IJEC
International Journal of Economics
https://ejournal.ipinternasional.com/index.php/ijec

e-ISSN: 2961-712X
Vol. 3 Issue 2, July-December 2024
DOI: 10.55299/ijec.v3i2.947

Critical Study of DSN-MUI Fatwa No. 86 Concerning Cash Prizes in Fundraising at Sharia Financial Institutions

***Aminuddin**
Sharia Science Doctoral Program, Faculty of Sharia and Law, Sunan Kalijaga State Islamic University, Indonesia
Correspondence Authors: aminuddin.permata@gmail.com
Article history: received June 28, 2024; revised July 15, 2024; accepted July 16, 2024

ABSTRACT

This research is intended to examine the Fatwa of the National Sharia Council of the Indonesian Ulema Council (DSN-MUI) No. 86 regarding cash prizes in raising funds at sharia financial institutions. This Fatwa requires that gifts given by Islamic financial institutions to customers must be in the form of goods or services, and prohibits gifts in the form of cash. This study aims to examine the effectiveness and implications of the fatwa and explore possible revisions based on input from Islamic banking scholars and practitioners. The research method used is qualitative through a descriptive analytical approach. Primary data includes DSN-MUI fatwa no. 86 of 2012, research results show that the implementation of this fatwa, especially regarding obligations for gifts in the form of goods, brings challenges for Islamic banks, especially in terms of procurement, maintenance and distribution of gifts in the form of goods and so on. Research also finds that prizes in the form of cash are more flexible and attractive to customers, without adding significant cost burdens to Islamic banks. This research suggests a review and possible revision of the DSN-MUI fatwa no. 86, taking into account the mutual benefit of banks and sharia financial customers.

Keyword: DSN MUI Fatwa No. 86, Prize Money, Fundraising Prize

INTRODUCTION

The Indonesian banking industry is one of several financial sectors that plays an important role in the structure of the Indonesian economy[1]. Do not forget that Islamic banks have also developed quite rapidly over the last decade. The assets of Sharia Commercial Banks (BUS) and Sharia Business Units increased by hundreds of trillions. According to OJK statistical data, thatSharia banking has reached assets in February 2024 of IDR 851 trillion[2].Looking at the current sharia banking phenomenon, there are at least three interesting things. First, competition in the banking market. Players are increasingly active in raising third party funds from customers, especially in the form of placing funds. Second, customers are becoming more rational. An emerging trend is for customers to have several savings accounts, or even several active sharia credit cards. Third, public demand for sharia-based banking products[3]. Competition between banks, including sharia banks or other sharia financial institutions, in collecting funds from the public has its own unique characteristics. This is because Sharia banks in carrying out promotional activities do not necessarily have the freedom to carry out promotional activities like conventional banks. Sharia banks must comply with sharia principles, especially in accordance with the Fatwa of the National Sharia Council of the Indonesian Ulema Council (DSN MUI), especially DSN MUI Fatwa No. 86 related to lawcash prizes in raising funds at sharia financial institutions.

Third party funds (DPK) are funds obtained from individuals in society, in the sense of society as individuals, companies, governments, households, cooperatives, foundations, etc. both in rupiah and foreign currency. For most banks, public funds are the largest fund for the bank. In credit or financing management, TPF is the basis for decision

[1] Jamal Wiwoho, "The Role of Bank Financial Institutions and Non-Bank Financial Institutions in Providing Justice Distribution for the Community," Mmh 43, no. 1 (2020): 87–97.
[2] OJK, "Sharia Banking Statistics, February 2024," no. February (2024): 1–3.
[3] Dimas Elly Ana and Arif Zunaidi, "Sharia Banking Strategy in Winning Competition During the Covid-19 Pandemic," Proceedings of Islamic Economics, Business, and Philanthropy 1, no. 1 (2022): 167–188.

e-ISSN: 2961-712X
Vol. 3 Issue 2, July-December 2024
DOI: 10.55299/ijec.v3i2.947

or policy making within the Bank. If DPK is stable, then this will provide a level of certainty in decision making in providing credit or financing. The greater the DPK, the higher the decision to grant credit or financing. DPK has a positive effect on credit or financing distribution. When the funds collected from the public are high, the decision to disburse credit will be even higher. Bearing in mind the main function of sharia financing institutions as fund intermediation institutions and realizing how important the existence of TPF is for the business continuity of sharia financing institutions, the activity of collecting TPF is part of operational activities that always receives serious attention from every management of sharia financing institutions.[4]

In an effort to increase DPK, Sharia Banks must compete with Conventional Banks and even with fellow Sharia banks. Various strategic efforts are made by Sharia Banks to improve the performance of third party funds. One of the strategies of Sharia Bank to increase the performance of third party funds is through increasing promotions on a regular basis[5]. In this case, Sharia Bank carries out promotions in various forms to attract sympathy from the public, either through giving gifts or convenience in services and transactions.

So that this promotional activity remains in accordance with sharia principles, thenThe National Sharia Council of the Indonesian Ulema Council (DSN-MUI) as a form of support and participation in growing sharia banking in Indonesia issued rules for prizes in raising funds, namely through Fatwa No. No. 86 Regarding Prizes in Fundraising. This fatwa regulates how Islamic banks or other Islamic financial institutions give gifts to saving customers, either in the form of promotional gifts or gifts for customer savings funds. One of the provisions in the fatwa stated in the third provision, regarding gifts, is that promotional gifts given by Sharia Financial Institutions (LKS) to customers must be in the form of goods and/or services and cannot be in the form of money. This provision can be understood to mean that gifts in the form of cash are not permitted.[6]

In practice, if the bank follows the DSN MUI fatwa no. 86, then gifts in the form of goods or services are quite difficult for Islamic banks. Because Islamic banks have to do many things, including procurement of gift items, maintenance of gifts, and the process of delivering gifts to customers. This indirectly has an impact on additional costs incurred by Islamic banks and there is even a risk factor of damage if the prize is in the form of goods. In fact, some customers are less interested in the gift model provided by Sharia Bank. In other words, gifts in the form of goods are more difficult to implement than gifts in the form of cash. Prizes in the form of cash are more flexible and do not involve additional costs and risk factors[7].

