

Debates in Modern Economic Transactions: Assessing the Gopay Contract in the Perspective of Indonesian Ulama

Khadijatul Musanna and Ali Sodiqin

Sunan Kalijaga State Islamic University, Yogyakarta

Email: *khadijatulmusanna2000@gmail.com*

Abstract: This article examines the debates of Indonesian scholars regarding the Gopay contract and the law of its transactions. This article attempts to answer two questions: why do the scholars have different opinions about the Gopay contract?, and what are the legal consequences of these different opinions? Using a normative approach and Sharia contract theory, the following conclusions are obtained: first, scholars differ in opinion regarding the contract used in Gopay. The Fatwa Council of Al-Irsyad and Erwandi Tarmizi believe that the contract in Gopay is a *qardh* contract or debt. So, making transactions with the Gopay application is unlawful because it contains elements of usury (*riba*), namely discounts given by Gojek to customers. Muhammadiyah believe that Gopay transaction could be categorized as *ijarah maushufah fi dzimmah* scheme. So, making transaction with it is permissible as for other marketing. Meanwhile, Nahdlatul Ulama and DSN-MUI scholars believe that the Gopay contract as a *wadi'ah* (safekeeping) contract. So, making transactions with the Gopay application is permissible because the discount given by Gojek to customers or consumers is just a gift or bonus and does not include usury. This article shows that scholars differ in assessing and determining the type of contract in the Gopay application. In this case, there are three schemes that appear in the assessment of scholars regarding contracts in Gopay, namely *qardh*, *wadi'ah*, and *ijarah maushufah fi dzimmah*.

Keywords: *Gopay contract; qardh; wadi'ah; usury; gifts; shari'a contract*

Abstrak: Artikel ini mengkaji perdebatan para ulama Indonesia terkait akad Gopay dan hukum bertransaksi dengannya. Ada dua pertanyaan yang hendak dijawab dalam artikel ini: mengapa para ulama berbeda pendapat tentang akad dalam Gopay?, dan apa konsekuensi hukum dari perbedaan pendapat tersebut? Menggunakan pendekatan normatif dan teori perjanjian syari'ah diperoleh simpulan sebagai berikut: *pertama*, terjadi perbedaan pendapat di kalangan para ulama terkait akad yang digunakan dalam Gopay. Dewan Fatwa Al-Irsyad dan Erwandi Tarmizi berpendapat bahwa akad dalam Gopay adalah akad *qardh* atau hutang piutang, sehingga melakukan transaksi dengan aplikasi Gopay adalah haram karena di dalamnya mengandung unsur *riba*, yakni adanya diskon

yang diberikan oleh pihak Gojek kepada pelanggan atau konsumen. Muhammadiyah menyatakan bahwa Gopay merupakan skema *ijarah maushufah fi dzimmah*, sehingga transaksinya diperbolehkan sebagaimana transaksi muamalah lain dalam perdagangan. Sementara para ulama dari kalangan Nahdlatul Ulama dan DSN-MUI memandang bahwa akad Gopay adalah akad *wadi'ah* (penitipan). Oleh sebab itu, melakukan transaksi dengan aplikasi Gopay adalah boleh karena diskon yang diberikan pihak Gojek kepada para pelanggan atau konsumen hanyalah sebuah hadiah atau bonus semata dan hal itu tidak termasuk riba. Artikel ini menunjukkan bahwa para ulama berbeda pendapat dalam menilai dan menentukan jenis akad dalam aplikasi Gopay. Dalam hal ini, ada tiga skema yang muncul dalam penilaian para ulama terkait akad dalam Gopay, yaitu *qardh*, *wadi'ah*, dan *ijarah maushufah fi dzimmah*.

Kata Kunci : *akad Gopay; qardh; wadi'ah; riba; hadiah; perjanjian syariah*

Introduction

Gopay is a virtual wallet contained in the Gojek application. It is used to store Gojek credit as a medium of exchange for Gojek service transactions.¹ The Gojek application is a non-cash payment model that has been in effect in Indonesia since Bank Indonesia issued regulations permitting electronic money through Bank Indonesia Regulation Number 11/12/PBI/2009.² Based on the BI Regulation, Gopay is a legal means of payment in Indonesia. This was also corroborated by the DSN MUI Fatwa No. 116 of 2017 concerning Sharia Electronic Money.³

Gopay is electronic cash with an application-based type of *software-based product*.⁴ Electronic cash is non-physical or non-cash

¹Erwandi Tarmizi, *Harta Haram Muamalat Kontemporer*, 22nd printing (Bogor: PT Berkat Mulia Insani, 2019), p. 286.

