafitri, "Pengaruh Penerapan Prinsip-Prinsip Good Governance dan Promosi Terhadap Penerimaan Wakaf Tunai" ..., 218.

¹¹Sugiono, *Metode Penelitian Kuantitatif, Kualitatif dan R & D* (Bandung: Alfabeta, 2014), 240.

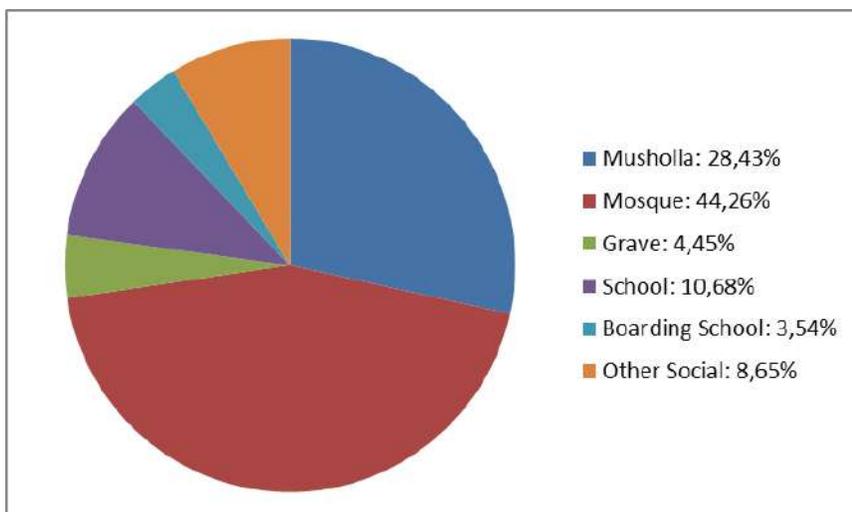
¹²Mehmet Babacan, "Economics of Philanthropic Institutions, Regulation, and Governance in Turkey", *Journal of Economic and Social Research*, Vol. 13 No. 2, 2011, 61.

¹³Farhah Saifuddin, et. al., "The Role of Cash Waqf in Poverty Alleviation: Case of Malaysia", *Proceeding KLIBEL*, Vol. 4 No. 1, 2014, 171.

Caliphate.¹⁴ However, the reality is that in Indonesia, *waqf* is not able to play its role and on the contrary, many problems arise, such as many of the *waqf* lands are abandoned, disputes over *waqf* land by heirs and many other problems. One of the disadvantages of *waqf* management in this country is the management of *waqf* which tends to be consumptive, traditional, and with an “old” understanding.¹⁵

Based on data obtained from the Ministry of Religion of the Republic of Indonesia in 2020, the assets of donated land in Indonesia are 52.245,41 hectares spread across 385.898 locations with a total of 60,82% certified *waqf*. Most of the use of *waqf* land is still in the form of direct (consumptive) *waqf*, as can be seen in Figure 1, which shows that the use of *waqf* land is dominated for the construction of mosques by 44,26% and *musholla* (a prayer room) by 28,43%.¹⁶

Figure 1: Percentage of Waqf Land Use in Indonesia



Source: SIWAK (2020).

This is supported by research conducted by the Center for Language and Culture of UIN Jakarta in 2006 on 500 *nazhir*

¹⁴Babacan, “Economics of Philanthropic Institutions, Regulation, and Governance in Turkey”, ..., 68.

¹⁵Nurul Huda, et. al., “Manajemen Pengelolaan Wakaf di Indonesia Timur”, EKUITAS (Jurnal Ekonomi dan Keuangan), Vol. 20 No. 1, 2016, 2.

¹⁶Sistem Informasi Wakaf (SIWAK), *Data Penggunaan Tanah Wakaf Indonesia, 2020*, Retrieved from <http://siwak.kemenag.go.id>, Accessed on September 2, 2020.

respondents (*waqf* managers) in Indonesia. The research shows that the *waqf* assets that are stationary are 77%, and those that are managed productively are only 33%.¹⁷

The potential described above does not include the potential for *waqf* of movable objects such as cash *waqf*. The potential for cash *waqf* in Indonesia reaches 3 trillion per year with an estimated number of generous Muslims of 10 million and an average monthly income of IDR 500.000 to IDR 10.000.000 as shown in Table 1. These funds will continue to increase if submitted to a professional manager and invested in a productive sector, it will be a huge source of funds for Muslims.¹⁸

Table 1: The Potential of Cash Waqf

Income Level / Month (IDR)	Number of Muslims (People)	Waqf Rates / Month (IDR)	Potential Cash Waqf / Month (IDR)	Potential Cash Waqf / Year (IDR)
500 000	4 millions	5 000	20 billion	240 billion
1 – 2 millions	3 millions	10 000	30 billion	360 billion
2 – 5 millions	2 millions	50 000	100 billion	1.2 trillion
5 – 10 millions	1 million	100 000	100 billion	1.2 trillion
Total				3 trillion

Source: Nasution and Hasanah (2005).

The following is an explanation from the table above:

1. If Muslims who earn IDR 500.000 a total of 4 million and spend IDR 5.000 per month for *waqf*, they will collect IDR 240 billion annually.
2. If Muslims who earn IDR 1.000.000 to IDR 2.000.000 a total of 3 million and spend IDR 10.000 per month in *waqf*, then each year they will collect IDR 360 billion.
3. If Muslims who earn IDR 2.000.000 to IDR 5.000.000 amount to 2 million and spend a month's *waqf* of IDR 50.000, each year it will collect IDR 1,2 trillion.
4. If a Muslim who earns IDR 5.000.000 to IDR 10.000.000 is 1 million and spends IDR 100.000 per month in *waqf* funds, each

¹⁷Tuti Alawiyah Najib dan Ridwan al-Makassary, *Wakaf, Tuhan, dan Agenda Kemanusiaan* (Jakarta: Center for the Study of Religion and Culture (CSRC), 2006), 84.

¹⁸Mustafa Edwin Nasution dan Uswatun Hasanah, *Wakaf Tunai Inovasi Finansial Islam: Peluang dalam Mewujudkan Kesejahteraan Umat* (Jakarta: PKTTI-UI, 2005), 37.

year he will collect IDR 1,2 trillion.

From the above calculations, the total potential *waqf* funds held is IDR 3 trillion.¹⁹

When compared with other countries, the development of *waqf* funds in Indonesia is still lagging behind as shown in Table 2. The use of *waqf* funds in Indonesia has only reached 2%, the difference is very significant with the use of *waqf* funds in Singapore which reaches 92%, even though the total population is Muslim and its area not comparable to Indonesia. As a country with the largest Muslim population, the *waqf* funds that have been collected should also be large, but the reality is still very small.²⁰

Table 2: Use of Waqf Funds in Several Countries

Country	Percentage (%)
Singapura (Lokal)	92
Saudi Arabia	4
India	2
Indonesia	2
Total	100

Source: Abdullah, Ali, and Yuliani (2018).

Waqf in Indonesia is managed by *nazhir* which are divided into three categories, namely individual *nazir*, organizational *nazir*, and legal entity *nazhir*. Among the individual *nazhir*'s are the donated land of al-Huda mosque in Tawang sub-district, Tasikmalaya city. *Waqf* is located in Tasikmalaya City, Lengkong Sari Village, Tawang District, there is land that has been donated by a *wakif* named Mr. H. Amas covering an area of 235 m² in 1987 with Mr. Mukhtar's *nazhir*. As a *nazhir*, Mr. Mukthar has held the mandate of 27 years since the year 1992 *waqf* pledge deed was made.²¹ Among the *nazhir*'s of the organization are the Pekalongan City Muslimin Foundation (YMKP)²²

¹⁹Syamsuri, et. al., "Potensi Wakaf di Indonesia (Kontribusi Wakaf dalam Mengurangi Kemiskinan)", *Malia*, Vol. 12 No. 1, 2020, 86.

²⁰Zaki Abdullah, et. al., "Aspek-Aspek Prioritas Manajemen Wakaf di Indonesia", *Al-Falah: Journal of Islamic Economics*, Vol. 3 No. 1, 2018, 4.

²¹Nuri Nurhidayah Mubarak, *Analisis Pergantian Nazhir Perseorangan ke Nazhir Organisasi pada Tanah Wakaf Masjid al-Huda di Kecamatan Tawang Kota Tasikmalaya* (Bandung: Universitas Islam Negeri Sunan Gunung Djati, 2019), 7.

²²Ahmad Furqon, *Kompetensi Nazhir Wakaf Berbasis Social Entrepreneur (Studi Kasus Nazhir Wakaf Bisnis Center Pekalongan)* (Semarang: LP2M IAIN Walisongo, 2014), 67.

and the Pondok Modern Gontor Waqf Maintenance and Expansion Foundation (YPPWPM).²³ Among the *nazhir*'s of legal entities is the Semarang City Mosque Welfare Agency (BKM).²⁴ The role of *nazhir* in managing *waqf* is a very important factor for the development or failure of a *waqf*. *Nazhir* is the person most responsible for the *waqf* property he holds, both for the *waqf* property itself and for the results and efforts of its development. Every *nazhir* activity towards *waqf* assets must be considered in the sustainability of the *waqf* assets to channel the benefits for the benefit of *mauquf 'alaih* or *waqf* recipients.²⁵

From this, the researchers found that the potential for *waqf* in Indonesia is arguably large. The potential for *waqf* land alone is 52.245,41 hectares spread across 385.898 locations with a total of 60,82% certified *waqf*. However, most of the use of the *waqf* land is still in the form of direct (consumptive) *waqf*, as can be seen in Figure 1 which shows that the use of *waqf* land is dominated for the construction of mosques by 44,26% and *musholla* (a prayer room) by 28,43%. In addition, the potential for cash *waqf* in Indonesia reaches 3 trillion per year with an estimated number of generous Muslims of 10 million and an average monthly income of IDR 500.000 to IDR 10.000.000.

B. Waqf Institutional Problems and Solutions

The problem in the development of *waqf* is related to *waqf* management, namely management that is not optimal and even mismanaged, which results in many *waqf* assets being abandoned, and some are even missing. This happens because the community donates land or buildings for schools, without thinking about the operational costs of *waqf*. In fact, *waqf* management requires professional management so that *waqf* management can develop and be productive. As stated by Ali Hashmi, the ideal *waqf* management is a management that resembles a company which can be applied to *waqf* management. In this case the key role lies in the existence of *nazhir*

²³Masruchin, *Wakaf Produktif dan Kemandirian Pesantren: Studi Tentang Pengelolaan Wakaf Produktif di Pondok Modern Darussalam Gontor Ponorogo* (Surabaya: Universitas Islam Negeri Sunan Ampel, 2014), 16.

²⁴Ahmad Furqon, "Pengelolaan Wakaf Tanah Produktif: Studi Kasus Nazhir Badan Kesejahteraan Masjid (BKM) Kota Semarang dan Yayasan Muslimin Kota Pekalongan", *Al-Ahkam*, Vol. 26 No. 1, 2016, 93.

²⁵Muhammad Aziz, "Kompetensi Nazhir dalam Mengelola Wakaf Produktif", *Jurnal al-Awqaf*, Vol. 7 No. 1, 2014, 60.

and a solid work team to maximize the expected results of *waqf*.²⁶

The priority problem from the community aspect is the low level of public awareness and understanding of *waqf*. As for the priority problems from the management aspect are the low operational costs and the weak *nazhir* resources. Furthermore, the government's priority problems are the lack of socialization of the *waqf* law and the low cost of the state budget for the certification of *waqf* land. Meanwhile, the priority of solutions to problems from the community aspect is socialization and education to the community as well as approaches from the religious side. And, the priority solutions to problems from the management aspect are increasing operational and training costs as well as improving *nazhir*'s recruitment system. Last but not least is the priority solutions to the problem of *waqf* from the government aspect that are increasing the socialization of the *waqf* law and increasing the cost of the APBN for the certification of *waqf* land.²⁷

In West Sumatra, the most problematic aspect of managing *waqf* is *nazhir*, while in Riau the most problematic aspect is *wakif*. *Nazhir*'s most important problem in West Sumatra is that *nazhir* is not the main profession, while in Riau it is the low competence of *nazhir* in managing *waqf*. The priority of *wakif* problems in Riau is in term of giving *waqf* directly to individuals, while in West Sumatra, *wakif* that does not coordinate with the heirs. The priority problem in West Sumatra and Riau from the regulatory aspect is the lack of socialization of the law. The priority solution to the problem of law socialization that is still lacking in West Sumatra is optimization through online media, while in Riau it is the making of a *waqf* bulletin. The priority for solutions to *nazhir* aspects in West Sumatra is to increase *nazhir* incentives, while in Riau is intensive training for *nazhir*'s. The priority of *wakif* solutions as a priority aspect of the problem in Riau is the ease of obtaining information about *wakif*, while in West Sumatra there is coordination between *nazhir* and heirs in providing *waqf*.²⁸

Waqf management pattern with several indicators including: *First*, managing finances transparently; *Second*, decision making

²⁶Sherafat Ali Hashmi, *Management and Development of Awqaf Properties*, ed. Hasmar Basar (Jeddah: IRTI/IDB, 1987), 21.

²⁷Abdullah, et. al., "*Aspek-Aspek Prioritas Manajemen Wakaf di Indonesia*", ..., 5.