DSN MUI Fatwa No. 86 which prohibits cash gifts needs to be analyzed from a legal perspective so that changes can be made to the fatwa to impact the collective benefit. Criticism of the MUI DSN Fatwa is not impossible. Because in the MUI DSN Fatwa itself there have been amendments or changes to the Fatwa based on input or experience during the time the MUI DSN Fatwa was implemented. For example, DSN MUI Fatwa No. 23 concerning Repayment Discounts in Murabahah states that if a Murabahah financing customer makes a payment on time or earlier than the agreed time, LKS 'may' provide a discount from the payment obligation provided that it is not agreed in the contract.[8]. In these provisions it is stated that the words "may provide deductions" mean that this policy may be carried out or not. Furthermore, DSN MUI made changes to these provisions by issuing DSN MUI Fatwa No. 153 concerning Repayment of Murabahah Financing Debts Before Maturity (PU-PMSJT) states that if PU-PMSJT is carried out, either at the will of the customer or at the will of LKS, LKS as the seller is "obligated" to provide a discount from Qimah Ismiyyah[9]. There is an editorial change from the word "may" to "must".

[4] Maltuf Fitri, "The Role of Third Party Funds in the Performance of Sharia Financing Institutions and the Factors That Influence Them," Economica: Journal of Islamic Economics 7, no. 1 (2016): 73–95.

[5] Mashuri Mashuri and Dwi Nurjannah, "SWOT Analysis as a Strategy to Increase Competitiveness," JPS (Journal of Sharia Banking) 1, no. 1 (2020): 97–112.

[6] DSN MUI Fatwa, "National Sharia Council Fatwa No. 86/DSN-MUI/XII/2012 Concerning Prizes in Fundraising for Sharia Financial Institutions," DSN MUI Fatwa No. 86 of 2012, no. 86 (2012): 1–10.

[7] ASBISINDO, "Materials for ASBISINDO & DSN MUI Meeting," 2023.

[8] DSN MUI Fatwa, "Repayment Deductions in Murabahah," MUI National Sharia Council (2002): 1–3, https://dsnmui.or.id/detik/fatwa/.

[9] DSN MUI Fatwa, "REPAYMENT OF MURABAHAH FINANCING DEBT BEFORE THE DUE," MUI National Sharia Council 153, no. Sharia Finance (2022): 1–12, https://dsnmui.or.id/detik/fatwa/.

e-ISSN: 2961-712X
Vol. 3 Issue 2, July-December 2024
DOI: 10.55299/ijec.v3i2.947

The antithesis to the DSN-MUI fatwa regarding No. 86 regarding the law on cash gifts in raising funds in sharia financial institutions, is based on the following problem formulation:

1) What are the provisions of the MUI DSN Fatwa No. 86 concerning the law prohibiting giving gifts in the form of cash when raising funds at sharia financial institutions, is it appropriate to apply to LKS, especially Sharia Banks?
2) Is there any other opinion / ijtihad from the ulama which states that gifts in the form of cash are not prohibited?

This is the background for researchers to choose a theme with a titleCritical Study of DSN MUI Fatwa No. 86 Concerning Cash Prizes in Fundraising at Sharia Financial Institutions.

METHOD

1.1. Research Approaches and Types

In research, a method or methodology is a method or strategy used to find or obtain the data needed to achieve research objectives. In this research, the method used is a qualitative method. Qualitative methods are research procedures that produce descriptive data in the form of written or spoken words from people and observable behavior. This method is often used to understand social phenomena from the participant's perspective, so that the resulting data is deeper and richer in meaning.

The approach used in this research is descriptive analysis. This approach aims to provide a systematic, factual and accurate description of the facts and characteristics of a particular population or area. In this context, descriptive analysis research aims to describe phenomena or research objects based on data that has been collected, both through samples and overall data. It is hoped that the results of this research will provide a clear and comprehensive picture, as well as produce conclusions that can be generally applied to the phenomenon or object studied.

This research describes and critically analyzes the law on gifts in the form of cash in raising funds in sharia financial institutions in the DSN-MUI fatwa No: 86 of 2012.

The type of research used is library research, namely research carried out using literature in the form of books, notes or previous research reports.

1.2. Data and Data Sources

Data sources are divided into primary data sources and secondary data sources. Primary data sources are data sources that provide data directly to data collectors. Meanwhile, secondary data sources are supporting data sources arranged in the form of documents in the form of books, journals and other sources related to research.

The primary data for this research is DSN-MUI fatwa No: 86 of 2012 concerning Cash Prizes in Fundraising in Sharia Financial Institutions, Jordanian Darul Ifta Fatwa No. 3518 of 2019 and Al-Rajhi Bank Sharia Board Decree (1/542) number 355. Meanwhile, secondary data sources were obtained from Fiqh literature, journals and books.

1.3. Data analysis

The primary and secondary data that has been collected will be analyzed using descriptive analysis methods to provide an overview of the information that has been obtained and provide an assessment of the problems raised through appropriate and accurate interpretation.

RESULTS AND DISCUSSION

1.4. DSN Fatwa No. 86/ DSN-MUI/ XII/ 2012 concerning Prizes in Fundraising for Sharia Financial Institutions

In Indonesia, fatwas related to sharia financial institutions are decided by the National Sharia Council of the Indonesian Ulema Council (DSN MUI. The status of DSN-MUI fatwas if they are related to positive law is almost the same as doctrine, namely as strengthening the judge's decision in a case. DSN-MUI fatwas have a role crucial in making regulations that limit and play an important role in efforts to encourage legal products for sharia financial

e-ISSN: 2961-712X
Vol. 3 Issue 2, July-December 2024
DOI: 10.55299/ijec.v3i2.947

institutions. Therefore, the DSN-MUI Fatwa plays a very crucial role for economic progress and the development of sharia financial institutions, especially in sharia banking.[10].

