

IJARAH AND RIBA IN THE SHARIA CARD: Analysis Of ‘Illat Hukmi Of Sharia Card In The Adz-Dzari’ah Perspective

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Received: 29 Juli 2021	Purpose: This article aims to analyze whether the imposition of ijarah (membership fee) in the sharia card belongs to the practice of usury, which will later affect Adz-Dzari’ah’s view of the permissibility of using sharia card.
Final Revision: 16 Maret 2022	Method: This research employed a normative method by obtaining information from various scientific literature sources as well as national and Islamic law materials.
Available online: 24 Maret 2022	Findings: Indonesia allows sharia card usage based on the concept of Adz-Dzari’ah following the ‘illat (legal or basic cause) attached to establish the banking products. In addition, it is also considered whether, in practice, there are also some acts considered usury, especially in the addition of fees due to ijarah imposed by the issuer on the user.
Corresponding Author: Syaifuddin Zuhdi sz123@ums.ac.id	Practicality: This article is intended for academics and practitioners in Islamic economic law, especially for sharia banking activists. Novelty/Originality: In essence, ijarah can be utilized as a variable to influence one’s opinion on Islamic law from a sharia perspective since the advantages exceed the risks, and it is preferable to allow it than

forbid it. However, these permits are also issued when new or revised rules are being developed or revised. Concerning procurement, not only in the MUI fatwa but also in the sharia card, the law is written to be utilized as a legal foundation binding the associated parties and providing broad legal recommendations. Additionally, it will bolster the Fath Adz-Dzari'ah position on the permissibility of using the sharia card since the specifications of its contents will almost definitely be more precise to avoid a legal vacuum.

Keywords: Ijarah, Sharia Card, Sadd Adz-Dzari'ah, Fath Adz-Dzari'ah

Introduction

As we enter this digital era, one of the most noticeable changes in the economic world is the development of cashless technology, in which no one needs physical money to transact because they use debit cards, credit cards, or fintech applications to do so. Due to the convenience of technology, it increasingly encourages people to abandon something deemed impractical. The Government of Indonesia and Bank Indonesia vehemently support the cashless economy, which is extensively and massively pushed and distributed to the people (Rachman, 2016).

Bank Indonesia created the National Non-Cash Movement (GNNT) in 2014 in response to the expansion of electronic money, which began in 2009. The most visible demonstration of the government's support for this campaign is the imposition of electronic money payments at all toll booths across Indonesia (IPrice Trend, 2018).

Non-cash transactions are not restricted to electronic money; they also involve the usage of credit cards. A credit card also serves as a convenient means of payment. Even if someone does not have cash on hand, he can still conduct transactions using a credit card, meaning borrowing money from a bank to buy products to replace them within a certain grace period. Credit cards were very popular in Indonesia even before electronic money became available. Almost all banks in Indonesia now provide their credit card products. The increased demand for credit cards would, of course, draw the attention of Islamic banks to issue products distinct from those offered by regular banks and provide distinct benefits.

Law No. 10 of 1998 amending Law No. 7 of 1992 on Banking is a significant step toward developing banking, particularly Islamic banking. Islamic banking is treated equally with mainstream banking under this legislation. Indeed, when the legislation was enacted, just one Islamic bank – Bank Muamalat – and perhaps 70 Sharia BPRs. The passage of Law No. 10 of 1998 expanded the development potential for Islamic banks. This legislation not only lists Islamic banks alongside regular banks but also details the concepts behind Islamic banking products such as Murabahah, Salam, Istisna, Mudharabah, Musyarakah, and Ijarah (Budiono, 2017).

