

## CHAPTER IV

### RESEARCH FINDING AND DISCUSSION

#### A. The Original Concept of *Qard Al-Hasan*

##### 1. The Original Perspectives.

###### a. Benevolent Loan.

From the legal point of view, the main ingredient of a *qard al-hasan* contract is a loan that is not contaminated in any way by *Riba*. There is a lender and a borrower, with no reference to a market, which might give one the impression that there should be a 'price' for it. The relationship between lender and borrower is one of creditor and debtor, and the principal of the money loaned out remains the responsibility of the borrower. The lender cannot demand his dues before the end of the contract period.

Funds in this form are advanced to both real and legal entities with the aim of providing humanitarian assistance and creating financial strength for members of society who lack the wherewithal to meet their general and essential needs. When *qard al-hasan* is given to a real person (that is, a household), it may be just for humanitarian and individual welfare purposes. Many Muslim countries have had long experience of this type of finance and such funds have been set up as private institutions among many believers. They are quite often short-term, humanitarian arrangements (based

on Qu'ranic teachings) to help people meet an immediate need. The borrowed money can be used for a variety of purposes, including the purchase of household durable goods. Such behavior, using interdependent utility functions, produces and develops a brotherly feeling among people within and between the households involved. These interest-free loans are in line with Qur'anic injunctions to honor society as vice-regents of Allah (SWT).

A legitimate question may arise here as to how such loans would deal with inflation. The simple answer is that it is hard to imagine inflation arising within the grand cooperative system in the first place, except perhaps during the transition period from the old capitalist system. In such circumstances, to prevent injustice to the lender in the face of inflation, it is recommended that the principal amount of the loan be pegged to the price of a specified commodity such as rice or wheat provided that the commodity is free of any speculative activities. At the end of the loan period, the borrower then pays an amount of money equivalent to the amount of the chosen commodity that could have been bought when the contract was initiated. In such circumstances, it is probably best to leave such funds in the hands of the private sector, which, for reasons outlined earlier, is normally more efficient than the public sector. (Toutouchian, 2002)

*Qard al-hasan* means “Benevolent loan”. A benevolent loan is a loan which is provided without charging any return or profit or interest. If a return in any form is associated with the loan, it will not be a *qard al-hasan*. In Islam, mankind originates from one soul, Adam, and hence mankind are brothers and sisters (in blood relation). A brother/sister is supposed to help other brothers/sisters in need. *Qard al-hasan* is one kind of help. In the Islamic philosophy, Allah is the creator, sustainer, provider of all income and wealth, and thus the owner of everything. He has given wealth to mankind as a Trustee. Therefore, He has right to determine the terms of the Trust. A such term is to spend wealth for mankind (*infaq fi sabilillah*). A *qard* is to spend service of wealth which could be earned, if not loaned out. Every individual and institution has a social responsibility to assist those who are in need. In Islam, *qard al-hasan* is encouraged so much so that it is mentioned in the Qur’an as a good loan to Allah Himself.

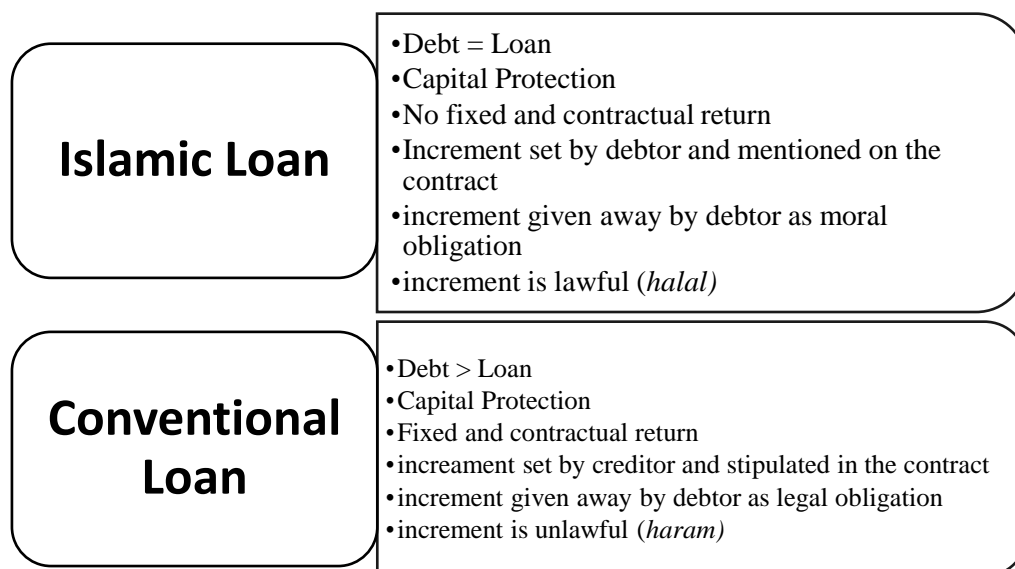
The social benefit is that when *qard al-hasan* helps those who are in need, it helps alleviate poverty, and thus helps in improving the condition of the society. *Qard al-hasan* improves the economic condition of the poor, and thus contributes to the achievement of equity in the distribution of income and wealth. The improvement in the whole environment improves the life of the provider of *qard al-hasan* as well. Allah, the provider of wealth,

treats *qard al-hasan* as a help to Himself and, therefore, declares great rewards for *qardhul hasan*. Some of the quotes are given below:

Abu Hurayrah said, the prophet Muhammad [pbuh] said, *“On the Day of Judgment, Allah will say: O son of Adam, I was sick yet you did not visit me. He will reply, O Allah, how could I have visited You since You are Lord of the Worlds? Allah will say: Did you not know that so-and-so a servant of Mine was sick, and yet you did not visit him? Did you not realize that if you had visited him [I would be aware of this, and would reward you] and you would have found me with him? O son of Adam, I asked for food from you but you did not feed me. He will say: My Lord, how could I feed you since You are the Lord of the Worlds? Allah shall say: didn't you know that so-and-so a servant of Mine asked food from you but you did not feed him, did you not realize that had fed him you would certainly have found [its reward] with Me? O son of Adam, I asked water from you but you did not provide Me with water. He will say, O Allah, how could I have provided you [with water] when You are Lord of the Worlds. Allah will say: so-and-so a servant of Mine asked you for water to drink but you did not provide him with water. Did you not realize that had you Surah provided him with water to drink you would have found [its reward] with me?”* [Sahih Muslim]

In addition to avoid public misunderstanding about the application of *qard al-hasan* contract instead. It is presently applied in the Islamic Republic of Iran and worth considering. What it does is to maintain the lending-borrowing relationship between depositors and banks, but without implicating interest.

This is the essence of loan contract in Islam. *Qard* means loan, while *hasan* implies good or benevolent. A *qard al-hasan* loan, therefore, expresses the spirit of cooperation (*ta'wun*) and brotherhood (*ukuwah*) between debtors and creditors. But it does not mean an Islamic bank that employs the *qard al-hasan* product will enjoy using deposits at zero cost, thus making more profit than conventional bank. For example, interest rate on deposits is 4 percent, while interest on loans is 12 percent. Here, the bank makes a net profit of 8 percent (Rosly, 2008)



Source: (Rosly, 2008)

#### **FIGURE 4.1**

Differences between Islamic and Conventional Loan

#### **b. The Application.**

Al-qard al-hasan, being a contract ('aqd) between two parties requires same principles which are applicable for other Islamic transactions. These principles are as follows: (Hossain, 2002)

##### **i. Both parties should be legally sharia capable to enter into the qard contract.**

It is unanimously agreed by the four schools of law that to enter into a contract, parties already *baligh*, *'aqil* and *rashid* (major with sound judgment). The Mejjelle has also incorporated the same principles.