DSN is tasked with carrying out the MUI's responsibilities in handling problems related to the activities of sharia financial institutions. One of the main tasks of DSN is to study, research and formulate the values and principles of Islamic law (Shariah) in the form of fatwas. Fatwa is intended as a guideline for transactional activities in sharia financial institutions.

One of the fatwas issued by DSN MUI related to raising funds at LKS is Fatwa No. 86/ DSN-MUI/ XII/ 2012 concerning Prizes in Fundraising for Sharia Financial Institutions. In the general provisions of this fatwa it is stated that:

> *"Promotional gifts given by Sharia Financial Institutions (LKS) to customers must be in the form of goods and/or services, and cannot be in the form of money"*

The interesting thing about the fatwa above is that gifts cannot be in the form of money. The word "not allowed" means that there is a prohibition on gifts in the form of money. Therefore, until now Sharia Banks have not dared to promote or issue gift programs using cash, either promotions for giving gifts before a transaction occurs or in order to retain existing customers to remain loyal to the bank. This could be due to following the provisions of this fatwa. In fact, Sharia Banks feel that this provision is very burdensome for them if the prize must be in the form of goods/services.Because Islamic banks have to do many things, including procurement of gift items, maintenance, delivery processes to customers. This condition was not a concern or consideration for the MUI DSN in issuing Fatwa No. 86/ DSN-MUI/ XII/ 2012 concerning Prizes in Fundraising for Sharia Financial Institutions.

In this case, it is necessary to carry out critical analysis and study of the fatwa decision based on the legal side and its beneficial impact. Criticism of the DSN Fatwa is nothing new. Several researchers have conducted similar research, namely criticism of several provisions of the MUI DSN Fatwa. Among them is research conducted by Karimatul Hasanah (2018), namely research entitled "Critical Study of DSN Fatwa NO. 15/DSN-MUI/IX/2000 concerning Principles of Distribution of Business Results in Sharia Financial Institutions", in their research the researcher stated that DSN fatwa no. 15/DSN-MUI/IX/2000 concerning "Principles of Distribution of Business Profit Sharing in Sharia Financial Institutions" needs to be reconstructed. This is because the fatwa issued by the DSN has a big influence on the activities or principles chosen by Sharia Financial Institutions. Among the provisions of the DSN MUI fatwa that the researchers have come to concentrate on is that LKS can choose two systems for sharing business results, namely profit sharing and net revenue sharing. The interesting thing in this fatwa is that the second point states "From the perspective of benefit (al-ashlah), currently the distribution of business results should use the principle of profit sharing (Net Revenue Sharing)". The words "benefit" and "should" seem to have a big influence on the profit sharing distribution procedures chosen by Sharia Financial Institutions today. This can be seen from the lack of Sharia Financial Institutions that choose a profit sharing system in terms of distribution of business profits. In this research, the researcher recommended that the DSN MUI fatwa no. 15, changes were made to several clauses that were of concern to the researchers[11].

Another research on the DSN MUI Fatwa was also conducted by Gusti Muslihuddin Sa'adi (2019) in research entitled "Critical Analysis of Gold Credit Law (Critical Study of DSN-MUI Fatwa Number 77 of 2010 Concerning Gold Murabahah)", the results of his research revealed that commodities gold will still be considered amwal ribawiyah (usurious goods), therefore buying gold using the installment system is still considered haram, because illat mustanbathah (illat concluded through the ijtihad process) cannot cancel al-ashl. This opinion criticizes the DSN MUI fatwa which states that buying and selling gold without cash, either by ordinary buying and selling or murabahah buying and selling, is permissible (mubah/ ja*"iz)*as long as gold is not an official medium of exchange (money). So according to the researcher, the DSN-MUI can review or revise the fatwa (i'adah an-nazhar) and make a more careful

[10] Muhamad Ibnu Afrelian and Imahda Khoiri Furqon, "Legality and Authority of the Fatwa of the National Sharia Council of the Indonesian Ulema Council in the Operations of Sharia Financial Institutions," Mizani Scientific Journal: Legal, Economic and Religious Discourse 6, no. 1 (2019): 1.

[11] Sharia Finance, Karimatul Khasanah, and Iain Pekalongan, "On the Principles of Distribution of Business Results" 16, no. 15 (2018): 111–123.

e-ISSN: 2961-712X
Vol. 3 Issue 2, July-December 2024
DOI: 10.55299/ijec.v3i2.947

fatwa decision (ihthiyathi) regarding gold ownership for customers in sharia financial institutions, especially sharia banking.[12].

Another research by Usman Rahim (2019), a Professor at the University of Iraq in the research "Taghayur al Fatwa wal Ahkam bi taghayuri az Zaman wal makan wal akhwal tathbiqotin fiqhiyatin mua'shirotin'" stated that changes to the fatwa are in line with the provisions of the Koran and Hadith and practice friends. However, he stated that the change in this fatwa was due to changes in the conditions of the time, place and circumstances of the people. A fatwa must follow the causes and illat of the law whether it exists or not[13].

1.5. Promotional Gifts in Islam

The term promotion in Islamic law is known as al hawafiz al muroghibah fi Al-syiro.In terms of language, al hawafiz al muroghibah fi Al-syiro' can be interpreted as "Everything that can encourage or attract other people's interest in buying." In a terminological sense, Khalid bin Abdullah Al Mushlih said that in defining the definition of al hawafiz al muroghibah fi Al-syiro', you should refer to books related to marketing which discuss this issue and make it the main object of discussion. By referring to these books, it will be known that the term used to indicate the meaning of something that encourages and persuades other people to buy is called promotion.[14].

This promotion has two meanings: general and specific meaning. The general meaning of promotion is any action taken by the company or producer to increase sales results. Meanwhile, the specific meaning of promotion is the communicative relationship of sellers or producers with buyers with the aim of informing them, persuading and encouraging them to buy. From this understanding, Khalid concluded that promotions are all actions carried out by shirkah (companies or producers) to increase sales results, both goods and services, both before and after the contract.[15].