²Bank Indonesia Regulation Number 11/12/PBI/2009 concerning Elektronik Money.

³The DSN-MUI stipulates a fatwa on the legitimacy of electronic money as a means of payment with a number of conditions, namely: (1) published based on the nominal amount of money deposited in advance to the issuer; (2) the nominal amount of money stored electronically in registered media; (3) the nominal amount of electronic money managed by the issuer is not a deposit as referred to in the banking law; and (4) used as a means of payment to merchants who are open to issuers of electronic money. See Fatwa of the National Sharia Council-Indonesian Ulama Council, No: 116/DSN-MUI/IX/2017 concerning Sharia Electronic Money.

⁴This electronic money value is the money value that is stored electronically on a media that can be transferred for the purposes of payment transactions and/or fund transfers. The value of electronic money can be obtained from the process of

money that is used for payment transactions and/or fund transfers. This electronic money value is sometimes called money value, which stored electronically on transferable media. The process of exchanging cash for money held digitally can be used to determine the value of electronic money, just as the Gojek application can store its customer balances in Gopay. Gopay is a new payment system in Indonesia and continues to grow along with the development of technology in the electronics field; and it has become the Indonesian people's choice. The form of Gopay electronic currency is based on digitalization of *based software-based* products. Gopay is a new payment system in Indonesia, where the most prominent Muslim community is in this country. Gopay continues to grow over time and is the choice of the Indonesian people. This phenomenon motivate the authors to conduct the study related to the Gopay contract based on a sharia agreement.

Regarding the gopay contract, scholars have different views. Erwandi Tarmizi believes that the Gopay contract is a *qardh* contract, namely a debt settlement transaction.⁵ The Al-Irsyad Fatwa Council stated that the Gopay contract is in the *qardh* (debt-receivable) contract category.⁶ Muhammadiyah believe that Gopay contract could be categorized as *ijārah maushūfah fi dżimmah* contract. As for Nahdlatul Ulama and the MUI National Sharia Council consider the contract used in Gopay is a *wadi'ah* contract.⁷

This difference of opinion among scholars regarding the contract in Gopay makes this issue interesting for further study. This

exchanging cash for electronic money stored in a digital application system, just like the Gojek application which can store its customer balances in Gopay.

⁵Erwandi Tarmizi, *Harta Haram*, p. 287. This contract is referred to as a *qardh* contract because in this transaction the money kept as a loan (debt) is then taken and used by the owner. In practice, Gojek application users (customers) will send money to Gojek (Top-Up), and after that Gojek will deposit these funds at BI (Bank Indonesia). See Huwaydi Y, Hakim dan Persada, S.F. "Analisis Deskriptif Pengguna Gopay di Surabaya" *Jurnal Teknik ITS*, 7, no. 1, (2018), p. 58.

⁶Dewan Fatwa Perhimpunan Al-Irsyad No: 005/DFPA/VI/1439 tentang Haramnya Diskon yang Didapatkan dari Go-Pay dan Layanan yang sejenis.

⁷See Nahdatul Ulama Indoensia, *Tanya Jawab Online*, www.nuonline.com. Accessed on 24 April 2022. Fatwa of the National Sharia Council No. 116 of 2017 concerning Electronic Money. See also Mohamd Anton Athoillah, Mohd Roslan Mohd Nor, Heri Khoiruddin, Rohimin, "The Historicity of The Economic Verses on Fatwa of DSN-MUI about Sharia Electronic Money," *Jurnal Ilmiah Peuradeun* 8, no. 1 (2021), p. 10.

article try to answer two questions: *first*, why do the scholars have different opinions about the contract in Gopay?, and *second*, what are the legal consequences of these differences of opinion? Thus, this article wants to examine and explain the basis and arguments of the scholars in establishing contracts in Gopay and, at the same time, explain the consequences of these differences of opinion concerning the law of making transactions using the Gopay application.