In the holy Qur'an, Allah says, "*Make trial of orphans until they reach the age of marriage; if then you find sound*

*judgment in them, release their property to them.*" (Al-Nisa (4): 6). This verse states that the age of marriage and the sound judgment is the age of majority, and thereby a major person is capable to enter into any transaction validly.

In a hadith, the Prophet Muhammad (PBUH) said, "*The pen is raised for three groups (of people) that is, they will not be responsible for their actions: the insane until they become sane, those who are sleeping until they are awoken, and the youth until they reach puberty.*" [Ahmad, Abu Daud and al-Tirmidhi]

The above hadith makes it clear that a person, who has not attained the age of puberty, may not be a responsible party for *qard al-hasan* transaction.

**ii. *Ijab* (offer) and *qabul* (acceptance) of the *qard* must be clearly made before entering into the loan contract.**

All four schools of thoughts agree upon that *ijab* and *qabul* should be clearly indicated in the contract, otherwise, the loan contract may create dispute in future. In the loan agreement, there should have clear expression, collation and conjunction of the *ijab* and *qabul* between the parties.

**iii. The date of payment must be specified.**

It is also agreed among the Muslim jurists that the date of payment should be mentioned in the loan agreement.

If no date is specified, the transaction may lead to ambiguity and dispute in future among the lender and the borrower.

It was based on the loan agreement of the Prophet Muhammad (PBUH) companions. When the Prophet Muhammad (PBUH) migrated to Madinah, he was informed that contracts of *salam* were made without stating specified time or amount, then the Prophet Muhammad (PBUH) said, "*Whoever enters into a contract of salam should specify the date of delivery and the amount of subject matter.*"

**iv. The loan contract should be written down.**

This ruling is based on a Qur'anic injunction. As Allah (s.w.t) says: "*O you who believe! when you deal with each other in transactions involving future obligations for a fixed period of time reduce them in writing.*" [Al-Baqarah (2): 282]

Muslim jurists, however, differ on this condition. Majority of the Muslim jurists opine that it is not obligatory but strongly recommended. The reason given by them is that if both parties agree not to write, then it is no longer an obligation upon them to write down. The wisdom behind the writing down is to avoid future dispute. On the contrary, minority of the Muslim jurists like *al-Tabari* are of the opinion that it is obligatory upon the parties to write down



the contract. It is submitted that the majority's stand seems more reasonable as they have given the option upon the parties whether to write down or not.

**v. Getting two witnesses.**

The Qur'anic injunction is that there must have two male witnesses, if two men are not available, then one man and two women will have the same effect. As the Qur'an says: *"And get two witnesses out of your own men and if there are not two men, then a man and two women."* [Al-Baqarah (2): 282] It is very essential for the loan contract to be complied with this Qur'anic requirement to avoid future disputes.

**vi. Administrative fee / Service charge.**

A question may arise whether a charge of administration fee is allowed in Sharia and if yes, how much will be the charge. Now, it is a settled issue among the Muslim jurists that administrative fee or service charge for loan transaction is not against Islamic principles.

Dr. Irfan Ul Haq in his Ph.D. (1996) dissertation entitled, *"Economic Doctrines of Islam"* mentioned that *"Banks are permitted to charge a minimum service fee to cover the cost of administrative fee"*. According to S.H. Amin, *"Some charges are in fact legitimate fees and not*

*interest by any standards but sometimes the line is hard to draw. For instance, in Islamic law payment of expenses may be allowable if the fee is attributable to some identifiable out of pocket expense such as lawyer's fees but not general overheads of the bank."* He further mentioned that to obtain some compensation for offering *qard al-hasan* facilities, the banks demand some charges and fees. These expenses incurred by banks on providing *qard al-hasan* are collected from the borrowers and the basis for the calculation of these expenses are laid down by the central bank.

In an article entitled "*Islamic Banking for Social Justice*" M. Azizul Huq (1984), an executive vice president of Islamic Bank Bangladesh, said, "*The Shari'ah does not permit and Islamic banks do not receive any income from interest-free loaning investment. The lending banks can, however, recover their administrative cost directly related to the investment as service charge. Islamic Development Bank Jeddah recovers service charge 2% to 3% on interest free loans. Alternatively, the cost can be reimbursed by third parties or the government. In Pakistan, the cost of interest for rural lending is reimbursed to the bankers by the government.*"

So, if *qard al-hasan* is given by any bank or other institutions, they may require service charge or administrative fee. However, there is no scope for an individual lender to demand this charge unless any amount incurred due to procedural requirements of the loan agreement, such as lawyer's fee, stamp duty etc.

**vii. Extra Payment.**

It is very clear that in the loan agreement, there will be no condition for extra payment, otherwise, it will be *Riba*. It is however, advisable for the debtor to give some sort of gift to the creditor as a sign of appreciation of his voluntary deed.

In a hadith, *Jabir bin Abdullah (R) reported that I had the right (of loan) on the Messenger of Allah, he had settled it and made additional payment to me. Again, Abu Rafi' reported that the Prophet Muhammad (pbuh) had borrowed a young female camel from someone and when he received zakat of camels, he ordered me to send a young female camel to the man as settlement of the loan. I said to him, "I could not find among the camels except a female camel which is ready for pregnancy". The Prophet Muhammad (PBUH) said, "give it to him, indeed, the good person among you is*

*he who settles loan with something better."* [al-Muwatta of Imam Malik].

The statement "*every loan which draws benefit is Riba*" is in fact not a hadith of the Prophet Muhammad (pbuh) according to the hadith scholars as there is a doubt of its chain of narrators. Moreover, Muslim jurists have various opinions relating to extra payment over loan. The Hanafi, the Shafi'e and the Hambali's stand is that every loan with profit is forbidden if the profit is stipulated in the loan agreement, otherwise, the profit is permitted. According to Malikis, the borrower may pay more than the capital quantitatively or qualitatively at the time of the settlement of the loan provided that the loan was used for commercial purpose. They restricted the extra benefit from the loan if it was used for consumption purpose.

Indeed, the majority's view is more reasonable, it is up to the borrower whether to pay extra or not, regardless the loan was for consumption or commercial purpose. The only restriction is that there should not be any stipulation for extra benefit in the loan agreement.

**viii. Early demand to pay back.**

Loan is a voluntary act by the creditor. However, it is not encouraged for early demand to pay back the loan from the debtor. In the Holy Qur'an Allah says,

*“O you, who believe, fulfil your contract.”* [Al-Maidah (5):1]

*“And fulfil your covenant, for every covenant will be inquired into.”* [Al-Isra (17):34]

*“Then for having broken their covenant, We rejected them and caused their hearts to harden.”* [ Al-Maidah (5):13]

*“And so (We punish them) for the breaking of their covenant.”* [Al-Nisa (4):155]

In hadith of the Prophet Muhammad (PBUH) said,  
*“Muslims are bound by their conditions except a condition that changes halal into haram or haram into halal.”* [Al-Muatta of Imam Malik]

The Qur’anic and the Hadith injunctions indirectly provide that the creditor should not demand the loan amount from the debtor before the agreement matures or lapses. Muslim jurists, however, have given different views on this matter. According to the Shafi’e and the Hambali jurists, the creditor can demand the settlement from the debtor before the expiry period as he wishes. They have given the reason that the loan is voluntary and it cannot compel any party to abide it. The Hanafi and the Maliki jurists, on the contrary,

are of the views that the creditor cannot demand the loan amount back until the time for settlement mature. Their reason is the above stated hadith of the Prophet Muhammad (PBUH). It is submitted that the latter view is more reasonable as being beneficial to the creditor and should be accepted.

**ix. Guarantors.**

In the case of *qard al-hasan*, there can be guarantors. The guarantors of the borrower may be any person or the property of the loanee that is collateral security, such as, mortgage, charge etc. In case of the borrower's failure to pay back the loan after the expiration of the time specified, his guarantor has to pay or the collateral security is to be valued for the repayment of the loan. But, Muslims should remember that a true believer should not delay to pay back his obligations.