There are differences in the meaning of promotional gifts from the perspective of jurisprudence experts and marketing experts. According to fiqh experts, gifts are a type of gift, namely giving something to another person without any exchange without the recipient's needs, although some gifts are given in order to glorify or maintain friendly relations between the giver and recipient. Meanwhile, according to marketers, prizes are given with the aim of fulfilling the need for advertising new products, promotions to attract customers, as well as gifts to maintain loyalty. Gifts are legally prescribed by law and sunnah as stated in the Koran and the hadith of the Prophet Muhammad SAW. Gifts are highly appreciated as a form of maintaining the relationship between the giver and the recipient of the gift.

Promotional gifts are given by sellers to buyers in various forms of gifts, whether gifts in the form of goods, services or even money. The law on gifts as stated in muamalah fiqh is permissible as long as there is no argument that prohibits it. Based on this law, sales promotion law is originally permissible, as long as it is carried out in a manner justified by the Shari'a, and does not cause danger, zulmand gharar. However, there are several views of jurisprudence experts regarding the law regarding promotional prizes in the form of money. The Syafii and Hanbali schools of thought prohibit giving sales promotional gifts in the form of money because they consider it to resemble usury (there is an advantage in exchanging one type of usurious item, namely money for money). Meanwhile, the Maliki madzhab and the Hanafi madzhab and several other madzhabs, including some groups from the Hambali madzhab, allow it.[16]

Among the arguments of the fuqaha that allow it are First: the hadith of the Prophet regarding the sale and purchase of slaves if the slave has his money in his hands, then the buyer is also entitled to that money. Second: experts agree that a valid contract cannot be considered void for a transaction (gift) that is permitted. Third: Another argument states that there is no express prohibition stating that there is a prohibition on gifts in the form of cash. And the rules also state that everything according to the law is permissible unless there is a clear prohibition[17]

---

[12] *Gusti Muslihiddun Sa'adi, "Critical Analysis of Gold Credit Law (Critical Study of DSN-MUI Fatwa Number 77 of 2010 Concerning Gold Murabahah),*" At-Taradhi: Journal of Economic Studies X, no. 1 (2019): 58.

[13] Usman Rahim, "Taghayur Al Fatwa Wal Ahkam Bi Taghayuri Az Zaman Wal Makan Wal Akhwal Tathbiqotin Fiqhiyatin Mua'shirotin" (2019): 117–144.

[14] Khalid bin Abdullah Al Mushlih, :": Al Hawafiz At Tijariyah At Tasywiqiyah Wa Ahkamiha Islamic Fiqh," in Daru Ibnu Jauzi, 2000, 9.

[15] Ibid.

[16] Ibid., 125.

[17] Ibid., 125–135.

e-ISSN: 2961-712X
Vol. 3 Issue 2, July-December 2024
DOI: 10.55299/ijec.v3i2.947

1.6. Practice of Giving Gifts in Sharia Banks to Third Party Fund Customers

In order to increase the performance portfolio of Third Party Funds, the majority of Islamic banks generally organize promotional program activities. In fact, promotional costs have become mandatory costs budgeted by Islamic banks every year to improve the performance of Third Party Funds. So far, Islamic banks in carrying out this promotional program have followed the direction of DSN MUI fatwa No.86 where prizes are given to customers in the form of goods/services.

Prizes are an integral part of promotion/marketing of industrial products, including the Islamic finance industry. Griffin and Ebert emphasized that prizes in business science are the most popular form of promotion. Based onresults of interviews with a number of sharia bank employees quoted from research by Jaih Mubarok et al (2013) in research entitled "Fatwa Concerning Prizes in Sharia Financial Institutions"explained that the various prizes given by sharia banks to customers were simplified into five modelsnamely lottery, gimik / direct, individual, bonus ('athayâ), and discounts. Lotteries are usually given to customers with a certain amount of savings, while gimik/direct is a small prize given when opening a new account. Individual prizes are given to certain customers based on request or agreement, and bonuses are given for wadi'ah savings or current accounts[18].

According to Islamic banks, the practice of gifts in the form of goods is quite problematic. Gifts in the form of goods affect the process of procuring goods, appointing vendors, stacking goods or even as a result of the accumulation of goods that become unfit for use or are damaged. Furthermore, the gift model in the form of goods that are ready stock is not necessarily popular with potential customers. It doesn't stop there, the process of delivering goods is also hampered by costs and verification of the gift recipient when the gift is received.

Public placement of funds in sharia banks generally uses two contracts, namely mudharabah or wadiah. Mudharabah contracts are used in savings, deposit and current account products. while the wadi'ah contract is used for savings and current account products.Mudharabahis a business cooperation agreement between 2 parties, where one party acts as the owner of the funds (shaibul mal) or the customer provides all the funds (100%) and the other party (bank) as a business manager or mudharib. In short, mudharabah is a profit-making partnership, where one party (rabbul mal) provides capital and the other party (mudharib) provides labor. Some fiqh experts, such as Hanafi and Hanbali, use the term mudharabah, while Maliki and Syafi'i use another term, namely qiradh.[19]

The principle of mudaraba is part offrom a unique sharia banking product, because it has philosophical differences between the conventional banking system and the sharia banking system which adheres to the principle of sharing profits or losses. The principle of profit sharing is known as profit and loss sharing, where when the mudharib makes a profit from the business capital provided by Sahibul Mal from the business he runs, the profits are shared between the two of them according to the agreement. Likewise, with losses, mudharib and shaibul mal both bear the responsibility. This concept is promoted by sharia banking, namely that the mudharabah contract implements a justice-based cooperation system.

