

CHAPTER II

LITERATURE REVIEW

A. Concept of Financing

1. Definition of Financing.

Funding can be divided into two type: (Antonio, 2001)

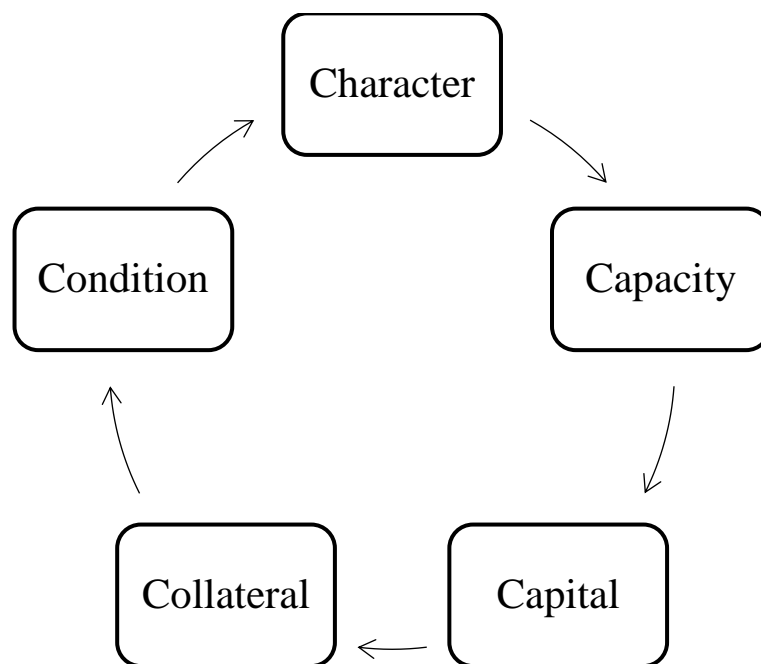
- a. Productive Financing, which is financing for production needs in a broad sense, that is to increase the business, whether production, trade and investment.
- b. Consumptive Financing, the financing used to meet the following. consumption needs, which will be used to fulfill needs.

According to the needs, financing productive can be divided into two things: (Antonio, 2001)

- a. Working capital financing, ie financing to meet increasing production requirements, both quantitatively and qualitatively, and for the purposes of trade or increase *the utility of place* of an item.
- b. Financing of investments, which is to meet the needs of capital goods (*capital goods*) as well as facilities closely related to it.

2. Principles of Financing.

Some basic principles that need to be done before deciding financing request submitted by the prospective customer. The principle of this financing can be called by 5C, basically the concept 5C provides information on good faith and ability to pay of the customer to repay the loan.



Source: (Antonio, 2001)

FIGURE 2.1
The Principles of Financing

5C principle is as follows:

- a. *Character* that is an assessment of the character or personality of candidates for financing with the aim to predict the likelihood that the recipient of financing to meet their obligations.

- b. *Capacity* namely subjectively assessment of the recipient's ability to make payments financing. The ability is measured by the track record of financing in the past recipients are supported by observations in the field on its business facilities such as shops, employees, equipment, plant and methods of activity.
- c. *Capital* that is an assessment of the ability of capital owned by the prospective recipient of financing as measured by the company's position as a whole are addressed by financial ratios and an emphasis on the composition of capital.
- d. *Collateral* is candidate receiving the financing. The assessment aims to be assured that if a risk of failure of payment is reached the case then guarantees can be used in lieu of liability.
- e. *Condition*, Islamic banks should see economic conditions that occurred in the community specifically looked at the relationship with the type of work done by the candidate receiving financing. This is because the external conditions play a major role in the running of business financing candidates.

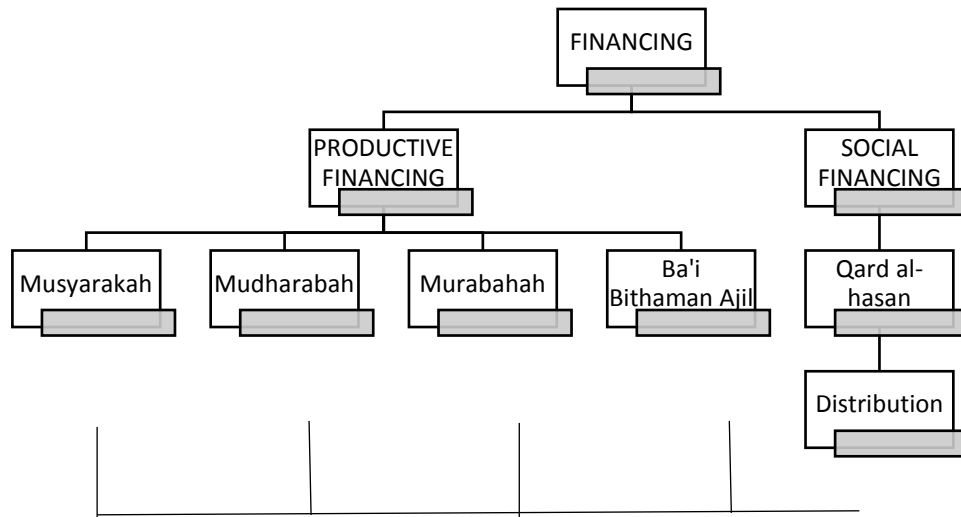
3. The Purposes and Function of Financing.

In general, the purpose of financing divided into two groups: the purpose of financing for macro-level and micro-level objectives for financing. (Muhammad, 2005) In Macro, Financing Aimed for:

- a. Economic improvement of the people, meaning people who are not able to access economically, with the funding they can access it. It is expected to improve their economic life.
- b. Availability of funds for business improvement, it means for business development requires additional funds. These additional funds can be obtained through financing activities. Parties that surplus and distribute to the parties minus the fund, so it can roll on.
- c. Increasing productivity, meaning that the financing opportunity for people to be able to increase productivity. Because efforts to increase production will not be fulfilled without funding.
- d. Create new jobs, meaning that with the opening of these sectors to absorb labor. This means add and create new jobs.
- e. Income distribution occurs, meaning that people are able to do productive work activities, meaning they will earn income from the crops. Income is income communities. If this is successful there will be a distribution of income.