As the Prophet Muhammad (PBUH) said, "*Deliberate delay of a rich borrower to settle the loan is injustice.*" [Sahih Bukhari & Muslim]

Islam attempts to establish justice and eliminate exploitation in the society and prevents the accumulation of wealth in the hands of few people. Islam, therefore, absolutely prohibits *Riba* as it is the root of all injustice in

the human society. *Qard al-hasan*, on the contrary, being an interest free loan for humanitarian and welfare purpose may ensure the proper movement of wealth amongst all classes of people in the society. That is why, the Qur'an and the Sunnah have much appreciated and encouraged for the implementation of *qard al-hasan* in the Muslims society.

**c. Qard Al- Hasan in *Seerah Nabawiyah*.** (al-Mubarakfuriyy)

Related to the original perspectives of *qard al-hasan* there are no specific topic about it. In this sub-topic will containing context of *qard al-hasan* which is loan, *Riba* (interest), and *infaq*. In addition to strengthen *qard al-hasan* in Muslim exclamation understanding.

Abu Amama said that the Prophet Muhammad [pbuh] said: *"In the night of the journey, I pbuh on the gate of heaven written, 'reward for sadaqah (charity) is ten times and reward for qard al-hasan is eighteen times'. So, I asked the angel, how is it possible? The angel replied, "Because a beggar who asked might have already had something but a loanee did not ask for loan unless he was in need."* [Ibn Majah & Ibn Hisham]

They Propet Muhammad (pbuh) themselves as a nation is more, than others and these spiritual leaders. The Jews were clever in the field of enterprise and life skills, this leads them to master the business of grain, dates, wine and clothing, they exporters and importers of textiles, clothing, wine and grain, aside from that they

also have other jobs that they own business, of which they are capable of collecting gains are doubled from the Arabs, not only that but they are involved with the practice of usury, by releasing loans to the heads of Arab tribes and their leaders, the money they loan of Jews was spent to acquire praise and adulation of poets and mention the name of the good of the public, after the property forfeited spent on something that is not beneficial, Jews were also owed to the heads of Arab tribes to accept the field or their farms as collateral, after the expiry of the period and the debt cannot be resolved then it will automatically be collateral had been through flowing Jews (al-Mubarakfuriyy).

Apart from the Jews as well-known as those that cause a scandal, conspiracy, damage, flint, lead to a feud between the Arab caravans unnoticed by them, thereby treat a protracted war between the Arab caravans, where the clashes occurred tribe, certainly there hands of Jewish pit and they will be watching this dispute from afar, they bring this dispute, by giving financial loans for laptops as an aid to the tribes who competed, because war is a heavy expense, in this way the Jewish reap two benefits: It can maintain the timber and its entities, enabling laptop system yielding a double to the next they can accumulate wealth.

He explained the real situation to the Muslims so that they make adequate preparation and arrangement wise. Allah (did) call



on them all to the al-Jihad, and even the Quran came down with some verses of surah al-Bara'ah which urged Muslims to fight and provide them with the spirit of al-Jihad. Prophet invited them to sacrifice with their wealth and charity lend as much as they can to the way God is.

## 2. Expert Conception.

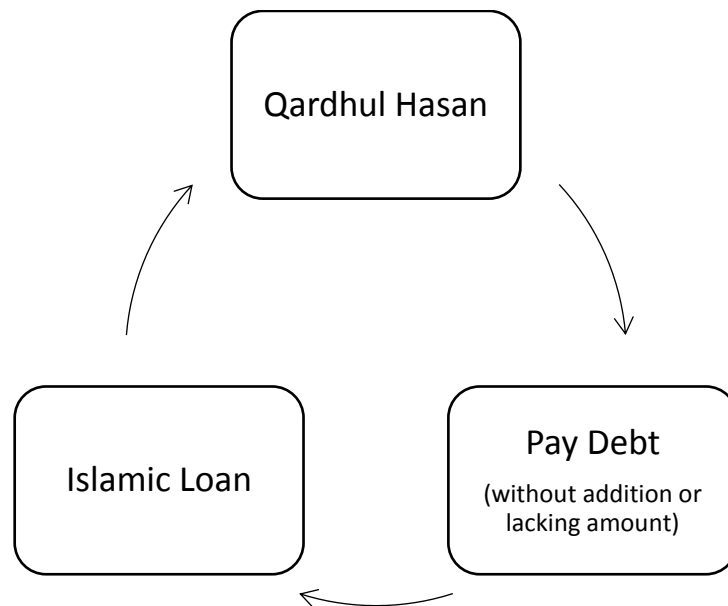
*Qard* is defined as the transfer of ownership of an asset or money from the original owner to others on condition that the asset or money will be returned to the owner in the same condition/form/ value as when it first received by the other party from the owner. In other words, it is a debt given in the form of money or borrowed things like car or hand phone to others on condition that it will be returned to the owner as the way it is, without anything lacking out of it or anything added to it. Borrowing or '*Qard*' in Islam is a contract, which is based on the concept of mutual help (*tabarru'*) and contemplation for others' wellbeing especially the people in need (Al-Mughni, Ibn Qudamah, 4/353).

Thus, Islam highly encourage the practise of *qard al-hasan* as stated in the Hadith of the prophet Muhammad (pbuh): "*One who releases his brother from difficulties, Allah will release him from the hardships in the hereafter. .*" (Hadith Muslim)

Another hadith mentioned on the borrowing with no interest charged: From Anas r.a., the prophet Muhammad (pbuh) said: "*I pbuh in the night of the journey (night of Isra' Mikraj) what written on the*

*heaven's wall; One sadaqah will be multiple to gain ten rewards, and the 'qard' (or the loan without interest) will gain eighteen rewards ..."* (Ibn Majah, 2/812).

Thus, on this basis, the contract of loan in Islam is not at all to become a tool for businesses i.e. to gain profits; because business is meant to gain profit and may suffer from loss, but *qard al-hasan* is an honourable deed, which gain no material profit for the practice. Therefore, it is crucial to ensure that the objective of welfare and to come to one's aid in the *qard al-hasan* is realized. Accordingly, Islam has laid down an obligation to return the money borrowed without any addition or lacking of a penny or less.



Source: (Rahman, 2006)

#### **FIGURE 4.2**

The Cycle Concept of Qardhul Hasan

For example, an amount of RM 5000 borrowed by a debtor must be returned to the creditor in the same amount i.e. RM 5000, without any additional amount or benefits being charged, forced, promised or agreed (for example; a 3 % interest charged on the RM 5000 borrowed money). All Islamic scholars mutually agreed that this is categorized as *Riba an-nasiah*, which is Haram (unlawful). The same applies to the thing, which is borrowed i.e. to return the thing in its original condition/form (Rahman, 2006).

## **B. The Application in Contemporary Bank System**

### **1. The Pros for *Qard Al-Hasan*.**

#### **a. *Qard Al-Hasan* in Indonesia.**

Fatwa from *Dewan Nasional Syariah (DSN)* No:19/DSN-MUI/IV/2001 about “Al-Qardh” in fatwa stated very clear about *qard al-hasan* regulation for conducted the product. This contract is applied in Islamic financial institutions such as Islamic Bank and BMT in Indonesia. In addition to prove this product application in Indonesia, author providing several information about Islamic bank in Indonesia with their *qard al-hasan* contract:

##### **i. CIMB Niaga Syariah**

Bank CIMB Niaga Syariah continue to improve the distribution of hasan or benevolent loan qardhul (Kelana, 2015). "Over the years, we always try to keep the number of welfare funds distributed by CIMB Niaga Syariah is

increasing," said Vice President of Corporate Planning & Management Head of Islamic Banking CIMB Niaga Syariah Rudi Amir.