In mudharabah contracts based on POJK No. 13 of 2021 at least includes the following provisions: "1) The bank acts as fund manager and the customer acts as fund owner. 2) Banks are not restricted from using customer funds in fund distribution activities as long as they do not conflict with Sharia Principles. 3) The bank and the customer share profits in the form of an agreed ratio and stated in the account opening contract. 4) In the event that the account opening is carried out through an online mechanism, the terms and conditions of the contract including the ratio agreement, and/or beneficial owner are stated in a form that is appropriate to the media for opening the account in question. 5) Banks are not permitted to reduce customer profit ratios without the customer's consent. "Customer approval can be done in writing or in the form of negative confirmation of the planned change in ratio carried out by the Bank."

Meanwhile, the Wadiah contract is a deposit or savings which in sharia financial institutions/ sharia banks refers to an agreement, where the customer deposits money in a sharia financial institution including banks with the aim that the sharia financial institution/ sharia bank is responsible for safeguarding the money they deposit and guarantees its return. the money will be asked for back later. AKad wadiah is a system of depositing money or goods with a bank that is entrusted with maintaining the safety, security and integrity of the goods or money.

[18] Jaih Mubarok, Hasanudin, and Yulizar D. Sanrego, "Fatwa Regarding Sharia Financial Institutions and Their Products," Miqot 37, no. 105 (2013): 327–346.

[19] Chasanah Novambar Andiyansari, "Mudarabah Agreements in the Perspective of Jurisprudence and Sharia Banking," SALIHA: Journal of Islamic Education & Religion 3, no. 2 (2020): 42–54.

e-ISSN: 2961-712X
Vol. 3 Issue 2, July-December 2024
DOI: 10.55299/ijec.v3i2.947

The difference between a mudharabah contract and a wadiah contract is as follows: a wadiah contract is purely a deposit, while a mudharabah contract is a form of collaboration between the bank and the customer with profit sharing.*Wow*It is a tabarru' (please help or help each other) contract, so it is included in the non-profit contract category. The practice of wadiah contracts in sharia banks uses the Wadiah yad dhamanah scheme. The definition of wadiah in this principle refers to the responsibility of the entrusted party for the integrity of the entrusted property so that the party may utilize the entrusted property.

*Wadiah yad dhamanah*This occurs tahawul al aqd (change of contract) from a deposit contract to a loan contract because the deposit is used by the recipient of the deposit. Thus, in this wadiah yad dhamanah scheme the qardh loan law applies.
Based on POJK No. 13 of 2021 that the characteristics of a wadiah contract include at least: 1) The bank acts as the recipient of the deposited funds and the customer acts as the depositor of the funds. 2) Banks can manage or use customer deposited funds. 3) Banks are not permitted to promise rewards or bonuses to customers. However, the Bank, based on internal policies and without agreement, can provide rewards/bonuses to customers. 4) The bank guarantees the return of funds deposited by customers

1.7. Critical Study of the Prohibition of Giving Gifts in the Form of Money.

Based on the description and explanation above, it can be said that the management status of third party funds for customers with mudharabah agreements is different from customers with wadiah agreements. DPK from customers with a wadiah agreement has the status of a loan, while DPK from customers with a mudharabah agreement is a collaboration fund. The differences in DPK status should be explained in the MUI DSN Fatwa No. 86 implications for each contract and the law is not generalized.

In this case the DSN MUI fatwa only explains that "*Promotional prizes given by Sharia Financial Institutions (LKS) to customers must be in the form of goods and/or services, and cannot be in the form of money. The fatwa does not differentiate between any type of contract."*As forIn the wadiah contract, the author agrees with DSN MUI that giving gifts that are promised for promotional purposes or maintaining customer loyalty is not permitted. This is because the wadiah status is a loan (qardh). Prohibition of any additions to the agreed loan including usury. As in the hadith of the Prophet SAW, "Every debt in which there is an additional/profit is considered haram. Likewise, the words "Every debt that requires additional debt is haram. This is not disputed by the scholars." (Al-Mughni, 6: 436)

As for the placement of funds between a bank and a customer using a mudharabah contract, the legal application should be different from that of a wadiah contract. The status of DPK funds for mudharabah contracts is cooperation funds and not borrowing and borrowing. If it is said that giving a mudharabah contract gift is tadhmin Ribh (guaranteeing profits) then it is not entirely true, because in this case the Sharia Bank has never issued a statement guaranteeing this profit. Sharia Bank provides prizes using promotional costs that are specifically reserved and have nothing to do with or be tied to managed mudharabah funds. This means that in financial accounting terms, this promotional prize is not directly related to customer funds, profit or loss.

The next criticism is that the provisions in the MUI DSN Fatwa No. 86 differentiates between gifts in the form of goods and money. This fatwa states that gifts in the form of goods are permitted and if they are in the form of money they are prohibited. Meanwhile, if the reason for the prohibition is because it is thought to guarantee profits, then in this case the criticism is that gifts in the form of goods are permitted. Even though the value of providing goods as a gift is no less than in the form of cash. Why gifts of goods are not considered to guarantee profits. The provisions of the MUI DSN Fatwa are irrational by distinguishing between gifts of goods and gifts of money.

The prohibition on gifts in the form of money makes it quite difficult for Islamic banks to create promotional programs, especially when competing with conventional banks. Especially if a Sharia Bank has Sharia Business Unit status where all promotional activities usually refer to conventional parent bank programs. As a result, several sharia banks were unable to participate in promotional programs from their parent banks.

Provisions of the MUI DSN Fatwa No. 86 is less implementable and tends to make things difficult for sharia banks. In fact, the MUI DSN Fatwa was formed to achieve convenience and benefit.The MUI DSN's own method when determining fatwas is to use the Al-taysîr al-Manhaji, Tafriq al-Halal An al-Haram, and I'adah an-Nadhar

e-ISSN: 2961-712X
Vol. 3 Issue 2, July-December 2024
DOI: 10.55299/ijec.v3i2.947

approaches.[20]Fatwa is not permitted to conflict with Maqāsid Sharī`ah. If it is contradictory then it must be rejected, likewise if the fatwa issued has a controversial impact, giving rise to disputes among Muslims. In general, the legal provisions in the DSN MUI fatwa often pay attention to the pattern of public benefit (maslahah ammah) and the essence of religious teachings (Maqāsid Sharī`ah), so that the DSN-MUI fatwa can truly answer the problems encountered by the people and become an alternative as a guide when implementing business sharia economics in Indonesia.