Several scholars have conducted the study on the Gopay problem from various angles, but no studies have been found that focus on the Gopay contract itself. Several scholars look Gopay from the perspective of its application in Indonesia. Also, its influence on economic transactions, such as studies conducted by Devi Maida Sari,⁸ Ani Rakhmanita,⁹ and Huwaydi Y.¹⁰ Other scholars examine Gopay from the perspective of the contracts and transactions used, as shown by Indah Khorotun Nisa and Sulham Karim Made Aming. Indah Khorotun Nisa, in her research, focuses more on examining the practice of online buying and selling contracts at Gofood from the perspective of Sharia economic law and only slightly mentions the contract law that applies to Gopay.¹¹ While Sulham Karim Made Aming, in his study, entitled *Go-Pay Transactions at Indonesian Go-Jek Companies Makassar Branch in the Perspective of Islamic Law*, discussed the Top-up system on Gopay. According to him, an *al-sarf* contract and an *al-ijarah* contract coincide in the Top-Up process. It is called an *as-sarf* contract (exchange contract) because there is an exchange transaction in the Gopay system where consumers hand over funds in cash and then exchange them for electronic money.

⁸Devi Maida Sari, "Pengaruh Transaksi Pembayaran Go-Pay terhadap Minat Beli Masyarakat di Kecamatan Medan Tembung", *Skripsi*, Universitas Sumatera Utara (2021).

⁹Ani Rakhmanita, Dampak Transaksi pembayaran Go-Pay bagi Peningkatan Penjualan Pedagang Kecil Menengah di Pasar Moderen BSD, *Jurnal Sekretari dan Manajemen*, 4, no. 2 (2020).

¹⁰Huwaydi Y, "Analisis Deskriptif Pengguna Gopay di Surabaya", *Jurnal Teknik ITS* 7, no. 1 (2018).

¹¹Indah Khorotun Nisa, "Analisis Praktik Akad Jual Beli Online ada Gofood Menurut Hukum Ekonomi Syariah", *Universitas Islam Negeri Walisong* (2018).

Meanwhile, it is called the *al-ijārah* contract because what is purchased on the Gojek application is a driver service with payment via Gopay.¹²

This article examines the differences of opinion among scholars regarding the Gopay contract and its legal consequences. The data in this article are based on primary and secondary data. The preliminary data in this article is in the form of legal fatwas from the organization or fatwa institutions of Al-Irsyad, Nahdlatul Ulama, Muhammadiyah, and the Syari'ah Council of the Indonesian Ulema Council. Apart from that, the book of *Harta Haram* by Erwandi Tarmizi, which contains his opinion about the contract in Gopay, is also one of the primary data in this article. There is also secondary data in the form of works in the field of fiqh and principle of Islamic jurisprudence related to the topic of this study. The data is then presented and analyzed in three stages: data reduction, presentation, and conclusion.

Gopay Practice Services in the Gojek Application

Gopay was created by PT. Dompot Anak Nasional, and is the result of PT. Dompot Anak Nasional local innovation. This company business creates the technologies of multi-service platforms and on-demand digital payment. Gopay is a payment platform provided for Gojek application users. A call center called Gojek was first established in Indonesia in 2010 to connect customers with courier delivery services.¹³ Gojek is also the country's first unicorn business operating in Indonesia, Vietnam, Singapore, Thailand, and the Philippines.¹⁴

In October 2017, Gopay transactions, the fourth largest e-wallet service in Indonesia, contributed for 30% of all e-money transactions in the country. In the same year, the Gopay service was licensed by the central bank to use QR Code scanning as a payment method. This is a form of Bank Indonesia's acknowledgment of Gopay

¹²Sulham Karim Made Aming, "Transaksi Go-Pay pada Perusahaan Go-Jek Indonesia Cabang Makassar Dalam Perspektif Hukum Islam", *Jurnal Al Mizan*, 17 no. 1 (2021).

¹³Official Gojek Website, "Tentang kami Gojek," in www.Gojekindonesia.com, accessed on 24 April 2022.

¹⁴Adnan Fauzi Suwardana, "Analisis Faktor-Faktor Yang Mempengaruhi Penguunaan Layanan Gopay (Mobile Payment) Pada Pelanggan Gojek", *Jurnal Ilmiah Mahasiswa FEB* 8, no. 1 (2016), pp. 107–109.

as the most proactive fintech company in supporting the National Non-Cash Movement.¹⁵

Gopay has the same function as cash and can be used as a valid means of payment with the same value as the first cash deposit in the Gopay account.¹⁶ In addition, Gopay is also a payment transaction method, which connects consumers with drivers and business people for all services contained in the Gojek application.¹⁷ The services intended include:

1. Gojek, which is a land transportation service using motorbikes;
2. Gocar, which is a land transportation service using cars;
3. Gosend, which is a small-scale goods delivery service; and
4. Gofood, which is a food and beverage delivery service.¹⁸

Gopay is a virtual wallet in the Gojek application. Nonetheless, Gopay also works together as a digital payment system for other applications, including first, the Ruang Guru application, which is a startup company engaged in education; second, the Bilibli application which operates in the digital trade sector as a medium for buying and selling all kinds of products (Digital Mall);¹⁹ third, the Tiket.com application which runs in the field of ticketing services: airplane tickets, concert tickets, trains, hotel, apartment and villa bookings;²⁰ fourth, the Alodokter application which operates in the health sector;²¹ and fifth, the Chatime app, which is the world's largest teahouse franchise. In

¹⁵About Us Gojek, Official Gojek Indonesia Website, www.gojek.com. accessed on 23 April 2022.