The overwhelming majority of Indonesia's population, 87.17%, are Muslims (Central Bureau of Statistics, 2021). According to these findings, sharia-based banking is widely

accepted by the public, and enthusiasm in its usage in Indonesia as an alternative institution for collecting and playing money is growing. The Indonesian Muslim community believes that the conventional economy has failed to achieve its stated objective of improving the lives of Indonesians. Indeed, according to the December 2020 Indonesian Sharia Banking Snapshot report, overall Islamic financial assets in Indonesia (excluding Sharia shares) might reach IDR 1,497.44 trillion, or 8.98% of Indonesia’s total financial assets (Financial Services Authority, 2020):

Table 1.1 Number of Provinces Contributing to Sharia Banking Assets

No	Province	Total Asset Donation/100%
1	DKI Jakarta	54.43%
2	West Java	9.00%
3	Nanggroe Aceh Darussalam	6.24%
4	East Java	5.71%
5	Central Java	4.07%
6	North Sumatra	2.51%
7	West Nusa Tenggara	2.15%
8	Banten	2.12%
9	South Sumatra	1.61%
10	Riau	1.57%

(Financial Services Authority, 2020)

Since the financial crisis, Indonesia has tended to change investing preferences from conventional to Islamic equities, beginning with the Asian financial crisis of 1997-1998 and the global financial crisis of 2006-2009. In recent years, sharia-based finance markets have evolved in Muslim nations, but they have also gained traction in non-Muslim countries. Due to the economic relevance of expanding capital markets, several studies comparing the performance of Islamic and conventional indexes have been conducted in both developed and developing countries (Bangsawan, 2017).

By examining the table of Islamic banking assets above, it is clear that the target market for Islamic banking is fairly broad and promising, particularly in densely populated regions with considerable economic activity. Islamic banks ultimately capitalize on the growing faith of the Indonesian people in their transaction services by issuing financial products that can be used in place of traditional bank products, one of which is the sharia card. According to Muhammad Tho’in, transactions using the credit system are permitted in Islam but become prohibited if including usury. Usury in credit cards results from a variable interest rate structure, causing the value of the card to fluctuate over time (Tho’in, 2016). Through ijhtihad conducted by Indonesian scholars, one of the rules for using sharia card goods that can be used in place of credit cards was born, specifically the National Sharia Council Fatwa No. 54/DSN-MUI/X/2006 on Sharia Card.

One of the most well-known sharia banking products is the sharia card or sharia credit card, available since 2003. The sharia card is a credit card that operates on sharia principles (Putra, 2015). According to the Fatwa of the National Sharia Council (DSN) Number 54/DSN-MUI/X/2006, a Sharia Card is a credit card that functions similarly to a credit card and establishes a legal relationship (based on the existing system) between the parties, namely the card issuer (*mushdir al-bithaqah*), the cardholder (*hamil al-bithaqah*), and card recipient (*merchant, tajir, or qabil al-bithaqah*) following the sharia principle. Several phrases are often used, including Sharia-based Credit Cards and Sharia Credit Cards. The National Sharia Council Fatwa No. 54/DSN-MUI/X/2006 about the Sharia Card, certified on October 11, 2006, by the National Sharia Council of the Indonesian Ulema Council (DSN MUI), serves as the legal foundation for obtaining this sharia card.

In practice, the following contracts appear on the sharia card: *qardh* contract, a loan arrangement for a certain period agreed upon when the debtor and the card issuer engage in an agreement called a *munqtaridh* (the creditor). Second, the *al-ba'i* contract (purchasing and selling) that manifests itself throughout the transaction. Thirdly, the *ijarah* contract is formed when the *munqtaridh* gives money for the transaction, and the money is subject to a membership charge and an *ijarah* fee. Finally, there is *kafalah*, in which *munqtaridh* acts as a guarantor between the debtor and the merchant for the debtor's responsibilities originating from transactions with the sharia card, as a result of the act of 'guaranteed wages' (Yuspin & Wardiono, 2017), where the conditions of this contract are likewise contained in the fatwa's third paragraph.

The primary purpose of holding a sharia card is to combat usury in the Indonesian banking system, and the following provisions establish the limitations on the sharia card usage (*Dhawabith wa Hudud*), which must be adhered to by the issuer, user, and recipient, as they are not addressed specifically to any of the parties. In addition, the fatwa specifies which the service receiver must pay costs and can be removed solely by the provider, including any penalty imposed on cardholders who fail.

It is anticipated that this fatwa would enable the sharia card to be effectively utilized as an alternative financing method that Muslims in Indonesia are now using since it provides clear legal certainty and contract processes are assured to adhere to what the scholars allow.