²⁸Nurul Huda, et. al., "*Akuntabilitas Sebagai Sebuah Solusi Pengelolaan Wakaf*", *Jurnal Akuntansi Multiparadigma*, Vol. 5 No. 3, 2014, 490.

based on organizational rules; *Third*, record the administration of *waqf*; *Fourth*, activities based on a planned work plan; *Fifth*, periodic management changes; *Sixth*, developing *waqf* assets; *Seventh*, developing human resources. While *nazhir* human resource development is through increasing knowledge, abilities, attitudes, and personality traits. So, in other words, development is more emphasized on increasing the ability to do work in the present and especially in the future.²⁹

In a survey related to *waqf* management, it turned out that the development of *nazhir* resources (HR) had the lowest value, namely 56%. This picture certainly holds the problem of the low quality of *nazhir*. It can be said that the problem faced in management is the quality of *waqf nazhir*. As the current portrait of *waqf* can be seen from the research results show that around 16% actually manage *waqf* in full (full time). On the other hand, the majority of 84% admit that they are only part time *nazhir*'s. In other words, the *nazhir* will prioritize their main job either as civil servants, farmers, fishermen, teachers or lecturers or other professions.³⁰

C. Good Governance Concept

Waqf management requires a good governance. Good Governance is a term that is popularly known as Good Corporate Governance. According to corporate language, it means united in a single group, and governance is the activity or manner of governing.³¹ According to IICG, Good Governance is a series of mechanisms that direct and control a company so that the company's operations run in accordance with the expectations of stakeholders. It is believed that good governance can be used as a measure of whether or not performance is good in the organization. The five principles of good governance are transparency, accountability, responsibility, independence and fairness.³² Based on the principle of transparency, stakeholders will be able to see information that is important for decision making. The principle of accountability requires companies to

²⁹Burhanuddin Yusuf, *Manajemen Sumber Daya Manusia di Lembaga Keuangan Syariah* (Jakarta: Raja Grafindo, 2016), 134.

³⁰Muhammad Aswad, *Manajemen Sumber Daya Manusia Nazhir Wakaf di Kabupaten Tulungagung dan Kota Blitar* (Yogyakarta: Universitas Islam Negeri Sunan Kalijaga, 2019), 7.

³¹Jonathan Crowther, *Oxford Advance Learnes Dictionary of Current English*, Vol. 5 (Inggris: Oxford University Press, 1995).

³²Fahma As'har dan Nur Diana, "Pengaruh Penerapan Prinsip Good Governance Terhadap Penerimaan Wakaf Tunai", *E-Jra*, Vol. 8 No. 2, 2019, 44.

be accountable for their performance in a transparent and fair manner. Based on the principle of responsibility, companies must comply with laws and regulations and carry out responsibility towards society and the environment. The principle of independence will show the *waqf* that every decision making in the *waqf* institution is carried out objectively. Based on the principle of fairness, in the process of implementing its activities, the company must always pay attention to the interests of other stakeholders based on the principles of fairness and equality.³³

In the implementation of Good Governance, human resources occupy an important position in a company or organization, because each organization is formed from people who use their services, develop their skills, encourage them to reach the higher levels, and ensure that they continue to maintain commitment to the organization are the basic factors in achieving organization goals.³⁴ Therefore, humans as users of natural resources are obliged to maintain, develop and utilize them properly. Thus, when a country has excessive natural resources, it is not certain that the people will be prosperous, especially if the state does not have the ability to utilize these human resources. Conversely, a country that lacks natural resources but can utilize its human resources, they can become prosperous people.³⁵ For example, the management of *waqf* at Pondok Modern Darussalam Gontor is a management that is based on the spirit of implementing the five-soul, five-term, philosophy, *sunnah*, and the discipline values. With the high commitment of the YPPWPM management and Gontor family, Gontor was able to maintain, develop *waqf* and prosper the people.³⁶

From this explanation, the researchers found that the five principles of good governance are transparency, accountability, responsibility, independence, and fairness. With transparency, stakeholders will be able to see information that is important for decision making. Accountability requires companies to be accountable for their performance in a transparent and fair manner. Responsibility requires companies to comply with laws and regulations and carry out responsibility for

³³Rahmani Timorita Yulianti, *Corporate Governance di Lembaga Zakat* (Yogyakarta: Kaukaba, 2016), 18.

³⁴Sri Nawangwulan, "Analisis Kebutuhan Pelatihan dan Pengembangan Sumber Daya Manusia", *Jurnal Manajemen Kesehatan Yayasan RS. Dr. Soetomo*, Vol. 4 No. 1, 2018, 25.

³⁵Ratonggi Siregar, "Sumber Daya Manusia dalam Pembangunan Nasional", *Prosiding Seminar Nasional Tahunan Fakultas Ilmu Sosial Universitas Negeri Medan*, 2017, 378.

³⁶Jarman Arroisi dan Syamsuri, "Manajemen Wakaf Pondok Modern Darussalam Gontor: Analisis Model Pemeliharaan, Pengembangan Wakaf, dan Kesejahteraan Umat", *Ijtihad*, Vol. 14 No. 2, 2020, 154.

society and the environment. Independence will show *wakif* that every decision making in the *waqf* institution is carried out objectively. Fairness means that the company must always pay attention to the interests of other stakeholders based on the principles of fairness and equality. Furthermore, in implementing Good Governance, an important position in a company or organization is human resources.

Conclusion

Waqf management requires a good governance. It is believed that good governance can be used as a measure of whether or not performance is good in the organization. The five principles of good governance are transparency, accountability, responsibility, independence, and fairness. Based on the principle of transparency, stakeholders will be able to see information that is important for decision making. The principle of accountability requires companies to be accountable for their performance in a transparent and fair manner. Based on the principle of responsibility, companies must comply with laws and regulations and carry out responsibility towards society and the environment. The principle of independence will show the *waqf* that every decision making in the *waqf* institution is carried out objectively. Based on the principle of fairness, in the process of implementing its activities, the company must always pay attention to the interests of other stakeholders based on the principles of fairness and equality.

Based on data obtained from the Ministry of Religion of the Republic of Indonesia in 2020, the assets of donated land in Indonesia are 52.245,41 hectares spread across 385.898 locations with a total of 60,82% certified *waqf*. Most of the use of the *waqf* land is still in the form of direct (consumptive) *waqf*. The use of *waqf* land was dominated for the construction of mosques by 44,26% and prayer rooms for 28,43%. Meanwhile, the potential for cash *waqf* in Indonesia reaches 3 trillion per year with an estimated number of generous Muslims of 10 million and an average monthly income of IDR 500.000 to IDR 10.000.000.

The problem in the development of *waqf* is related to *waqf* management, namely management that is not optimal and even mismanaged, which results in many *waqf* assets being abandoned, some even missing. This happens because the community donates land or buildings for schools, without thinking about the operational costs of *waqf*. In fact, *waqf* management requires professional management so that *waqf* management can develop and be

productive. In this case the key role lies in the existence of *nazhir* and a solid work team to maximize the expected results of *waqf*. In addition, the priority problem from the community aspect is the low awareness of the community for *waqf* and the low understanding of the community about *waqf*. The priority problems from the management aspect are the low operational costs and the weak *nazhir* resources. The government's priority problems are the lack of socialization of the *Waqf* Law and the low cost of the APBN for the certification of *waqf* land. The priority solutions to problems from the community aspect are socialization and education to the community as well as approaches from the religious side. The priority solutions to problems from the management aspect are increasing operational and training costs as well as improving *nazhir*'s recruitment system. The priority solutions to the problem of *waqf* from the government aspect are increasing the socialization of the *Waqf* Law and increasing the cost of the APBN for the certification of *waqf* land.

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Waqf in the Perspective of Waqf Rules in Indonesia

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Abstract

For Muslims in Indonesia, the basic concept of waqf in Islam is very well understood, and more than that, if examined further, there will be many waqf assets in Indonesia. In the perspective of a country, it is necessary to implement regulations, including Waqf Law (Law), Government Regulation (PP) on Waqf, Regulation of the Indonesian Waqf Board (BWI), and Regulation of the Minister of Religion (PMA). This study aims to explain waqf from the perspective of waqf rules in Indonesia. This research uses qualitative-descriptive-literature methods. The conclusion is that the existing waqf rules that apply in Indonesia aim to maintain the existence of waqf to always be in accordance with the basic concept of waqf in Islam. In addition, this rule also serves as the basis for the legal protection of legality of waqf in Indonesia.

Keywords: *Waqf, Constitution of the Republic, Compilation of Islamic Law (KHI)*

Introduction

Waqf is a special form of Islamic economic instrument that bases its function on the elements of virtue (*birr*), goodness (*ihsan*) and brotherhood (*ukhuwah*). The main feature of *waqf* is that there is a shift in private ownership towards the ownership of the Muslim community which is expected to survive and provide lasting benefits. Through *waqf*, it is hoped that the process of distributing benefits to the wider community will take place, from private benefits

to social benefits.¹ The distribution of these benefits continues to grow, both in the concept of generosity (philanthropy) and also in the concept of empowerment.

As one of the religious institutions that is closely related to the socio-economic situation, *waqf* has helped a lot in the development of Indonesia as a whole, both in human resource development and social resource development.² One of the important things in *waqf* is how the benefits/results of this *waqf* can be channeled properly and accurately, which will certainly have an extraordinary positive impact on the Muslim community.

The distribution of *waqf* revenue in the form of *waqf* revenue empowerment is generally aimed at *mauquf 'alaih* (*waqf* recipients), who have sometimes been determined by *waqf* for what and to whom. Even so, some *wakif*'s do not refer to the distribution of *waqf* to the people in particular, but to something of a macro nature such as public interest and so on. Generally, *waqf* recipients are grouped into two main groups. *First*, people who are incapable or helpless. There are two groups in this category, namely economic disabilities (such as poor children, neglected, helpless women, and so on because of the economic hardships that befell them) and incompetence in the form of lack of freedom and slavery to obtain their human rights (such as minorities, marginalized, victims of violence, and so on). *Second*, for the public interest. The recipients of this *waqf* is not due to economic shortages, but because its services and objectives are for the benefit of many Muslims. Within this group, there are many programs and models of *waqf* distribution ranging from education, health, religious facilities, to public facilities that are closely related to the lives of many people.³

In terms of *waqf* social justice, it can be seen from at least three angles. *First*, *waqf* to meet basic needs that include food, shelter, education and health. *Second*, *waqf* to strive in increasing equal opportunities for everyone, especially the less fortunate. *Third*, *waqf* for structural change that includes changes in social systems and less

¹AM Saefuddin, *Membumikan Ekonomi Islam* (Jakarta: PT. PPA Consultans, 2011), 125-126.

²Abdul Aziz dan Mariyah Ulfah, *Kapita Selektta Ekonomi Islam Kontemporer* (Bandung: Alfabeta, 2010), 65-66.

³Miftahul Huda, *Mengalirkan Manfaat Wakaf: Potret Perkembangan Hukum dan Tatakelola Wakaf di Indonesia* (Ponorogo: Jurusan Syari'ah STAIN Ponorogo, 2014), 257-258.

pro-poor institutions.⁴

The distribution of these benefits must be developed continuously, both in the concept of generosity (philanthropy) and also in the concept of empowerment. *Nazhir* is expected to be able to channel/strengthen the results of this *waqf* properly and accurately.

Waqf property as an Islamic social institution, in fact, can be used as an economic resource. That is, the use of *waqf* assets is not limited to certain activities based on conventional orientation (education, mosques, hospitals, orphanages, etc), but *waqf* assets in the macro sense can also be used for economic activities such as agriculture, including mixed farms or agriculture and livestock, industry, mining, real estate, office buildings, hotels, restaurants and others. The position of the asset is fixed, but the result can be used more optimally, and not just used for a limited way. Of course, Muslims do not need to use all *waqf* assets for productive purposes only, but this can be considered as an alternative to optimize the function of *waqf*.⁵

In its development, the distribution of *waqf* revenue is not only aimed at charity programs for the poor because with this program, only one capital will be spent. Therefore, as much as possible, it should be used for empowerment programs for the poor so that capital can be used sustainably, even if there is a possibility that this capital can be reproduced to others who need it, either to strengthen distribution capacity or as initial capital to start a business (productive capacity).⁶

In Indonesia, to further strengthen the concept of *waqf*, there are several regulations that regulate, including *Waqf Law*, and Government Regulations on *Waqf*. Therefore, this study aims to explain *waqf* in a regulatory perspective. In addition, this research is also expected to add to the treasures of Islamic knowledge, especially in the discussion of *waqf*.

Methodology

This research is compiled using qualitative methodology as a research procedure that produces descriptive data in the form of

⁴Sudirman Hasan, *Wakaf Uang: Perspektif Fiqih, Hukum Positif dan Manajemen* (Malang: UIN-Maliki Press, 2011), 58.

⁵Mardani, *Hukum Ekonomi Syariah di Indonesia* (Bandung: PT. Refika Aditama, 2011), 72-73.

⁶Ismail Nawawi, *Fiqh Muamalah: Hukum Ekonomi, Bisnis dan Sosial* (Surabaya: Putra Media Nusantara, 2010), 430.

words and language,⁷ with descriptive methods that aim to make descriptions or drawings systematically,⁸ and is a literature review, namely research conducted using literature.⁹ The researcher seeks the necessary data in the form of *Waqf* Law, Government Regulations on *Waqf*, Regulations of the Indonesian *Waqf* Council, and Regulations of the Minister of Religion. The data obtained were then compiled by the researcher to explain the *waqf* in a regulatory perspective. The analysis process takes place from the beginning to the end of the research, so it is hoped that the concept of *waqf* description can be explained. In its presentation, this research first explains the basic concept of *waqf* in Islam, then later explains the rules on *waqf*.