As for the micro sector, financing granted in order to:

- a. Efforts to maximize profit, meaning that every effort be opened have high goals, is to maximize profit effort to generate maximum profit, it is necessary to support adequate funding.
- b. Efforts to maximize the risk, which means that the work done to be able to generate maximum profits, then employers should be able to minimize the risk. Risk capital shortfall can be addressed with financing.
- c. Utilization of the economy, meaning that economic resources can be developed to do the mixing between natural resources with human resources and capital resources (finance).



Source: (Muhammad, 2000)

FIGURE 2.2

Flow Chart of Islamic Banking Financing Product

B. CONCEPT OF QARD AL-HASAN

1. Definition of Qard al-hasan.

Etymologically, *qardh* means *qath'i* (cut). Treasure form that is paid to *muqtarid* (who invited *qardh*) called *Qarad*, because it is from the estate of *muqrid* (owner of goods) (Lathif, 2005) Understanding the terminology, among other things stated by scholars *Hanafiyah*. According to his statement *qardh* is something given someone from *mitsil* property (which has a parable) to meet their needs. Meanwhile, according to scholars *Malikiyah* is a transfer of wealth to others who are not accompanied *iwadh* (rewards) or additional returns (Lathif, 2005). When a loan is given without requiring any kind, other than to repay them after a certain period of

time then this form of lending money as referred to *qard* (Karim, 2010). According DSN MUI Fatwa Number: 19 / DSN-MUI / IV / 2001 *Al-Qardh* are loans given to selected customers (*muqtaridh*) that entails. Customers al *Qardh* obliged to return the principal amount received at the agreed time together.

In essence, *tabarru* contract is an agreement to do good is expecting a reply from Allah. That is why this agreement is not intended to seek commercial gain. By corollary, if the contract *tabarru* done by taking commercial advantage, then he is no longer the contract *tabarru*". It will be a contract *tijarah*. (Karim, 2010)

2. Legitimacy of Qard al-hasan Contract.

a. Al-Qur'an.

i. Al-Muzammil: 20

﴿ إِنَّ رَبَّكَ يَعْلَمُ أَنَّكَ تَقُومُ أَدْنَىٰ مِن ثُلُثِي اللَّيْلِ وَنِصْفَهُ وَثُلُثَهُ وَطَآئِفَةٌ
مِّنَ الَّذِينَ مَعَكَ وَاللَّهُ يُقَدِّرُ اللَّيْلَ وَالنَّهَارَ عَلِمَ أَن لَّنْ نَّحْصُوهُ
فَتَابَ عَلَيْكُمْ فَاقْرَءُوا مَا تَيَسَّرَ مِنَ الْقُرْآنِ عَلِمَ أَن سَيَكُونُ
مِّنْكُمْ مَّرْضَىٰ وَعَاخَرُونَ يَضْرِبُونَ فِي الْأَرْضِ يَبْتَغُونَ مِن
فَضْلِ اللَّهِ وَعَاخَرُونَ يَقْتَلُونَ فِي سَبِيلِ اللَّهِ فَاقْرَءُوا مَا تَيَسَّرَ
مِنْهُ وَأَقِيمُوا الصَّلَاةَ وَآتُوا الزَّكَاةَ وَأَقْرَضُوا اللَّهَ قَرْضًا حَسَنًا
وَمَا تَقْدِمُوا لِأَنْفُسِكُمْ مِن خَيْرٍ تَجِدُوهُ عِنْدَ اللَّهِ هُوَ خَيْرٌ وَأَعْظَمَ أَجْرًا
وَأَسْتَغْفِرُوا لِلَّهِ إِنَّ اللَّهَ غَفُورٌ رَّحِيمٌ ﴿٢٠﴾

Indeed, your Lord knows, [O Muhammad], that you stand [in prayer] almost two thirds of the night or half of it or a third of it, and [so do] a group of those with you. And

Allah determines [the extent of] the night and the day. He has known that you [Muslims] will not be able to do it and has turned to you in forgiveness, so recite what is easy [for you] of the Qur'an. He has known that there will be among you those who are ill and others traveling throughout the land seeking [something] of the bounty of Allah and others fighting for the cause of Allah. So recite what is easy from it and establish prayer and give zakah and loan Allah a goodly loan. And whatever good you put forward for yourselves - you will find it with Allah. It is better and greater in reward. And seek forgiveness of Allah. Indeed, Allah is Forgiving and Merciful.

ii. Al Baqarah: 245

مَنْ ذَا الَّذِي يُقْرِضُ اللَّهَ قَرْضًا حَسَنًا فَيُضَاعِفَهُ لَهُ أَضْعَافًا كَثِيرَةً وَاللَّهُ
يُقْبِضُ وَيَبْضُطُ وَإِلَيْهِ تُرْجَعُونَ ﴿٢٤٥﴾

Who is it that would loan Allah a goodly loan so He may multiply it for him many times over? And it is Allah who withholds and grants abundance, and to Him you will be returned.

iii. Al Hadiid: 11

مَنْ ذَا الَّذِي يُقْرِضُ اللَّهَ قَرْضًا حَسَنًا فَيُضَاعِفَهُ لَهُ
وَلَهُ أَجْرٌ كَرِيمٌ ﴿١١﴾

Who is it that would loan Allah a goodly loan so He will multiply it for him and he will have a noble reward?

iv. Al-Hadiid: 18

إِنَّ الْمُصَّدِّقِينَ وَالْمُصَّدِّقَاتِ وَأَقْرَضُوا اللَّهَ قَرْضًا حَسَنًا يُضَعَّفُ لَهُمْ

وَلَهُمْ أَجْرٌ كَرِيمٌ ﴿١٨﴾

Indeed, the men who practice charity and the women who practice charity and [they who] have loaned Allah a goodly loan - it will be multiplied for them, and they will have a noble reward.