¹⁶Muhyi HA Raharja Raharja &, "Payment as an Enabler for Business Opportunities: A Go-Pay Case Study," *Review of Integrative Business and Economics Research* 9, no. 9 (2020), p. 320.

¹⁷Darma GS & Danuarta GLN, "Determinants of Using Go-Pay and It's Impact on Net Benefit," *International Journal of Innovative Science and Research Technology*, 4, no. 11 (2019), p. 241.

¹⁸Tazkiyyaturrohman Rifqi, "Eksistensi Uang Elektronik Sebagai Alat Transaksi Keuangan Modern," *Jurnal Muslim Heritage*, 3, no. 1 (2018), p. 22.

¹⁹Online Mall Bilibli, in www.bilibli.com, accessed on 23 April 2022.

²⁰"Satu aplikasi Aplikasi untuk kebutuhan liburan," in www.tiket.com, accessed on 23 April 2022.

²¹"Tanya jawab kesehatan," in www.alodokter.com, accessed on 23 April 2022.

2006 this application opened its first store in Indonesia, and now the chatime can be ordered through the available application.²²

The Contract System between the Customer and the Gojek Company in the Gopay Contract

The form of contract of Gopay involves the Gojek Company (PT. Dompot Karya Anak Bangsa) and consumers. This form of contract is not written in the Gopay application, but every users has agreed that the balance stored is not in the form of a savings account.²³ Thus, there is no interest in it. This can be found on the official Gojek company page. Thus there is no special contract between Gopay users and Gopay companies. Only terms and conditions that guide all users, as written in the Gojek application.

The elements contained in Gopay are issued on the basis of the value of money that was first deposited to Gojek users. Then the e-money in Gopay will be managed by an entrusted fund issuers, such as banks.²⁴ The Bank Indonesia regulations also do not regulate the form of contract between the company and the user. It is similar to the fatwa of DSN MUI Number 116 of 2017 concerning electronic money.

Using Gopay means that consumers have entrusted their money and all personal data to PT. Dompot Anak Nasional.²⁵ The contractual agreement to use the Gojek application has been developed directly between the user and the Gojek company. The main points of the contract and requirements between users and business owners are as follows:²⁶

First, Gojek manages Gopay, which consists of deposits or balance top-ups; thus, the company can add and remove funds as desired. In this case, businesses will work hard to maintain Gojek's

²²Chatime Indonesia, in www.chatime.co.id, accessed on 23 April 2022.

²³Official Gojek Website, "Tentang kami Gojek," in www.Gojekindonesia.com, accessed on 24 April 2022.

²⁴Sukma Indra et al., "Transaksi E-Money Terhadap Layanan Gopay Pada Aplikasi Go-Jek Perspektif Ekonomi Syariah," n.d., p. 51.

²⁵Apriliani Dwi Gunadarma, "The Effect Of User Experience On Donation Interest Through The Digital Wallet Applications," *Journal of Islamic Economic and Finance Studies* 2, no. 1 (2021), p. 35.

²⁶Nuruni Ika Kustini, "ExsperiantialMarketing, Emotional Branding, and Brand Trust Their Effect On Honda Motorcycle Product", *Journal Of Economic, Business and Accountancy Ventura* 14, no. 1 (2011), p. 19–28.

reputation as a popular e-service. *Second*, the money that has gone through the Top-Up process will be stored in the Gojek application on the Gopay service. *Third*, the Gojek company reserves an electronic copy of the proof/payment slip between the user and the company on its server. Users can access these copies at any time through the Gojek Gopay service application. *Fourth*, the Gojek company has the right to change and update the transaction process on the Gojek application, including rewards, forms, discounts, service features, fees, and others. The Gojek company will also inform the public about changes that have occurred through electronic media and other channels.