The Basic Concept of Waqf in Islam

Etymologically, *waqf* comes from the word *waqafa-yaqifu-waqfan* which means to stop or withhold (*al-habs*). In terms of terminology, there are several definitions of *waqf*. The Shafi'i school, according to Imam Nawawi, "*Waqf holds property that can be beneficial but not for oneself, while the object remains with it and is used for good and close to Allah SWT*", according to Ibn Hajar al-Haitami and Shaykh. Umairah, "*Waqf is the holding of assets that can be used by maintaining the integrity of the asset, by deciding the ownership of goods from the owner for what is allowed*". The Hanafi school, according to Imam Syarkhasi, "*Waqf is keeping property out of the reach of others*", according to al-Mughni, "*Waqf holds property under the hands of the owner, accompanied by the giving of benefits as alms*".¹⁰ Maliki school of thought, according to Ibn Arafah, "*Waqf is the benefit of something, in the time limit of its existence, at the same time waqf remains in the possession of its owner, even if it is only an estimate*".¹¹ Compilation of Islamic Law, "*Waqf is the legal action of a person or a group of people or legal entities that separates part of their property and institutionalizes it forever for the purpose of worship or other public interest in accordance with Islamic teachings*".¹² Law No. 41 of 2004, "*Waqf is a legal act of wakif to separate and/or hand over part of his*

⁷Lexy J. Moleong, *Metodologi Penelitian Kualitatif* (Bandung: PT. Remaja Rosdakarya, 2013), 4.

⁸Moh. Nazir, *Metode Penelitian* (Bogor: Ghalia Indonesia, 2013), 54.

⁹Etta Mamang Sangadji dan Sopiah, *Metodologi Penelitian: Pendekatan Praktis dalam Penelitian* (Yogyakarta: CV. Andi Offest, 2010), 28.

¹⁰Mardani, *Hukum Ekonomi Syariah di Indonesia, ...*, 63.

¹¹*Ibid.*, 64.

¹²Pasal 215 Ayat (1), Kompilasi Hukum Islam Indonesia.

property for permanent use or for a certain period of time in accordance with his interests for the purpose of worship and/or the welfare of society according to sharia".¹³

As for what is stated as the basis of *waqf* law by the scholars is as follows:

يَا أَيُّهَا الَّذِينَ ءَامَنُوا ارْكَعُوا وَاسْجُدُوا وَعَبُدُوا رَبَّكُمْ وَأَفْعَلُوا الْخَيْرَ لَعَلَّكُمْ تُفْلِحُونَ ﴿٧٧﴾

"O you who believe! Bow down, bow down, and worship your Lord; and do good, that you may prosper." (QS. al-Hajj ayat 77).¹⁴

لَنْ تَنَالُوا الْبِرَّ حَتَّى تُنْفِقُوا مِمَّا تُحِبُّونَ وَمَا تُنْفِقُوا مِنْ شَيْءٍ فَإِنَّ اللَّهَ بِهِ عَلِيمٌ ﴿٩٢﴾

"You will not get any good, until you give up some of the property you love. And whatever you eat, in fact, God knows best" (QS. Ali-'Imron ayat 92).¹⁵

مَثَلُ الَّذِينَ يُنْفِقُونَ أَمْوَالَهُمْ فِي سَبِيلِ اللَّهِ كَمَثَلِ حَبَّةٍ أَنْبَتَتْ سَبْعَ سَنَابِلٍ فِي كُلِّ سُنْبُلَةٍ مِائَةٌ حَبَّةٌ وَاللَّهُ يُضَعِفُ لِمَنْ يَشَاءُ وَاللَّهُ وَاسِعٌ عَلِيمٌ ﴿٢٦١﴾

"The parable of the man who spends his wealth in the way of Allah is like a seed that grows seven stalks, in each stalk there are a hundred seeds. Allah multiplies for whom He wills, and Allah is All-Powerful, All-Knowing" (QS. al-Baqarah ayat 261).¹⁶

يَا أَيُّهَا الَّذِينَ ءَامَنُوا أَنْفِقُوا مِنْ طَيِّبَاتِ مَا كَسَبْتُمْ وَمِمَّا أَخْرَجْنَا لَكُمْ مِنَ الْأَرْضِ ۖ وَلَا تَيَمَّمُوا الْخَبِيثَ مِنْهُ تُنْفِقُونَ وَلَسْتُمْ بِآخِذِيهِ إِلَّا أَنْ تُغْمِضُوا فِيهِ وَاعْلَمُوا أَنَّ اللَّهَ عَنِّي حَمِيدٌ ﴿٢٦٧﴾

"O you who believe! Give some of your good works and some of what We have brought down from the earth for you. Do not choose what is bad - for you to erase it, but you do not want to take it yourself but by squeezing (reluctantly)

¹³Pasal 1 Ayat (1), Undang-Undang Republik Indonesia Nomor 41 Tahun 2004 tentang Wakaf.

¹⁴Departemen Agama RI, *Al-Qur'an dan Tafsirnya (Edisi yang Disempurnakan)*, Vol. 6 (Jakarta: Departemen Agama RI, 2010), 459.

¹⁵Departemen Agama RI, *Al-Qur'an dan Tafsirnya (Edisi yang Disempurnakan)*, Vol. 2 (Jakarta: Departemen Agama RI, 2010), 3.

¹⁶Departemen Agama RI, *Al-Qur'an dan Tafsirnya (Edisi yang Disempurnakan)*, Vol. 1 (Jakarta: Departemen Agama RI, 2010), 390-391.

using it And know that Allah is Almighty, Most Praiseworthy” (QS. al-Baqarah ayat 267).¹⁷

عَنْ أَبِي هُرَيْرَةَ أَنَّ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ إِذَا مَاتَ الْإِنْسَانُ انْقَطَعَ عَنْهُ عَمَلُهُ إِلَّا مِنْ ثَلَاثَةٍ إِلَّا مِنْ صَدَقَةٍ جَارِيَةٍ أَوْ عِلْمٍ يُنْتَفَعُ بِهِ أَوْ وَلَدٍ صَالِحٍ يَدْعُو لَهُ ﴿١٨﴾

“From Abu Hurairah that Rasulullah SAW said, “If a person dies, his deeds will be cut off except for three things: alms, useful knowledge, and pious children always pray for him.”.¹⁹

عَنْ ابْنِ عُمَرَ رَضِيَ اللَّهُ عَنْهُمَا أَنَّ عُمَرَ بْنَ الْخَطَّابِ أَصَابَ أَرْضًا بِحَيْبَرَ فَأَتَى النَّبِيَّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ يَسْتَأْمِرُهُ فِيهَا فَقَالَ يَا رَسُولَ اللَّهِ إِنِّي أَصَبْتُ أَرْضًا بِحَيْبَرَ لَمْ أَصِبْ مَالًا قَطُّ أَنْفَسَ عِنْدِي مِنْهُ فَمَا تَأْمُرُ بِهِ قَالَ إِنْ شِئْتَ حَبَسْتَ أَصْلَهَا وَتَصَدَّقْتَ بِهَا قَالَ فَتَصَدَّقْ بِهَا عُمَرُ أَنَّهُ لَا يُبَاعُ وَلَا يُوهَبُ وَلَا يُورَثُ وَتَصَدَّقْ بِهَا فِي الْفُقَرَاءِ وَفِي الْقُرْبَى وَفِي الرِّقَابِ وَفِي سَبِيلِ اللَّهِ وَابْنِ السَّبِيلِ وَالضَّيْفِ لَا جُنَاحَ عَلَى مَنْ وَلِيَهَا أَنْ يَأْكُلَ مِنْهَا بِالْمَعْرُوفِ وَيُطْعِمَ غَيْرَ مُتَمَوِّلٍ قَالَ فَحَدَّثْتُ بِهِ ابْنَ سِيرِينَ فَقَالَ غَيْرَ مُتَأْتِلٍ مَالًا ﴿٢٠﴾

“From Ibn Umar, Umar bin Khathab got a piece of land in Khaibar. Then he went to the Prophet SAW to ask for advice on the land. He said, “O Messenger of Allah, I have land in Khaibar where I have never acquired a property more valuable than that. What did you tell me about that land?” He replied, “If you want, you can keep ownership and contribute the benefits. “Then Umar gave him the decision that the land was not sold, not given and not inherited. He gives its benefits to the needy, brothers, people who liberate slaves, fighters in the way of God, tourists and guests. It is okay for those who take care of it to eat it in the right way and feed others without accumulating wealth. Then I narrated this hadith to Ibn Sirin. He said, “That means, not accumulating wealth”.²¹

¹⁷Ibid., 403.

¹⁸Shahih Muslim Juz 8 (405), dalam Aplikasi Maktabah Syamilah.

¹⁹Muslim bin al-Hajjaj al-Qusyairi an-Naisaburi, *Ensiklopedi Hadits: Shahih Muslim* 2, Vol. 4, Terj. Masyhari dan Tatam Wijaya (Jakarta: Almahira, 2012), 71-72.

²⁰Shahih Bukhari Juz 9 (263), dalam Aplikasi Maktabah Syamilah.

²¹Ahmad bin Muhammad al-Qasthalani, *Syarah Shahih Bukhari*, Terj. Abu Nabil (Solo: Zam-Zam, 2014), 468.

From the above description, there are some provisions in terms of *waqf*. According to Azhar Bashir, the provisions are as follows. *First*, *waqf* property must remain (not transferable to others) either by trading it, giving it away, or inheriting it. *Second*, *waqf* property is free from the property of the person who donated. *Third*, the purpose of *waqf* must be clear (clear). *Fourth*, *waqf* assets can be certified by a supervisor who is entitled to participate in *waqf* assets. *Fifth*, *waqf* assets can be in the form of land and so on, which are durable and do not disappear after use.²²

An asset or *waqf* object is said to have a permanent use of at least 4 (four) things. *First*, this object can be used by many people. When a person donates land or buildings, even cash *waqf* to be formed in educational facilities, the general public will benefit from the presence of a *madrasah* or school. Especially if the school fees are cheap and even free after being subsidized by funds from the *waqf* management. *Second*, the object of *waqf* gives a more real value to the *waqf* itself. Materially, *waqf* has the right or can use the object of *waqf* as it applies to other *waqf* recipients. In an immaterial way, the *waqf*'s will certainly get a continuous reward value because the objects used by the general public will certainly provide great benefits to the society in general. *Third*, the immaterial benefits of *waqf* assets are greater than the material benefits. Or it can be put in another language that the *waqf* pressure point is actually more concerned with the function of others (many) than the object itself. Therefore, people who use *waqf* land for example to establish worship facilities are not interpreted as just vertical worship but also horizontal. *Fourth*, the object of *waqf* itself does not pose or bring danger to others and *wakif*.²³

Waqf Rules in Indonesia

A. Law No. 41 of 2004 on Waqf

Waqf is valid if implemented according to *sharia*. The promised *waqf* cannot be canceled. *Waqf* aims to utilize *waqf* property according to its function. *Waqf* serves to realize the economic potential and benefits of *waqf* property for the benefit of worship and to promote public welfare.

Waqf is performed by fulfilling the following elements of *waqf*: (1) *Wakif*, the party who contributes their property, including individuals,

²²Abdul Rahman Ghazaly, *Fiqh Muamalat*, Vol. 1 (Jakarta: Kencana, 2010), 176.

²³Huda, *Mengalirkan Manfaat Wakaf, ...*, 258-259.

organizations, or legal entities; (2) *Nazhir*, the party who receives *waqf* property from the *wakif* to be managed and developed in accordance with his appointment, including individuals, organizations, or legal entities; (3) *Waqf* assets, assets that have long-term resilience and/or long-term benefits and have economic value in accordance with *sharia*, are represented by a *wakif*, consisting of immovable, immovable objects including rights to land, buildings or parts of buildings, standing on the ground, plants and other objects related to the ground and moving objects; (4) A pledge of *waqf*, a statement of the will of the *waqf* spoken orally and/or in writing to *nazhir* to donate his property; (5) Provision of *waqf* property; (6) *Waqf* period.

In Law No. 41 of 2004 on *Waqf*, article 5 explains the function of *waqf* is to realize the economic potential and benefits of property for the benefit of worship and to improve the welfare of society. *Waqf* is a voluntary legal action that is suggested as an expression of gratitude to the *rizki* that a person has the value of social diversity.

The formation of Law Number 41 of 2004 on *Waqf* stems from the fact that the practice of *waqf* performed in society is not yet fully organized and efficient, for example, *waqf* assets are not well cared for, neglected, and transferred to third parties by committing illegal acts.²⁴

Prior to the enactment of Law Number 41 of 2004 on *Waqf* in Indonesia, *waqf* activities were very popular in line with the spread of Islam in Indonesia. Through the *da'wah* spread by scholars, the teachings of *waqf* are also introduced to the community. This is evidenced by the existence of a historic mosque built on *waqf* land. This proves that the teachings of *waqf* derived from Islam have been accepted among the community and have become customary law. These *waqf* activities are limited to religious activities, such as the construction of mosques, *madrrasah's*, tombs so that *waqf* activities in Indonesia are not economically beneficial to the general public. Several regulations have been made to regulate the *waqf* system in Indonesia, such as Government Regulation No. 28 of 1977 on Representation of Owned Land in Article 2 and Presidential Instruction No.1 of 1991 on the Preparation of Islamic Law Article 216 which explains that in accordance with the purpose of *waqf*, which instituted it forever which serves as an interest in worship or for other purposes in accordance with the provisions of *syara'*. In article 4 of Law No. 41 of 2004 on *Waqf*, the *waqf* aims to utilize *waqf* property in

²⁴Jaih Mubarak, *Wakaf Produktif* (Bandung: Simbiosis Rekatama Media, 2008), 58.

accordance with its function.²⁵ To achieve this goal, added in article 22, that *waqf* property is only intended as a means and activities of worship, education, health, assistance to the poor, neglected children, orphans, scholarships, progress and economic or people's progress, other general welfare which is not contrary to Islamic law and positive law.