v. Al Maa'idah: 12

﴿وَلَقَدْ أَخَذَ اللَّهُ مِيثَاقَ بَنِي إِسْرَائِيلَ وَبَعَثْنَا مِنْهُمُ اثْنَيْ عَشَرَ نَقِيبًا وَقَالَ اللَّهُ إِنِّي مَعَكُمْ لَئِنْ أَقَمْتُمُ الصَّلَاةَ وَآتَيْتُمُ الزَّكَاةَ وَآمَنْتُمْ بِرُسُلِي وَعَزَّرْتُمْهُمْ وَأَقْرَضْتُمُ اللَّهَ قَرْضًا حَسَنًا لَأُكَفِّرَنَّ عَنْكُمْ سَيِّئَاتِكُمْ وَلَأُدْخِلَنَّكُمْ جَنَّاتٍ تَجْرِي مِنْ تَحْتِهَا الْأَنْهَارُ فَمَنْ كَفَرَ بَعْدَ ذَلِكَ مِنْكُمْ فَقَدْ ضَلَّ سَوَاءَ السَّبِيلِ ﴿١٢﴾﴾

And Allah had already taken a covenant from the Children of Israel, and We delegated from among them twelve leaders. And Allah said, "I am with you. If you establish prayer and give zakah and believe in My messengers and support them and loan Allah a goodly loan, I will surely remove from you your misdeeds and

admit you to gardens beneath which rivers flow. But whoever of you disbelieves after that has certainly strayed from the soundness of the way."

vi. At-Taghaabun: 17

إِن تَقْرِضُوا اللَّهَ قَرْضًا حَسَنًا يُّضْعِفْهُ لَكُمْ وَيَغْفِرْ لَكُمْ وَاللَّهُ شَكُورٌ
حَلِيمٌ ﴿١٧﴾

If you loan Allah a goodly loan, He will multiply it for you and forgive you. And Allah is Most Appreciative and Forbearing

b. Al- Hadith.

عَنِ ابْنِ مَسْعُودٍ أَنَّ النَّبِيَّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ مَآ مِنْ مُسْلِمٍ يُقْرِضُ مُسْلِمًا
قَرْضًا مَرَّتَيْنِ إِلَّا كَانَ كَصَدَقَتَيْهَا مَرَّةً.

ibn Mas "ud narrated that the Prophet. Said: "It is not a Muslim (they) were lent Muslims (more) twice unless the other is (worth) alms". (HR. Ibn Majah no. 2421, book AlAhkam; Ibn Hibban And Baihaqi) (Al-Albani, 2000)

عَنْ أَنَسِ بْنِ مَالِكٍ قَالَ قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ رَأَيْتُ لَيْلَةَ
أَسْرِي بِي عَلَى بَابِ الْجَنَّةِ مَكْتُوبًا الصَّدَقَةُ بِعَشْرِ أَمْثَالِهَا وَالْقَرْضُ
بِمِائَةِ عَشْرٍ فَقُلْتُ يَا جِبْرِيلُ مَا بَالُ الْقَرْضِ أَفْضَلُ مِنَ الصَّدَقَةِ قَالَ
لَأَنَّ السَّائِلَ يَسْأَلُ وَعِنْدَهُ وَالْمُسْتَقْرِضُ لَا يَسْتَقْرِضُ إِلَّا مِنْحَاجَةً.

Anas bin Malik that the Prophet said, "I saw in the night in-Isra", at the gates of heaven says: alms rewarded tenfold and qardh eighteen times. I asked, "O Gabriel, why qardh more important than charity?" He replied, "because beggars something and he had, while borrowing will not borrow except for purposes of". (Reported by Ibn Majah no. 2422, Kitab al - Ahkam, and Baihaqi) (Al-Albani, 2000)

Once we give a loan to someone, let the loan contains an element of goodness, so when the loan was due. By means with *ihsan* in collecting debts (*Qardh*), sometimes carried out with regard paid off, all or in part, or to postpone the time such payment is due, or to reduce the payment terms that have been burdensome.

c. Ijma'.

Proposition *ijma'* or *consensus* is that all the Muslims have agreed permissibility of debts. (Mardani, 2002) The scholars have agreed that *al-qardh* don'ts. Ulama agreement is based on human nature cannot live without his brother's help and assistance. No one who has all the goods he needed. Therefore, borrowing has become a part of life in this world. Islam is a religion that is very attentive to all the needs of his people.

Ownership rights in *Qardh* according to Abu Hanifah and Muhammad apply through *Qabd* (submission) If someone

owes the mud wheat and have occurred *qabdh*, then he is entitled to use and restore with example though *muqridh* request a refund of the grain itself, because it would no longer have the wheat *muqridh*, that is the responsibility which *muqtaridh* wheat and wheat have not loaned, although *Qardh* it lasts.

Hanafi sect argues, is justified on the property *Qardh* have equivalence, ie the property value is not striking differences, such as items -Items is assessed, weighed, grains that have a similar size such as coconut and eggs, and measured, such as fabric material. Are allowed also *qardh* bread, either with weights or beans.

Maliki, Shafi'i and Hanbali argued, allowed to carry on all the property *qardh* bias greeting object, be it measured out, weighed, such as gold, silver and food or possessions of value, such as merchandise, animals and so forth , like a treasure-trove of seeds, because the history of Abu Rafi 'said that the Prophet owed a camel-old is still young, but for not the property is assessed or weighed, and since that was the object greetings can in right about the sale and is determined with attituding , Then it could be the object *qardh*. As the property is assessed and weighed.

From here, according *jumhur* jurist, allowed to *qardh* to all objects that may be traded except humans, and not justified

to *qardh* on benefits / services, different from the opinion of Ibn Taymiyyah, such as helping to harvest a day in exchange he will be assisted harvest for a day, or occupy other people's homes in exchange for the person occupying the house.

d. Muslim Genesis (*tafsir*).

i. Tafsir Al-Muyassar (Basyir, 2011)

Allah took the covenant of the Children of Israel to express their sincere worship only Allah, and Allah has ordered Moses to choose twelve tribal leaders according to which some of them. Twelve princes took the oath of allegiance from each tribe to listen and obey Allah and His Apostle, and His book. God said to the Children of Israel, “surely I am with you with the care and help me. When you establish prayer, pay Zakat obligatory on the party entitled to receive it, let messengers me in what they tell to you and you are willing to support them, and you for infaq way in me, and I will melt the mistakes you and enter you into a flow surge brought trees and palaces and rivers. Whoever denies this agreement between you, then he has strayed from the path of truth towards the road to health”. (Al-Maidah:12)

ii. Tafsir Al-Misbah (Shihab, 2009)

