

# Regulations of Qard by AAOIFI and DSN: What's The Difference?

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**Abstract.** AAOIFI and DSN have different rules regarding merging qard contracts with other commutative contracts in one transaction, which AAOIFI in the Shariah Standards No.19 prohibits, while DSN in the Fatwa No. 79 allows it. This difference can affect certain Islamic financial products which combine qard contracts with other commutative contracts, such as Islamic gold pawn products. Thus, the purpose for this study is to compare the Shariah Standard No.19 of AAOIFI on Qard, and Fatwa No.19 and 79 on qard, so that the differences between the two can be presented in a detailed manner. This research uses the normative legal method with comparative approach and content analysis techniques. The results show that the characteristics of the qard rules of these two institutions are indeed different, where AAOIFI focuses on the main essence of qard such as the elements (arkan) of qard, prohibition of interest, permissible fees, and time periods, while DSN focuses on the implementation of qard in Qardhul Hasan product or as an additional agreement to other commutative contracts. Most of the rules of these two institutions can complement each other, except in the case of merging the qard with other commutative contracts that are in conflict with each other.

**Keywords:** AAOIFI's Sharia Standard, DSN's Fatwa, Stipulation of Qard.

## 1 Introduction

The Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI), founded in 1991, is an international organization that prepares accounting, auditing, governance, ethical standards, based on sharia principles for Islamic financial institutions (Islamic Finance Institutions) and the Islamic financial services industry.[1] Currently AAOIFI is supported by more than 200 members from 45 countries from various backgrounds including Central Banks, regulatory agencies, accounting and audit institutions, as well as other members of the Islamic banking industry.[2][3] The existence of this standard is made for all sharia-based financial institutions and services to have the right formulation in preparing the financial statements of their institutions to be in accordance with Islamic values. However, in practice, not all countries apply the standards of the AAOIFI. Malaysia, for example, uses the AAOIFI standard as a guide in its financial reporting practice, but in reality it still uses IFRS in the rules of preparing financial statements in the Islamic finance industry.[4]

Meanwhile in Indonesia, *Dewan Syariah Nasional Majelis Ulama Indonesia* (DSN MUI / National Sharia Council of Indonesian Ulama Council) was established in 1999 with a role to encourage the application of Islamic teachings in the economic and financial fields. For this

reason, DSN issues various fatwas related to systems, activities, products and services that must be implemented by Islamic Financial Institution (IFI). Furthermore, DSN MUI also formulates implementation guidelines standard so that there are no multiple interpretations of the implementation of the fatwas that have been made. Currently the MUI DSN is composed of more than 157 central administrators and is assisted by members of the regional representatives throughout Indonesia with various competency backgrounds, ranging from finance, mufassir, and the majority are filled by those who have expertise in the field of muamalah fiqh.[5]

The presence of two standard from AAOIFI and the DSN MUI has created differences in some rules. As seen in the merging of qard contracts with other commutative contracts in one transaction, which AAOIFI in the Shariah Standards No.19 prohibits, while DSN in the Fatwa No. 79 allows it. This difference can certainly affect Islamic financial products issued by Indonesian IFI. Therefore, this article attempts to compare the Shariah Standard No.19 of AAOIFI on qard, and Fatwa No.19 and 79 on qard, so that the differences between the two can be presented in detail.

## **2 Research Methods**

This is a qualitative research with a comparative approach. The primary legal material that the author uses is Shariah Standard No. 19 Regarding Loans (*Qard*), DSN Fatwa Number 19 Year 2001 regarding al-Qardh, and DSN Fatwa Number 79 Year 2011 regarding Qardh Using Customer Funds. The data in this research were collected using documentation techniques, and then analyzed using content analysis techniques.

## **3 Result and Discussion**

### **3.1 Shariah Standard No. 19: Loan (*Qard*)**

This standard begins with basmalah, hamdalah, and salawat to the Prophet Muhammad and his family and friends. Before presenting the articles related to Qard, AAOIFI first provides an introduction that Standard 19 is formulated to elaborate the rules related to Qard and the possibility of usury that often appears in the contract, whether agreed upon during the contract or not. Then this standard will also contain special rules for the implementation of the Qard in IFIs, such as current accounts, service fees in debt, and others.

The first statement contains the scope of Standard 19, that this Standard only regulates the qard and the costs attached to it in the event that IFIs act as borrowers or lenders. Meanwhile, the application of qard outside the scope of this, particularly in the case of credit sales or investment accounts, is not included in this standard.

The second statement explains the terminology of qard, that qard is the transfer of a certain amount of wealth from one person to another. The wealth must then be returned to the original owner with exactly the same amount.

The third statement mentions the elements (*arkan*) and conditions that must exist in a qard contract. First, the contract must be based on consent and acceptance which is carried out verbally or other media. Second, in the contract, there must be a borrower and a lender as contract actors. Third, assets lent will be transferred to the borrower's ownership, but he must

return it with the same amount to the lender, in the same location as when he received the loan. However, this provision of place is disallowed in the fourth statement, that the return may be made at another place agreed by the parties.

