

lah contract because in practice in Islamic banking this contract is used for mutual assistance activities,⁷ this contract is allowed because of the concept of mutual assistance activities and in the world of Islamic banking, this contract is used as a forum to bring together parties who have capital with parties who need capital, and the bank gets a fee from these services.

In its implementation regarding Wakalah contracts, the scholars have several different opinions, according to Hanafiyah scholars, Wakalah contracts which are carried out by representatives freely are their own responsibility, although later after the contract is completed, the giver and recipient of the representative will hand over the results of the contract in question.⁸ The Syafiyah and Hanabilah scholars state that all responsibility for all these actions rests with the power of attorney to the representative, the representative only acts as an executor because of that all responsibility lies with the power of attorney, while the Malikiyah scholars say that the issue depends on the habits in society.⁹ Wakalah activities can also occur if the work being represented is so large that it cannot be done alone, then he may be represented to do work that he cannot do, the representative may not also represent others, except with the permission of the representative or because he is forced to.¹⁰ Wakalah is a handover from someone to another person to do something where the representative is valid as long as the representative is still alive.¹¹ The implementation of the Wakalah contract is basically justified to be adapted to the habits of the local community, but the most important thing is that the party giving the power of attorney is the party who is fully responsible for the activity, the party who represents only the intermediary, or the representative for the activities carried out, meaning that the activity can be categorized as legitimate. if the party giving the power of attorney exists, or lives and therefore the representative is considered valid, if there is approval or ratification of the work of the representative.

Wakalah can be divided into: Al-Wakalah Al-Ammah and Al-Wakalah Al-Khosshoh, Al-wakalah al-muqoyyadoh and al-wakalah mutlaqoh.¹²

- a. Al-wakalah al-khosshoh, is a procession of delegation of authority to replace a specific job position. And the specifications have been clear, just like buying a Honda type X, being an advocate for solving certain cases.
- b. Al-wakalah al-,ammah, is a general process of delegation of authority, without any specifications. Like buy me any car you come across.
- c. Al-wakalah al-muqoyyadoh and al-wakalah mutlaqoh. Is a contract in which the authority and actions of the representative are limited by certain conditions. For example, sell my car for 100 million for cash and 150 million for credit. Meanwhile, Al-wakalah al-muthlaqoh is a wakalah contract where the authority and representatives are not limited by certain conditions or rules, for example, sell this car, without mentioning the desired price.¹³

Meanwhile, according to Muhammad Ayub, the types of Wakalah consist of:¹⁴

- a. Deputy –bil –kusoomah (taking over various disputes/cases on behalf of the principal)
- b. Deputy –bil taqazi al Dayn (receipt of debt)
- c. Deputy bil Qabaza al Dayn (ownership of debt)
- d. bil bai representative (trading agency)
- e. bil shira representative (agency for purchasing)

⁷ M. Syafii Antonio, *Bank syariah : Wacana Ulama dan Cendekiawan*, (Jakarta, Bank Indonesia & STIE TAZKIA,1999) page. 240-243

⁸ Abdul Aziz Dahlan, *dkk Ensiklopedia Hukum Islam, Jilid 6 page.1914-1915*

⁹ Lihat Mohd. Ali Baharum, *Misrepresentation : A Study Of English And Islamic Contract Law (Kuala Lumpur, Rahmaniayah, 1988) page. 153-154*

¹⁰ Sulaiman Rasyid, *Fiqh Islam (Bandung; Sinar Baru Algensindo, 1994)*

¹¹ Hendi Suhendi, *Fiqh Muamalah, (Jakarta : Rajawali Press) page. 233.*

¹² *Ibid*

¹³ *Ibid*

¹⁴ Muhammad Ayub, *Understanding Islamic Finance, (Jakarta, PT Gramedia Pustaka Utama, 2009) page. 530*

Another opinion regarding the types of Wakalah Contracts is that they are divided into several types depending on the point of view, such as there are Wakalah ‘Aamah and Wakalah Khaashah, there are Wakalah Muthlaqah and Wakalah Muqayyadah (Limited), there are Wakalah Munjazah and Wakalah Mu’allaqah, and finally Wakalah Bighairi Ajr. (without wages) and Wakalah Bi-Ajr (with wages). For this last classification, the scholars agree that the Wakalah contract is essentially a Tabarru’at (voluntary-benevolent) contract so that it has no legal consequences (ghairu laazimah) for the representative (al-wakiil). However, if it changes to Wakalah Bi-Ajr (paid) then the condition changes to laazimah (legal consequences) and is classified as a barter-compensation contract (Mu’aawadhaat).¹⁵Based on the types of Wakalah, it will be implemented in existing contracts in the community. This Wakalah contract has become an important part of transactions, both in Profit Oriented and Non Profit Oriented activities. Therefore, in its implementation, the rules must be strictly observed according to the Shari’a. Each Wakalah activity in its implementation takes different forms in its activities. Therefore, it must be properly understood and identified each of these types of wakalah contracts.