- a) While scholars commented: Allah is generous, she owns property, he is bestowed on man, but he called the man in the way of donation which is not for the sake of Allah as *qardh*, namely *loan* to Allah, then it shall be accompanied by the appointment of return manifold coupled with forgiveness.
- b) Paragraph ago pointed luck of those who spend their wealth for his stinginess and repress. The luck that is described in this paragraph, The above verse states: *if you lend to Allah a goodly loan, that spend their faith even though some property which is in the grip of his hands, He is the Most Merciful it multiplies the reward for you to lend it at least ten times and can be reached seven hundred times, or even more, and besides that he will forgive you and Allah is Oft grateful trustees* so that he does not hasten the punishment of the guilty. Do not expect the suspension of the punishment because he did not know or did not authorize. Not! *He knows the unseen and the seen, the most powerful* cannot be defeated or rejected the will of God.

- c) The subordinated loan means property on the condition returned. Presumably, this word was born of the word credit. what *qardh* named *Hasan*. The most important of which is that the property given by lawful and sincere without being accompanied by reminders of your generosity. (At-Taghabun: 17)
- d) Furthermore, this verse mention some of the tasks that God Almighty, lay on them and they should follow, namely, that if you pray for a good and true, sincere and humble in accordance with terms and harmonious, when is the principles and practice to perfect *the* obligation of *zakat* and still *believe in his messengers*, among others, Moses and the prophets before him and the prophets sent by God thereafter, namely Jesus and Muhammad, and *you support them*, that the apostles were to support the strong, respectful, *and you loan to Allah a goodly loan*, namely *zakat* and charity, in addition to a variety of policy areas pour what you have without waiting for reward except from Allah, *Allah will certainly remove your sins. And ye by the grace of Allah, Allah will enter into Heavens of flowing rivers. Those who reject Faith*, which violates the

agreement and the messages of Allah. *Among you after that, that after the apostles, or after this warning, then indeed he has strayed from the straight path.* (Al-Ma'idah:12)

- e) There is truth in the argument that the meaning of the word *aqradhu* similar to the meaning of the word *al-mushshadiqin* and *al-mushshadiqat*, but it is purposely these two words mentioned in conjunction with the word *aqradhu* it to reflect that charity which is *qardh* it is *good* not just charity or impose themselves but has been qualified to do the will of God Almighty. It is drawn from the word *at tashdiq*, namely *justification*, so that the above verse speaks of men and women who are very sincere and robust justification of religious teachings and in addition to lend alms to Allah a goodly loan. (Al-Hadid: 18)
- f) God said to increase donation that: *who will lend to God a good loan*, namely spent outright but in return *God will give double* pay and reward of God that have doubled it's a lot to seven hundred times and even more *for him* in hereafter, and also can be in this world, *and for him*, as well as doubled it, a

rich reward, which is fun and satisfying. *Dza* said in His word: *man dza* serve as encouragement for infaq amplifier. Indeed, the purpose of this paragraph styles are encouraged to ask anyone of them is who still want to charity for his sake. The subordinated loan means property on some of the condition returned. Presumably, this word was born of the word credit. The most important of which is that the property given by lawful and sincere without being accompanied by reminders of your generosity or offend the recipient. What is meant by *a generous reward* among others the remission of sins. (Al-Hadid: 11)

g) *And give loan to Allah a goodly loan*, that is charitable with what you have in addition the obligation of zakat, *and any policy*, both of which have been called or otherwise *you do to yourself* that you do outright so helpful for you in world and in the hereafter, *then you will find it listed on the side of God* in the form of reward *and the reward he only* was it not otherwise *best for you and the greatest reward*. (Al-Muzammil: 20)

iii. Tafsir Al-Kanz (Surin, 2012)

- a) Good loan or *qard al-hasan* meanse spend in the cause of Allah with sincere with the intention to draw closer to God. (At-Taghabun: 17)
- b) *Qard al-hasan* is the purpose of the loan is to spend willingly for do the obligations. (Al-Ma'idah: 12)
- c) *Qard al-hasan* is the purpose of the loan is to spend willingly for do the obligations. (Al-Hadid: 18)
- d) Good loan (*qard al-hasan*) is contributions required by Islam. Because the contribution is paid by the time we live in the world, while we thank revenge later in the hereafter, then he called: *Qirdh*, which means loan, down payment or advance payment. (Al-Baqarah: 245)

iv. Tafsir Ibnu Katsir (2005)

- a) "Unless you establish regular prayers and practice regular charity, and faithful to the Messenger of Allah." That you justify them on the revelation that they bring to you. "And you help them" ie, you help and support them in their efforts to build truth. "And you lend to Allah a good loan" that is, in the form of donation in the way of God in order to find the willingness from God. (Al-Ma'idah: 12)

- b) "Who will lend to Allah a good loan" Umar ibn al-Khattab said: "the donation in the way of Allah." There are also saying: "that is, a living given to the family." And it's true that it is more common than the definition above. So, anyone who infak in the way of Allah in sincere and honest and sincere intention, then he had entered into the generality of this paragraph. Hence, God said: "Who will lend to Allah a good loan, then the gods will reward good for him." As Allah says in another verse: "then, God will doubled the payment to him with a lot." (Al-Hadid: 11) and (Al-Baqarah: 245)
- c) In this verse Allah tells of the reward that will be given to men and women who give alms of their possessions to the needy, the poor and needy: "And they lend to Allah a good loan." That is, they submit their wealth with sincere intention for God. They do not expect any reply from those they have given. (Al-Hadid: 18)
- d) The Word of God: "If you lend Allah a good loan, Allah will double the reward for you and forgive you." It means whatever you shall spend, God will give it instead. And whatever you given (alm), then

return depends on God. That such is aligned with a loan for him, as asserted in the book ash-shahibain:

"That the gods have spoken: people who lend it painless and non-poor" (based on the Hadith Al-Bukhari and Muslim). (At-Taghabun: 17)

e) Allah says: "and give loan to Allah a good loan."