He said it was the Koran endowment ceremony of CIMB Niaga Syariah to Baitul Mal Hidayatullah (BMH) at the headquarters of CIMB Niaga Syariah Jakarta, last week. Rudi added, in 2013, CIMB Niaga Syariah welfare funds of Rp 5 billion more. In 2014 the number increased to Rp 7.3 billion. "In 2015 we expect the numbers even more, if it can be Rp 10 billion," said Rudi. Corporate Services & Communication, Corporate Planning & Management CIMB Niaga Syariah Otit Sofiawati submit, during the distribution of funds for the welfare of CIMB Niaga Syariah include several pillars.

The pillars are Namely education (scholarships and educational infrastructure), health (eg blood donor unit cars and ambulances), economic empowerment (in collaboration with partner organizations), social and religious organizations (for example in the form of charitable donations Koran). Rudi said, CIMB Niaga Syariah is working with 20 partner institutions. "This included an amil zakat institutions (LAZ), as Baznas, BMH, Dompot, Al-Azhar Peduli people, and PKPU," he said.

ii. BNI Syariah

Bank Negara Indonesia (BNI) Syariah took Baitul Maal Wat Tamwil (BMT) Cengkareng to distribute Rp 40 million grant *qard al-hasan* (rachman, 2011). Funds from the Zakat Collectors Unit (UPZ) bank, the plan will be given to the mustahik and micro entrepreneurs in West Jakarta. According to the Director of BNI Syariah Compliance, Imam Teguh Saptono, this program is part of BNI Syariah previous program, management of gratitude. "It is the synergy between corporate profits, zakat and donations of employees," he said, Saturday (28/5).

Additionally, BNI Syariah also perform other activities. Program prosperity of the mosque to be one of the main activities. BNI Syariah cooperate with a number of parties including the Prosperity Council of Mosques (DKM) Manarul Amal and Islamic Student Activity Unit (UKMI) Faruq Mercuru Buana University. In addition to Badan Amil Zakat Nasional (Baznas) are also involved. "Movement Training prosper UPZ-based Masjid and Islamic economics is a manifestation of this program in one branch office in West Jakarta," he explained.

The goal is to make the mosque is not only a place of worship but also empower the community center. BNI

Syariah asset growth target of 50 percent or Rp 9.1 trillion in 2011. Funding is projected to grow by 56 percent to Rp 5.5 trillion, while third party funds are expected to increase 57 percent to Rp 7.8 trillion.

**b. *Qard Al-Hasan* in Abroad.**

In Malaysia based on Concept Paper Central bank of Malaysia known as Bank Negara Malaysia (2016), As part of the objective to strengthen the Shariah-compliance practice among Islamic financial institutions (IFIs), Bank Negara Malaysia (the Bank) is developing a Shariah-based regulatory policy with the objective to provide a comprehensive guidance to the Islamic financial industry with respect to end-to-end compliance with Shariah.

This concept paper (CP) consists of two components, Shariah and operational requirements with respect to the operational of *qard* contract. The Shariah requirements highlight the salient features and optional practices of a valid Shariah contract to facilitate sound understanding of a particular contract by the IFI. The operational requirements outline the regulatory expectations with respect to the governance and oversight, structuring, risk management, business and market conduct as well as financial disclosure.

### C. The Cons for *Qard Al-Hasan*

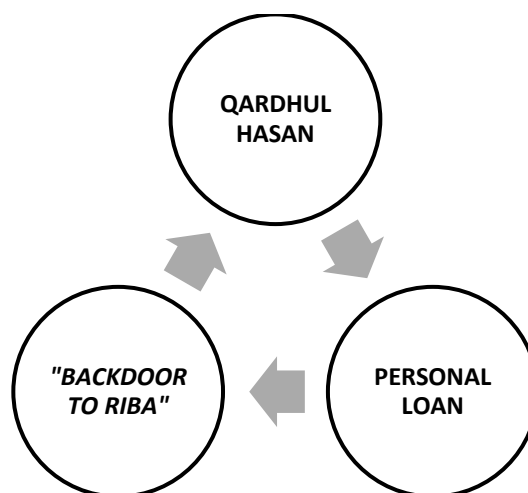
#### 1. Critics on The Application.

Application of *qard al-hasan* financing at financial institutions and Islamic microfinance institutions cannot be stated to be entirely wrong or right, it needs to be studied in-depth against this judgment. By looking at the case of the implementation in financial institutions could be different, it can be more detailed than sharia supervisory board. Based on the results of the output can be known from the community should be obvious to the user, the recipient of financing or bank perspective. (Person3, 2017).

In practice Supply side (a financial institution as a financing provider) becomes unattractive because it is purely social *qard al-hasan* or in other words, when someone gets a hundred loans, the amount of borrowed must be returned. It could even be a burden on the supply side because it needs more effort as must their risk management for all the expenses. Demand side then become unattractive because of lack of socialization or less interesting to know the supply side and does not provide facilities that it should. (Person3, 2017)

According to El-Islamy (2017) do not agree on the use of financing *qard al-hasan* as a personal loan, more details about the charge is a fee. For example, a customer submits a loan of one million, and he must return the amount borrowed and be charged a fee. When there are facilities for personal financing, despite being set in the system at the

internal bank, benefit in *qard al-hasan* was allowed as long as there is no charge in fee because it could say "*backdoor to Riba*".



Source: Based on Interview (Person2, 2017)

### FIGURE 4.3

Cycle About Concerning *Qard Al-Hasan* As Personal Loan.

Administration fee is a fund that should be released or charged by customers when applying for financing *qard al-hasan*. This fact did occur in practice on the supply side. The question arises as to the formulation of calculating the administration fee has been created by the financial institution. In the *fatwa's* there should be no linkage between the funds levied from *qard al-hasan* any outstanding or the amount of financing to the financing, if it was found as it could be categorized as usury. The establishment of technical procurement administration fee payment at the beginning or at the end of the agreement is an agreement between of supply and demand. (Person3, 2017)



In practice, Islamic banks and BMT has strategy respectively to the direction and purpose of the institution. Holding the mandate of stakeholders is a priority that is how to be able to seek profit as much as possible, or can be regarded as a commercial oriented. When Islamic financial institutions must be more than able to develop a commercial social oriented is oriented in a way one of them is giving *qard al-hasan*. There are facts that occurred in this application are *qard al-hasan* bail. There is no definite rule against this, even though the social fund should not be guaranteed. Many opinions will emerge this phenomenon which guarantees the necessary due to the social fund is prone to moral hazard, so to maintain the trust between the parties be given a loan with an agreement at the earliest.

## **2. Critics on Wadiah Yad dhamanah and Hibah Related to *Qard al-hasan* application.**

Wadiah Yad dhamanah means safe-keeping with guarantee. Wadiah Yad dhamanah deposit (WAD) depositors allow the bank to invest their money in return for deposit protection. But the bank has no legal obligation to pay depositors a fixed return, and may do so only on voluntary ground. In the manner, the bank holds prerogative on profit distribution policy in the form of gifts (*hibah*). As non-contractual monetary return, *hibah* is necessary to motivate people to place their savings in islamic banks. Otherwise they will lose clients to banks that pay interest (Rosly, 2008).

Islamic bank cannot promise to give depositors a fixed contractual income, as doing so run against the principle of *wadiah yad dhamanah* itself. If a bank wishes to give away *hibah*, it must be done on free choice when they find it fitting to do so, especially when business is bullish. Making *hibah* compulsory on *wadiah yad dhmanah* deposits violets the basis principles of *wadiah yad dhamanah* (Rosly, 2008).