The MUI's fatwa, notably Fatwa No. 54/DSN-MUI/X/2006 of the National Sharia Council, offers a gap that irresponsible people might use to continue the practice of usury clandestinely. It has been specified in the fatwa that there have been regulatory restrictions on the sharia card usage (*Dhawabith wa Hudud*) that both the issuer and the user must adhere. The disadvantage of this restriction is the lack of transparency about the percentage/nominal that the issuing bank can take. This rule is written in broad strokes and contains no explanation, even in other regulations. As a result, sharia-issuing banks can offer various sharia card types, each with its own set of benefits, and can charge a high *ijarah* (membership fee) to cover the cost of the various facilities and services.

Apart from its content, which is not stated in detail, the MUI fatwa's authoritative status is not that of a source of national law, of which the existence can bind linked parties. This MUI fatwa only conveys an opinion or advice from Islamic law experts being members

of an organizational forum (Atmo Prawiro, 2016). In Indonesia, the legal gap for violating this legality principle is extremely dangerous since it serves as the first basis for exploiting the legal vacuum.

The following table summarizes the distinctions between the sharia card and the normal credit card.

Table 1.2 Differences between Conventional Credit and Sharia Card (Chikmah, 2016)

No	Point	Conventional Credit	Sharia Card
1	Profit	Credit interest/Bank interest	Share the results agreed upon through the contract/agreement at the beginning
2	Return Procedure	Regulated by the bank using the prevailing market interest (floating)	It has been determined from the beginning how much must be paid in installments, where the installments can be conducted by bargaining
3	Principles of granting credit	Not related to halal or haram laws; what matter is that the customer pays according to the amount owed and on time	Several principles are applied, including: Mudharabah; Musharakah; Murabaha; Ijarah; and Ijarah wa Iqtina

The comparison above demonstrates that Muslim awareness of usury on conventional credit cards grows. As a result, many of them ultimately adopt the sharia card because, as Imam Achdiyaat R. Hasrif stated in his study, the contract between the issuer and the user of this sharia card is a debit or credit arrangement, or *al-qardh* (Hasrif, 2012). While Islam's teachings prohibit usury in debt and credit contracts, the topic of usury in contemporary times has grown highly complicated. Riba is organized in contemporary times in such a manner that it seems to benefit human existence, even though it contains aspects of tyranny and injustice (Kalsum, 2014). Islamic banks assert that their contracts are Sharia-compliant, despite having just reached *tadarru* (gradual).

Naturally, when someone gives products and services, he desires greater profit. Both of which will be utilized to cover corporate and personal expenses. When Islamic banks provide sharia card goods, they anticipate reciprocity from their customers, one of which is ijarah payments. There has been a restriction on the application of ijarah in the MUI fatwa. However, since these restrictions are not precisely defined, the amount of ijarah that consumers must pay to Islamic banks varies. This worry has also been highlighted by Mufti Afif and Richa Angkita (Afif & Mulyawisdawati, 2016), who mentioned that one of the usury loopholes in Islamic banking is manipulating the number of admin fees required of sharia card users with ijarah as one of the details.

Thus, this research seeks to determine whether or not removing *ijarah* charged to sharia card users affect the permissibility of using sharia card since the amounts are still within appropriate bounds for calculating administrative fees in line with *muamalah* in Islam. Additionally, there are additional reasons why sharia card with minimal standards is still permitted to be used. Indonesian rules have not yet been able to enable everything, and study is required to persuade them to adopt policies promoting Islamic economics and finance growth.¹

Research Method

This research employed a normative juridical method, meaning that the law is understood either as what is stated in statutes and regulations or as a guideline or standard that guides persons to act naturally. These regulations or standards constitute basic and secondary legal documents, respectively. The study is specifically relevant to the Fatwa of the National Sharia Council No: 54/DSN-MUI/X/2006. A descriptive qualitative method was applied. The generated data from this study depict the data as viewed via the authors' interpretation of the facts supplied.