That is the form of alms, God will reward the best and most widely on the matter. (Al-Muzammil: 20)

v. Tafsir Al Qurtubi

Word of Allah mentions everything anything asked him his successor. *Sifulan* has lent to *sifulan*, meaning that the provision will be returned. Mandatory for borrowing to repay the loans, for verily Allah explains that actually he who *infaq* in the way of Allah is not stored with Allah SWT, but certainly will be returned reward (reward). (Al-Baqarah: 245)

vi. Tafsir An-Nur

"*and ye lend to Allah a good loan*", which is Sadaqah and hasan ie with a clean soul and a sincere heart, which only expects *ridho* from Allah and from property halal. (Al-Maidah: 12)

vii. Tafsir Jalalayn

This means: (and give to God a good loan). is anything meant to him to seek God with a sincere of good assets (Toyib). Already discussed the explanation that earlier in the letter Al Hadid. Zaid bin Aslam is nafqah for families. Umar said that means is *nafaqah* for *fisabilillah*. (Al-Muzammil: 21)

3. Essential Principle and Requirement.

TABLE 2.1
ESSENTIAL PRICIPLE OR PILLAR (RUKUN)

Essential Principle (<i>rukun</i>) of Qard al-hasan			
Muqridh (Lender)	Muqtaridh (Debtor)	Ijab Qabul (Agreement)	Qardh (loan)

Source: (Muhammad, Manajemen Bank Syari'ah: Edisi Revisi , 2005)

Valid terms and condition of qardh:

- a. *Qardh* or loaned items must goods which have benefited, is not valid if there is no possibility of utilization for qardh is an agreement to the treasure.
- b. *Qardh* cannot be done except with the consent and Qobul as in buying and selling.

Contract:

- a. Use of the funds *qardh* by *muqtaridh* should be clearly identified and administration in accordance with the real condition is not made up.
- b. Future financing and repayment system should be included in the contract.

4. Source of Funds.

Qardh nature does not provide financial benefits. Therefore, funding *qardh* can be taken according to the following categories:

- a. *Al-qardh* needed to help very small businesses and social purposes, can be sourced from zakat, infaq, and alms.
- b. *Al-qardh* necessary for financial help customers quickly and short term. Bailout fund above can be taken from capital bank.

5. Application on Financial Institutions.

Contract of *qard* usually applied as follows: (Mardani, 2002)

- a. As the product supplies to customers who have proven their loyalty and it bonafie, which requires the bailout funding immediately for a period of relative shortly. Customer will return as soon as possible the amount of money borrowed it.
- b. For customers who require funding facility quickly, while he could not withdraw their funds because, for example, stored in the form of deposits.

- c. As the product to contribute very little effort or pay in social sector. In order to fulfill this particular scheme has been known for a particular product, namely *al-qard al-hasan*.

6. Benefit of Qard.

Qardh benefits in practice Islamic banking aplenty including the following: (Mardani, 2002)

- a. Allows customers who are in trouble urged to get a short-term bailout.
- b. *Al-qardh al-hasan* is also one of the characteristics of shariah and conventional banks in which there are difference between the bank's social mission, in addition to commercial mission.
- c. The existence of this social mission will enhance the good image and increase the loyalty of the population to Islamic banks.
- d. Risk *al-qardh* comparatively high because he is considered substantial funding covered by the guarantee.

7. Provisions of Qard. (Heykal & Huda, 2010)

- a. *Al qardh* are loans given to customers who require
- b. Customers *al qardh* obliged to return the principal amount received on agreed time
- c. Administrative costs charged to customers

- d. LKS may require a guarantee to customers where necessary
- e. Customers al qardh can provide extra voluntarily to the LKS for not agreed in the contract
- f. If the customer is unable to return part or all of its obligations at the time agreed and

Islamic financial institution (IFI) has ensured incompetence, IFI can do:

- Extending the repayment period
- Remove (*write off*) part or all of its obligations.

C. CONCEPT OF WADIAH

Wadiah corresponds to safekeeping, custody, deposit and trust. In Islamic finance, wadiah refers to the deposit of funds or assets by a person with an Islamic bank. In this arrangement, the depositor deposits his funds or assets with the bank for safekeeping and in most of the agreements the bank charges a fee for the safe custody of the depositor's funds.

1. There are two types of wadiah:

- *Wadiah yad amanah* refers to property is deposited on the basis of trust (guarantee safe custody).
- *Wadiah yad Dhamanah* refers to savings with guarantee or safe-keeping.

The term wadiah relates to the old concept of amanah where one person hands over his or her assets to other person for the purpose of safekeeping. The concept of Wadiah has been implemented in different Islamic countries such as Malaysia and Bangladesh (Hosen & Nahrwai, 2012). Generally, Islamic banks charge an accounts maintenance fee for wadiah accounts, which can be attributed to the administrative costs incurred by the bank in managing the assets or funds in safe custody.

2. Some Features of Wadiah Bank Accounts.

- a. This is a non-profit and loss bearing product.
- b. Bank gives the guarantee to return the full amount on demand / maturity at its own risk (depositor will not share the risk).
- c. Bank can invest this deposited fund with the permission of the depositor. Bank may share the profit with the depositors as per management's decision.
- d. Accounts maintenance fees apply.

3. Related Verse from The Qur'an.

“Indeed, Allah commands you to render trust to whom they are due and when you judge between people, to judge with justice” (Al Quran, Al Nisa, 4:58)

D. PROHIBITION OF RIBA (INTEREST)

In the conventional literature, interest is seen as the time value of money, as described by the common expression: "time is money". However, Islamic scholars contend that time is not money, but "time is life". Therefore, money in Islam is seen simply as a medium of exchange - with no intrinsic value in itself so it is impermissible to lend money and earn a guaranteed rate (interest) on the money.

1. Riba in Qur'an and Hadith.

The definition of riba can be clarified and understood further, by looking at its representation within the Qur'an and hadith.