No contractual benefit to the lender (Concept Paper: Qard, 2016):

- a. The *qard* contract must not result in any form of contractual benefit to the lender merely for lending money. This includes:
  - b. Execution of contracts for sale of assets conditional on the purchaser borrowing money from the seller;
  - c. Pre-agreed periodic rebate (*ibra'*) to the purchaser on the instalment of a deferred selling price which is linked to the *qard* contract from the purchaser to the seller;
  - d. Any form of incentives promised to a lender to enter into a *qard* contract; or
  - e. *Hibah* given by the borrower to the lender in the form of cash, in kind or benefit that is conditional to the *qard* contract.

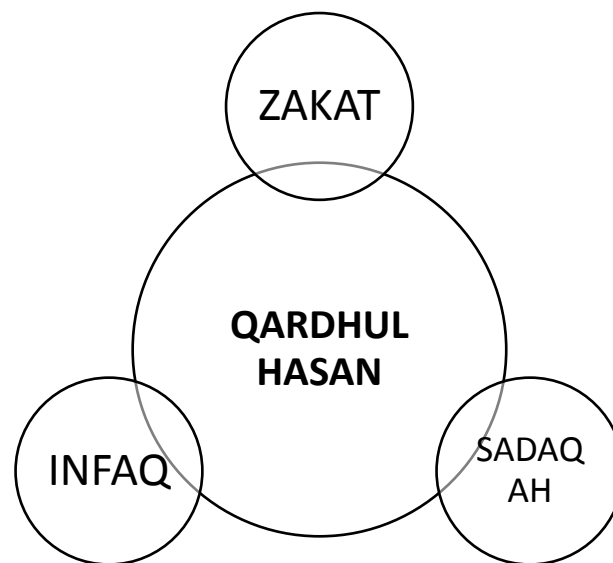
Prohibition of granting *hibah* in *qard* contract:

- a. The borrower under a *qard* contract must not give *hibah* to a lender, in the form of cash, in kind or benefit that is conditional to the *qard* contract.
- b. The granting of *hibah* by the borrower to the lender is only allowed when it is solely based on the borrower's discretion.
- c. The borrower must not disclose, promote or market the indicative rate or prospective payment of *hibah*.
- d. The borrower must not use historical information on the payment of *hibah* to promote or market *qard*.
- e. Borrower may disclose historical information on the payment of *hibah* for purpose of market transparency.

#### **D. The Application in Bmt Amanah**

In this sub-chapters will explain BMT managing funds Baitul Mal especially *qard al-hasan* funds for financing. This research was conducted in BMT Amanah. Some of the data presented in this case is more qualitative because some quantitative data is not given by the BMT. Sources of funds from BMT Amanah mal firstly comes from zakat 2.5%. The second infaq and *sadaqah* which has no a limit to collect. It is also through the box infaq deployed strategic place, which will enter the infaq funds. Third wakaf fund that has been certified by the Indonesian Wakaf Institution (BWI). Wakaf which has two type, namely cash wakaf and the wakaf through money as planned program for the purchase of ambulance (Person4, 2017).

BMT Amanah for association funds have a target in order to have a more maximal performance. Target determined through plans that will be determined later. The selection of the fund mal adjusted to the ability to speculation. BMT Amanah continuously improve performance and innovation in order to develop baitul mal.

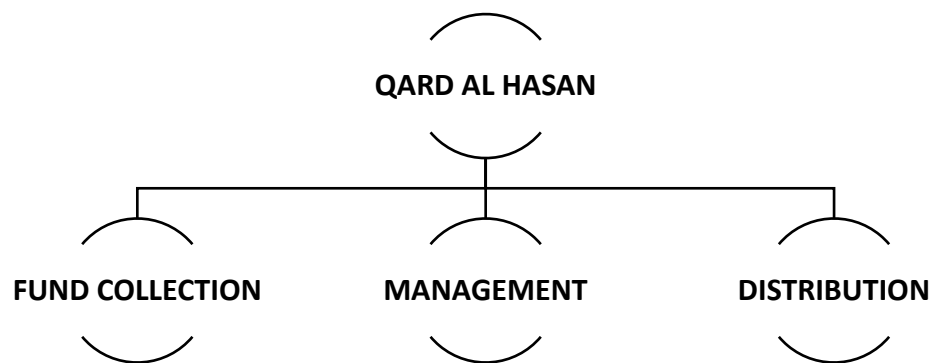


Source: (Person4, 2017)

**FIGURE 4.4**  
Source of Funding Related to *Qard Al-Hasan*.

ZISWAF fund management is with arrange programs and cooperate through proposal submitted to the BMT Amanah. There are essentially two programs on eid ul-fitr and qurbani eid. On Eid ul-fitr BMT Amanah gives stocking Eid package in the form of groceries. Besides, there are other programs such as compensation orphanages and disaster relief. If there is a need of emergency funds that can be used from ZIS, for zakat funds only for the eight *hasnaf*. To provide assistance of the BMT will do the

coordination with the village representation, social institutions, or agencies that already deal with disasters particularly to complement the needs that have not been available with in times of disaster (Person4, 2017).



Source: Based on interview (Person4, 2017)

**FIGURE 4.5**  
Qard al hasan Application in BMT

On particular Mal distribution *qard al-hasan* fund, BMT Amanah firstly will conduct a survey to prospective beneficiaries. *Qard al-hasan* is benevolent loans without any additional charge. Although the BMT feel that the money should be returned if it could, because it is not money but the money ZISWAF institutions. Granting a period of time given to borrowers with the holding of the deal at the beginning, so it will be easier for the BMT for monitoring or remind. If there are borrowers who can or return policy liabilities will be carried out write-off that already clarified as *gharim* (not capable to pay debt). The main objective of giving *qard al-hasan* BMT Amanah is to help the community and not to incriminate (Person4, 2017).

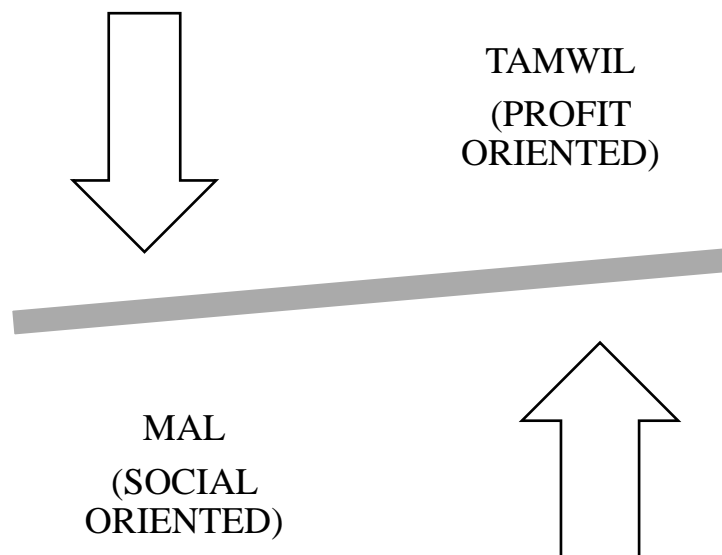
**TABLE 4.1**  
DATA OF *QARD AL-HASAN* DISTRIBUTION

<b>Year</b>	<b>Receiver</b>	<b>Necessity</b>	<b>Amount Received</b>	<b>Amount Refunded</b>
2016	Ikatan Pelajar Muhammadiyah Purwokerto	Cadre's recruitment	Rp.5.000.000	Rp. 5,000,000 + Rp. 250,000 (INFAQ)
2016	Sudarso	Education	Rp. 500,000	WRITE-OFF

Source: BMT Amanah

The importance of education and socialization perceived necessary to provide insight to the community about the products BMT especially *qard al-hasan* as benevolent loans (Person4, 2017). In practice BMT Amanah to provide socialization not focus specifically on *qard al-hasan*, Because the focus for now is on compensation. The reason the base has to be considered to take the next step. It can be seen from the people who belonged not be able to, when given the venture capital could not refund or to be developed this to be a chore for the lender. BMT Amanah has conducted programs that empower home industry for a plate of stick. Obstacles that occur in the field is of the 30 participants who attended training only 5 people. With the problems that the collector of funds mal BMT Amanah has to drive *qard al-hasan* opinion on community empowerment. Thought is meant when helping small merchants in need of capital to *qard al-hasan*. The results of

this thinking when traders that own a large business and can return the loan, the loan will be played back as *qard al-hasan*.