1.8. Reconstruction of DSN Fatwa No. 86/DSN-MUI/ XII/ 2012 concerning Prizes in Fundraising for Sharia Financial Institutions

Based on the previous discussion, it is explained that a gift is a general transfer of property rights without compensationsent to the recipient to glorify him[21]. According to Muhammad Qal'aji, a gift is the giving of something without compensation to strengthen ties of friendship, bring relationships closer and honor them.[22] In this sense, Muhammad Qal'aji emphasized that gifts are not purely giving without compensation, but there is a certain purpose, namely sometimes to strengthen ties of friendship, bring relationships closer and bring glory.

Giving gifts is highly recommended in Islam, in surah al-Anfal verse 63 Allah says: "and Who unites their hearts (the believers). Even if you spent all (wealth) on earth, you would not be able to unite their hearts, but Allah has united their hearts. Indeed, He is the Most Valiant, the Most Wise." Apart from that, the Prophet's hadith explains the importance of giving gifts. From Abū Hurairaĥ RA from the Prophet SAW said "give gifts then you will love each other".

From this explanation, it can be understood that giving gifts under normal conditions is highly recommended to create friendship between the parties involved. The problem is if the gift given has a specific purpose or in other words the gift requires a substitute, whether the substitute is in the form of money or objects.

In this case, Sharia Banks use various methods and innovations to attract the hearts and sympathy of the public so that they want to place their funds in Sharia Banks. Several Sharia Banks promote their banking products by giving away prizes. In general, the bank's motivation for giving prizes is first: Maintaining the existence of existing products. Like banks in general, every Sharia Bank will make various breakthroughs to maintain the bank's existence amidst its competitors. Especially in maintaining existing products. Second: motivate customers to continue to increase the balance in their accounts. Human behavior is usually always initiated by motivation to gain profit, because an action carried out by a person should be motivated by intention. Good intentions will make humans try to move towards something better in both worldly and hereafter aspects. Motivation from this spirit of intention is also what drives Sharia Bank to try to take opportunities from Muslims to become partners and at the same time motivate their enthusiasm for saving through giving gifts. Third: as a thank you for cooperation in partnership relations. Partnership is an effort that involves various sectors, including community groups, government and non-government institutions, to work together to achieve a common goal based on an agreement on the principles and roles of each. In this cooperative relationship, the customer is one of the parties who invests capital in a sharia bank, and the bank will manage these funds to obtain a profit. This is cooperation in managing funds.

DSN MUI in fatwa decree no. 86 concerning Prizes in raising funds Sharia financial institutions allow LKS to offer or give prizes in the context of promoting fund raising products by following the following conditions:[23]

1. Promotional gifts giveniSharia Financial Institutions (LKS) to customers must be in the form of goods and/or services,cannot be in the form of money;
2. Promotional giftsyesng given by the LKS must be beappearance of existing objects,good shape h*aqiqi*norwgo to huk*mi;*
3. Promotional giftsyanggivenan by LKS must be an objectyang mubah*/halal;*
4. Promotional giftsyang dibeFish provided by LKS must belong to LKSyang concerned,not belonging to the familyah;

[20] Ma'ruf Amin, "Islamic Legal Solutions (Makharij Fiqhiyyah) as Drivers of the New Current of Sharia Economics in Indonesia Scientific Oration" (2017): 1–23.

[21] Abi Yahya Zakaria Al-Anshari As-syafii, Asnal Mathalib (Asnal Mathalib, Beirut, Darul pole Al Ilmiyah Juz 5 h. 566, nd).

[22] Muhammad Qal'aji, Mu'jam Lugatil Fuqaha, al-ishdar. (al-maktabah ash-syamilah, nd), 493.

[23] MUI, "National Sharia Council Fatwa No. 86/DSN-MUI/XII/2012 Concerning Prizes in Fundraising for Sharia Financial Institutions."

e-ISSN: 2961-712X
Vol. 3 Issue 2, July-December 2024
DOI: 10.55299/ijec.v3i2.947

5. In terms of pen contractsyThe deposit of funds is a wadi contract*'Ah,*then promotional gifts diprovided by LKS before the wadi contract occurs*'Ah;*
6. LKS has the right to determine conditions for gift recipients as long as these conditions do not lead to the practice of usury;
7. In the event that the recipient of the gift breaks the syarat-conditions that have been determined by LKS,The gift recipient must return the giftywhich has been receivedya;
8. The policy of giving promotional gifts and prizes for Third Party Funds by Sharia Financial Institutions must be regulated in the internal regulations of Sharia Financial Institutions after taking into account the considerations of the Sharia Supervisory Board;
9. The Authority must supervise the policies of Sharia Financial Institutions regarding the provision of promotional gifts and gifts of Third Party Funds to customers, including their operations;

Apart from that, there are provisions related to how to determine the recipient of the gift, namely:

a) Promotional prizes may not be given by Sharia Financial Institutions if: a) they are of the nature of taking personal advantage of officials of the company holding the funds, b) have the potential to practice risywah (bribery), and c) lead to hidden usury;
b) Providing promotional gifts by Sharia Financial Institutions must avoid qimar (maisir), gharar, usury, and, ahdzul maal bil vanity;
c) Providing promotional prizes by Sharia Financial Institutions may be done directly, and may also be done through drawing (qur'ah);

The discussion of gifts to Third Party Funds cannot be separated from the discussion of the respective binding contracts, whether mudharabah contracts or wadiah contracts. Each contract has its own characteristics.