Article 5 of Law No. 41 of 2004 on *Waqf* explains that the function of *waqf* is to realize the economic potential and benefits of *waqf* property for the benefit of worship and the welfare of society. In order for the function of *waqf* to be in line with the purpose of *waqf*, the object of *waqf* must be used as best as possible in its management, therefore it is necessary to have a professional and competent inspector in his field by promoting Islamic teachings. With the presence of professional *nazhir*, *waqf* objects that are still neglected and not used optimally can function well, so as to contribute to the well-being of society and can minimize the social problems that exist in society.

B. Government Regulation No. 42 of 2006 on Waqf

Government Regulation No. 42 of 2006 on *Waqf* states that the implementation of cash *waqf* is based on the law governing *waqf* and its implementation in accordance with the provisions on cash *waqf* where the position of cash *waqf* should be clearer so that the legality of issuing cash *waqf* is guaranteed.

Government Regulation Number 42 of 2006 on *Waqf* states that *waqf* assets or objects do not specify the time period, especially for moving objects *waqf*, such as land and or buildings. Basically, the implementation of *waqf* is not limited to the time or permanent nature given by the community to support the general welfare.

In the provisions of Article 27 Government Regulation Number 42 of 2006 specifically regulates the norms of provisions for *wakif*'s that require a certain period or period of time on *waqf* objects in the form of moving objects in the form of money. *Waqf* in the form of money is usually given without a specified period of time. This is because the perspective of society is that *waqf* can be equated in the form of worship.²⁶

²⁵Naimah, "Implementasi Yuridis Terhadap Kedudukan Waqf Produktif Berbasis Peningkatan Ekonomi Masyarakat di Indonesia", *At-Taradhi: Jurnal Studi Ekonomi*, Vol. 9 No. 1, 2018, 12.

²⁶Puji Sulistyanyingsih, et. al., "Pelaksanaan Hak Kekayaan Intelektual Sebagai Obyek Wakaf", *Jurnal of International Property*, Vol. 2 No. 2, 2019, 16.

C. Inpres No. 1 of 1991 on the Compilation of Islamic Law (KHI)

Compilation is a collection when it comes to law, it can be interpreted as a collection of legal material in one book. The Compilation of Islamic Law (KHI) is the compilation of Islamic legal material that is compiled systematically as completely as possible with reference to articles commonly used in legislation. On June 10, 1991, the President of the Republic of Indonesia issued Presidential Instruction No. 1 of 1991 to the Minister of Religion, who first distributed the Compilation of Islamic Law consisting of 3 books: Book I on Marriage Law; Book II on Heritage; and Book III on *Waqf* Law. The birth of KHI was established in the form of Inpres No. 1 in 1991 to meet the needs of the Indonesian people, especially the Muslim community, so that in the field of marriage, inheritance and *waqf* law, they have a strong legal protection in these three areas.

Waqf according to Presidential Decree No. 1 of 1991 on the Compilation of Islamic Law (KHI) is the legal action of a person or a group of people or legal entities that separates part of their property and instituted it forever for the purpose of worship or other general purpose in accordance with the teachings Islam.

In Effect No. 1 of 1991 on the Compilation of Islamic Law (KHI) which is the development and improvement of materials related to *waqf* that already exist in the previous legislation, such as *waqf* object, change of *waqf* object, *nazhir* oath, *nazhir* figure, *nazhir* supervision, *nazhir* supervision, role of *Ulama* council and KUA, the implementation of *nazhir* duties and responsibilities performed by the chairperson of the sub-district KUA, district MUI and District Religious Court.

D. Regulations of the Indonesian Waqf Institution

Existence of Law No. 41 of 2001 on *Waqf* which brought fundamental progress to the *waqf* system in Indonesia, where this regulation in addition to changing the *waqf* paradigm also changed the policy on *waqf*. In this law it is understood that not only *waqf* for immovable objects, such as land and buildings, but *waqf* can also be made on moving objects such as money, precious metals, securities, intellectual property rights (RIGHTS), vehicles, rental rights, and other moving objects in accordance with the provisions of *sharia* and legal regulations.²⁷

²⁷Departemen Agama RI - Ditjen Bimas Islam, *Undang-Undang Nomor 41 Tahun 2004 tentang Wakaf dan Peraturan Pemerintah Nomor 42 Tahun 2006 tentang Pelaksanaan*

In 2002, the Indonesian *Ulama* Council issued a *fatwa* that allows cash *waqf* in Indonesia, which can be seen from the potential *waqf* in Indonesia to reach one-third of the wealth of Muslims, which according to the Prophet its potential will be incredible. This extraordinary cash *waqf* can be managed by *nazhir* for investment developed with a *waqf* development model as in Law Number 41 of 2004 on *Waqf*, in Article 43 paragraph 2 there is a collection of investments, partnerships, trade, industry and investments of *waqf* land is strategic and has great economic value, so it can be used as a tool of tourist objects, for example, where there are many different types of games, complete with facilities for mosques, hotels so that they can increase the value of per capita income so they can open jobs for the community reducing the national unemployment quantity.

As for the role of *waqf* institution as an institution oriented to optimize the role of *nazhir* and the function of *waqf* institution as a motivator, facilitator, organizer, and education for *nazhir*. With the existence of *waqf* institutions in each region, all issues related to *waqf* can be addressed directly by the *waqf* institution, so that the *waqf* problem does not become the authority of the central government or the institution appointed by the central government. Structurally, the membership of the Indonesian *Waqf* Board (BWI) in Law 41 of 2004 is described in Article 55, which is related to the appointment and dismissal of BWI members, as follows: (1) *Waqf* membership is appointed and terminated by the president; (2) The membership of BWI representatives in these areas is appointed and terminated by the Indonesian *Waqf* Body, and his term in Article 56 explains that BWI membership is appointed for 3 years and can be reappointed for 1 term.²⁸

Conclusion

The establishment of Law Number 41 of 2004 on *Waqf* comes from the practice of *waqf* in society that is not fully limited to religious activities, such as the construction of mosques, *madrassah's*, tombs so that *waqf* activities in Indonesia are not economically beneficial to the general public. To achieve this goal, added in Article 22, that *waqf* property is

Undang-Undang Nomor 41 Tahun 2004 tentang Wakaf (Jakarta: Departemen Agama RI Ditjen Bimas Islam, 2007), 10-12.

²⁸Rahmat Dahlan, "Analisis Kelembagaan Badan Wakaf Indonesia", *Jurnal Bisnis dan Manajemen*, Vol. 6 No. 1, 2016, 121.

only intended as a means and activities of worship, education, health, assistance to the poor, neglected children, orphans, scholarships, progress and economic or people's progress. But also, for other general welfare which is not contrary to *sharia* law and the positive law. As for the role of *waqf* institution as an institution oriented to optimize the role of *nazhir* and the function of *waqf* institution as a motivator, facilitator, organizer, and education for *nazhir*. Meanwhile, *nazhir*'s handling in cash *waqf* practice is *nazhir*'s lack of ability in managing and optimizing *waqf* objects (money), thus improving the quality of HR/*nazhir* is very much needed. The President of the Republic of Indonesia issued Presidential Instruction No. 1 of 1991 to the Minister of Religion, the first to distribute the Compilation of Islamic Law consisting of 3 books: Book I on Marriage Law; Book II on Heritage; Book III on *Waqf* Law. The birth of KHI was established in the form of Inpres No. 1 in 1991 to meet the needs of the Indonesian people, especially the Muslim community, so that in the field of marriage, inheritance and *waqf* law, they have a strong legal protection in these three areas.

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Application for *Wakalah bi al-Ujrah* Contract in Various Banks, Insurance, and Syariah Mutual Funds Indonesia According to Wahbah Zuhaili

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Abstract

Wakalah is one of the most frequently used transactions in insurance, mutual funds, and especially Islamic banking. Insurance is one of the economic activities that we often hear about, many of these activities, such as health insurance, education, and etc. This paper uses a literature analysis method by using journals as its primary source. According to Wahbah Zuhaili there is insurance that is allowed to do and there is insurance that is illegal to do. Basically, the purpose of the insurance is having a mutual help. So if the participant does not use the insurance premium they have been paid, this premium will be allocated to others. Until there is a help-seeking action based on sincerity. However, it will be illegal if the purpose of this insurance activity is based solely on profit. Thus, it will create a synergy that will eliminate the benefits. So this insurance being an illegal activity. which is containing five elements, there are riba, gharar, gaban, qimar, and jahalah, which can damage human benefits and harms. Then insurance activity is illegal.

Keywords: *Insurance, Shariah Banking, Shariah Law, Wahbah Zuhaili*

Introduction

Indonesia is a country with the largest Muslim population, so it has a very high potential for industry based on *sharia* elements. Seeing the development of *sharia* market that has been growing rapidly,¹ it is also able to encourage the country's financial sector, both from *sharia* banking, *sharia* insurance, or other *sharia* financial institutions. The Islamic banking assets have increased on average 60 per cent in the last four years. They rose from US\$ 1.498 billion (1 per cent of the total banking assets) in 2004 to US\$ 2,6 billion (1,8 per cent of the total banking assets) in 2005. Bank Indonesia has devised a roadmap to ensure that the Islamic banking industry has a share up to 6 per cent of the total Indonesian banking market by 2011. There are 30 *takaful* and re-*takaful* companies in the country. In 2005, *takaful* industry held 1,5 per cent of total insurance market which was expected to increase to 2 per cent by the end of 2006. There are growing opportunities to invest in Islamic stocks, bonds, and money market instruments in Indonesia.² With the emergence of various Islamic financial institution companies, the products offered are also growing and one of the various contracts offered to customers is *wakalah* contract.

Wakalah contract almost being a principal contract in every bank product. The contract itself is a power of attorney from a person called *muwakkil*, to a person who represents the *muwakkil* to perform certain legal actions.³ Some of the products that use this contract are insurance, mutual fund, and another product. Where the contract becomes a legality in the course of the transaction. However, in the field, many economic activities are not based on an appropriate contract, or not fulfilled a contract which results in the cancellation of the contract to the invalidity of the transaction. Currently, several insurance applications that occur are violating the rules and detrimental to customers (*shahibul maal*), the example, the insurance at BTPN *Syariah*, indirectly gives the impression that MMS is forced to pay premiums to all parties in executing insurance claims. Insurance (Allianz) does not hand over claims directly because

¹Nur Hisamuddin, "Implementasi Akuntansi Akad *Wakalah bil Ujrah* Perusahaan Asuransi *Syariah* Berdasarkan PSAK 108: Studi di PT Asuransi *Takaful Keluarga*", *Jurnal Addin*, Vol. 8 No. 1, 2014, 54.

²M. Mansoor Khan and M. Ishaq Bhatti, "Islamic Banking and Finance: On Its Way to Globalization", *Managerial Finance*, Vol. 34 No. 10, 2008, 718.

³Fatwa DSN-MUI No. 113/DSN-MUI/IX/2017 Tentang Akad *Wakalah bil Ujrah*.

those who submit the claim and the technical payment as well as the amount of premium that must be paid. Because premium payments are combined with financing installment payments. BTPN *Syariah* provides claims only for customers and customers' husbands who died and there is no return of claims for customers who did not pass away and for customers who made early repayments.⁴

In case of Islamic mutual fund, *sharia* committee must be provided to oversee that the offered products are fully *sharia* compliance. *Sharia* committee will guide the fund manager in choosing the products that categorized as *sharia* compliance. *Sharia* principle encourages the business activity especially in Islamic capital market to be free from usury (*riba*), gambling (*maysir*), and (*gharar*) uncertainty activities.⁵ However, the *sharia* law has regulated it in such a way that nothing happens and can cause harm to both parties. So, according to the case before, the researcher will discuss a research about "*Application for Wakalah bi al-Ujrah Contract in Various Banks, Insurance, and Syariah Mutual Funds Indonesia According to Wahbah Zuhaili*".

Literature Review

A. Biography of Wahbah Zuhaili

Wahbah az-Zuhaili is a contemporary scholar who is known as a great scholar. He is a figure scholar who is famous in the field of *fiqh* and also expert in commentator. Almost all of his time is only focused on developing scientific fields. He lived in the 20th century who was equal to other figures, such as Thahir Ibn Asyur, Said Hawwa, Sayyid Qutb, Muhammad Abu Zahrah, Mahmud Syaltut, Ali Muhammad al-Khafif, Abdul Ghani, Abdul Khaliq, and Muhammad Salam Madkur with understanding and guidance from knowledge. Since childhood Wahbah az-Zuhaili was familiar with the basics of Islam. At the age of 7, his friends also attended *ibtidaiyah* school in his village until 1946. Entering his formal education, he spent almost 6 years of

⁴Viddy Cariestya Genoveva, et. al., "*Kedudukan Hukum Akad Asuransi dalam Akad Pembiayaan Murabahah Nasabah BTPN Syariah MMS Majalengka*", *Jurnal Ekonomi Syariah dan Bisnis*, Vol. 1 No. 2, 2018, 135.

