



PROCEEDINGS

3rd INTERNASIONAL CONFERENCE ON ISLAMIC LAW IN INDONESIA
“Reviving and Strengthening Islamic Law as a Living Law Within World’s Legal System”

September 4th-6th 2018
Faculty of Law, Mulawarman University
Samarinda

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**FOREWORD DEAN
FACULTY OF LAW, MULAWARMAN UNIVERSITY**

Assalamu'laykum Warahmatullahi Wa barakaatuh

First, let us thank to Allah SWT for blessing and guiding us into the right path.

On behalf of the Faculty of Law Mulawarman University, we are greatly honored and pleased that the 3rd International Conference on Islamic Law in Indonesia (ICILI) on “Reviving and Strengthening Islamic Law as a Living Law Within World’s Legal System” has been done and the proceeding will be published online soon.

This international conference is organized by Faculty of Law Mulawarman University in collaboration with the Association of Islamic Law’s Lecturers in Indonesia (ADHII), Lembaga Kajian Islam dan Hukum Islam (LKIHI) Law Faculty of Universitas Indonesia and has become the 3rd ICILI after the first one in Law Faculty of Universitas Mulawarman and the second one in Law Faculty of Universitas Andalas.

The theme of this 3rd ICILI is to reviving and strengthening the Islamic Law as a Living Law Within the World’s Legal System, we hope that the Islamic law will not be limited anymore just in private law but in all the legal system as well as the Islamic Law has every rules for everything to do for humankind.

We would also like to extend our gratitude to our invited speakers Prof. Dr. Noor Aziah Mhd. Awal (University Kebangsaan Malaysia), Prof. Mehmet Asutay, BA, M.Sc. PgDip, MA, Ph.D. (Durham University, UK), Dr. Tawat Noipom (Halal Institute Prince of Songkla University), and Prof.Dr.H. Jaih Mubarak,SE,MH.M.Ag (Sunan Gunung Djati Islamic State University) and also all participants, sponsorship partners, and committees.

Finally, allow me to wish you a beneficiary and pleasant international conference of Islamic law in Indonesia and wish that this conference will always continuous every year.

Wassalamu'alaykum wa rahmatullahi wa barakaatuh

Samarinda, September 2018
Dean

Dr.Mahendra Putra Kurnia, S.H., M.H.

FOREWORD
DR. WIRDYANINGSIH, S.H., M.H.
CHAIRMAN OF ISLAMIC LEGAL ASSOCIATION OF INDONESIA

Assalamu'laykum Warahmatullahi Wa barakaatuh,

Thank God, we pray to God Almighty and prayers and greetings to our lord, the Prophet Muhammad, may we always be in line to uphold Islamic law on this earth.

Alhamdulillah, since the establishment of the Association of Islamic Law Lecturers in Indonesia (ADHII) in 2015, then the following year, the 2016 ICILI (International Conference on Islamic Law in Indonesia) was first held at the Faculty of Law, University of Indonesia, Depok. Then the second ICILI was held at the Faculty of Law, Andalas University, Padang and the third at the Faculty of Law, Mulawarman University, Samarinda. In every conference i ICILI always chooses topics that develop at that time. This time the topic of the 3rd conference was about "Islamic Law Reviving and Strengthening as a living law within the world's legal system".

This conference is a forum for meeting Islamic law lecturers throughout Indonesia to discuss and present their findings, studies and research results related to Islamic law and its development in Indonesia, which is now recorded in the form of proceedings. My hope is that this conference will continue to run in a better direction in order to strengthen Islamic law in Indonesia.

This proceeding is a collection of writings from papers presented at ICILI 3rd at Mulawarman University, Samarinda on 4-6 September 2018. The writing in this proceeding is more and better than the previous proceedings. Many results of research and studies can be a reference for teachers, researchers and Islamic law enthusiasts to further develop the next study.

Finally, hopefully this conference and proceedings will continue with better results. Jadzakallahu khairon katsiro for the help of the parties, especially the Institute of Islamic Studies and Islamic Law FHUI which has supported the implementation of this conference and the realization of this proceeding.