People who use Gopay as a payment medium would enjoy various benefits and advantages, significantly the benefit of paying for all services contained in the Gojek application and other applications that are partner of Gopay in a non-cash manner.²⁷

Gopay Contractin the Debate of the Ulama

Gopay is a feature that facilitates transactions for users and contributes to the benefit of users.²⁸ In addition, it is also a non-cash payment method for drivers.²⁹ It is manifested in electronic money, which is currently quite popular in Indonesia, especially in the era of the industrial revolution 4.0.³⁰ In this case, the Gojek company must comply with all electronic money provisions in Bank Indonesia Regulation Number 26/PBI/2018 Chapter II Article 2, which regulates the requirements for administering electronic money.³¹

Scholars still differ on the law of using Gopay in economic and financial transactions. Some of them forbid it, while others allow it.

²⁷Alparisi A and Muamar, "Electronic Money (e-Money) in Maqashid al-Sharia Perspective," *Journal of Islamic Economics Lariba* 3, no. 2 (2017), p. 550.

²⁸Malthu Siroj, "Konsep Kemudahan Dalam Hukum Perspektif Al-Qur'an Dan Hadist," *Jurnal Studi Keislaman* 6, no. 2, (2019), p. 143.

²⁹Achmad Taufan dan Trino Yuwono, "Analysis of Factors That Affect Intention to Use E-Wallet through the Technology Acceptance Model Approach (Case Study: GO-PAY)," *International Journal of Science and Research (IJSR)* 8, no. 7 (2019), p. 413.

³⁰Zulfian DM, "Faktor-Faktor Yang Mempengaruhi Keputusan Berdonasi Secara Online Melalui Platform Financial Technology Crowdfunding", *Skripsi*, Universitas Islam Indonesia (2020), p. 42.

³¹Bank Indonesia Regulation Number 26/PBI/2018 Chapter II Article 2, concerning Bank Indonesia Electronic Money.

This difference of opinion is due to differences in viewing or assessing the contracts in Gopay.

For example, the Fatwa Council of the al-Irsyad Association in Fatwa Number: 005/DEPA/VI//1439 emphasized that the law of origin of Gopay is halal. However, the discount on Gopay has made Gopay illegal. According to the fatwa, transactions using Gopay are the same as depositing money at a bank where some money is lent to the bank, and then the bank gives an additional amount as a gift. This gift in the banking system is called interest.³²

Almost the same opinion was expressed by Erwandi Tarmizi. He gave a fairly detailed explanation regarding the contract in Gopay and the law of making transactions using Gopay. According to him, transactions in Gopay use a debt-receipt (*qardh*) contract. *Qardh* itself is giving someone a certain amount of money to be able to function, and the funds will be reimbursed without expecting anything in return.³³ According to Tarmizi, the contract in the Gopay contract is a loan and borrowing agreement (debit and credit) between the issuer (Gojek Company), which is the issuer of electronic money, and the user (Gopay customer) who has agreed that the company will return the money to the user, which follows the agreement.³⁴ Tarmizi further illustrates Gopay Top Up balances that personal funds are entrusted to a grocery store so that goods can be collected as needed. Price payments are automatically deducted from the funds given to the store for safekeeping.³⁵

Tarmizi's opinion refers to Ibn Abidin, a Hanafi School scholar who died in 1836 AD.³⁶ Ibn Abidin said:

“If someone pays the seller money, he may take up to five items a day, and he never acknowledges the transaction by saying, "I bought from you." Even though the purpose of purchasing the item in question is on the day the money is deposited, the legal

³²Dewan Fatwa Perhimpunan Al-Irsyad No : 005/DFPA/VI/1439 tentang Haramnya Diskon yang Didapatkan dari Go-Pay dan Layanan yang sejenisnya.

³³Abdullah Al-Mushlih, *Fikih Ekonomi Keuangan Islam*. Translated by: Abu Umar Basyir (Jakarta: Darul Haq, 2008), p. 254.

³⁴Nengsih, “Analisis Terhadap Fatwa Dewan Syariah Nasional Majelis Ulama Indonesia (DSNMUI) Tentang Uang Elektronik Syariah (Studi Kartu Flazz BCA, Go-Pay, Dan Grab-Pay).”

³⁵Edwar Tarmizi, *Harta Haram*, p. 287.