⁵Faaza Fakhrunnas, "*The Performance of Islamic Mutual Funds, Why Is It Not Better than Conventional?*", *Islamic Management Accounting and Economics*, Vol. 1, 2018, 21.

secondary education, and in 1952 he received a diploma, which was the first step to continue to university. Namely the *Sharia* Faculty of Damascus University, obtained his bachelor's degree in 1953 AD. Then continue his doctoral studies, he deepened his knowledge at al-Azhar University in Cairo. And in 1963 he officially became a Doctor with his dissertation entitled *Atsar al-Harb fi al-Fiqh al-Islami*.⁶

B. *Wakalah bi al-Ujrah* Contract

According to DSN-MUI, the *wakalah bil ujrah* contract is the contract used between the insurance participant and institution. *Wakalah* itself means (representation) or the hand over, delegation, or granting of a mandate or power of attorney for the transfer of authority by one party to another party in matters which may be represented.⁷ So it could be assumed that *wakalah bi al-ujrah* is *wakalah* which accompanied by rewards in the form of *ujrah* which also called by *wakalah bi al-tijarah*.

Meanwhile, according to Bank Indonesia regulations "*wakalah bil ujrah*" is the granting of authority from *sharia* deposit certificates investors to a *sharia* deposit certificates transaction supporting institutions to conduct a *sharia* certificate of deposit transactions in exchange (*ujrah*)⁸ which is applied to the deposit transaction certificate.

Based on the DSN-MUI, this contract is said to be valid if it meets all the criteria. *First*, a *muwakkil* and *wakil* may be a person (*syakhshiyah thabi'iyah/natuurlijke persoon*) or who is likened to a person, whether incorporated or not incorporated (*syakhshiyah i'tibariah/syakhshiyah hukumiyah/rechtsperson*), in accordance with applicable laws and regulations. *Second*, a *muwakkil* and *wakil* must be competent with the law in accordance with *sharia* and the applicable laws and regulations. *Third*, *muwakkil* must have the authority to provide power of attorney to other parties, both authority which is pure or *ashliyyah* and represented or *niyabiyyah*. *Fourth*, a *muwakkil* must have the ability to pay fee or *ujrah*. *Fifth*, a *wakil* must have the ability to realize the legal acts authorized to him.⁹

⁶Sadiani dan Abdul Khair, "Analisis Kritis Pemikiran Wahbah az-Zuhaili Tentang Penetapan", *Fenomena*, Vol. 8 No. 2, 2016, 145.

⁷Fatwa DSN-MUI No. 113/DSN-MUI/IX/2017 Tentang Akad *Wakalah bil Ujrah*.

⁸Peraturan Bank Indonesia Nomor 20/9/Pbi/2018 Tentang Transaksi Sertifikat Deposito Syariah di Pasar Uang.

⁹Fatwa DSN-MUI No. 113/DSN-MUI/IX/2017 Tentang Akad *Wakalah bil Ujrah*.

In the object, it must fulfill the following requirements. *First*, *wakalah bi al-ujrah* can only be done on activities or legal actions that may be represented. *Second*, the object of *wakalah bi al-ujrah* must be a certain work or act and must be clearly known by the representatives and *muwakkil*. *Third*, the object of *wakalah bi al-ujrah* must be carried out by the representative. *Fourth*, the contract of *wakalah bi al-ujrah* may be limited in terms of time by *muwakkil* (authorizer). *Fifth*, the *wakil* is not obliged to bear the risk of losses arising from the actions he did, except because *al-ta'addi*,¹⁰ *al-taqshir*,¹¹ or *mukhalafat al-syuruth*.¹²

The provisions of the *ujrah* given are as follows. *First*, the *ujrah* can be in the form of money or goods that may be used according to *sharia (mutaqatuwam)* and the applicable laws and regulations. *Second*, the quantity and quality of the *ujrah* must be clear, either in the form of a nominal number, a certain percentage, or a formula that is agreed upon and known by the parties making the contract. *Third*, the *ujrah* may be paid in cash, installments and resilient in accordance with *sharia*, agreements, and/or applicable laws and regulations. *Fourth*, the agreed upon *ujrah* may be reviewed for benefits that have not been received by *muwakkil* according to the agreement.¹³

C. Insurance and Syariah Mutual Funds in Various Syariah Bank

Insurance is an agreement between two or more parties, by which the insurer binds itself to the insured, by receiving insurance premiums¹⁴ to provide reimbursement to the insured due to loss, damage or loss of expected profits, or legal liability to third parties that may be suffered by the insured arising from an uncertain event, or to provide a payment based on death or someone's life is insured.¹⁵ In this case Indonesia has two types of insurance which are very contradictory, namely conventional insurance and *sharia* insurance. The conventional insurance, funds are collected from customers (premiums) become fully owned by the company. Thus, the

¹⁰*Al-ta'addi* is doing something that should not be done.

¹¹*Al-taqshir* is not doing an action that should be done.

¹²*Mukhalafat al-syuruth* is violating the content and/or substance or conditions agreed in the contract.

¹³Fatwa DSN-MUI No. 113/DSN-MUI/IX/2017 Tentang Akad *Wakalah bil Ujrah*.

¹⁴The insurance premium is an amount of money that must be paid each month as the obligation of the insured for his participation in insurance that has been determined by the company.

¹⁵Indah Nihyatia, "Penerapan dan Aplikasi Akad *Wakalah pada Produk Jasa Bank Syariah*", *Jurnal Ekonomi dan Hukum Islam*, Vol. 3 No. 2, 2013, 91.

participant of the fund will be forfeited if he does not make any claim during the coverage period. Conventional insurance companies also have freedom in determining the allocation of investment premium funds. Apart from how to manage it, conventional insurance risk management is in the form of risk transfer from participants to insurance companies (risk transfer). Where the risk is borne or charged by insurance participants.

But in *sharia* insurance, the *sharia* principle is the basis of its operation. Which is based on the principles of Islamic law in insurance activities based on fatwas issued by institutions that have the authority to determine. With the premium paid by participants to the insurance institution. The epidemic that was collected from the policyholders was still jointly owned by the participants. The position of the insurance company only acted as a trustee to manage it on the basis of a contractual agreement, either with *ujrah* (commission) or without *ujrah*. Therefore, the *sharia* insurance company will return its *tabarru'* fund management underwriting surplus to participants who have not made a claim. Although there are also some who do not return the funds when participants have stated their donation during the contract.¹⁶ *Syariah* insurance also called by *takaful*, between *takaful* and insurance are institutions involved in risk management which aim to reduce the suffering experienced by individuals. *Takaful* also has an element of mutual help which distinguishes it from conventional insurance. *Takaful* is a system whereby participants regularly contribute a certain amount to a common fund with the intent of jointly guaranteeing each other.¹⁷

Syariah mutual funds is an investment facility that can be used by the public to develop a portfolio of securities that can be obtained in increasing the value of the Net Asset Value (NAV). Mutual funds are instruments that are used financially to raise funds from the investor community which are then invested in a securities portfolio by the investment manager. Mutual funds are a collection of shares, resignations, or other securities owned by a group of investors and managed by an investment company.¹⁸ Some of the contracts that

¹⁶Deni Purnama, "Penerapan Akad *Wakalah bi al-Ujrah* dalam Industri Asuransi dan Lembaga Keuangan *Syariah* Lainnya", *Jurnal Ekonomi dan Hukum Islam*, Vol. 2 No. 1, 2012, 212.

¹⁷Aisyah Mustafa and Asmak Ab Rahman, "The Islamic Perspective on the Underwriting of Health *Takaful* Products: A Study of Selected *Takaful* Operators in Malaysia", *New Developments in Islamic Economics*, Vol. 9 No. 3, 2018, 136.

¹⁸Setia Mulyawan, "Kinerja Reksa Dana *Syariah* dan Beberapa Faktor yang

occur in *syariah* mutual funds, such as *wakalah bil ujarah* if the investor as the owner of the fund (*shahibul maal*) is subsequently invested in the securities portfolio by the investment manager as a *shahibul maal* representative according to the provisions and principles of Islamic *sharia* fund owners (investors) who wish for a *halal* investment will secure their funds under a *wakalah* contract to the investment manager. *Sharia* mutual funds will act in a *mudharabah* agreement as a *mudharabah* that manages mutual funds from investors. As proof of participation, investors will receive participation units from Islamic mutual funds. Islamic mutual funds will be placed back into the activities of the issuer (other company) by purchasing *sharia* securities. In this case, Islamic mutual funds act as *shahibul maal* and the issuer acts as *mudharib*.¹⁹

Methodology

This research used qualitative methods. And, it was used with a study approach based on the examination of previous studies.²⁰ With a normative learning using a conceptual approach from individual life history by Wahbah Zuhaili and statute approach by looking at phenomena and making statements and concluding them.²¹ So that documents are processed and analyzed through two stages, namely explaining and describing. This research is a library research with the object of the research on related phenomena. To obtain data through this research, primary data was carried out by analyzing journals and several books relevant to this research.

Result and Analysis

A. Application for Wakalah bi al-Ujarah Contract in Indonesian Insurance

Wakalah bi al-ujrah that have been implemented in some various product such as insurance itself. Some of case that occur,

Memengaruhinya: Studi di Pasar Modal Indonesia 2010-2013", IJTihad: Jurnal Wacana Hukum Islam dan Kemanusiaan, Vol. 16 No. 2, 2017, 219.

¹⁹Ade Nanda Sawitri, "Analisis Investasi dalam Asuransi Syariah di Indonesia Terhadap Portfolio Optimal", *Media Ekonomi*, Vol. 19 No. 2, 2017, 35-36.

²⁰Paola Paoloni and John Dumay, "The Relational Capital of Micro-Enterprises Run by Women: The Startup Phase", *The Electronic Library*, Vol. 34 No. 1, 2017, 175.

²¹Siti Muflichah, "Implementation and Protection of Legal Law on Cash Waqf Toward Tabung Wakaf Indonesia of Dompot Dhuafa Jakarta", *Jurnal Dinamika Hukum*, Vol. 17 No. 2, 2017, 1.

such as contract between customers and the companies as the risk management service at PT *Asuransi Takaful Keluarga* is *tijarah*. The use of *tijari* contract is comprised of *mudharabah*, *mudharabah musytarakah*, and *wakalah bil ujarah* in PT *Asuransi Takaful Keluarga* can be implemented on almost any products that have an element of risk management in the form of savings as well as secure investments in accordance with *sharia* law. Recognition, measurement, presentation, and disclosure undertaken by PT *Asuransi Takaful Keluarga* are appropriate based on PSAK 108.²² Another case which happened in PT Family MTakaful and Prudential Insurance, use *mudharabah* deposits and *sharia* bonds for the contract of investment. The next PT Insurance Allianz have the optimal type of investment, which is mutual funds.²³ However, several obstacles that occur at BTPN *Syariah* indirectly give the impression that MMS is forced to pay premiums for all parties in executing insurance claims. Insurance (Allianz) does not hand over claims directly because the person submitting the claim and submitting the technical payment, as well as the amount of premium that must be paid. Because premium payments are combined with financing installment payments. BTPN *Syariah* provides claims only for customers and customers' husbands who died and there is no return of claims for customers who did not pass away and for customers who made early repayments.²⁴

The scholars agreed that in insurance the relationship between the insurance participant and his institution uses the *wakalah* contract, because in essence it is the *tabarru'at* contract (voluntary-benevolence) so that there is no legal consequence (*ghairu laazimah*) for the representative (*al-wakiil*). *Tabarru'* contract (grant) is used for participant relations, where basically the contract is done on the basis of assistance (*ta'awun*). Because, basically the system implemented in *sharia* insurance is a system that operates with a sense of mutual responsibility, helping, and protecting each other between the participants.²⁵

²²Hisamuddin, "Implementasi Akuntansi Akad *Wakalah bil Ujarah* Perusahaan Asuransi *Syariah* Berdasarkan PSAK 108", ..., 1.

²³Sawitri, "Analisis Investasi dalam Asuransi *Syariah* di Indonesia Terhadap Portfolio Optimal", ..., 49.

²⁴Genoveva, et. al., "Kedudukan Hukum Akad Asuransi dalam Akad *Pembiayaan Murabahah Nasabah BTPN Syariah MMS Majalengka*", ..., 135.

²⁵Amalia Fadilah dan Makhrus, "Pengelolaan Dana *Tabarru'* pada Asuransi *Syariah* dan Relasinya dengan Fatwa Dewan *Syariah Nasional*", *Hukum Ekonomi Syariah*, Vol. 2 No. 1, 2006, 90.

So in the collection of premiums or insurance funds must be in *tabaru'* which comes from the word *tabarra'a-yatabarra'u-tabarru'an*, which means donations or charity.²⁶ Where there is a separation between *tabarru funds'* with company funds, so do not recognize the term charred funds. Thus, funds collected from participants in the form of contributions remain the property of participants, companies or Islamic insurance entities only as holders of trust in managing the funds.²⁷ But for the relationship between participants and insurance companies used a *tijarah* agreement (*ujrah/fee*), *mudharabah* (profit sharing), *mudharabah musyarakah*, *wakalah bil ujah* (representative), *wadiah* (safekeeping), *syirkah* (union).²⁸

If the contract is changed to *wakalah bi-ajr (wage)*, then the condition changes to *laazimah* (legal consequences) and is classified as a barter-compensation agreement (*mu'aawadhaat*). Because, *wakalah bil ujah* that occurs in this insurance activity by giving power of attorney from the participants to the insurance company to manage the funds of participants in exchange for the gift of *ujrah* (fee). *Wakalah bil ujah* may be done between insurance companies with participants. The application of *wakalah bil ujah* can be done in *sharia* insurance products in the form of saving or non-saving (*tabarru'*). Funds collected from the participants by the *sharia* insurance fund are obliged to invest the fund in the form of saving (*mudharabah*) and non-saving (*tabarru'*) and *sharia* insurance companies are required to invest on *sharia* basis.