Source: Based on interview (Person4, 2017)

**FIGURE 4.6**  
The Fact About Orientation In BMT Product

Facts on the field of unbalance between tamwil and mal in most BMT caused by the initial formation of BMT more focus to tamwil or commercial oriented. It also happened to BMT Amanah, and the need to attenuate the gap between tamwil and mal. The way to do is to increase public confidence through the program and of internal BMT (Person4, 2017). As an example of community empowerment programs that have applied in the area of Bogor, namely the group lending models. Later the members of this group will be able to contribute to *infaq* and *sadaqah* which is may to be channeled through BMT (Person3, 2017).

## E. The Engagement Solutions

### 1. Education for *Qard Al-Hasan* Application.

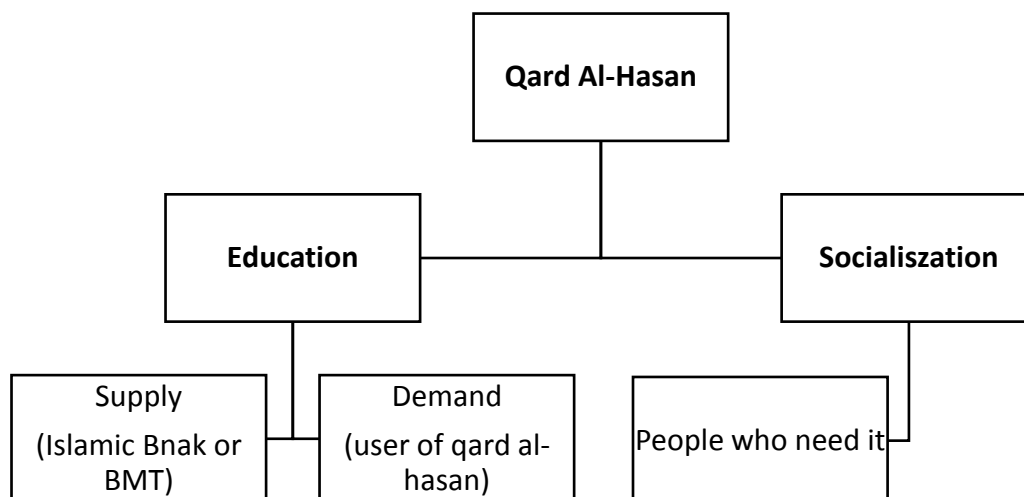
In the fact that not all Islamic majority are actually conventional banker. Very view people who are Islamic banks and the rest they have professional banker then now there are now in Islamic bank Reviews their mindset very much commercially oriented. The second challenge is on the part of people who received *qard al-hasan*. The case it should be the same as previous problem that the people who receive *qard al-hasan* also they should have the right mindset. What is the right mindset is “*I do not want to get something with free*” It is related to supply and demand, supplier of *qard al-hasan* wanting to give free but the demander of *qard al-hasan* do not want to take it free. This is the mindset that will work if there is *qard al-hasan* to offer. For example, if you have the mindset of the person giving the *qard al-hasan* very relucted he want the money but I give it or if force to give it, so the people who received always want to get free (Person1, 2017).

According the interview with Person 1 (2017) for several problems of *qard al-hasan* application:

*“Being academic, be educated. We must make sure education for banker, client about this idea of there are responsibility or obligation or maybe rule you may have the rule of regulation for example certain cases of qard al-hasan, give incentive for people actually give him qard al-hasan, or maybe I help you and you help somebody else. So, this is very interesting you may find out about practice about this give. I don’t see anything problems, why this is important? That you teach people even if im poor I get qard al-hasan I can still help them. So, I don’t have to give back principle amount*



*to the bank without any charge, but I help somebody else. so, this is important value that establishment people.”*



Source: Based on Interview Person 1 (2017) and Person 3 (2017)

**FIGURE 4.7**  
Maximizing Qard Al-Hasan Contract in Indonesia

## 2. *Sadaqah* Instead of *Hibah*

*Hibah* is a gift from one person to another person without consideration. The practice of *hibah* is encouraged in Islam. In the context of Islamic wealth management, *hibah* is one of the instrument instead of *faraid*, *wasiat*, *waqf*, *zakat* and others. *Hibah* is giving during the lifetime of donor to whoever he wants even for the person that have no family relations with him (Nadzirah Mohd Said, 2016). *Hibah* comes from an Arabic term “*wahaba*” which means giving without consideration. In the context of Islamic wealth management planning, *hibah* is a giving to someone else during the life tie of donor. The scope

of property given in *hibah* in this study including vehicles and buildings such as land and house.

*Hibah*, gift and *sadaqah* are different even their definitions are almost same. The difference is in terms of the objective of giving. When someone give something to someone else because of appreciation and affection, it is a gift while if he gave something to get reward from Allah, itss called *sadaqah* (Zuhaili, 1999). As a conclusion, every gift and *sadaqah* is a *hibah* but not all *hibah* are gifts and *sadaqah* (Muda, 2008)

*Hibah* giving has been executed since the days of Prophet Muhammad and he himself gave and received *hibah* (Zuhaili, 1999). In Malaysia, in the context of *hibah* as estate planning, the Muslims have long practiced *hibah* but mostly verbally without any document (Muhammad, 2011). *Hibah* given to a family member such as parents to their children, husbands to wives and grandparents to grandchildren.

Islamic Loans can also create an additional increase. Here, it is the debtor who sets the increase, not the creditor. Moreover, the increment is not contractually fixed, and declared only when the loan matures. If a debtor could not pay the loan due to, say, disability, the creditor is enjoined by the Quran to write off the debt. This is *sadaqah* (Rosly, 2008). *Qard al-hasan* is therefore a charity or *sadaqah*. It is because firstly, *qard al-hasan* does not require interest payments, and secondly, if the debtor cannot pay, the lender is enjoined to cancel the debt. Obviously, bot represent acts of benevolence.

*Qard al-hasan* is an optional *sadaqah* which also includes ‘*ariyah*, *hibat*, *waqf*, etc. *Riba*, therefore, is different from *sadaqah* because in the forme, the borrower will be legally obligated to pay interest as well as principals loan (Rosly, 2008). In view of the nature of *qard al-hasan*, such Islamic loans may not find relevant applications in business or consumer financing. It is only useful in meeting personal needs where profits are not the dominating factor in determining lending decisions. This is why the Quran looks to trading and commerce (*al-bay*), rather than *sadaqah* as an alternative to interest-bearing instruments such as bank loans, private debt securities, government bonds, and other fixed income securities.

#### **F. The Continuance of Qardhul Hasan**

Prospects *qard al-hasan* has its own place later on, but when it is not shared by replacing stigma and mindset banker and the client will be the same or smaller growth figures. If *qard al-hasan* want to penetrate into bigger role it should be changing the mindset and government can promote it to the next level. The indicator of successful *qard al-hasan* is the banker should be as Also advisor or the bank cannot give the *qard al-hasan*. Thus, can come from social organizations that receive funds from the bank, on hence not just Islamic or BMT affords *qard al-hasan*. (Person1, 2017)

From practices that had been conducted which has been running, in BMT across Indonesia are already being developed. Even with a small budget it has a meaning role of funding the mal to be developed as

well. Prospects *qard al-hasan* directly proportional to the availability of social funds. Thus, when treasury perform well then it should *qard al-hasan* be one way to empower people. (Person3, 2017)

With the start of the seriousness of the supplier *qard al-hasan* can make the product as a product of social funds very marginally useful for people in need. In addition to answering questions on issues related to shortcomings inherent in the application of this product is expected to be immediately enhanced by the parties involved. It takes a long period of time in order to build *qard al-hasan* be the perfect social fund products, by looking through the factors related. Being part of a social personal loan is the main thing in the application of these products, but does not rule out the possibility that this product could be formed in such a way to reach people who need the maximal and evenly.