Wassalamu'alaykum wa rahmatullahi wa barakaatuh

October 2018

TABLE OF CONTENTS

Title	i
Committee Arrangement	ii
Foreword Dean Faculty of Law, Mulawarman University	iii
Foreword to Chairman Of Islamic Legal Association Of Indonesia	iv
Table of Contents	v

A. Participant Paper

1. The Prudential Principle Of Trademark As The Object Of Secured Transaction In Financing Author : Trisadini Prasastinah Usanti	1
2. Tinjauan Hukum Islam Terhadap Zakat Fitrah Di Kelurahan Sambaliung Kab. Berau (Kajian Normatif Dan Sosiologis) Author : Bustani	11
3. The Right Of Child From An Apostate Wife In The Perspective Of Inheritance Law Author : Fiska Silvia Raden Roro	23
4. Prophetic Ethic Principle On Public Service Quality Improvement In Indonesia Toward Transcendental. Author : Insan T. Nur and Aullia V. Y.	44
5. Civil Servants' Income Zakat (Sharia and Indonesian Law's Perspective) Author : Titin Fatimah and Heru Susetyo	60
6. Pengaruh Kebijakan Pemerintah Dalam Pengelolaan Zakat Setelah Munculnya Undang – Undang Zakat 2011 Author : M.I. Abdul Aziz and Heru Susetyo	71
7. The Implementation Of Marriage Registration In The Fishery Community In Kampung Nelayan I, Medan Belawan, North Sumatera Author : Idha Aprilyana Sembiring, Yefrizawati, Yusrin	87
8. Ecological Justice In The Perspective Of Islamic Law And The National Law Of Indonesia Author : Haris Retno Susmiyati	101
9. The Role Of Judge Mediator And Non-Judge Mediator In Heirs Dispute Resolution At Religious Court Pekanbaru Author : Anton Afrizal Candra	108
10. Ratio Decidendi Of The Supreme Court Verdict Number 1400/K/Pdt/1986 About Interfaith Marriage In Islamic Law Perspective Author : Dr. Rosmini, Christ Amarta Harludi	116
11. Configuration Of Act Number 21 Of 2008 Based On Act Number 12 Of 2011 And Qaidah Fiqih Author : Asep Rozali	123

12.	Study Of Islamic Law In The Implementation Of Corporate Social And Environmental Responsibilities In Indonesia Author : Nur Arifudin	133
13.	Justification Of Leader Intervention In Zakat Distribution Author : Irma Suryani, S.Ag, M.Ag	148
14.	<i>Murabaha</i> Based Credit Cards: The Appropriateness Of <i>Murabaha</i> And <i>Maqasid Al-Shariah</i> Author : Rahmadi Indra Tektona	155
15.	Tinjauan <i>Maqashid</i> Syariah Terhadap Pidanaan Dalam Hukum Pidana Islam Author : Abdul Karim Munthe	170
16.	Considering Authority Of Waqf By The Country: Study of Utilization of Abandoned Waqf Property by the State Author : Drs. Zainal Arifin, S.H., M.H.	178
17.	Norm Of Religious Law Delineates Religious Society In Indonesia Author : Burhanudin Harahap and Luthfiyah Trini Hastuti	188
18.	Penegakan Hukum Dan Perlindungan Hak Konsumen Terhadap Sertifikasi Dan Labelisasi Produk Halal Menurut Undang-Undang Nomor 33 Tahun 2014 Tentang Jaminan Produk Halal Author : Dr. H. KN. Sofyan Hasan, S.H.,M.H.....	198
19.	Legal Protection For Online Taxi Bike Drive Norma Hukum Religijs Cermin Umat Beragama di Indonesiars In The Transaction Of Go-Send Application (Perspective <i>Maqashid Al-Shariah</i>) Author : Dyah Ochtorina Susanti	220
20.	Halal Certification As A Public Moral Exception In The World Trade Organization Author : Nabilla Syahdinda Putri and Yetty Komalasari Dewi	231
21.	The Implementation of Substitute Law on Financial Information Access as Indonesia Commitment in Automatic Financial Exchange of Information Author : Bambang Sugeng Ariadi Subagyono, Agus Yudha Hernoko and Zahry Vandawati Chumaida	244
22.	Implementation Of Sharia Compliance And Good Governance At Baznas In Zakat Management In Indonesia * Author : Nurfahmi Islami Kaffah and Heru Susetyo, SH, LL.M., M.Si. Ph.D.	257
23.	Studies For Islamic Inheritance Law In Indonesia Based On Legal Pluralism Approach For Wives Author : Didi Sukardi	269