"O those who believe, fear Allah and give up what still remains of the Riba if you are believers. But if you do not do so, then be warned of war from Allah and His Messenger. If you repent even now, you have the right of the return of your capital; neither will you do wrong nor will you be wronged." (Al-Baqarah 2:278-9)

The above verse confirms the seriousness of engaging in riba transactions. However, not all forms of excess are forbidden, since the Qur'an explicitly permits trade:

"Seized in this state they say: 'Buying and selling is but a kind of interest', even though Allah has made buying and selling lawful, and interest unlawful." (Al Baqarah 2:275)

It is also important to keep in mind, that riba can take the form of exchange of goods:

Abu Sa'id al-Khudri (r) reported Allah's Messenger (p) as saying: Gold is to be paid for by gold, silver by silver, wheat by wheat, barley by barley, dates by dates, salt by salt, like by like, payment being made hand to hand. He who made an addition to it, or asked for an addition, in fact dealt in riba. (Sahih Muslim)

2. Classification of Riba (Interest).

Jurist have categorized riba as follows:

- **Riba Al-Nasiyah**

This is also known as riba al-Quran and riba al-Jahiliya. It has been defined by leading scholars, as per below:

"That kind of loan where specified repayment period and an amount in excess of capital is predetermined." Imam Abu Bakr Hassas Razi

"Every loan that draws profit is one of the forms of Riba"
Sahabi Fazala Bin Obaid

"Every loan that draws more than its actual amount" Abu Ishaq az Zajjaj

- **Riba Al-Fadl**

This is also known as riba al-Hadith. It involves excess received when two alike commodities are exchanged. This is explained further in the Sahih Muslim hadith, shown above ("Gold is paid for by gold....")

3. **Riba in Loans/Debts.** (Ayub, 2007)

Based on the above references from the Qur'an and Sunnah we can derive a number of results regarding the severity of the sin of Riba, its forms and its connotation. First, indulging in Riba-based transactions is tantamount to being at war with Allah (SWT) and His Messenger, which no one should even think of. Not only the lenders but also borrowers and other parties involved commit sin by paying interest or by giving a helping hand in interest based business. If a destitute is constrained to borrow on interest in case of compulsion to fulfil his basic food needs, there is the possibility of granting limited permission to borrow on interest. But a person who takes advantage of interest-based loans for luxurious consumption or for the development of his businesses is culpable as per the above tenets. What the Qur'anic verses have discussed is the Riba on loans and debts. As is discussed in detail in, a loan (Qard) is any commodity or amount of money taken from any other person with liability to return or pay back the same or similar commodity or amount of money when demanded back by the creditor. A debt (Dayn) is a liability to pay which results from any credit transaction like a purchase/sale on credit or due rentals in Ijarah (leasing).

The amount of debt has to be paid back at a stipulated time and the creditor (in case of debt) has no right to demand payment of the debt before the mutually agreed time. The principle that the Holy Qur'an has

given in verses 2: 278 and 279 is that in both loans and debts, the creditor has the right to the *Rasul - mal* (principal amount) only; in the former case, exactly the amount given as the loan and in the latter case, the liability or the amount of debt generated from the credit transaction. Any amount, big or small, over and above the principal of loan or debt would be *Riba*. As conventional banks' financing falls into the category of loans on which they charge a premium, it falls under the purview of *Riba* as prohibited by the Holy Qur'an. As such, there should be no doubt that commercial interest as in vogue is *Riba* in the light of the principle given by the Holy Qur'an. The word "*Riba*", meaning prohibited gain, has been explained in the Holy Qur'an by juxtaposing it against (profit from) sale.

It explains that all income and earnings, salaries and wages, remuneration and profits, usury and interest, rent and hire, etc. can be categorized either as:

- Profit from trade and business along with its liability – which is permitted; or
- Return on cash or a converted form of cash without bearing liability in terms of the result of deployed cash or capital which is prohibited.

Riba, according to the criterion, would include all gains from loans and debts and anything over and above the principal of loans and debts

and covers all forms of “interest” on commercial or personal loans. As such, conventional interest is Riba.

E. ISLAMIC LOAN (QARD) AND ISLAMIC DEBT (DAYN)

1. Definition Qard and Dayn.

Qard (loan) is Literally “to cut”. It is so called because the property is cut off transferred to the borrower. Legally, Qard means to give anything having value in the ownership of the other by way of virtue so that the latter may avail himself of the same for his benefit with the condition that the same or similar amount of that thing will be paid back on demand or at the settled time. The repayment of loan is obligatory. Loans under Islamic law can be classified into Salaf and Qard, the former being a loan for a fixed time and the latter payable on demand. Salaf used in two senses: (i) literally, payment in advance; a loan which draws forth no profit for the creditor; it includes loans for specified periods, i.e. short, intermediate and long-term loans; slightly different from Qard – an amount given as Salaf cannot be called back, unlike Qard, before it is due. Also, another name of Salam – forward sale; (ii) Forebears – jurists and scholars of early periods of Islam. (Ayub, 2007)

Dayn (debt) goods of indeterminate category that can be used for payment of liabilities; a liability to pay which results from any credit transaction like purchase/sale on credit or due rentals in Ijarah (leasing). A Dayn comes into existence as a result of any other

contract or credit transaction. Mal or property in Islamic commercial law is divided into movable and immovable, fungible and nonfungible and finally determinate ('Ain) and indeterminate (Dayn) categories. 'Ain is a specific or determinate type of Mal while Dayn is a nonspecific or indeterminate property. In contracts, when a person is to get a certain/specific property from other, this is determinate or 'Ain. When a nonspecific unit of any kind of property is to be taken, it is regarded as Dayn. Hence, gold, silver, currency, grain, oil and the like are kinds of indeterminate or Dayn property; while giving counter delivery in exchange contracts one can give any units of these items. Legally, Dayn is the responsibility or obligation of a person to another person that has to be fulfilled by paying any units of the relevant property equivalent to the obligation. (Rahim, 1958)

2. The Context of Qard and Dayn.

The Shariat Appellate Bench (SAB) of the Supreme Court of Pakistan has quoted what Syed Mohammad Tantawi of Al Azhar (Egypt) considers about Qard and Dayn. He says:

“Qard (as a term) is more particular than Dayn, as it is that loan which a person gives to another as help, charity or an advance for a certain time. A Dayn is incurred either by way of rent or sale or purchase or in any other way which leaves it as a debt to another. Duyun (debts) ought to be returned without any profit since they are advanced to help the needy and meet their demands and, therefore, the lender should not impose on the borrower more than what he had lent.” (Usmani, 2000)

The English word “loan” seems to be the counterpart of the word Qard and “debt” that of Dayn. The loans/advances given by the present banking system are covered under any of these two categories. In Murabaha operations by IFIs, goods are sold and Duyun/debts are created, which ought to be returned without any profit over the amount of debt, as all conditions relating to Dayn would be applicable to them. In view of all these definitions and the Sunnah of the holy Prophet, it may be said that Qard is a kind of loan advanced for the benefit of the borrower and the creditor can demand it back any time. Ownership of the loaned goods is transferred to the borrower who can use, buy, sell or donate it as he wishes, like his other belongings.