Results and Discussion

Analysis of *'Illat Hukmi* on the Permissibility of Using Sharia Card in the Fatwa of the National Sharia Council No: 54/DSN-MUI/IX/2006 in the *Adz-Dzari'ah* Perspective

There are various points to the debate concerning *'illat* law, including the following: To begin, it is clear from the objective of providing sharia card in Indonesia's banking sector. The premise "Essentially, all types of *muamalah* are allowed unless there is a proposition against them" is one of the *fiqh* norms that guide the fatwa-making process. Thus, the sharia card, a novel concept in contemporary times, can be described as a permissible act since no prohibition argument exists against it. However, not all novel activities without direct proof are regarded permissible in Islam; hence, in the lack of *syara'* law regulating such behaviors, scholars must search for legal guides backward, namely the Qur'an and Hadith, to solve new cases using the concept of *qiyas* (N. Hosen, 2016).

In the concept of *maslahah* put forward by Al-Ghazali in Hengki Firmanda, anything is deemed *maslahah* if it benefits and protects. When advantages and damage build, the action with the strongest *maslahah* must be taken; if there are too many, rejecting harm is more essential than obtaining *maslahah* (Firmanda, 2014). According to the MUI fatwa, the purpose of considering the permissibility of using this sharia card is to meet the needs of the Indonesian people for convenience, security, and comfort in conducting usury-free transactions, consistent with the concept of *maslahah* to provide benefits to sharia card users.

¹ Agus Yulianto, "Seputar Polemik Riba", <https://republika.co.id/berita/patymi396/seputar-polemik-riba> (accessed on June 2, 2021, at 02.31 p.m.)

On the other hand, the usage of this sharia card can have unintended consequences. As previously stated, the contract included on the sharia card is deemed a debt or loan contract. The existence or absence of usury affects whether or not the use of the sharia card is permissible under this statute. If it is not explicitly stated in the present MUI fatwa, the primary objective of authorizing the use of the sharia card to fight usury will not be accomplished.

When someone borrows money, usury *nasi'ah* occurs. According to Hanifiyah scholars, the term 'illat legislation prohibiting usury *nasi'ah* refers to the extra payment of a primary obligation of which the repayment is postponed. In its evolution, some argue that the ban of such excess stems from historical circumstances that deemed the excess to be borne by the debtor without any consensual debate between the creditor and debtor. As such, it is considered a kind of persecution since it disregards the debtor's desire to make the additional amount required.

With the knowledge that the Messenger of Allah (PBUH) likewise overstated his return when he owed Jabir ibn 'Abdillah, there is an agreement that if the excess is set in advance, it will not involve usury and will be completely the debtor's initiative or agreement from the start. It is arguably a more favorable return (*husn al-qadha*) (Agustinar & Rini, 2018). In conclusion, Islamic law does not justify debt repayment with additions unless they are founded on a specific contract, either an upfront agreement with sincerity, particularly for the debtor, or on the debtor's initiative.

Some academics disagree with the previous interpretation because they believe the linguistic sense of the passage against usury means that any excess beyond the amount of debt is usury, which is prohibited. It is explained by Al-Jashshash and Al-Qurtubi, who forbid all usury without exception, arguing that usury is the behavior of pre-Islamic Arabs oppressed and that what is postulated in the Qur'an is not a limitation on the prohibition of usury, but merely an information description of pre-Islamic Arab society's practice. Meanwhile, in Indonesia, according to Lajnah Bahstul Mastail, Nahdlatul Ulama, as quoted by Agus Saron (Saron, 2020), divides the issue of usury into three categories:

- a. *Haram*, because it includes debt levied on rent, interpreted textually as usury;
- b. *Halal*, because there are no conditions at the time of the contract, allowing the debtor to add to the return; and
- c. *Subhat* (not necessarily halal and haram) because there are permissible things and those that are not. For example, consumer interest is considered usury, but productive interest differs from usury.

MUI has defined usury as an extra (*ziyadah*) without compensation resulting from a delay in previously negotiated payments. In contrast, one kind of usury is interest, described as an addition in *al-qardh* transactions without regard for the principal's utilization or result,

the period, or a precise calculation in advance, and whose amount is generally a percentage change over time (Saron, 2020). Thus, if a sharia bank applies an *ijarah* that differs from the definition of interest above, such as considerations of utilization, a fixed maturity, an upfront contract with a clear calculation and a fixed value, and the customer is informed beforehand, it does not fall under the category of charging interest included in usury.