In this case, if the contract used is a wadiah contract, the customer status is muqridh (the party who lends) and the bank status is muqtaridh (the party who borrows). This statement is the opinion of the majority of contemporary fiqh scholars, including the decision of the 9th Majma' Fiqh Islam ad-Dauli number 86 (3/9) which was implemented in Abu Dhabi, United Arab Emirates from 1-6 Dzulqa'dah 1415 Hijriah or coinciding with 1 -6 April 1995. The reasons for this opinion are: a). Customers who deposit their funds in the bank know that the bank will use these funds and will mix them with other customers' funds, the bank will use these funds to be used as capital for financing. Therefore, in essence the funds used by banks are qardh or loans from customers. b). Customer funds in the bank are automatically owned by the bank, because the bank has the freedom to use these funds, therefore its status is qardh. If a customer's savings or current account funds in a bank are assumed or called wadiah, the bank should not own these funds and not use them for the bank's interests. In the rules of jurisprudence it is stated that "the legal status of a contract is based on the meaning contained therein, not based on words", therefore the mention of the word wadiah in savings and current account contracts is only words, because in essence the contract or the meaning contained in the contract is a qardh contract. c). The bank's status for customer funds deposited in the bank is guarantor. If the contract uses wadiah in the fiqh sense, then the bank does not guarantee the funds, because in essence the wadiah contract is a trust contract which does not require the party receiving the deposit to guarantee it unless there is an element of intent or negligence. d). The bank's motivation for accepting savings or checking funds from customers is to use these funds. Therefore, banks will not accept savings or current accounts if the funds are in the nature of a trust that cannot be used for investment purposes. So the gifts or bonuses given and promised by banks to customers include excess loans or also known as interest.

If the customer deposits his funds in the bank as investment funds (mudhrabah contract) and the bank acts as mudharib, then the bank may not give gifts with the aim of guaranteeing profits to the customer from the investment. Banks are only allowed to share profits based on the profit ratio agreed upon at the beginning of the contract, that is, if the bank makes a profit, the customer gets the agreed share of the profits, but if there is no profit, the customer gets nothing. Guaranteeing profits falls into the prohibited category of usury. The practice of giving gifts at sharia banks usually uses promotional costs that are specifically budgeted to motivate the public or customers to save at sharia banks. This promotional fee does not take a portion of customer profits.

IJEC
International Journal of Economics
https://ejournal.ipinternasional.com/index.php/ijec

e-ISSN: 2961-712X
Vol. 3 Issue 2, July-December 2024
DOI: 10.55299/ijec.v3i2.947

This is also in line withopinion of Al-Rajhi Bank Sharia Board Decree (1/542) number 355 reads[24]: Al-Rajhi Bank may give prizes to customers who hold investment accounts, provided that the prizes are not taken from investors' funds, because investment accounts are not debt, so the prizes do not include "debt that attracts benefits".

Another opinion confirms the Jordanian Darul Ifta Fatwa No. 3518 of 2019 that prizes can be given to investment customers with conditions[25]:

(a) The prize should not be taken from mudharabah profits. Because the manager cannot donate any mudharabah assets without the permission of the property owner.

(b) The gift should not result in an obligation to guarantee mudharabah capital.

(c) The prize is not taken from the bank's profits, because the account holders have the right to the profits obtained by the bank. Don't donate their assets without their permission.

Next on the fatwaJordanian Darul Ifta Fatwa No. 53 of 2001 states that[26]:

"يجوز شرعا لمجبس إدارة البنك الإسلامي أن يوازع جوائز تشجعية نقدية أو عينية أو تحمل نفاقات الحج الحسابات الاستثمارية إذا كان مخولا بذلك بشرط أن تكون الجوائز من أرباح البنك الخاصة ""

"Islamic banks are permitted to give gifts to customers as a form of motivation to save their funds, whether in the form of money, goods or in the form of travel expenses for Umrah and Hajj or other official gifts to the customer, provided that the gift comes from the bank's own profit funds.".

Based on these fatwas, it can be concluded that giving gifts in mudharabah contracts is permitted as long as it meets the applicable provisions according to sharia principles. There are also no restrictions on the form of gifts, whether in the form of money, goods or services.

The provisions on the object of gifts in the DSN MUI fatwa No. 86 by distinguishing between prizes of money and goods do not have a clear reference and basis as outlined in the DSN MUI fatwa. The MUI DSN fatwa which prohibits giving gifts in the form of money has no strong basis and is irrational. This is because giving gifts in the form of money or goods has no implications for the customer's investment funds. Prizes in the form of money and goods come from the bank's internal funds.

Therefore, according to the author, giving gifts in placing third party funds in Islamic financial institutions is permitted in any form as long as the form is halal, including cash gifts. Unless the contract used is a wadiah contract, giving promotional gifts promised to customers falls into the usury category. Because the wadiah contract at a sharia bank is a qardh contract.

As the final form of this study, the author recommends DSN fatwa no. 86/ DSN-MUI/*I'adah an-Nadhar* [27]- a method that is the basis for DSN MUI in giving fatwa, namely re-examination by re-examining the mu'tamad's opinion by considering legal opinions which have so far been considered weak due to the existence of new legal illat and/or these opinions bring benefits, then these opinions are used as guidelines in establishing laws-so DSN fatwa no. 86 of 2012 is expected to be amended to:

Changes to conditions:
"Promotional prizes given by Sharia Financial Institutions"ah to the Customer can be in the form of goods and/or services, and may be in the form of cash"

---

[24] Islam online, "Baina Hadaya Bunuk Islamiyah Wa Fawaid Al Bunuk," https://islamonline.net/هدايا-وفوائد-البنوك-الإسلامية/.

[25] Darul Ifta Jordan, "Hukmu Jawaiz Hisabat At Taufir Fil Bunuk Islamiyah," https://aliftaa.jo/research-fatwas/3518/Questions2.aspx?Id=111.

[26] Darul Ifta Jordan, "Hukmu Al Jawaiz Alati Tu'ti Min Al Bunuk Al Islamiyah Wifqo Aliyati Muayyanah; 53," https://www.aliftaa.jo/decision/54/AddQuestion.aspx.