This Islamic insurance aims to help you, so that in its management if you experience a loss it will divide the risk among insurance participants (risk sharing).

B. Application for Wakalah bi al-Ujrah Contract in Various Banks in Indonesia

Apart from insurance, the *wakalah bi al-ujrah* contract also available in *sharia* banking products. This is the case when the customer gives a power of attorney to the bank to represent himself doing certain service work. However, as stated in the Law No. 21 of 2008 on *Sharia* Banking, Islamic banks have several functions, not

²⁶*Ibid.*, 91.

²⁷Teguh Suropto dan Abdullah Salam, "Analisa Penerapan Prinsip Syariah dalam Asuransi?", *JESI (Jurnal Ekonomi Syariah Indonesia)*, Vol. 7 No. 2, 2018, 135.

²⁸Fadilah dan Makhrus, "Pengelolaan Dana Tabarru' pada Asuransi Syariah dan Relasinya dengan Fatwa Dewan Syariah Nasional", ..., 87.

only as an association and distribution fund but also as a service institution.

Banking services is a bank service for customers that do not use cash. And, for this service the bank accepts a fee. These services are in the form of money transfers, check disbursement (collection), foreign exchange (forex), letters of credit (*sharia* import letter of credit & *sharia* export letter of credit), in the implementation of letters of credit import, not only has one of my contracts but many contracts like *wakalah bil ujarah* with *qard*, *wakalah* with *mudharabah*, *wakalah* with *hiwalah*. Whereas the export letter of credit uses a contractual agreement with *qard* and contractual agreement with *mudharabah*. Other *sharia* banking products such as letters of guarantee, custody, factoring, trustee, *sharia* mutual fund investment, *sharia* bank account financing, and *sharia* insurance.²⁹

C. Application for Wakalah bi al-Ujrah Contract in Syariah Mutual Funds

Mutual funds are an alternative investment for the community of investors, especially small investors who do not know and do not have much time to calculate the risk of their investment. Mutual funds are designed as a means to raise funds from people who have the capital and desire to invest, but only have limited time and knowledge.³⁰

Whereas *sharia* mutual fund contain the meaning of management or policies whose investments refer to Islamic law. This means not investing in stocks or bonds whose management or products are against *sharia* law. According to the *Ulama'*, *sharia* mutual funds are mutual funds whose management and investment policies are based on *sharia* law.³¹ So that the contract used is either in the form of a contract between the financier as the owner of the assets (*sahib al-mal/ rab al mal*) with the investment manager as the representative of *shahib al-mal*, and between the investment manager as the representative

²⁹Nihyatia, "Penerapan dan Aplikasi Akad Wakalah pada Produk Jasa Bank Syariah", ..., 94.

³⁰Nooria Fitri, *Implementasi Akad Wakalah dan Mudharabah pada Reksa Dana Syariah Sebagai Alternatif Investasi* (Semarang: Universitas Islam Negeri Walisongo, 2019), 15.

³¹Bintang Pratama Buana Putra dan Imron Mawardi, "Perbandingan Kinerja Reksadana Syariah di Indonesia Menggunakan Metode Sharpe (Studi Kasus Reksadana Syariah Saham, Reksadana Syariah Pendapatan Tetap, dan Reksadana Syariah Campuran Periode 2012-2014)", *Terapan*, Vol. 3 No. 9, 2016, 15.

of *shahib al-mal* and the user capital.³² So that the *wakalah bil ujah* happens. The conditions must be in accordance with predetermined *sharia* law.

More clearly, the mechanism for purchasing *sharia* mutual funds between investors and investment managers is carried out using the *wakalah* system, whereby investors mandate the investment managers to invest in the interests of investors in accordance with the prospectus. Then the investment manager manages funds from investors to be invested in various investment instruments in the capital market with a collective investment contract scheme with a custodian bank where the investment manager has the authority to manage a collective investment portfolio. Custodian banks are given the authority to carry out collective safeguards. Meanwhile, investment managers and investment users are conducted using the *mudharabah* system, which is the distribution of profits between the capital owners represented by investment managers and investment users based on agreed proportions. The owner of the capital only bears the risk of the funds that have been given. The investment managers do not bear the risk of loss, unless it occurs due to negligence.³³

D. Application for Wakalah bi al-Ujah Contract in Various Banks, Insurance According to Wahbah Zuhailii

According to Wahbah Zuhailii, there are only two types of insurance, namely cooperative insurance (mutual insurance) or in the terms *al-ta'min al-ta'awuni* and insurance with fixed pay or *al-ta'min bi as-tsabit*. As for what is meant by *al-ta'min al-ta'awuni* are a number of people who agree that each of them pays a certain amount of money in order to compensate members affected by certain calamities.³⁴ The insurance agent is not an organization which is divided with the participants, but the members involved in this insurance do not aim to obtain profit. But its members only aim to ease the burden of losses caused by disasters and other unexpected things. So the premiums paid are based on sincerity. As was realized in the word of Allah:

³²Fitri, *Implementasi Akad Wakalah dan Mudharabah pada Reksa Dana Syariah Sebagai Alternatif Investasi, ...*, 6.

³³*Ibid.*, 94.

³⁴Syamsudin, *Analisis Pendapat Wahbah al-Zuhaili Tentang Asuransi dalam Kitab al-Fiqh al-Islam wa Adillatuhu* (Mataram: Skripsi Fakultas Syari'ah dan Ekonomi Islam Universitas Islam Negeri Mataram, 2017), 4.

وَتَعَاوَنُوا عَلَى الْبِرِّ وَالتَّقْوَىٰ وَلَا تَعَاوَنُوا عَلَى الْإِثْمِ وَالْعُدْوَانِ وَاتَّقُوا اللَّهَ إِنَّ اللَّهَ شَدِيدُ الْعِقَابِ ﴿٣٥﴾

While insurance with a fixed premium (*al-ta'min bi qis thabit*) is a person who is guaranteed security (insurance) is responsible for making certain payments to the insurer. As for the insurer is an insurance company consisting of a number of people who have certain shares. Based on the amount of payment given by the insurance recipient, the insurer is responsible for providing certain insurance services in the event of a hazard or disaster to the insurance recipient.³⁶

The most fundamental difference between business insurance (*al-ta'min bi qis thabit*) and cooperative insurance (*al-ta'min al-ta'wuni*) is, business insurance (*al-ta'min bi al-tsabit*) is insurance which is managed by a stand-alone institution outside of the group of participants who deposited the premium. So it can be distinguished in detail that in this insurance there are two parties that play a role, namely, the insurance management agency (guarantor) and the insurance participant (guaranteed) where the orientation of the insurance is profit.

While cooperative insurance (*al-ta'min al-ta'wuni*) is the insured party and the guarantor is in one group itself. This means that the party who holds money or in terms of insurance is known as a premium is a person who shares it not from another party that stands alone as well as business insurance. And, as the main orientation of this insurance is to help with the willingness of the heart, so the concept of insurance like this are allowed in Islam according to Wahbah al-Zuhaili.³⁷

The solution is the *takaful* contract, *takaful* and insurance are institutions involved in risk management which aim to reduce the suffering experienced by individuals. *Takaful* also has the element of mutual help which distinguishes it from conventional insurance. *Takaful* is a system whereby participants regularly contribute a certain amount to a common fund with the intent of jointly guaranteeing each other.³⁸

Basically, Wahbah Zuhaili forbids insurance because it assumes that insurance is unlawful with five elements, there are five factors

³⁵Al-Qur'an Surat al-Maidah Ayat 2.

³⁶Syamsudin, *Analisis Pendapat Wahbah al-Zuhaili Tentang Asuransi dalam Kitab al-Fiqh al-Islam wa Adillatuhu, ...*, 53.

³⁷*Ibid.*, 63.

³⁸Mustafa and Rahman, "The Islamic Perspective on the Underwriting of Health Takaful Products: A Study of Selected Takaful Operators in Malaysia", ..., 136.

that cause insurance to be unlawful. *First is riba*. The compensation provided by insurance companies exceeds all premiums given by the insurance recipient, and the excess given without reciprocity is considered prohibited usury. Added to the fact that insurance companies invest their capital on projects that promote usury, and charge interest to insurance recipient in the event of delinquency of premium installment payments to be paid.

Second, insurance contains *gharar* benefits in the form of something speculative, not fixed, uncertain, and this is a form of *gharar*. Insurance companies must pay compensation to the recipient without compensation in accordance with *gharar*. *Third*, insurance contains element of deception/fraud (*gaban*) because the goods and prices become unclear. Whereas certain information of goods and prices is a legal requirement of a transaction. *Fourth*, insurance contains elements of *qimar*. This business insurance agreement is classified as a form of gambling, because there are advantages in financial compensation, where the recipient of the insurance pays a small amount of contribution and waits for a large profit, this is the nature of gambling. *Fifth*, insurance contains an element of misery (*jahalah*), where the amount of the premium to be given by the recipient to the insurer is not clear, as is apparent in life insurance. Then both parties in insurance refer to the transaction that does not notify how much loss and profit will be obtained by both parties of the insurer.³⁹

Based on the factors above, insurance that aims to seek profit, it will cause usury/*riba*, *gharar*, *gaban*, *qimar*, *jahalah*. And all of this refers to thankfulness so that this insurance becomes *haram*.

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Investment Cooperation Agreement on Equity Crowdfunding Platform from the Perspective of *Sharia* Economic Law

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Abstract

Equity crowdfunding is a new innovation in finance, which is an external product of financial technology, by combining financial systems with information technology. Equity crowdfunding is a combination of investment business model with information technology, where meetings between investors and fund managers are conducted online through websites on this platform. Crowdfunding equity platform is now growing rapidly and is very popular among the community, due to some of the facilities offered by the platform organizers for service users. Therefore, further research needs to be done on this business practice, which covers all aspects of the mechanisms and systems on this platform. The purpose of this study is to determine the mechanisms and systems of all aspects of the investment cooperation agreement model applied on the equity crowdfunding platform. The intended aspects include the mechanism of agreement (contract), profit sharing system, user protection, stock trading mechanism, dispute resolution, risk management, and so on. Furthermore, it aims to determine its compliance with Islamic law and the positive laws that apply in Indonesia. Investment agreements on equity crowdfunding platform can be implemented in mudharabah agreement, meanwhile, the agreement between the crowdfunding service provider and the crowdfunding user can use the wakalah bil ujah contract. The percentage to revenue ratio

can use the profit and loss distribution system and the revenue distribution system according to the agreement. Equity crowdfunding platform should really pay attention to consumer protection in accordance with the provisions in accordance with POJK and *hifdzul maal* theory. In addition, it must carry out risk management to minimize the occurrence of losses for some parties, and create a dispute resolution mechanism in accordance with Islamic law and economic law.

Keywords: *Equity Crowdfunding Platform, Sharia, Economic Law*

Introduction

The phenomenon of Financial Technology (Fintech) is currently the topic of discussion in the world, because financial technology has a huge impact on the development of the world economy. This phenomenon is an indirect effect of the development of the technological world. The development of information technology also affects the economic sector. This phenomenon is an indirect effect of the development of the technological world. The development of information technology also has an impact on the economic sector. Various new innovations have begun to emerge that connect the fields of economics and information technology, giving birth to concepts that combine the fields of economics and information technology, known as information technology.

Information technology is the implementation and utilization of technology to improve banking and financial services using software, internet, communications, and computer technology. Thus, various models of financial services emerged in the world, which also spread to Indonesia. The fintech financial model first appeared in the UK started by Zopa, he introduced a new technology-based financial system that runs money lending services.

One of the most popular types of fintech in the community is crowdfunding. Crowdfunding is a scheme to raise funds online on a small scale but comes from a large number of people until a large amount of funds are raised.¹ Meanwhile, the phenomenal crowdfunding model is equity crowdfunding, which is a direct stock offering by issuers to sell shares directly to investors via electronic systems using the internet.²

¹Tetuko Lugas Edhita Praja, *Analisis Perkembangan Model Bisnis Platform Crowdfunding di Inonesia dengan Menggunakan Platform Desain Tollkit*, Skripsi (Surabaya: Institut Teknologi Sepuluh, 2017), 2.

²Peraturan Otoritas Jasa Keuangan Nomor 37 /POJK.04/2018 Tentang Layanan

Indeed, crowdfunding is an old concept that uses a new term, pioneered by Jonathan Swift in the 1700's that provided low capital loans to poor families in Ireland, so that they could open small businesses. Crowdfunding is the evolution of micro financing model financing. Then in 2005 a microfinance platform called Kiva emerged, followed by the emergence of popular crowdfunding platforms to this day, namely Kickstarter and Indiegogo.

In Indonesia there are also many equity crowdfunding platforms, so the financial services authority issues separate regulations governing the equity crowdfunding platform as stated in the Financial Services Authority Regulation Number 37/POJK.04/2018 on Fundraising Services through Crowdfunding Information Technology-Based Stock Offering.

There are a number of equity crowdfunding platforms licensed by the Financial Services Authority (OJK), such as www.santara.co.id. This platform is protected by PT. Santara Daya Inspiratama located in the village of Gamping Sleman Yogyakarta. The Santara platform is the largest and first platform that was licensed by OJK on September 6, 2019.³ This platform is owned by PT. Santara Daya Inspiratama standing in Sleman Yogyakarta. The santara.co.id platform has brought together a number of investors and company owners.