At the moment, when customers understand that when they open a sharia card, they are entering into a contract, the bank is permitted to charge additional fees legal under national and Islamic law, as long as the user is not obligated to continue using their services if they do not agree with the contract's terms. It demonstrates that users of the sharia card subscribe to the contract willingly rather than under compulsion.

It can also occur if one of the standards applicable to parties involved in legal proceedings involving sharia banking services is the existence of offers (*ijab*) and acceptances (*qabul*) from both parties whose provisions are agreed upon and are bound not to violate sharia principles contained therein. Additionally, sharia card users in Indonesia are often from the middle and higher economic classes, who, although with increased expenses, can still cover their necessities first. Even before admitting clients, Islamic banks must undertake an evaluation to see if potential customers qualify for loans based on a good financial analysis (Financial Services Authority, 2016). As a result, there is no longer an 'old time' framework to operate, as this excess will result in persecution and tyranny. It must be the essence of the MUI fatwa governing the sharia card usage in Indonesia.

The effect of the MUI's fatwa is that it can create loopholes that irresponsible individuals might use to continue carrying out usury in a hidden way. It is specified in the fatwa that there have been regulatory restrictions on the sharia card usage (*Dhawabith wa Hudud*) that both the issuer and the user must adhere. The disadvantage of this restriction is the lack of transparency about the percentage/nominal that the issuing bank may take. This rule is written in broad strokes and contains no explanation, even in other regulations. As a result, sharia-issuing banks can offer various sharia card types, each with its own set of benefits, and can charge a high *ijarah* (membership fee) to cover the cost of the various facilities and services.

Apart from its content, which is not stated, the MUI fatwa's authoritative status is not that of a source of national law whose presence can bind linked parties. This MUI fatwa only conveys an opinion or advice from Islamic law experts being members of an organizational forum (Atmo Prawiro, 2016). In Indonesia, the legal gap for violating this legality principle is dangerous since it serves as the first basis for exploiting the legal vacuum.

This lack of regulation necessitates questioning whether usury or the sharia card is permissible. Additionally, the intended purpose of releasing this sharia card is to fight usury in Indonesia, as stated in the fatwa's preamble, which reads, "That present credit cards use an interest-based system inconsistent with sharia principles" (Budiwati et al., 2020) even if the norms that come from *ijtihad* are far from ideal.

This criterion precludes the sharia card usage due to the ongoing controversy about the presence of usury in practice. Some allow it because the contract is created with each party's pleasure in mind, but it also contains *gharar*, prohibited under Islamic law, due to the lack of clarity regarding the details of the *ijarah* (membership fee) that the bank should provide and even the lack of clarity regarding the limits (M. N. Hosen, 2009).

Most apparent from this vantage point is how the legal provisions are originally intended to be formed. At first look, the MUI Fatwa regulating the sharia card seems to be intended as a tool to fight usury, growing in Indonesia due to the pledge of the interest system in traditional banks. While the norms and practices are not flawless, the Indonesian government and ulama have attempted to establish an environment similar to what Islam regulates. It is intended that this fatwa will familiarize the public with Islam's present system, which will subsequently be refined to achieve the perfection of *muamalah* acts in line with Islamic teachings.

Annis Matta's book *Membentuk Karakter Muslim* (Shaping Muslim Characters) in Vivi Washilatul' Aziza (Azizah, 2020) is believed to establish a religious life practitioner in Muslims. We cannot instantly force all that has to be done on him but must do it in stages. The first step is *tadarru* (progressive), a gradual process of change, improvement, and development that should be carried out until the same concepts and orientation can be implanted one day. Patenting the outcomes of this method takes a long time.

Thus, even though legislation and practitioners have a variety of limitations. Sharia card activities, such as paying *ijarah* (membership fee), are nevertheless classified as *Adz-Dzari'ah* because they must be carried out and supported for Indonesians to get used to *muamalah* activities that adhere to sharia Islam. If this activity is prohibited, society will be forced to learn how to conduct transactions that already adhere to Islamic economic principles. Rather than halting, they will seek alternative means of payment, particularly credit cards from established banks. It is commendable that, throughout this process, the government and the ulama who regulate this policy observe and evaluate the use of these sharia card products, taking into account not only the *ijarah* (membership fee) on the sharia card but also other factors contributing to moral perfection and Islamic economic practice as Islam dictates.