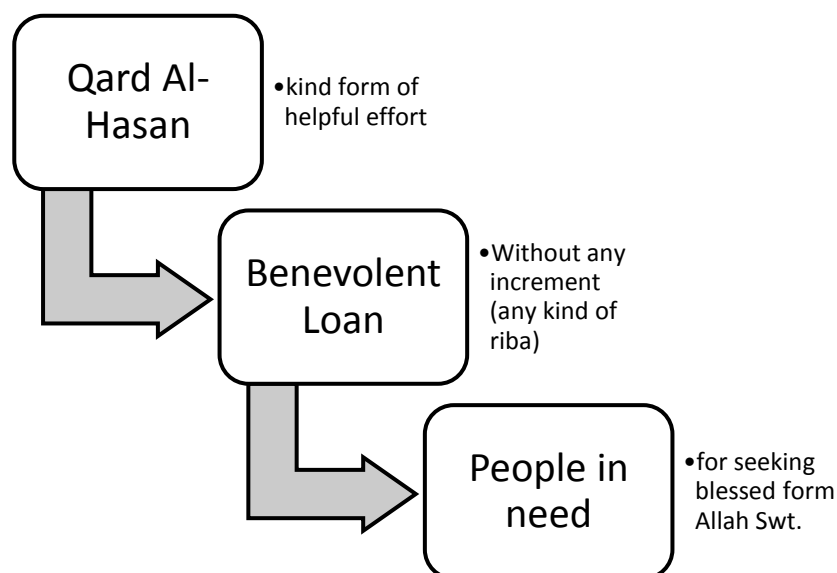
## **G. Concept Qard Al-Hasan Developed by Author**

### **1. Timeline of Qard Al-Hasan.**

#### **a. The Past.**

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). Scholars have many thought about *qard al-hasan*, beside it can

derived as simply as Benevolent loan or loan without any kind of increment (*riba*).



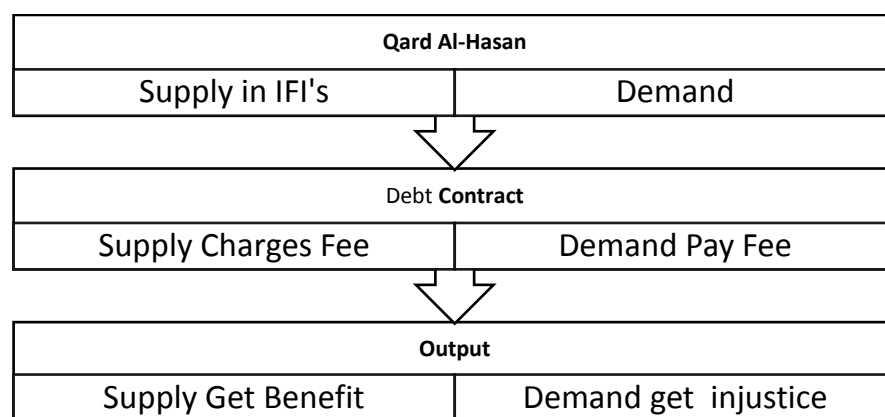
Source: Based On Author Analysis

**Figure 4.8**  
Qard Al-Hasan in the past

#### **b. The Present.**

The current condition of *qard al-hasan* was applicable in any kind of Islamic Financial Institution (IFI). In Indonesia, mostly applied in Islamic bank such as: CIMB Syariah, BRI Syariah, BNI Syariah, Mandiri Syariah and etc. in microfinance sector applied in several Baitul Mal Wa Tamwil (BMT) in Indonesia. This contract is mainly help people in need, it is because can help to fulfil basic necessities or to be capital for Small Medium Enterprise (SME).

There is a lot of critics of the application *qard al-hasan* in IFI's. in addition to get any kind of benefit sometimes supplier create system that can be said as the way to get benefit in social contract. Beside it can head for to interest (riba) that actually forbidden by Allah SWT and his follower. This situation is very intruded, because there is people in need that does not know about application of *qard al-hasan* in right way.



Source: *Based on Author Analysis*

#### **FIGURE 4.9**

Flow Chart of “deviation” *qard al-hasan*

*“the possibility that may happen to qard al hasan application based on supply and demand side. In this flow chart divided into three part are: the subject (supply and demand), debt contract (qard al hasan), and the output”*

#### **c. The Future.**

Based on author analysis *qard al-hasan* will be growing fast, this because of there are IFS that had been implemented *qard al-hasan* as social product. Accompanying with DSN regulation *qard al-hasan* is already insight of government thus, it will become more

saver to both supplier and demander. Based on the result of interview with Person 1 about the future of *qard al-hasan*:

*“im sure there is a role to play. But I think if you don’t change the mindset for the banker and client I think it will be continue to be like now which is small percentage. If you want play a bigger role I think you must change the mindset and government can promote qardhul hasan. You must make sure the qard al-hasanis successful it means you have to not just to be a banker you may also to be advisor, or this sometime bank don’t want to do. Islamic bank our function to give financing or you should more than this. Or maybe qard al-hasan just not come from bank maybe from social organization. How come from its money? So maybe the bank make money gives the money to social organization.”*

## **2. Analysis with Theory of Constructive.**

Qualitative research explored in subjective, Because the data from this study was taken from the social reality of the community. In the case of *qard al-hasan* in issue. Ever-changing social reality, this is what will be the approach used author is phenomenology. In fact, the application of *qard al-hasan* in Indonesia could suffer a shift negatively or positively. For this negative situation, can be detrimental to the demand, because the supplier to take advantage intentionally formed with the goal should not be. For the plus side is *qard al-hasan* will be formed in various ways but should not be out of the understanding that the loan originally without the benefit or profit,

The analysis will be carried out by the author will use the three stages namely externalization, objective, and Internalization derived from constructive theory of Peter L. Berger and Thomas Luckmann (2013)

**a. Externalization.**

*Sufyan* narrated from *Abu Hayan*. And *Zaid bin Aslam* said he was *nafqah* for families. Al Hasan: worship circumcision, and some say he's real *dalah* good deeds. Al Qusyairy said: "what is meant by *qardhan hasanan* someone who do *sadaqah* with the right intention, the soul is clean, and the only hope blessed Allah of *sadaqah* he spends, not accompanied by a feeling of *riya* and *sum'ah* (seek fame and reputation) and only from lawful property. And the other meaning of Al *qardhul\_hasan* is not intended to remove or *sadaqah* of bad-bad and the ugly (Qurtubi).

*"Who is it that would loan Allah a goodly loan so He will multiply it for him and he will have a noble reward?"* (Al-Hadid: 11)

Very clearly said in the Qur'an *qard al-hasan* basically is help in the form of loans virtue. Thus, in a real sense in this contract. According to the Koran, hadith, ijma, and Muslims genesis is a textual approach, which is to interpret the verses of Allah. In order to make it more easily understood. In this sense step of *qard al-hasan* still have the same meaning as contained in the Qur'an. then the result of translating the Qur'an was done by Islamic thinkers or people in ancient times is that you have enough knowledge and more knowledge, recognized by the



general public. In practice, this idea of the books interpretation that will be understood by the majority of the group, and can spread it called textual understanding.