The fourth and fifth statements regulate interest, or what in this rule is referred to as *excess benefits*, that excess benefits may not be agreed upon during the contract, during the extension of the term, and during the extension of the term, even though this excess benefits is a custom in the local community. Except if the contract period has expired, and the borrower takes the initiative to give something while making repayments, either in the form of money or goods, then this is allowed.

The sixth statement discusses the time period, that the time period may be determined at the time of the contract, with the consequence that the lender may not demand payments before that period expires. On the other hand, if the time period is not specified, the borrower is obliged to make repayments on demand.

The seventh statement prohibits the stipulation of commutative contracts such as buying and selling and services in qard contracts. In addition to these two, other commutative transactions such as money exchange (sharf), salam contracts, and istishna contracts are also included in this category.[6]

The ninth statement allows IFI to set a service or administrative fee commensurate with the actual costs incurred by the IFI for a single qard transaction. In addition, the amount of this fee must be calculated with precision so that there is no excessive burden paid by each customer. Unless the calculation cannot be carried out with precision because the debt is in the form of joint responsibility, then the cost may be calculated based on the total amount owed. The Sharia Supervisory Board (SSB) is required to be directly involved in determining the method of calculating this service fee, for which a complete explanation regarding the basis and rationalization is written in the form of an Standard Operating Procedures (SOP) document or the like. Indirect expenses such as employee salaries, building rent, and other general agency expenses cannot be calculated as these actual costs.

The tenth statement presents several examples of the application of qard in IFIs, such as current account, where IFIs may set monthly administration fees, deposit fees, withdrawal fees, bilyet check fees, and ATM card fees. However, IFIs are prohibited from promising certain prizes to attract new prospective customers to purchase the current account product, whether in the form of goods, incentive funds, or additional services outside the current account such as free credit card administration fees, free transfer fees, and others.

### **3.2 Fatwa DSN No. 19 about al-Qardh**

Fatwa DSN No. 19 concerning al-Qardh, like other DSN fatwas, is in the form of a decree that begins with the consideration section containing the background for formulating the fatwa, the recall section contains the legal basis used by the DSN to formulate the fatwa, and the attention section contains the date of the fatwa. After these three sections, then the fatwa provides the stipulating section which contains provisions related to qard.

The first provisions contain general provisions related to qard. That qard is a loan that the customer must return to the IFI in accordance with the principal amount received when the loan period has ended. IFIs may impose administrative fees on customers, and request guarantees if necessary. At the time of settlement, the customer may make a voluntary contribution which cannot be agreed upon during the contract. If the customer is unable to pay off his debt, the IFI can extend the term of the debt, or write it off.

The second provision allows IFIs to impose sanctions on customers who do not have good intention to pay their obligations, even though they are actually able to pay them off. The sanction in question is in the form of selling collateral to cover the debt.

The third provision states the sources of funds that IFIs can use for qard products, which can be sourced from capital, from a portion of the profit that is intended for it, or from infaq funds managed by IFIs. Customer funds are not mentioned in this provision, so it can be concluded that customer funds cannot be used as a source of funds for this qard product.

Finally, in the fourth provision, it is stated that dispute resolution between IFIs and customers must be carried out through deliberation. If the deliberations fail to produce an agreement, then the IFI and the customer can make a settlement at the Sharia Arbitration Board.

### **3.3 Fatwa DSN No. 79 about Qardh by Using Customer Funds**

As Fatwa DSN No. 19 above, Fatwa DSN No. 79 also begins with the background of the formulation of the fatwa, legal arguments, and the date of the fatwa's stipulation. However, some of the textual arguments from the Qur'an and hadith in this fatwa are different from the Fatwa DSN No. 19, and there are additional arguments from *ijma*, *qiyas*, and the opinions of contemporary scholars, which in this case are sourced from Wahbah Zuhaili and Muhammad Abdul Mun'im Abu Zaid.

The first provision contains general provisions in the form of an operational definition. The terms that are operationalized in this provision are qard and customer funds, where qard is defined as a fund distribution agreement with a debt contract, which must be returned to the IFI when the period has expired. Meanwhile, customer funds are funds that customers deposit with IFIs in funding products, which consist of savings, current accounts, and time deposits.[7][8]

Furthermore, the second provision of DSN states that IFIs can use qard contracts for two optional purposes below:

1. Qard for social purposes in the form of *Qardhul Hasan* products as directed by DSN Fatwa No. 19. Funds for this product may not be sourced from customer funds.
2. Qard as an additional agreement in other products of a commercial nature. The commercial products in question, for example, are gold pawning, hajj financing, debt transfers, and credit cards. Funds for this product can be sourced from customer funds, with the consequence that the customer will get a share of the profits generated by the product.