There are also projects from Indonesian citizens who raise funds using the equity crowdfunding fundraising service, such as the DeadOut horror game project, this game raises funds through the Indiegogo Crowdfunding platform. In addition, there is a project to build an R80 aircraft belonging to former third president BJ Habibie started by PT. Regio Aviasi Industri through the kitabisa.com Crowdfunding platform, although this project is no longer part of the national strategic project.

Equity crowdfunding is one of the new financial concepts that really helps people in need of capital easily, without complicated conditions like bank financing. Therefore, it is very popular with some people, especially entrepreneurs from UMKM houses. So, the transaction practice of the equity crowdfunding platform should be in line with the concept of *sharia* economic principles, and should not be contrary to the positive law.

Urun Dana Melalui Penawaran Saham Berbasis Teknologi Informasi (*Equity Crowdfunding*).

³Retrieved from www.ojk.go.id, Accessed on July 26, 2020.

Methodology

This research discusses the phenomenon of financial technology in the form of crowdfunding equity. The researcher will make the concept of crowdfunding equity based on Islamic economic principles, by implementing *mudharabah* contracts, *wakalah bil ujah* contracts, and other Islamic legal theories on crowdfunding equity transactions. Sources are taken from various references that explain the nature of the peer to peer lending mechanism, and sources from Financial Regulation Number 37/POJK.04/2018 on Crowdfunding Services through Information Technology-Based Stock Offering (Equity Crowdfunding).

Equity Crowdfunding Mechanism

Crowdfunding is the practice of raising funds for various types of business, whether in the form of product, business, or activity ideas, for which their funds are derived from public contributions, and often receive gifts in the form of goods or services. The inspiration for crowdfunding comes from the concepts of microfinance and crowdsourcing.⁴ Meanwhile, according to Sullivan, crowdfunding inspired by crowdsourcing describes the collaboration, care, and collective trust of those who network and raise their money together, via the internet, to support efforts initiated by other people or organizations. Crowdfunding aims to mobilize disaster relief, citizen journalism, artists seeking fan support, and even for political campaigns.⁵

Meanwhile, according to Hemer, the concept of crowdfunding is taken from a similar term that is already well-known abroad, namely crowdsourcing. The term crowdsourcing, which describes the outsourcing process to a large number of anonymous individuals, is a group of people (the internet community) who use their assets, resources, knowledge or expertise. So, this crowdfunding, aims to generate money.⁶

There are types of crowdfunding based on Massolution that have been published in the 2013 industry report. *First*, Equity-based

⁴Rosalina, et. al., *Aplikasi Crowdfunding Sebagai Perantara Penggalangan Dana Berbasis Website dan Facebook Application* (Surabaya: Universitas Kristen Petra, t.th.), 1.

⁵Maulana Irfan, "Crowdfunding Sebagai Pemaknaan Energi Gotong Royong Terbarukan", *Social Work Jurnal*, Vol. 6 No. 1, 38.

⁶Joach Hemer, *A Snapshot on Crowdfunding* (Karlsruhe: Franhoufer ISI, 2011), 11-12.

Crowdfunding, donors as funders expect compensation in the form of equity or income or share arrangements from the proceeds of fundraising projects. *Second*, Lending-based Crowdfunding, donors as funders receive periodic compensation (interest) and expect repayment of funds that have been given after the project is successful. *Third*, Reward-based Crowdfunding, donors as funders provide money for benefits or compensation in addition to money. *Fourth*, Donation-based Crowdfunding, donors as funders do not expect compensation from project owners.⁷

There are 3 parties involved in the crowdfunding transaction of equity crowdfunding. As explained in Financial Regulation Number 37/POJK.04/2018 on Crowdfunding Services through Equity Crowdfunding Services. *First*, crowdfunding service provider, is an Indonesian legal entity that provides, manages and operates crowdfunding services. *Second*, crowdfunding service users. (1) Project publisher (startup), issuer is an Indonesian legal entity in the form of a limited company that sells its shares through a crowdfunding service provider. (2) Investors, are those who buy the shares of an issuer through a crowdfunding service provider.⁸

Figure 1: Equity Crowdfunding Schemes



Equity crowdfunding schemes and mechanisms can be explained as follows. *First*, the project owner submits his proposal to the online equity crowdfunding platform which is then published to the general public, with an agreed profit sharing agreement. After the publication, there will be potential investors who will fund the startup publisher project through the equity crowdfunding platform. As such, the platform acts as an intermediary that unites project owners and investors. Then if the

⁷Praja, *Analisis Perkembangan Model Bisnis Platform Crowdfunding di Inonesia dengan Menggunakan Platform Desain Tolkit*, 10.

⁸Peraturan Otoritas Jasa Keuangan Nomor 37/POJK.04/2018 Tentang Layanan Urun Dana Melalui Penawaran Saham Berbasis Teknologi Informasi (*Equity Crowdfunding*).

project manager generates a profit, the manager will share the results with the investor who financed the project according to the profit distribution agreement for both parties. Since equity crowdfunding is a crowdfunding service, there is not only one investor for the publisher of this project, but there are several investors who will fund the fund manager project.

The phenomenon of equity crowdfunding also occurs in Indonesia. This encourages the financial services authority to issue special regulations to oversee the equity crowdfunding platform, as well as regulate the start-up government in accordance with state law. This regulation is contained in the Financial Services Authority Regulation Number 37/POJK.04/2018 on Crowdfunding Services through Information Technology-Based Stock Offering (Equity Crowdfunding).

These rules contain general provisions related to the implementation of equity crowdfunding, ranging from the parties involved in this transaction to some terms related to this type of transaction. There are also terms of agreement between the parties transacting on the platform via the online, and provisions on the signing of the agreement through electronic documentation.⁹

Also arrange a licensing platform that will provide crowdfunding services, along with the requirements that startups must meet in organizing crowdfunding. As well as general provisions on crowdfunding operators and users. These regulations also cover the form of investment and share purchase agreements that must be complied with by applicable law in Indonesia, as well as how the profit sharing system or liquidity level for parties involved in business transactions is listed on the crowdfunding equity platform.

The OJK rules also explain risk management from various aspects, such as data protection for consumers, and the certainty of the liquidity of profit distribution funds from agreements between business managers and investors, and there is also user protection by providing a secure platform and a sophisticated level of network security in accordance with existing regulations.¹⁰

Furthermore, the financial services board requires a crowdfunding equity platform to report overall on transactions and financial activities conducted on each of these platforms in a transparent manner.¹¹

⁹*Ibid.*

¹⁰*Ibid.*

¹¹*Ibid.*

Investment Agreement Using Mudharabah Agreement

The *fiqh muamalah* contract that is in accordance with the investment cooperation agreement is a *mudharabah* or *musyarakah* contract. *Mudharabah* is a cooperation agreement between the two parties where the first party (*shahibul maal*) provides all the capital, while the other party manages.¹² Meanwhile, the investment itself is an investment for one or more of the assets owned and usually has a long term in the hope of making a profit in the future.¹³ So the investment agreement will unite business managers (stock issuers) and investors as capital owners (stock buyers).

Meanwhile, in the equity crowdfunding investment cooperation model, there are service providers and service users, there are two parties for service users, namely, business managers and investors. The mechanism of relationship between the two parties on this platform is the same as for transactions using *mudharabah* contracts.

Profits from businesses that use *mudharabah* contracts are divided according to contract agreements, while losses are borne by the capital owner as long as the losses are not due to the negligence of the manager. If the loss is due to the negligence of the manager, then the manager must be responsible for the loss. In other words, *mudharabah* is a partnership relationship based on the principle of profit distribution in such a way that one person gives his capital to another to do business and both parties share the profits or bear the burden of losses based on the initial agreement.¹⁴ Therefore, it can be concluded that *mudharabah* is a contract between the capital owner and the capital manager, provided that the profits are earned by both parties in accordance with the amount of the agreement.¹⁵

This law of this contract is valid in Islam, and it was stated in Qur'an as below:

عَلِمَ أَن سَيَكُونُ مِنْكُمْ مَّرْضَىٰ وَءَاخَرُونَ يَضْرِبُونَ فِي الْأَرْضِ يَبْتَغُونَ مِنْ فَضْلِ اللَّهِ وَءَاخَرُونَ يُقْتَلُونَ فِي سَبِيلِ اللَّهِ

¹²Afzalur Rahman, *Doktrin Ekonomi Islam*, Vol. 2 (Yogyakarta: Danabhakti Wakaf, 1996), 380.

¹³Sunariyah, *Pengantar Pengetahuan Pasar Modal* (Yogyakarta: UUP AMP YKPN, 2003), 32.

¹⁴*Ibid.*

¹⁵Solari Sahani dan Ru'fah Abdullah, *Fikih Muamalah* (Bogor: Ghalia Indonesia, 2011), 190.

"He knows that some of you will be sick, some will be travelling throughout the land seeking Allah's bounty, and some fighting in the cause of Allah" (QS. al-Muzzamil: 20).

The existence of the word *yadribun* is the same as the basic word *mudharabah* which means to do business travel. *Mudharib* as an entrepreneur is part of those who make (*dharb*) a journey to seek grace from Allah SWT. profit from his investment.

The pillars and conditions of the *mudharabah* contract are: (1) *Aqidain* (two people with a contract), capital owner (*shahibul maal*) and businessman (*mudharib*) must be a person who is able to act according to the law and able to act as a representative, because *mudharib* is a representative in managing the assets of the capital owner. Conditions of representation also apply to stock managers in *mudharabah* transactions; (2) *Maal* (shares or capital), must be known between the shares traded and the profits from the trade to be distributed to both parties in accordance with the agreed agreement. Shares or capital in the form of immovable assets, such as places of business, cannot be in the form of debt; (3) *Amal* (managed business), managed business is not against *sharia*, for example gambling business; (4) *Al-Ribhu* (profit), profits will be jointly owned and divided according to the agreement at the beginning of the agreement. If the profit distribution is not clear, the agreement will be broken; (5) *Sighat* (agreement and acceptance) is the language of transaction in the form of a contract of cooperation between the capital owner and the investor and the provider of trading power with a profit sharing system.¹⁶

Therefore, if adapted to the *mudharabah* contract in the equity crowdfunding investment agreement model, the agreement between the crowdfunding service user as the business manager issuing the share certificate is *mudharib*, and the investor or stock buyer becomes *shahibul maal*. *Amal* (managed business) is a type of business that is advertised and uploaded on the equity crowdfunding platform website conducted by crowdfunding service providers.

The division of *mudharabah* is generally divided into two parts. *First, Mudharabah Mutlaqah*. It is a form of cooperation between shareholders and employees/entrepreneurs, the form of business is not determined and not limited by shareholders. Meanwhile, the results of this effort will be distributed in accordance with the agreement.

¹⁶Tim Laskar Pelangi, *Metodologi Fiqih Muamalah* (Kediri: Lirboyo Press, 2013), 261-262.

From the application of *mudharabah mutlaqah*, there are two types of fundraising products, namely *mudharabah* savings and *mudharabah* savings. *Second, Mudharabah Muqayyadah*. It is a form of cooperation between shareholders and employees/entrepreneurs, the form of business is determined and limited by the capital owner. An example of a capital owner limiting his business to opening a restaurant.¹⁷

Apart from the *mudharabah* contract, there is another contract that connects the business manager and the owner of the capital, namely the *musyarakah* contract. *Musyarakah* contract is a contract made by a party committed to work together, all parties have the right to take legal action on the capital to be managed. Then the capital comes from all parties, with the profits adjusted to the agreed percentage, as well as the losses incurred together.¹⁸

However, *musyarakah* contracts do not seem to be adaptable and used in the equity crowdfunding investment agreement mechanism, as these contracts must involve investors and business owners to jointly manage their business. However, in the equity crowdfunding mechanism consolidated through remote online media, making it difficult for capital owners to participate in managing the business, the right contract with the crowdfunding equity investment agreement is the *mudharabah* agreement.

Implementation of Mudharabah Agreement on Equity Crowdfunding Services

Equity crowdfunding is a new model of financial transactions that combines the financial economic system with electronic systems in the internet media. Something new and not many people understand the mechanism that exists in it. The birth of the crowdfunding mechanism is a new alternative that has been triggered in the economic world in general, so that the existing system still uses the global or conventional economic system.

However, there are also users of equity crowdfunding services from the Muslim community. Of course, they prioritize the economic system based on *sharia* principles, not only the form of business that does not violate *sharia* law, but the mechanism in it must also be in accordance with Islamic economic principles. Therefore, it is necessary to design the equity crowdfunding system and mechanism

¹⁷*Ibid.*

¹⁸M. Yazid Afandi, *Fiqh Muamalah* (Yogyakarta: Lugong Pustaka, 2009), 119-120.

in accordance with *sharia* principles.

The National Supervisory Council of the Indonesian *Ulama* Council has issued a *fatwa* regulating financing services through information technology. The *fatwa* is found in DSN-MUI *Fatwa* No: 117/DSN-MUI/II/2018 on Information Technology-Based Financing Services Based on *Sharia* Principles. The *fatwa* explains that the implementation of financing using internet media must avoid *riba*, *gharar*, *tadlis*, *dharar*, *maysir*, *zhulm*, and *haram*.¹⁹ To avoid this, the mechanism in equity crowdfunding must use contracts that comply with *sharia* economic law.