[27] *Amin, "Islamic Legal Solutions (Makharij Fiqhiyyah) as Drivers of the New Flow of Sharia Economics in Indonesia*Scientific Oration."

IJEC
International Journal of Economics
https://ejournal.ipinternasional.com/index.php/ijec
e-ISSN: 2961-712X
Vol. 3 Issue 2, July-December 2024
DOI: 10.55299/ijec.v3i2.947

Additional conditions:
The promised promotional prizes only apply to mudharabah contract customers.

CONCLUSION

From the study above, it can be concluded that based onDSN MUI fatwa no. 86 concerning the prohibition of gifts in the form of cash does not have a clear legal basis. The prohibition of gifts in the form of money and the permissibility of gifts in the form of goods do not have a strong legal basis. Providing gifts in the placement of customer funds under a mudharabah agreement is not included in the category of tadhmin ar ribh or included in the category of usury. Because in this case the bank does provide special funds for promotion without taking any of the customer's investment funds and the bank never promises guaranteed profits to the customer. In Fatwa no. 86 does not differentiate between prizes between the placement of funds in the form of mudharabah contracts and wadiah contracts, which each have their own characteristics. The fatwa only explains the timing of the gift giving, namely if it is a wadiah contract then the gift is given before the funds placement transaction agreement is carried out. Thus, it is necessary that the MUI DSN fatwa no. 86/ DSN-MUI/ DSN MUI needs to conduct an I'adatu Nadzar study of DSN MUI fatwa no. 86 is because the fatwas issued by DSN have a big influence on the activities of Sharia Financial Institutions, especially in carrying out promotional activities. The MUI DSN fatwa No. 86 does not support the development of the sharia financial economy in Indonesia.

REFERENCES

Al-Ansari, A. Y. Z. (n.d.). *Asnal Mathalib*. Beirut: Darul pole Al Ilmiyah, Juz 5, p. 566.

Afrelian, M. I., & Furqon, I. K. (2019). Legality and authority of the fatwa of the National Sharia Council of the Indonesian Ulema Council in the operations of sharia financial institutions. *Mizani Scientific Journal: Legal, Economic and Religious Discourse, 6*(1), 1.

Amen, M. (2017). Islamic legal solutions (Makharij Fiqhiyyah) as drivers of the new flow of Sharia economics in Indonesia scientific oration (pp. 1–23).

Ana, D. E., & Zunaidi, A. (2022). Sharia banking strategy to win the competition during the Covid-19 pandemic. *Proceedings of Islamic Economics, Business, and Philanthropy, 1*(1), 167–188.

ASBISINDO. (2023). Materials for the ASBISINDO & DSN MUI meeting.

Andiyansari, C. N. (2020). Mudarabah agreement in the perspective of jurisprudence and sharia banking. *SALIHA: Journal of Islamic Education & Religion, 3*(2), 42–54.

Darul Ifta Jordan. (n.d.-a). Hukmu al jawaiz alati tu'ti min al bunuk al islamiyah wifqo aliyati muayyanah; 53. Retrieved from https://www.aliftaa.jo/decision/54/AddQuestion.aspx

Darul Ifta Jordan. (n.d.-b). Hukmu jawaiz hisabat at taufir fil bunuk islamiyah. Retrieved from https://aliftaa.jo/research-fatwas/3518/Questions2.aspx?Id=111

Fitri, M. (2016). The role of third party funds in the performance of sharia financing institutions and the factors that influence them. *Economica: Journal of Islamic Economics, 7*(1), 73–95.

Sa'adi, G. M. (2019). Critical analysis of gold credit law (Critical study of DSN-MUI fatwa number 77 of 2010 concerning gold murabahah). *At-Taradhi: Journal of Economic Studies, 10*(1), 58.

Islam online. (n.d.). Baina hadaya bunuk islamiyah wa fawaid al bunuk. Retrieved from https://islamonline.net/-هدايا وفوائد-البنوك-الإسلامية/

Al Mushlih, K. A. (2000). *Al hawafiz at tijariyah at tasywiqiyah wa ahkamiha islamic fiqh*. Daru Ibn Jauzi.

Mashuri, M., & Nurjannah, D. (2020). SWOT analysis as a strategy to increase competitiveness. *JPS (Journal of Sharia Banking), 1*(1), 97–112.

Mubarok, J., Hasanudin, & Sanrego, Y. D. (2013). Fatwa regarding sharia financial institutions and their products. *Miqot, 37*(105), 327–346.

Qal'aji, M. (n.d.). *Mu'jam lugatil fuqaha*. Al-Ishdar. al-maktabah ash-syamilah.

DSN MUI. (2012). National sharia council fatwa no. 86/DSN-MUI/XII/2012 concerning prizes in fundraising for sharia financial institutions. *DSN MUI Fatwa No. 86 of 2012*, 1–10.

e-ISSN: 2961-712X
Vol. 3 Issue 2, July-December 2024
DOI: 10.55299/ijec.v3i2.947

DSN MUI. (2022). Repayment of murabahah financing debt before the due. *MUI National Sharia Council, 153*, 1–12. Retrieved from https://dsnmui.or.id/detik/fatwa/

DSN MUI. (2002). Payment cut in murabahah. *MUI National Sharia Council*, 1–3. Retrieved from https://dsnmui.or.id/detik/fatwa/

FSA. (2024). Sharia banking statistics, February 2024. 1–3.

Rahim, U. (2019). Taghayur al fatwa wal ahkam bi taghayuri az zaman wal makan wal akhwal tathbiqotin fiqhiyatin mua'shirotin, 117–144.

Khasanah, K., & Iain Pekalongan, F. S. (2018). On the principles of distribution of business results. *Sharia Finance, 16*(15), 111–123.

Wiwoho, J. (2020). The role of bank financial institutions and non-bank financial institutions in providing justice distribution for the community. *MMH, 43*(1), 87–97.