24.	Guarantee Of <i>Halal</i> Product In Positive Laws Perspective In Indonesia To Protect Consumers Author : Erna Susanti	289
25.	Amil Rights And Zakat Management Operational Funding Author : Dr. H. Fachrul Ghazi, Lc, MA.	297
26.	Islamic Laws On Sexual Violence Involving Children Author : Rini Apriyani	304
27.	Agreement Technical Barriers To Trade And Indonesia Law Of <i>Halal</i> Product Assurance, An Overview Of Technical Barriers Within International Trade Author : Syukri Hidayatullah	313
28.	Standing Position Of Magistrate Guardian In Marriage In Religion Affairs Office (KUA) Author : Mardalena Hanifah	330
29.	The Fairness And Accountability Principles In Collection Of Tax And Zakat: The Study Of Rules And Their Application In Indonesia Author : Indah Purbasari, Encik Muhammad Fauzan, Yudi Widagdo Harimurti, Murni, Azizah	344
30.	Zakat Distribution And Utilization In Baznas Province Of Kalimantan Timur: Sharia Maqashid Study On Asnaf Fi Sabilillah Program Author : Dr. Mursyid	352
31.	Eksistensi Pemerintah Dalam Pengelolaan Zakat Untuk Kemakmuran Rakyat Author : Dr. Nur Insani, S.H.,M.H.	362
B.	Committee Arrangement	379

MURABAHA BASED CREDIT CARDS: THE APPROPRIATENESS OF MURABAHA AND MAQASID AL-SHARIAH

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ABSTRACT

The Economic development boosts the development of banking products. One of the products is credit card. In this context, the larger credit cards used, it may cause some problems viewed from Islamic Fiqh. Moreover, the use of Shariah credit card has not been regulated. Unlike conventional credit cards that has a clear legal instrument. Therefore, this research elaborates the appropriateness of Credit cards that is based on murabaha and the maqasid al Shariah. The research done is a normative legal research. The theory applied to answer the problems of the research is the theory of Maqasid al-Shariah. Murabaha-based Credit card is applicable to be developed in this modern era that demands simplicity and easiness in a non-cash transaction as an effort to anticipate customer's consumptive behavior to stay in accordance with the Islamic Shariah, and to promote benefits for all parties. Because murabaha-based credit card meets the five missions of maqashid Shariah i.e., maintaining faith or religion, life, intellect or knowledge, lineage, and wealth or property.

Keywords: *Maqasid Al Shariah, Mubarahah Contract, Shariah Credit Card*

1. Introduction

1.1. Background of Study

In the modern banking worlds, there are some products that become the basic of the economic transactions, i.e., loan, credit, pawn, etc., and one of the product is credit card. Credit card is part of the economic activities commonly used by modern societies to change money in cash as a transaction tool to be exchanged with goods, money, or services wished by the customers in certain place that provide credit card payment system.¹

Nowadays, there are 24 companies in Indonesia that issued credit cards as follows:²

**FIGURE1:
LIST OF CREDIT CARD ISSUER**

No.	Name of the Issuer	No.	Name of the Issuer
1	BANK BUKOPIN	13	BANK OCBC NISP

¹Subagyo. *Bank dan Lembaga Keuangan Lainnya* [Bank and Other Financing Institution]. Yogyakarta : Bagian Penerbitan Sekolah Tinggi Ilmu Ekonomi YKPN, 2005), p. 39.

²<https://www.bi.go.id/id/statistik/sistem-pembayaran/apmk/Contents/ Penyelenggara%20APMK.aspx>, accessed on April 4th, 2018.

2	BANK CENTRAL ASIA	14	BANK PERMATA
3	BANK CIMB NIAGA	15	BANK QNB INDONESIA
4	BANK DANAMON	16	BANK RAKYAT INDONESIA
5	BANK DBS INDONESIA	17	BANK SINARMAS
6	BANK HSBC INDONESIA	18	BANK UOB INDONESIA
7	BANK MNC	19	BNI SYARIAH
8	BANK ICBC INDONESIA	20	CITIBANK
9	BANK MANDIRI (Persero)	21	PAN INDONESIA BANK
10	BANK MAYBANK	22	PT. AEON CREDIT SERVICES
11	BANK MEGA	23	PT. SHINHAN INDO FINANCE
12	BANK NEGARA INDONESIA	24	STANDARD CHARTERED