³⁶Edwar Tarmizi.

status that applies is halal. Because here, there is only intent, no implied sale or purchase. When the payment and the goods are clear, this is what is called buying and selling. This is the category of the original sale and purchase transaction."³⁷

Erwandi Tarmizi further said that Gopay in the Gojek contract application can be equated with *qardh*, as stated by Ibnu Abidin above. This is because Gojek program users save money in the form of a balance in the Gopay virtual wallet so that the Gopay application balance will be deducted when users and drivers make payment transactions for Gojek services. But on the other hand, payments through Gopay get a discount, which is categorized as usury by Tarmizi. Therefore, according to Tarmizi, Gopay transactions are transactions that are forbidden because they contain elements of usury. The price discount here is an additional benefit from debt transactions. To strengthen this argument, Tarmizi cites a fiqh rule: *kullu qardbin jarra naf'in fabua riba*, that any debt that brings blessings, the debt contains elements of usury.³⁸

Erwandi Tarmizi also stated that Gopay uses a *qardh* contract, and in a *qardh* contract, additional benefits are not allowed when carrying out debt and credit transactions. Meanwhile, the discount on Gopay is an additional benefit that should not be applied to avoid elements of usury. In connection with this usury, Tarmizi cites the opinion of Salih bin al-Fauzan who explains that usury is "an addition to something that has been determined."³⁹ The addition to Gopay is in the form of a discount because it has made payments through Gopay. Meanwhile, Sayid Sabiq defines usury as an addition that has been required, received by the debtor (Gojek customer), from the one who accepts the debt (Gojek party) as a reward or gift. As for Gopay, the bonus in question is in the form of a price-cut discount.⁴⁰

On the other hand, Nahdatul Ulama argues that transactions in Gopay use a *wadi'ah* contract, where users only deposit a certain amount of money in Gopay to make transactions easier. According to Jumhur

³⁷Edwar Tarmizi, *Harta Haram*, p. 288-289.

³⁸Djazuli, *Kaidab-Kaidab Fiqih: Kaidab-Kaidab Hukum Islam Dalam Menyesuaikan Masalah-Masalah Yang Praktis* (Jakarta: Kencana, 2010), p. 76.

³⁹Salih bin Fauzan al-Fauzan, *Al-Mulakbbhas al-Fiqhi*, 1st printing (Dār al-‘Alamiyyah, 2012), p. 27.

⁴⁰Sayyid Sabiq, *Fikih al-Sunnah*, 3rd printing (Beirūt: Dār al-Fikr), III: 178.

Ulama, *wadi'ah* manages certain assets based on an agreement and in a certain way.⁴¹ Nahdlatul Ulama also emphasized that no balance (interest) was added to the user's Gopay account when doing a Top-Up. Therefore, for Nahdlatul Ulama, making transactions with Gopay is permissible.⁴²

According to Muhammadiyah's point of view, as stated in the suaramuhammadiyah website, the contract used in Gopay transactions is more appropriate if it categorized as an *ijārah maushūfah fī dżimmah* contract. This contract involves a service sale and purchase transaction occur between Gopay users and company, namely Gopay service users make payments for Gopay services at the beginning of the transaction. Muhammadiyah analogizes Gopay transactions as using ATM cards. Furthermore, according to Muhammadiyah, Gopay is prohibited by some scholars because they consider Gopay to be a debt transaction, so when a Gopay user uses a discount, it can be categorized as an additional profit in debt. This prohibition is analogous to bank interest, whose legal status is usury. As long as the *ijārah* is in the form of *muawadab* (paid), the service provider is allowed to ask for wages, even though the service has not been provided to the customer. Based on the *mashūm muwāfaqah* on this contract, the seller may ask for payment before the merchandise is handed over to the buyer. Many muamalah transactions use a scheme where customers pay for goods or services in advance, after which they will receive the goods or services. In principle, Muhammadiyah uses fiqh rules which state that "basically everything related to muamalah is permissible until there is an argument that does not allow it."⁴³

Concerning this Gopay contract, the Fatwa of the National Sharia Council of the Indonesian Ulema Council (DSN-MUI) Number 116 of 2017 says that the contract is an agreement between Gojek companies and electronic money users.⁴⁴ To ensure that Gopay is

⁴¹Wahbah az-Zuhaili, *Fikih Islam Wa Adillatuhu* (Jakarta:Gema Insani, 2011), V: 556

⁴²"Nahdlatul Ulama official website," in Nuonline.co.id, accessed on 24 April 2022.

⁴³Suara Muhammadiyah, "Hukum Go-Pay dalam Aplikasi Gojek", January 23 2021, in <https://suaramuhammadiyah.id/2019/10/25/hukum-go-pay-dalam-aplikasi-gojek/> accessed on 20 Mei 2023.