As stated in the *fatwa* of DSN-MUI, that the contract that may be used in the implementation of information technology financing must be a contract that fits the characteristics of the financing service, such as *al-bai'* contract, *ijarah* contract, *mudharabah* contract, *musyarakah* contract, *wakalah bil ujah* contract, and *qard* contract. Meanwhile, the appropriate agreement with the equity crowdfunding service is a *mudharabah* contract.

The *mudharabah* agreement is a form of agreement that unites *mudharib* as a business voter and *shahibul maal* as the owner of the capital. There are a number of pillars and conditions that must be met in the *mudharabah* agreement, so the investment agreement plan on equity fundraising services based on *sharia* principles must comply with the terms and conditions contained in the *mudharabah* agreement.

The first pillar is *aqidain* or two believers. The first *aqid* is *mudharib* (fund manager), if similar to the investment agreement in crowdfunding services equity crowdfunding, the business owner who sells his shares on the platform website plays the role of *mudharib*. The second *aqid* is *shahibul maal* (fund owner), when compared to the investment agreement model in equity crowdfunding, investors who buy shares and fund supporters on the platform act as *shahibul maal*.

The second pillar is *maal* (stock or capital). Funds channeled by funders in investment agreements on the equity crowdfunding platform for fund managers must be legitimate funds, which means that the funds are generated in a manner that is not contrary to Islamic law. This fund is also not a debt fund.

The third pillar is *amal* (managed business). Businesses run by stock issuers on the equity crowdfunding platform shall not be

¹⁹Fatwa DSN-MUI No: 117/DSN-MUI/II/2018 Tentang Layanan Pembiayaan Berbasis Teknologi Informasi Berdasarkan Prinsip Syariah.

contrary to Islamic *sharia*, such as businesses selling and buying illicit goods, business replacement, or businesses containing *riba*, *gharar*, and *maisyir*.

The fourth pillar is *ar-ribhu* (fortune). The benefits derived from investment cooperation on the equity crowdfunding platform must be divided according to the preliminary agreement based on a voluntary agreement between the two parties. OJK Regulation Number 37/POJK.04/2018 on Crowdfunding Services through Information Technology-Based Stock Offering has provided for the liquidity of funds to be obtained by the parties on the equity crowdfunding platform.

The fifth pillar is *ijab qabul* (the offer and acceptance). The language of the cooperation agreement between the fund manager and the investor must be clear and can be done orally or in writing. In the implementation of equity crowdfunding, consent is done through the internet without meeting face to face. Agreement agreements are contained in electronic documents that use electronic signatures.²⁰

Investment agreements on the crowdfunding equity platform can be made with *mudharabah mutlaqah* contracts, as well as *mudharabah muqayyadah* contracts. Technical and implementation should be tailored to the type of contract. However, a more suitable contract is a *mudharabah mutlaqah* contract, as the type of business uploaded and advertised on the equity crowdfunding platform has been determined directly by the business owner (fund manager).

Profit Sharing Between Parties in Equity Crowdfunding Platform

The percentage of profit distribution on the equity crowdfunding platform is attached based on the agreement only, in fact some platforms have determined the percentage of profit distribution between several parties, including the benefits earned by the crowdfunding service provider (equity crowdfunding). Financial services authority rules only indicate that the distribution of profits must be based on an agreement.

The mechanism of calculation of profit distribution in Islamic economy consists of two systems, namely profit division and revenue division. Profit division is the calculation of how the result is based on the net result of total income after deducting the costs incurred

²⁰Peraturan Otoritas Jasa Keuangan Nomor 37 /POJK.04/2018 Tentang Layanan Urun Dana Melalui Penawaran Saham Berbasis Teknologi Informasi (*Equity Crowdfunding*).

to obtain acceleration.²¹ In Islamic banking, this term is more often used with the division of profits and losses, which means that the division of profits is accompanied by a loss of income earned from the proceeds of the business done. Revenue sharing is a profit sharing mechanism calculated from total fund management income without deducting any fund management costs.

So, the profit-sharing agreement available on the crowdfunding equity platform must be based on the profit-sharing calculation mechanism, be able to use the profit and loss distribution system and revenue distribution. So that the profit distribution ratio is easier to understand by service users, so that the profit distribution ratio is closer to permanence and readiness (*ridho bi ridho*).

Wakalah Agreement Between Service Providers and Service Users

Agreements that occur in the provision of crowdfunding equity are not only made by fund managers and funders, but there are agreements between service providers and both parties using crowdfunding services. This agreement covers several things such as an agreement with the business owner to upload and issue shares on the platform provided. Then an agreement with the fund owner to be a liaison in the purchase of shares that have been issued. As well as an agreement on the rate of service obtained by the operator from the two parties using the service.

Therefore, the administration of crowdfunding services (equity crowdfunding) acts as a broker between the fund manager and the funder. The crowdfunding organizer is also responsible for the lack of liquidity of funds required by both parties. Therefore, the function of this crowdfunding service provider is to represent both parties. The business owner (fund manager) represents himself to the service provider to sell and advertise the shares he issues. Then the fund holder represents himself to the crowdfunding service provider to provide the funds to the business owner.

The contract used for representative services in Islam is called *wakalah bil ujah* contract. This contract is a delegation contract, in which the party appoints the other party to replace him in doing

²¹Tim Pengembangan Perbankan Syariah IBI, *Konsep, Produk dan Implementasi Operasional Bank Syari'ah* (Jakarta: Djambatan, 2001), 264.

something or acting.²² The legal basis of this contract is stated in the Qur'an:

فَابْعَثُوا أَحَدَكُمْ بِوَرِقِكُمْ هَذِهِ إِلَى الْمَدِينَةِ فَلْيَنْظُرْ أَيُّهَا أَزْكَى طَعَامًا فَلْيَأْتِكُمْ بِرِزْقٍ مِنْهُ وَلْيَتَلَطَّفْ وَلَا يُشْعِرَنَّ بِكُمْ أَحَدًا

"So, send one of you with these silver coins of yours to the city, and let him find which food is the purest, and then bring you provisions from it. Let him be 'exceptionally' cautious, and do not let him give you away" (QS. al-Kahfi: 19).

Therefore, in the crowdfunding service agreement between the organizer and the user of the crowdfunding service can be linked to the *wakalah bil ujah* contract.

Both parties who use crowdfunding services act as *muwakkil* or representative, then the crowdfunding service provider acts as *wakil* or representative, while the obligation given by the user to the crowdfunding service provider is called *muwakkal fih*.

Consumer Protection and Theory of *Hifdzul Maal*

Online transactions are particularly vulnerable to cybercrime. So investment agreements on the equity crowdfunding platform require special methods to protect users, which are related to the security of data and funds belonging to users of the equity crowdfunding platform. This protection is very important, because it covers a person's survival. Evidently, the state issued Law Number 8 of 1999 on Consumer Protection. In Islam, the protection of property is included in *al-maqashid al-khamsah*, which means Islam is also very concerned to protect consumers not only in terms of personal data but also their assets.

Hifdzul maal protects and preserves the existence of property, and spends it in a way that is not prohibited by *sharia*, such as stealing, usury, or taking the property of others.²³ So what is meant here is to protect property by taking good care of it, taking care of it in the right way, and distributing property in a way that is not contrary to *sharia* economic law.

The financial services board also issued these related

²²Nurul Huda dan Mohamad Heykal, *Lembaga Keuangan Islam Tinjauan Teoritis dan Praktis* (Jakarta: Kencana, 2010), 110.

²³Khairun Nisa, *Maqasid al-Syari'ah Perspektif Nuruddin al-Khadimi* (Yogyakarta: Universitas Islam Indonesia, t.th.) 9.

regulations, which are set out in chapter POJK VIII on the education and protection of users of crowdfunding services through the offering of shares based on information technology (equity crowdfunding). Regulating how funds revolve on the crowdfunding equity platform must be guaranteed security, and no one feels at a loss. OJK (Financial Services Board) also requires equity crowdfunding service providers to report all activities and finances carried out in it. OJK requires operators to be transparent, conduct fairly, keep data confidential and secure, and be responsible for user losses caused by operators.²⁴

To protect users of crowdfunding services, crowdfunding operators must have a data center and disaster recovery center. Providers must also meet adequate information technology system standards, in terms of security, system problems and so on.²⁵

Risk Management

All types of business face various risks, including in the investment agreement model on the crowdfunding equity platform. Various sources in the verses of the Qur'an have explained the importance of risk management, as exemplified in the story of the Prophet Joseph, who commanded his people to save crops for the next few years, because famine was foretold. So, in the Islamic perspective, risk management is an effort to preserve the trust of Allah for assets owned for the benefit of human life, and is *sunnatullah*.²⁶

قَالَ تَزْرَعُونَ سَبْعَ سِنِينَ دَابًّا فَمَا حَصَدْتُمْ فَذَرُوهُ فِي سُنْبُلِهِ إِلَّا قَلِيلًا مِمَّا تَأْكُلُونَ

"Joseph replied, "You will plant 'grain' for seven consecutive years, leaving in the ear whatever you will harvest, except for the little you will eat" (QS. Yusuf: 47).

Therefore, crowdfunding service providers must reduce risk, that is, reduce all risks involved in providing crowdfunding services, such as risk of investment loss, risk of lack of liquidity, business risk, risk of settling dividend distribution and share ownership risk.

²⁴Peraturan Otoritas Jasa Keuangan Nomor 37 /POJK.04/2018 Tentang Layanan Urun Dana Melalui Penawaran Saham Berbasis Teknologi Informasi (*Equity Crowdfunding*).

²⁵*Ibid.*

²⁶Fasiha Kamal, "Manajemen Resiko dan Resiko dalam Islam", *Jurnal Muamalah*, Vol. 4, 2014, 96.

Dispute Resolution

Islamic economic law offers several methods of resolving disputes, including *al-sulh* (the path of peace), *tahkim* (arbitration), and *wilayat al qadha* (judicial power or the judicial line).²⁷ Meanwhile, in POJK, the dispute resolution of users of crowdfunding services in an easy, fast and affordable way. The mechanism can be through trial or through internal dispute resolution and external dispute resolution.²⁸

If there is a dispute in the investment agreement on the equity crowdfunding platform, it can be done in various ways as an existing condition, even if the transaction is in cyberspace, but the dispute resolution can be in accordance with current state regulations, as there are laws that protect all form of business, included in online media. Therefore, service users must have important documents related to investment agreements on the crowdfunding equity platform in the form of electronic documents, as proof in the event of a dispute.

Conclusion

Investment cooperation agreements on the equity crowdfunding platform are a modern form of agreement that combines economic systems and information technology systems. There are several parties to investment agreements in general, namely there are business managers (stock issuers) and investors as stock buyers. The crowdfunding service organizer (equity crowdfunding) acts as a liaison (intermediary) between the fund manager and the investor. Investment agreements on equity crowdfunding platform can be implemented in *mudharabah* agreement, so that the relationship between fund manager and investor can be similar to *aqidain*, namely *mudharib* (business manager) and *shahibul maal* (investor), so investment agreement on equity crowdfunding platform can be planned using *mudharabah* agreement. Meanwhile, the agreement between the crowdfunding service provider and the crowdfunding user can use the *wakalah bil ujah* contract. The percentage to revenue ratio can use the profit and loss distribution system and the revenue distribution system according to the agreement. Equity crowdfunding platform should really pay attention to consumer protection in

²⁷Nurhayati, "Penyelesaian Sengketa dalam Hukum Ekonomi Islam", *Maros: Jurnal Hukum Ekonomi Syariah*, Vol. 3, 2019, 4-5.

²⁸Peraturan Otoritas Jasa Keuangan Nomor 37 /POJK.04/2018 Tentang Layanan Urun Dana Melalui Penawaran Saham Berbasis Teknologi Informasi (*Equity Crowdfunding*).

accordance with the provisions in accordance with POJK and *hifdzul maal* theory. In addition, it must carry out risk management to minimize the occurrence of losses for some parties, and create a dispute resolution mechanism in accordance with Islamic law and economic law.

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Transliteration Guidelines

Arabic romanization in *Al-Iktisab* refers to the transliteration system of Library of Congress (LC) combined with the model of Department of Religious Affairs of Indonesia which based on Joint Decree Letter between Ministry of Religious Affairs and Ministry of Education and Cultural.

b = ب	dz = ذ	ṭ = ط	l = ل
t = ت	r = ر	ẓ = ظ	m = م
ts = ث	z = ز	' = ء	n = ن
j = ج	s = س	gh = غ	w = و
ḥ = ح	sy = ش	f = ف	h = هـ
kh = خ	ṣ = ص	q = ق	' = ؕ
d = د	ḍ = ض	k = ك	y = ي

1. The transliteration system of Library of Congress (LC) and Department of Religious Affairs of Indonesia:

For *madd* and diphthongs:

ā	=	a long
ī	=	i long
ū	=	u long
او	=	aw
او	=	uw
اي	=	ay
اي	=	iy

2. Examples:

√ The person's name is written in Indonesian without transliteration.

Example: al-Syahrastani, not as-Syahrastāni, written as usual and not italic.

√ For the foreign terms are not entered into the Indonesian language, written as the original and italics, instead of the underscore.

Example: *al-qawā'id al-fiqhiyyah; isyrāqiyyah; 'urwah al-wutsqā*

While foreign terms that have been popular and entry into the Indonesian language, written in plain, without transliteration.

Example: al-Qur'an, not al-Qur'ān; objektif, not objektive.

√ The title of the book is written as the original and italics.

Example: *Irsyād al-Fuḥūl.*