Source :<https://www.bi.go.id/id>, processed, 2018

Based on these data, it can be observed that there are currently various forms of credit cards, both applied locally and internationally. Then, the number of credit cards circulated at least in 2017 is 17,244,127, while in 2018 until February is 17.438.938.³ Total credit card transactions in the use of expenditures in 2015 that reached 274,719,267 transactions amounted to 273,141,967 million rupiah, in 2016 and 2017 as much as 297,661,974 transactions amounted to 272,950,052 million rupiah.⁴

The rapid development of credit cards that provide easiness in transactions has encouraged Islamic Banks or world financial institutions to issue Islamic Credit Card.⁵ in the Middle East countries, as the highest number of credit card users, in the first five years since the issuance has reached 26% growth with the total transaction of 34.7 million US dollars. In the Saudi Arabia, the growth even reached 40%.⁶ While in Indonesia, in 2007 the first Islamic credit card is issued by Bank Danamon Syariah, called Dirham Card, then is followed by BNI Syariah in 2009 by launching Hasanah Card product. Both of these Islamic credit cards are the products in collaboration with MasterCard International.⁷ Therefore, the use of Islamic credit card has big potential in the future, such as shifting the use of conventional credit card to the Islamic credit card.

The above condition can be observed from the research of Karim Business Consulting (KBC) consisted in Muhammad Syafi'i Antonio stated that the potential migrations of the conventional credit cards users to the Islamic credit card is significant, which is at the rate of 26.1%, in other word the migration potential reaches 987,9

³<https://www.bi.go.id/id/statistik/sistem-pembayaran/apmk/contents/jumlah%20apmk%20beredar.aspx>, accessed on April 4th, 2018.

⁴<https://www.bi.go.id/id/statistik/sistem-pembayaran/apmk/contents/transaksi.aspx>, accessed on April 4th, 2018

⁵Arif Pujiyono. *Islamic Credit Card (Suatu Kajian Terhadap Sistem Pembayaran Islam Kontemporer)* [Islamic Credit Card: The Study of Contemporary Islamic Finance System]. *Jurnal Dinamika Pembangunan* Vol. 2 No. 1, Juni 2005, p. 70.

⁶ Muhammad Syafi'i Antonio, *Modal*, Majalah Islami bulanan Edisi No. 8, Juni 2003, hlm. 9.

⁷ Dian Safitri Pantja. *Kartu Kredit Islam Vs Kartu Kredit Konvensional* [Islamic Credit Card Vs. Conventional Credit Card], p. 3. accessed from <http://eprints.unisbank.ac.id/163/1/artikel-5.pdf>, on January 27th, 2018.

thousand people or more. Even the results of the KBC researchers will have the effect that growth will be as good as the growth rate if it is at 47% per year. Indeed, the result of KBC strengthens the assumption that the growth will be better through the growth of Islamic banking that reached 47% per year.⁸

The results of KBC have explained that there is a big potential in the Islamic credit cards. However, the application of the concept is not easy. So that, the potential of Islamic credit cards may still experience some problems, as follows:

1. Philosophical Problem

Basically, the implementation of Islamic Economy should be free from the elements of *Maysir*, *Gharar*, *Haram*, *Riba*, and *Bathil* (*MAGHRIB*) because the principle of Islamic Economy is based on willingness and free from tyranny.⁹ Moreover, the *MAGHRIB* elements are not in line with the Islamic principles explained in the Qur'an and Hadist. Therefore, the use of Islamic credit cards should always be controlled

2. Theoretical Problem

a) The naming of card containing the phrase 'credit' might be a debatable issue.

b) The basic mechanism or model of Islamic credit cards should be carefully observed. The purchase contract of *Murabaha* and service of *Ijarah* also have difficulties in the operational.¹⁰ Essentially, the products of Islamic Economy should be based on *Maqashid Shariah* (the purpose of Islamic Law) for the beneficial of all mankind.

3. Juridical Problem

Up to this moment, there has no any regulation regarding the Islamic credit card, whereas the conventional one has been regulated in various legal instruments. Despite the laws of *Shariah*, the product of credit cards is defined in the DSN-MUI No.54 / DSN-MUI / 2006 DSN-MUI / 2006 on *Shariah* Card to be determined as a product of Islamic Credit card.