**b. Objective.**

After the externalization stage, knowledge *qard al-hasan* will that has spread to become a social reality in the society. With the development of the times, *qard al-hasan* be a form of social fund products that have been applied in IFI certain countries (mostly Muslim majority country). Social reality that has happened on this product then occurs and cannot be controlled to always be guided by the textual understanding of the past. Then there are deviations in the form of technical or system in practice. Understanding about *qard al-hasan* then be in the form of a product that could be detrimental to users. With the initial understanding where *qard al-hasan* only as a purely benevolent loan without any benefit oriented from the supplier. But at this moment might have caused changes in the understanding and practice of *qard al-hasan*.

Based on an interview with Person 2 about the practice *qard al-hasan* in Malaysia:

*"The problem is that we use the concept of qard al-hasan but in Malaysia told you in the form of wadiah deposit but did in fact we did not make any promises about the return of no return yes, indeed qard al-hasan just are taking shape wadiah yadammanah with saving so though it qard al-hasan loaned by us but we are given things to invest but*

*Because the core origin wadiah was entrusted ya cannot be discharged when we give it only saving, save the account, usually one does give no return or profit, Because if you want wadiah yes wadiah not to be named wadiah but make but create expectations still wadiah although you should give a return to my (lenders) are definitely commercially qardhul use existing hasan is not a form we give a loan but in the form of society Because we take the name of commercial banks would want to loan back. "*

For such problems then Person 2 provide solutions in the form of real tawaruq in Indonesia itself has not been able to put in place regarding the problem permission of the relevant parties. But he thinks if we use less evil tawaruq will be better than *qard al-hasan* contained that may benefit or usury (*riba*). Then understanding about *qard al-hasan* up to understanding the substance and also has a bright future as a loan product that really helps people. The author provides a statement that the use of *qard al-hasan* is indeed possible irregularities could occur, even with the use of the name of the same contract but in practice there are things forbidden by Allah SWT.

**c. Internalization.**

Internalization stage in the development process from the objective named negotiate stages, where the stages will become understanding results in advance of the contract's *qard al-hasan*. At this stage, the notion that *qard al-hasan* have used IFI may occur two possibilities, the first use of *qard al-hasan* is in conformity with the provisions of the initial and second, there

can be deviations in practice. When a deviation occurs is a function analysis by the authors to restore the public's understanding of the origin of *qard al-hasan later*.

Author has the criticism that will help the user application and *qard al-hasan* contract that will not be a total in irregularities.

First, you should use *qard al-hasan* contract must have a rationale and understanding that this highly pure contract in which the development policy loan without any benefit, because this contract has the purpose to help people who have difficulty with without giving him another load.

Second, related regulators should be able to provide education to the supply and demand in order to use *qard al-hasan* according to first principles, namely lending policies, the supply side should be able to provide assistance that is very quick without is hoping reward or benefit, while for the demand to be vanished stigma free money to be able to do reverse the debt to suppliers.

Third, the author believed that if *qard al-hasan* does not run along the regulators will be not be developed, sanctions and penalties to those who try to make *qard al-hasan* into loans containing benefit or usury (*riba*).

### **3. Final Concept *Qard Al-Hasan*.**

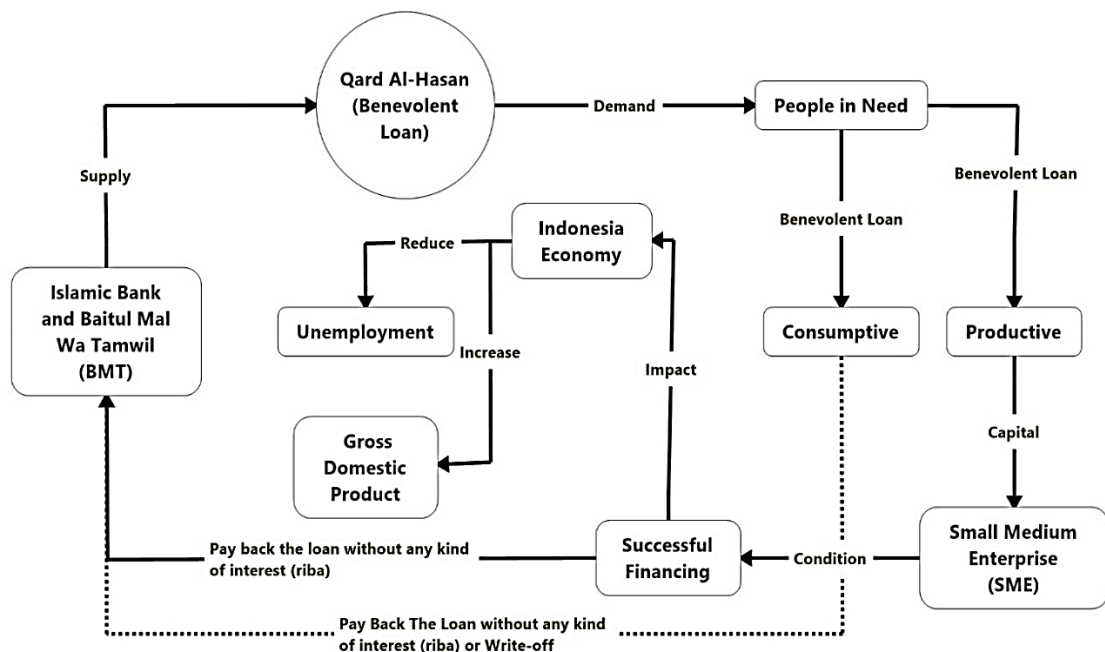
*Qard al-hasan* could be an answer to the needs of the community about the social fund. Later *qard al-hasan* has not only become a loan

product, but it can become a productive social product. Community needs to continue to increase along with increasing consumption. For the author of *al-hasan qard* importance not only as a loan product, recalled the impact can affect the economy. Although in practice the Islamic bank or BMT only provide relatively small fund for such help, but still give meaning to those who receive these products. As an example of someone who applied to be the capital as Small medium enterprise (SME), this can make productive loans and can provide a positive impact for the people themselves, the lender, as well as to the surrounding environment. When a loan *qard al-hasan* as a form of loan capital and work, when it also will fund *qard al-hasan* can rotate back into good loans for the needy.

In general, SMEs in the national economy has a role: (1) a leading role in economic activity, (2) the provider largest employer, (3) a significant player in the development of the local economy and community empowerment, (4) the creators of new markets and sources of innovation, and (5) contribution to the balance of payments. Therefore, empowerment must be done in a structured and sustainable, with the direction of increasing productivity and competitiveness, and fostering new entrepreneur formidable (Zuhal, 2010).

One of the benefits of SMEs is, sometimes she is very agile for opportunities to innovate to implement new technologies than large companies that have been established. Not surprisingly in this era of

global competition today many large companies that rely on small and medium suppliers. Surely this is an opportunity for us to also engaged in the global era at the same time moving the real economic sector In the book Economic Development Todaro in (Zuhal, 2010) suggests that the success of the economic development of post-crisis Indonesia relies heavily on the ability to realize the "development that is really oriented to the people" , SMEs or cooperatives selected as the representation of the people's economy because in addition to absorbing a workforce of approximately 90 percent, as well as purchase value-added about 56 percent where the agricultural sector plays an important role is very large (about 70 percent).



Source: Developed by Author

**FIGURE 4.10**  
Concept of Qard Al-Hasan Toward Economy

*“This flow chart is to explain about the impact of qard al hasan contract toward economy. Firstly, people in need divided into two kind of necessities that are productive and consumptive. In consumptive, the chart will end until people use it, but for productive it will continue to be capital to start business. Although the outcome is minor but it significantly influences GDP in positive input. In despite of this argument still need to be prove by following research, the author believe that the result is not swerve away”.*

#### **4. Qard Al-Hasan Concept and application**