Salaf is used for a loan of fixed tenure, and in that sense, it is closer to Dayn and both these types are the liabilities created on account of credit transactions for a fixed tenure. Loans may consist of any things that are valuable and their similar or substitute becomes payable immediately or on demand in the case of Qard and at the stipulated time in the case of Salaf and Dayn. Further, a Qard should not be conditional upon any other contract like Bai'. (Zuhayli, 2003)

F. Theory of Phenomenology

Phenomenology associated with an understanding of how daily, intersubjective world (living world). Phenomenology aims to interpret social actions we and others as a meaningful (interpreted) as well as to reconstruct the derived meaning (the meaning of which is used the next

time) from meaningful action in individual intersubjective communication in the world of social life (Sudarmanti, 2005). Phenomenological research trying to explain or reveal the meaning of the concept or phenomenon of experience based on the awareness that occurs in some individuals. Phenomenology is done in a natural situation, so there is no limit in defining or understanding the phenomenon being studied, and the researchers are free to analyze the data obtained.

According to Creswell (1998), the phenomenological approach suspends all judgment about a natural attitude to find a particular base. The delay is usually called epoche (period). Epoche concept is to distinguish the data area (subject) with the interpretation of the researcher. The concept of epoche a center where researchers compile and categorize initial assumptions about the phenomenon to understand what was said by the respondent. Phenomenology method, according to Polkinghorne (Creswell, 1998)

phenomenological studies illustrate the meaning of a life experience for some people about a concept or phenomenon. People who are involved in dealing with a phenomenon of consciousness exploration of the structure of human experience.

Meanwhile, another meaning is according to Husserl (Creswell, 1998) phenomenological researcher trying to find about things that are necessary (essential), invariant structure (essence) or the meaning of a fundamental experience and emphasis on the intensity of consciousness

which consisted experience things that are visible from the outside and issues things that are in the consciousness of each is based on memory, image and meaning.

Author will next use hermeneutics approach to try to examine the real meaning *qard al-hasan*. Hermeneutics is derived from the Greek word *hermeneuein* and *hermeneia* respectively mean "interpreting" and "interpretation". In the Greek tradition, the term hermeneutics associated with Hermes (Hermeios), an Emissary (god) in Ancient Greek mythology served roomates Convey and translate the message to the gods in human language (Raharjo, 2008). However, the author does not use proper hermeneutics, because the author uses verses from the Qur'an, Hadith, and the results of the interpretation of the *qard al-hasan*. Hermeneutics here only as a model or type of approach in isolation, cannot be said to be a pure research with hermeneutics because the religion of Islam has had his own way to interpret the verses down from Allah SWT. That comes from the Qur'an, Hadith, and then at Break down in the interpretation.

G. Islamic Jurisprudence (*Usul Fiqh*)

This research use verse form Qur'an and hadith also Muslim genesis (*tafsir*) as main references to discuss about *qard al-hasan* more deeply, thus author use *usul fiqh* that is *Al-Dalalat* (Textual Implication).

The law normally requires compliance not only with the obvious meaning of its text but also with its implied meaning, and indirect indications and inferences that could be drawn from it. With reference to

the textual rulings of the Qur'an and the *Sunnah*, the ulama of *usul* have distinguished several shades of meaning that a *nass* may be capable of imparting. The Hanafi jurists have distinguished four levels of meaning in an order which begins with the explicit or immediate meaning of the text. Next in this order is the 'alluded' meaning which is followed by the 'inferred' meaning, and lastly by the 'required' meaning. There is yet a fifth variety of meaning, namely the 'divergent' meaning, which is somewhat controversial but has, in principle, been accepted, as our discussion will show.

1. The explicit meaning (*ibarah al-nass*), which is based on the words and sentences of the text, is the dominant and most authoritative meaning which takes priority over the other levels of implied meanings that might be detectable in the text. In addition to its obvious meaning, a text may impart a meaning which is indicated by the signs and allusions that it might contain.
2. This secondary meaning is referred to as *isharah al-nass*, that is the alluded meaning. A legal text may also convey a meaning which may not have been indicated by the words or signs and yet is a complementary meaning which is warranted by the logical and juridical purport of the text.
3. This is known as *dalalah al-nass*, or the inferred meaning, which is one degree below the alluded meaning by virtue of the fact that it is essentially extraneous to the text. But as will later be discussed,

there is a difference of opinion between the Hanafi and the Shafi'i, jurists as to whether the inferred meaning should necessarily be regarded as inferior to the alluded meaning.

4. Next in this order is the *iqtida' al-nass*, or the required meaning, which is once again a logical and necessary meaning without which the text would remain incomplete and would fail to achieve its desired purpose. When there is a conflict between the first and the second meanings, priority is given to the first. Similarly, the second will take priority over the third and the third over the fourth.
5. The last is Divergent Meaning or *Mafhum al-mukhalafah*. The basic rule to be stated at the outset here is that a legal text never implies its opposite meaning, and that any interpretation which aims at reading a divergent meaning into a given text is unwarranted and untenable. If a legal text is at all capable of imparting a divergent meaning, then there needs to be a separate text to validate it. But any attempt to obtain two divergent meanings from one and the same text is bound to defy the very essence and purpose of interpretation. This argument has been more forcefully advanced by the Hanafis, who are basically of the view that *mafhum al-mukhalafah* is not a valid method of interpretation. Having said this, however, *mafhum al-mukhalafah* is upheld on a restrictive basis not only by the Shafi'is but even by the

Hanafis; they have both laid down certain conditions which must be fulfilled so as to ensure the proper use of this method. *Ma'fhum al-mukhalafah* may be defined as a meaning which is derived from the words of the text in such a way that it diverges from the explicit meaning thereof.