Hadiths related to wakalah:

هَنُومِيْمَ هُاجُوْرَفَ، رَاَصِنُّاْلُ اَنْمَ اَلْجُرُوْ عَفِيَارَ اِبْاْ ثَعَبَ مَلَسَوْ وِلَاوْ وِيْلَعْ هَلْا اِلَّصَ وِلْا لَوْسُرَ نَّاْ
(أطومل ا يف لكالام هاور) ثِراخْلا تَنْبِ

“Rasulullah SAW represented Abu Rafi’ and an Ansar to marry (the Prophet’s marriage qabul with) Maimunah r.a.” (Narrated by Malik in al-Muwaththa’).

لَوْسُرَ لاقَفَ هُبَاخْصَاْ هِبَ مَهَفَ ظَلْعُفَ هَاَصْاَقْتِيْ مَلَسَوْ وِيْلَعْ مَهَلْا اِلَّصَ يَبِيْنْاْ اِتاْ اَلْجُرَ نَّاْ
اي: اولاَقَ: وِيْسَ لَتْمَ اَنْسَ هُوْطُغَاْ: لاقَ مَثْ، اَلْاَقَمَ قَحْا بَحْاَصْلَ نَّاْفَ، هُوْعُدْ: مَلَسَوْ وِلَاوْ وِيْلَعْ مَهَلْا اِلَّصَ وِلْا
يَبِيْاْ نَّعَ يراخْبِلا هاور) هَاَصْاَقَ مَكْنَسْخَاْ مَكْرِيْخَ نَّمْ نَّاْفَ، هُوْطُغَاْ لاقَفَ. وِيْسَ نَّمْ لَتْمَ اَلْا اِلْ دُجْناْ لَوْسُرَ
(قَرِيْرَهْ)

“A man came to the Prophet SAW to collect a debt from him in such a rude way that the companions intended to “handle him”. He said, ‘Leave him alone, because the owner of the right has the right to speak;’ then he said, ‘Give (pay) this person a year old camel like his (indebted) camel.’ They replied, “We did not get it except the older ones.” The Messenger of Allah then said: “Give it to him. Verily the best of you is the one who is best at paying.” (Narrated by Bukhari from Abu Hurairah).

In this case, in Indonesia, wakalah has been regulated through the fatwa of the National Syari’ah Council, as stated in the DSN-MUI Fatwa No: 10/DSN-MUI/IV/2000, dated April 13, 2000 concerning Wakalah. The legal basis prescribed in the Wakalah contract.

FATWA

NATIONAL SHARIA COUNCIL

Number 10/DSN-MUI/IV/2000

About

Wakalah

مِيْحِرْلَا نَمْحِرْلَا هَلْا مَسْبِ

National Sharia Council after

¹⁵ Saiyah Umma Taqwa, MA , <http://alimankairo.multiply.com/reviews/item/1>

Review	:	<p>a. that in order to achieve a goal it is often necessary for another party to represent it through a wakalah contract, namely the delegation of power by one party to another in matters that may be represented;</p> <p>b. whereas the practice of wakalah in LKS is carried out as a form of banking services to customers;</p> <p>c. that in order for the practice of wakalah to be carried out in accordance with Islamic teachings, DSN deems it necessary to stipulate a fatwa on wakalah to be used as a guideline by LKS.</p>
Remember	:	<p>1. The Word of Allah QS. al-Kahf [18]: 19:</p> <p>أَمْؤَيِ انْتَبِيلِ اُولَاقِ ،مُتَشَبِلِ مَكْ مُنْمِ لِيَاقِ لَاقِ ،مُنْمُنِيْبِ اُولِءَاَسْتِيْلِ مَهَانَتَعَبِ لِكَلِذِكْوِ فَنِيْدِمْلَا يَلَا هَذِهِ مَكْتَقِرُوْبِ مَكْتَدَحَا اُوْتَعَبَاَتِ مُتَشَبِلِ اَمْبِ مَلْعَا مَكْتَبُرِ اُولَاقِ ،مُؤَيِ ضَعْبِ وَا اَدْحَا مَكْتَبِ نَّرْعِشْنِي اَلَوْ فُطَلَّتِيْلُو هُنْمِ قِرْبِ مَكْتَبَاِيْلَفِ اَمْعَطِ اِكْرَا اَهْيَا رُظْنِيْلَفِ</p> <p>“And thus We raised them to question one another among themselves. One of them said: “How long have you been (here)?” They replied: “We have been (here) a day or a half.” Said (another): “Your Lord knows best how long you have been (here). So send one of you to the city with this silver of yours, and let him see which food is better, then let him bring it for you, and let him be gentle, and never tell anyone about your things.</p> <p>2. “Firman Allah dalam QS. Yusuf [12]: 55 tentang ucapan Yusuf kepada raja:</p> <p>مُيْلَعِ ظِيْفِخِ يِنِّيْ ،ضِرْاَلَا نِيَاَرِخِ يْلَعِ يِنْلِعْجَا</p> <p>“Jadikanlah aku bendaharawan negara (Mesir). Sesungguhnya aku adalah orang yang pandai menjaga lagi berpengalaman.”</p> <p>3. The Word of God QS. al-Baqarah [2]: 283::</p> <p>... So, if some of you believe in others, let the one who is trusted fulfill his mandate and let him fear Allah, his Lord...</p> <p>“Firman Allah QS. al-Ma’idah [5]: 2:</p> <p>نَاوْدُعْاَلَاوْ مَثَالَا يْلَعِ اُوْنُوَاَعْتِ اَلَوْ ،يُوْقِنْتَالَاوْ رِيْلَا يْلَعِ اُوْنُوَاَعْتَوْ</p> <p>“And help in (doing) righteousness and piety, and do not help in (doing) sins and transgressions.”</p> <p>4. Hadiths of the Prophet, among others:</p> <p>هَاجُوْرَفَ ،رَاَصْنَالَا نَمِ اَلْجُرُوْ عِفَارِ اِبَا تَعَبِ مَلَسَوْ هِلَاوْ هِيْلَعِ هِلَا يْلَصَ هِلَا لَوْسِرَ نَا (أطوملأ يف كلام هاور) شرأحلأ تنب فنؤمؤيم</p> <p>“Rasulullah SAW represented Abu Rafi’ and an Ansar to marry (the Prophet’s marriage qabul with) Maimunah r.a.” (Narrated by Malik in al-Muwaththa’)</p>
Notice	:	Opinions of participants at the Plenary Meeting of the National Sharia Council on Thursday, 8 Muharram 1421 H./13 April 2000.