### **3.4 Discussion**

Based on the explanation of the Shariah Standard from AAOIFI and the two fatwas on qard from the DSN above, it can be seen that there are fundamental differences between the regulatory products of the two institutions. In terms of definition, for example, AAOIFI tends to interpret the qard as a transfer of ownership from the lender to the borrower,[9] while DSN directly translates for technical purpose of IFI product, that qard is a product of channeling funds with the principle of a loan.[10][11]

Next, AAOIFI explicitly mentions the elements and conditions that must exist in a qard contract. Meanwhile, DSN only includes it implicitly, that in the qard contract there is an IFI as a lender, a customer as a borrower, loans sourced from customer funds for commercial products and infaq funds for social products, as well as *Ijab Kabul* with administrative costs that charged to the customer.[12]

This administrative fee was later elaborated in more detail by AAOIFI, that it had to be based on the actual expenses calculated precisely by the IFI in the transaction, with written

SOPs that compiled under direct supervision of SSB. Detailed provisions regarding administrative costs in this qard contract do not exist in the DSN's fatwa.

In terms of interest or excess benefits in the qard contract, AAOIFI provides a fairly long explanation of that, that the basic law for it is prohibited (haram) unless it is submitted at the time of repayment on the basis of the willingness of the borrower without any prior agreement for it.[13] DSN also mentions a similar provision, although the volume of explanation is much more concise and straightforward.

With regard to the time period, DSN assumes that in every qard transaction between an IFI and a customer, a certain period of time must be determined, when the customer is obligated to pay it off. Meanwhile, AAOIFI assumes that the standards they publish do not only apply within the IFI environment, but also among the general public who often do not specify a time period when performing qard contracts. Thus, AAOIFI also stipulates that if the time period is not specified, the borrower is obliged to make repayments on the lender's demand.[14]

If the borrower is unable to make payments for certain reasons that are acceptable to the lender, specifically for Qardhul Hasan products, DSN asks IFI to provide an additional period, or write the debt off if possible.[15] However, if the customer is able to deliberately refuse to pay, DSN allows IFIs to impose sanctions in the form of selling collateral.[16] Provisions related to sanctions in this qard contract do not exist in the AAOIFI's standard.

AAOIFI prohibits IFIs from combining qard contracts with commutative contracts such as buying and selling and services. Therefore, the application of this qard contract is limited to products with a single contract, such as current accounts and credit cards.

On the other hand, DSN explicitly allows combining the qard contract with a commutative contract in a particular product that requires it. In gold pawning products, for example, IFIs can combine rahn, ijarah, and qard contracts at once.[17] This also applied to hajj or umrah financing products that combine ijarah and qard contracts.[18] In addition, the qard contract can also stand alone by itself in certain products, such as Qardhul Hasan which is devoted to social interests.[19] This DSN provision makes the qard contract widely applicable by IFIs in its various products.

In Qardhul Hasan, DSN does not allow IFIs to use customer funds as a source of funds. IFIs can use the Corporate Social Responsibility (CSR) funds or Zakat Infaq Sadaqa Waqaf (ZISWAF) funds they manage for the needs of the Qardhul Hasan funding source.[20] Customer funds can only be used for commercial products, with the condition that the profits of such products must be shared with the customer.[21] Provisions regarding the source of funds for this qard contract do not exist in the AAOIFI's standard.

To summarize the differences above, we provide it in the form of a table below:

**Table 1.** Differences in AAOIFI and DSN Rules regarding Qard

No	Stipulation	AAOIFI	DSN
1	Definition	Transfer of Wealth	Loan
2	Elements and Conditions	Explicit	Implicit
3	Stipulation of Administrative Fee	Rigit	Simpel
4	Explanation of Excess Benefit	Deep	Simpel
5	Period	Optional	Mandatory
6	Stipulation of Sanction	Not Available	Available
7	Combination with Commutative Contract	Prohibited	Permitted
8	Stipulation of Qard Fund Source	Not Available	Available

Source: Processed by Author, 2022.

The differences in the first to sixth points and the eighth points above can be compromised because of their non-conflicting nature. In terms of administrative costs, for example, IFIs may comply with DSN and AAOIFI at the same time by calculating the cost of the administration they charge to customers. Likewise, the provisions of sanctions which, although not regulated by AAOIFI, IFIs can still be oriented to DSN without violating AAOIFI's own provisions.

On the other hand, the differences in the seventh point are contradictory to each other, so compromising them is impossible. Thus, if an IFI is fully oriented to the AAOIFI rules, they may need to explore other alternative contracts that can be used to facilitate commutative products that provide loans to customers.

#### 4 Conclusion

This study found that there are eight differences between Shariah Standard No. 19: Loan (Qard) from AAOIFI and DSN Fatwa No. 19 and No. 79 about Qardh. Seven of the eight differences do not contradict each other, and can be compromised or even complement each other. There is only one conflicting difference between AAOIFI and DSN, which is related to the merging of qard contracts with other commercial contracts in one product.

This study only examines the Shariah Standard of AAOIFI and the DSN's fatwa partially, without seeing it as a whole as a single standard. In the case of sanctions for selling guarantees, for example, even though Shariah Standard No. 19 does not mention it, it could be that the provision existed in another standard. Thus, the next researcher can conduct a thorough study of the entire AAOIFI standard and DSN's Fatwa, in order to obtain complete and simultaneous data regarding the differences between the two.

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