The presence of *ijarah*, the amount of which is undetermined owing to the MUI fatwa's lack of clarity, has caused some Muslims to dispute the permissibility of using the sharia card. In Islam, there is a process for deciding whether or not to do an act called *Adz-Dzari'ah*. Before delving into *Adz-Dzari'ah*'s position, it is necessary to grasp the notion of 'illat law. What is meant by 'illat law is the basic nature of existence to determine how the legal provisions will be (Baroroh, 2017). For instance, although the COVID-19 vaccination is still controversial because 'illat is more beneficial than harmful in facing the pandemic urgency in Indonesia, the Indonesian Ulema Council (MUI) has eventually permitted it, despite signs that trypsin use contains pork (Mashabi, 2021).

‘Illat is a factor that underpins the application of a legal provision to achieve the benefit, and it must incorporate and include the embodiment of value as a motivating force for the formulation and enactment of a law that achieves benefits despite the danger of future harm (Zuhdi & Junaidi, 2019). ‘Illat must be seen clearly and definitively for academics to conclude that its presence is a requirement for every legal formulation that will result in a new legal provision. The link between the usage of ‘illat and Adz-Dzari’ah’s viewpoint is as follows: In this perspective, the presence of ‘illat can be seen in two broad categories.

When someone acts based on intentions and purposes, for example, when a wine merchant offers his commodities to be created as *khamr*, the conduct should be outlawed. Regardless of the perpetrator’s initial aim and motive for doing the crime, if it is alleged that his actions will result in harm rather than *maslahah*, it will be preferable to prevent the act by prohibiting it and vice versa (Baroroh, 2017).

After establishing ‘illat law, the application of Adh-Dzari’ah in defining Islamic law is classified into two types: Sadd Adz-Dzari’ah and Fath Adz-Dzari’ah. The following are the distinctions between the two categories.

Sadd Adz-Dzari’ah refers to the incapacity to use certain instruments or perform certain activities due to the element of harm (*mudharat*). In contrast, Fath Adz-Dzari’ah can be defined as the ability to use certain instruments or perform certain actions due to the element of goodness (*maslahat*).

Jurists initially utilized the Adz-Dzari’ah idea to judge the notion of cancellation, prevention, and prohibition of activities understood or believed to result in harm that can occur plainly and persuasively if permitted (Baroroh, 2017). This strategy is one of the preventative measures against the risk of a negative effect if a new act is not yet clearly controlled and the authorized person judges whether or not it is permitted.

Concerning the current ‘illat law, some points need additional exploration. For example, if it takes the shape of an endeavor to avoid usury but ultimately results in injury, can it be punished using the Sadd Adz-Dzari’ah idea or inflicting little harm but obtaining benefits? Moreover, increased *maslahah* is permitted if Fath Adz-Dzari’ah is employed.

Returning to the notion of *ushul fiqh*, the concept of Dzari’ah is one of the mechanisms through which scholars disagree so that one legal conclusion reached by one expert or fatwa can vary from another.

Conclusion

Sharia card is permitted in Indonesia based on the Adz-Dzari’ah idea, based on the ‘illat related to creating the financial products. Additionally, it is evaluated if some activities are constituted usury in reality, most notably the addition of costs owing to *ijarah* imposed by the issuer on the user. Thus, although this *ijarah* can be utilized as a variable that affects one’s view on Islamic law from a sharia standpoint, the advantages exceed the risks, and it is preferable to allow its usage rather than forbid it. However, this use permission is also issued when new or revised rules are being developed or revised. Concerning procurement, not only in the MUI fatwa but also in the sharia card, the law is written to be utilized as a legal

foundation binding the associated parties and providing broad legal recommendations. It will also bolster the Fath Adz-Dzari'ah position on the permissibility of using the sharia card since the specifics of its contents will undoubtedly be more precise to avoid a legal vacuum.

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