DECIDE

Assign	:	FATWA ON WAKALAH
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First	:	Provisions regarding Wakalah: 1. Statements of ijab and qabul must be stated by the parties to show their will to enter into a contract (akad). 2. Wakalah with compensation is binding and cannot be canceled unilaterally.
Second	:	Pillars and Conditions of Wakalah: 1. Requirements for muwakkil (representative) 1. The legal owner who can act on something that is represented. 2. The mukallaf or the mumayyiz child within certain limits, namely in matters that are beneficial to him such as representing to receive grants, receiving alms and so on. 2. Requirements for representative (representative) a. speak law, b. Can carry out the tasks assigned to him, c. A representative is a person who is given a mandate. 3. Things that are represented a. Clearly known by the person representing, b. Does not conflict with Islamic Shari'ah, c. Can be represented according to Islamic law.
Third	:	If one of the parties does not fulfill its obligations or if there is a dispute between the parties, then the settlement is carried out through the Shari'ah Arbitration Board after no agreement is reached through deliberation.

Wakalah Terms¹⁹,

1. The person who gives the power of attorney (al-Muwakkil) is required to be able to act legally, that is, he is mature and of sound mind, both male and female, may be absent (unseen) or in place, as well as sick or healthy. People who receive power (al-Wakil), are required to:
 - a. Able to act legally for himself and others, have adequate knowledge about the problems that are delegated to him, and are trustworthy and able to do the work that is mandated to him.
 - b. Appointed directly by the person who represents and the appointment must be firm so that it is really aimed at the representative in question. Not using the power given to him for his own benefit or other than that approved by the power of attorney.
 - c. If the person receiving the power of attorney makes a mistake without the knowledge of the person giving the power of attorney, causing a loss, the resulting loss will be borne by him.
2. Cases that are represented/objects of wakalah, something that can be used as an object of a contract or a job that can be done by other people, cases that are permissible and justified by syara', have a clear identity, and are the legal property of al-Muwakkil, for example: buying and selling, leasing, transfer of debt, dependents, business cooperation, currency exchange, salary provision, profit sharing contract, divorce, marriage, peace and so on.
3. Statement of Agreement (Ijab-Qabul, the agreement of both parties both verbally and in writing with the sincerity of giving and receiving both physical and benefits from the things transacted.

CONCLUSION

Wakalah is a contract which according to the rules of Fiqh Muamalah, is allowed and justified according to the Shari'a. The definition of Wakalah is:

- a. Protection (al-hifzh)
- b. Sufficient (al-kffayah)
- c. Dependents (ad-dhahamah)
- d. Delegation (ai-tafwidth)

In the Wakalah contract several pillars and conditions must be met for this contract to be valid, namely the presence of a person who represents (Al-Muwakkil), the person who is represented. (Al-Wakil), the object being represented and Shighat/Ijab Qobul. Each pillar has its own provisions in supporting the validity of the Wakalah contract.

The Fatwa of the National Sharia Council – Indonesian Ulema Council NO: 10/DSN-MUI/IV/2000 regarding Wakalah, has provided an explanation of how wakalah contracts should be implemented in muamalah activities in the community, besides that the legal foundations of wakalah activities strengthen the its application in Islamic Banking and Islamic financial institutions. This will support the development of Islamic financial products with Wakalah contracts, which can be implemented in several banking products such as buying and selling and investment. This will motivate the development of Islamic banking in Indonesia. This wakalah contract is a complementary contract in contracts in Islamic banking or Islamic financial institutions, but its role is very important to determine the success of the contract itself.

So wakalah in terms of collection (collecting debts) in this case is allowed which is a bank service activity to carry out a mandate from a third party in the form of collecting a certain amount of money to a certain person or entity that has been appointed by the giver of the mandate as long as it does not conflict with Islamic shari'ah. .

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