⁴⁴Fatwa of the National Sharia Council-Indonesian Ulema Council, No: 116/DSN-MUI/IX/2017 concerning Sharia Electronic Money.

following the sharia contract, the contract must meet several requirements, including (1) Gopay's nominal balance is a deposit that can be withdrawn and used at any time, and (2) Gojek issuers/companies are not permitted to use balances or electronic funds stored in the Gopay function without user (customer) approval. The *wadi'ah* requirements consist of

1. the act of entrusting the goods (*al-'ain al-muda'ah*),
2. the existence of consent and qabul (*sigbat*),
3. the presence of a party who designates the goods (*al-mu'di*), and
4. there is a trusted party (*al-muda'*).⁴⁵

In connection with the discount on Gopay, the DSN-MUI fatwa states that the value in question is not an additional benefit but a mere gift.⁴⁶ A gift is a token of gratitude for being a consumer and entrusting something to a company (Gopay).

The Analysis of Gopay Contract Ambiguity in the Sharia Agreements Perspective

Sharia agreements in the Qur'an are known as *al-'aqdu*, which means agreement. The agreement is a relationship between humans and another that creates a bond in *muamalah* activities.⁴⁷ The same thing applies to Gopay transactions. Transactions on Gopay are binding between Gopay users (Customers) and the company, in this case, PT. Karya Anak Bangsa created the Gopay service.

It's just that scholars have different opinions regarding the agreement or contract that applied in Gopay transaction. Some scholars say that transactions in Gopay use a *qardh* (debt) contract, some say that gopay is *ijarah mausufah fi dzimmah*, while others say that transactions in Gopay use a *wadi'ah* contract. The difference in assessing the contract in Gopay has implications for the legal status of using Gopay. In this regard, the following will further analyze the opinions of the scholars regarding the contract in Gopay.

⁴⁵Rachmat Syafe'i, *Fiqh Muamalah* (Bandung: CV Pustaka Setia, 2001), p. 38.

⁴⁶Fatwa of the National Sharia Council-Indonesian Ulema Council, No: 116/DSN-MUI/IX/2017 concerning Sharia Electronic Money.

⁴⁷Ghufron A. Mas'adi, *Fiqh Muamalah Kontekstual*, 1st printing (Jakarta: RajaGrafindo Persada, 2002.), p. 75.

First of all, the author will analyze the Fatwa of the Al-Irsyad Fatwa Council and the opinion of Erwandi Tarmizi, who forbids Gopay because it contains elements of usury.⁴⁸ As explained earlier, Erwandi Tarmizi believes that transactions in Gopay use a *qardh* contract.⁴⁹ This is because the *qardh* contract process in the Gopay feature indicates that Gopay transactions are included in the *qardh* contract category. The indications referred to are as follows: Gojek is allowed to use the existing balance of Gopay customers, with a guarantee that it will return according to the contract when the user (customer) fills in the Gopay Top-Up. At that time, there was no sale and purchase agreement, so the balance in Gopay was not a means of payment but a candidate for transferring funds between Gopay accounts. Thus, it is evident that the practice that occurs in Gopay is the same as the *qardh* contract. However, the discount given by the company to Gopay users causes additional benefits, which Tarmizi calls usury. This addition that is considered usury makes the Gopay contract a prohibited transaction.⁵⁰

Meanwhile, Nahdatul Ulama and the MUI National Syari'ah Council believe that Gopay is a *wadi'ah* contract because the balance contained in Gopay is entrusted by the Gopay account user, which will be used at any time when transacting on Gojek services.⁵¹ Transactions in Gopay are called *wadi'ah* contracts because they follow and fulfill the requirements and pillars of *wadi'ah*: First, there is a party that deposits goods (*al-Ain al-muda'ah*), namely the act of depositing goods/money. In Gopay, the items entered are cash deposited by customers or consumers, then stored as E-Money in the Gojek application. Second, consent *qabul (sighat)*. In this case, the customer and the company understand each other, and the customer or consumer also understands that any money is stored and that Gojek will give permission for the customer to use it when making transactions. Third, the entrusting party (*al-mudi*). In this case, the party entrusting goods or money to

⁴⁸See Dewan Fatwa Perhimpunan Al-Irsyad No: 005/DFPA/VI/1439 tentang Haramnya Diskon yang Didapatkan dari Go-Pay dan Layanan yang Sejenisnya and Edwar Tarmizi, *Harta Haram Muamalat Kontemporer*, p. 287.

⁴⁹Edwar Tarmizi.

⁵⁰Edwar Tarmizi.

⁵¹See official website of Nahdatul Ulama, in Nuonline.co.id, accessed on 24 April 2022; see also Fatwa of the National Sharia Council-Indonesian Ulema Council, No: 116/DSN-MUI/IX/2017 concerning Sharia Electronic Money.