H. Theory Constructive

Two terms in the sociology of knowledge Berger is a reality and knowledge. Berger and Luckmann began to explain social reality by separating the understanding of reality and knowledge. Reality is defined as a quality inherent in the realities that are recognized as having Being that does not depend on the will of our own. While knowledge is defined as the certainty that the realities are real and have specific characteristics (Berger & Luckmann, 2013).

Berger and Luckmann said public institutions are created and maintained or changed through human action and interaction. although social institutions and society objectively evident, but in the reality, everything is built in a subjective definition through interaction process. Objectivity can only happen through repeated assertion that given by others who have the same subjective definition. At the highest level of generality, man created the world in a universal symbolic significance, namely a comprehensive view of life, which gives legitimacy and organize social forms and give meaning to the various fields of life. In short, Berger and Luckmann said there is dialectic between the individual and the

community to create a society creates individuals. This occurs through the dialectical process of externalization, objectivation and internalization (Berger & Luckmann, 2013).

People living in a particular social context, the process of simultaneous interaction with the environment. With the process of interaction, the community has a dual dimension of social reality which can each build, but instead could also undermine each other. Residents live in dimensions and objective reality is constructed through moments of externalization and objectivation, and subjective dimensions built through internalization moment. Moment of externalization, objectivation, and internalization will always proceed dialectically. The third dialectic process of those moments, in this context can be understood as follows: (Berger & Luckmann, 2013)

1. Externalization.

In moments of externalization, social reality is pulled out of the individual. In this moment, the social reality of a process of adaptation to the sacred texts, many scholar agreements, laws, norms, values and so that it is outside of the self. So, that in the process of social construction involves a moment of adaptation themselves or adaptation of the text with the socio-cultural world. These adaptations can be through language, action and tradition that the treasures of the social sciences called the interpretation of the text or dogma. Because adaptation is based on the

interpretation of the adjustment process, it is very possible occurrence of variations in adaptation and adaptation, or action on each individual.

2. Objective.

Objectivity is the process of crystallizing into your mind about an object, or any form of externalization that have been made visits back to reality in an objective environment. So, in this case can occur new meanings or additional meaning. Objectivation process is a moment of interaction between the two realities are inseparable from each other, humans on the one hand and the socio-cultural reality of the other side. as two separate entities then form a network of intersubjective interaction. This moment is the result of the fact externalization which then manifests as an objective reality that is unique.

At this moment, there is also a process of differentiating between the two are social reality, that is the reality of the individual and other social reality that is outside, so that the social reality into something objective. In the process of social construction, this process is referred to as social interaction through institutionalization and legitimacy. Institutionalization and legitimacy of the agency in charge of the world draw subjectivity into the objective world through social interaction are built

together. Institutionalization will happen when there is a relationship of understanding intersubjective or subjects.

In this moment, there is a social construction of social reality differentiator from other realities. objectivation is due to the externalization process. When in the process of externalizing all the characteristics and symbols known by the general public.

3. Internalization.

Internalization is as true individuals subjectively interpret objective reality. Or impregnating back reality by man, and transforming once again from the structures of the objective world into structures of subjective world. At this moment, people will absorb all the things that are objective and then will be realized subjectively. This internalization last a lifetime an individual with socializing. In the process of internalization, the individual is different in absorption dimensions. There is nothing more absorbing external aspects, there are also more absorbent internal parts. Moreover, besides the internalization process can be earned by individuals through the process of primary and secondary socialization.

The last phase of this internalization process is the formation of identity. Identity is regarded as a key element of subjective reality, which is also related dialectically with the community. Identity shaped by social processes. Once obtaining

his form, he maintained, modified, or even reshaped by social relations. The forms of social processes that occur affect the form of the identity of an individual, whether that identity is maintained, modified or even reshaped. Identity is a phenomenon that arises from the dialectic between the individual and society. The third process that there will continue to run and are related to each other, so that the process is all right back to the stage of internalization and so on. Until people can form new meanings and behaviors if there are values new contained therein.

Researchers chose the theory of social construction of reality Peter Berger and Thomas Luckmann because basically the concept put forward in the theory is very relevant to the reality that was about to be studied by researchers. Researchers want to perform in-depth assessment of the product *qard al-hasan* in practice in Indonesia. while Berger has been suggested that basically contained within the reality of society is constructed by society itself. In this case, the reality of the meaning of *qard al-hasan* practiced in the IFI's regulation on the basis DSN simultaneously constructed as described Berger through dialectic triad is through externalization process, objectivity and internalization.



Source: (Berger & Luckmann, 2013)

FIGURE 2.3
Step by step Constructive Theory

I. PREVIOUS RESEARCH

There is still a view studies, books, and articles that discussing about *qard al-hasan* which is it had normative and empirical characteristics, included several journal and even undergraduate theses. This is a several sources that author used to research more about *qard al-hasan*, namely:

1. International journal article from Dr. Noraini Mohd. Ariffin and Assoc. Prof. Dr. Muhammad Akhyar Adnan in Kuliyyah of Economics and Management Sciences International Islamic University Malaysia (2011) the title is “The Perception of Banker on Qard al-hasan In Malaysian Islamic Banks”. The study adopted the methodology of Questionnaire survey.
2. Journal article from Iqbal M. Aris Ali in Universitas Khairun Ternate (2012) the title is “Memakai Disclosure Laporan Sumber Dan Penggunaan Dana Kebajikan (Qard al-hasan) Bank Syariah”. The Methodology is using Non-positivistic approach with symbolic interaction and God trilogy teaching are utilized.

3. Journal article from Muhammad Akhyar Adnan and Firdaus Furywardhana in JAAI Vol.10, December 2006: 155-171 the title is “Evaluasi Non-Performing Loan (NPL) Pinjaman Qard al-hasan (Studi Kasus di BNI Syariah Cabang Yogyakarta)”.