Gojek is a customer or user of the Gojek program. Fourth, the party given the trust (*al-muda'*), namely the Gojek company itself, acts as the party entrusted with goods (money).⁵²

In the third opinion, the Gopay contract is halal because it is considered a service sale and purchase transaction, or in Sharia economic law theory, it is called *ijārah maushūfah fī dżimmah*. The gopay contract is categorized as an *ijārah* contract because Muhammadiyah believe this contract is valid as being valid for various kinds of transactions commonly used by Indonesian people, and it is halal. If in a sale and purchase transaction, what is transacted is goods, then in the Gopay contract, what is being transacted is the services provided by Gojek Services. Service providers, in principle the same as goods providers, have the right to set prices and offer discounts to their consumers to promote their goods or services. Even so, categorizing the Gopay contract with the *ijārah maushūfah fī dżimmah* scheme seems wrong. Because the principle of *ijārah* is leasing, while the cases that are analogous to Gopay are more likely to buying and selling goods/services schemes, in addition, according to DSN MUI Fatwa No. 102 of 2016 concerning *al-Ijārah al-Maushūfah fī adz-Dżimmah* on KPR-Indent products, the benefits of an item being transacted must be clear in nature and specifications (both quality and quantity). Meanwhile, in Gopay transactions, users do not get precise information about how much discount they will get, and they may not even get it at all.

Regarding the discount Gojek gave to Gopay users, Nahdlatul Ulama and the National Sharia Council consider it a gift. Therefore, having a deal on Gopay is not something that is prohibited. It is not usury. Thus, making transactions using Gopay is not something that is forbidden.⁵³

Based on the analysis above, the authors tend to argue that the contract in Gopay is a *wadi'ah* contract, not a *qardh* contract or *ijārah maushūfah fī dżimmah* because the truth is that consumers are never in debt to Gojek companies and Gojek companies are also not in debt to

⁵²Fatwa of the National Sharia Council-Indonesian Ulema Council, No: 116/DSN-MUI/IX/2017 concerning Sharia Electronic Money.

⁵³See official website of Nahdlatul Ulama, in Nuonline.co.id, accessed on 24 April 2022; see also Fatwa of the National Sharia Council-Indonesian Ulema Council, No: 116/DSN-MUI/IX/2017 concerning Sharia Electronic Money.

consumers. In this transaction, users only deposit their money in the Gopay application, which users can use at any time to make payments. This electronic payment is part of the development of financial transactions in the Industrial Revolution 4.0 Era. Almost everything was done electronically at this time, especially regarding the payment process for every economic activity. This, of course, will facilitate every economic activity by people, including muslims, and this is, of course, following religious goals, namely to provide freedom for people in achieving its goals.⁵⁴

Conclusions

Based on the studies and analyses that have been carried out, the following conclusions are obtained: First, there is a difference of opinion among scholars and scholars regarding the contract used in Gopay. The Fatwa Council of Al-Irsyad and Erwandi Tarmizi believe the Gopay contract is a *qardh* or receivables contract. Therefore, the existence of discounts in Gopay is considered an addition or excess and included in the *riba* category. Muhammadiyah considers Gopay transactions to be *ijārah maushufah fi dzimmah*. Service owners have the right to get paid in advance and give discounts to their services' users. Meanwhile, Nahdlatul Ulama and DSN-MUI view the Gopay contract as a *wadi'ah* (safekeeping) contract. Therefore, the discount Gojek gives customers or consumers is only a gift or bonus. Second, there are differences of opinion regarding the contract in the Gopay application, which has implications for the legal status of transactions using the Gopay application. The Al-Irsyad Fatwa Council and Erwandi Tarmizi believe that making transactions with the Gopay application is prohibited (*haram*) because it contains elements of usury. Meanwhile, Muhammadiyah, Nahdlatul Ulama, and the National Syari'ah Council are agreed in the opinion that making transactions with the Gopay application is permissible even though there are differences of opinion over the categorization of the Gopay contract scheme. According to Nahdlatul Ulama and MUI, the discount given by Gojek to customers or consumers is only a gift or bonus and does not include usury. This article, thus, has clearly shown the causes of differences of opinion

⁵⁴Taqiyuddin Abu Bakar, *Hukum Jual Beli Islam* (Surabaya : CV Bina Iman, 1995), p, 61.

among scholars and scholars regarding the contracts used in the Gopay application and, at the same time, the implications thereof.

Conflicts of Interest

The authors have no conflict of interest with any party in writing this article.

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