4. Sociological Problem

The existence of Islamic Credit cards may affect the life of Muslim to be more consumptive. The phrasing of Credit is usually related to credits or debts for productive activities. On the other side, credit is also necessary for the parties to help the poor, for example, without any repayment. While in Islam there exists *Qordhul Hasan* which specifically help and lighten burden people in need.¹¹ Another problems that might occur is that the Islamic card still contains the

⁸Muhammad Syafi'i Antonio. *Bank Syariah dari Teori ke Praktik* [Bank Shariah Practice to Theory]. Jakarta : Gema Insani Press, 2001, p. 11.

⁹Andri Soemitra. *Bank dan Lembaga Keuangan Syariah*. [Banks and Islamic Financing Institution]. (Jakarta: Kencana, 2010), p. 36.

¹⁰Amrullah Ahmad, *Dimensi Hukum Islam dalam Sistem Hukum Nasional [Dimension of Islamic Law in the National Legal System]: Commemorating 65 years of Prof. Dr. H. Bustanul Arifin*, (Jakarta: Gema Insani Press, 1996), p 228.

¹¹Arif Pujiyono. *Islamic Credit Card (Suatu Kajian Terhadap Sistem Pembayaran Islam Kontemporer)* [Islamic Credit Card: The Study of Contemporary Islamic Finance System]. *Jurnal Dinamika Pembangunan*, Vol. 2 No. 1, Juni 2005.

elements of *riba* (or usury), where there is an additional price of goods as the profits of the bank and the seller in accordance with the agreement of both parties.

1.2. Problem of Study

Based on the above explanations on the philosophical, theoretical, juridical, and sociological issues, it should be observed whether or not the *murabaha* contract in the credit card is in accordance with *maqashid syariah*. So that the problems can be minimized and the use of the Islamic credit card can be in line with the objectives of the Islamic law.

1.3. Literature Review

1.3.1. Maqashid Al Shariah Theory

One of fundamental and significant concept of *Maqasid at-tasyri'* or *maqasid al-shariah* insisted that the Islamic law is upheld to create and maintain the *maslahah* (interest or goodness) of humankind. This concept has been acknowledged by the Islamic scholars that they formulate a popular theorem, namely:¹² "*where maslahah exists, there is the law of God.*"

According to *Al-Khawarizmi in Al-Syaukani*, *maslahah* means maintaining the purpose of Islamic law to keep away damage for all mankind.¹³ Any regulation to maintain the seven purpose of *syara'* (Islamic law) by keeping away from damage is called *Maslahah*. Based on the theory, the barometer of *maslahah* is the Islamic Law. The theory of *Maslahah* emerged from theory of the Islamic Law which is human prosperity oriented. This theory does not merely see the textual of Law but rather emphasize on the principle and objectives stated in the *nash* (or text).

1.3.2. The Concept of Financing

In General, financing means funding paid for the designed investments. Specifically, Financing is used to define funding made by financing institutions to their customers such as the Islamic Banks.¹⁴

The definition of Funding is also found in the constitutions, one of which The Law Number 10 of 1998 on Banking, Islamic-based Financing is the provision of money or a claim based on the agreement of the banks and another parties that require the funded parties to refund the money or claim after a certain period of time in exchange for wages or profit sharing.¹⁵ The definition of the *Shariah* Principle itself is the rule of agreement based on the Islamic law between banks and other parties for the saving of funds and / or financing of business activities, or other activities which are in accordance with the *shariah* (Islamic Law), such as financing based on the principle of profit sharing (*mudharabah*), financing based on the principle of capital participation (*musyarakah*), the principle of buying and selling of goods by obtaining profit (*murabaha*), or financing

¹²Muhammad Sa'id Ramdan al-Buti. *Dawabit al-Maslahah fi as-Syariah al-Islamiyah*. (Beirut: Mu'assasah ar-Risalah, 1977), p. 12.

¹³Al-Syaukani. *Irsyad a Fuhul Ila Tahqiq al Eal min 'lim al-Ushul*. (Beirut : Dar al-Fikr, t.th.), p.242.

¹⁴Muhamad. *Manajemen Bank Syariah* [Management of Shariah Bank]..(Yogyakarta: (UPP) AMPYKPN, 2002), p. 260. (*selanjutnya disebut Muhamad I*)

¹⁵See Article 1 point 12 Law Number 10 of 1998 on Banking.

of capital goods based on the principle of pure leasing without choice (*ijarah*), or by the option of transferring ownership of the rented goods from the bank by another party (*ijarah wa iqtina*)..¹⁶

1.3.3. The Concept of Murabaha

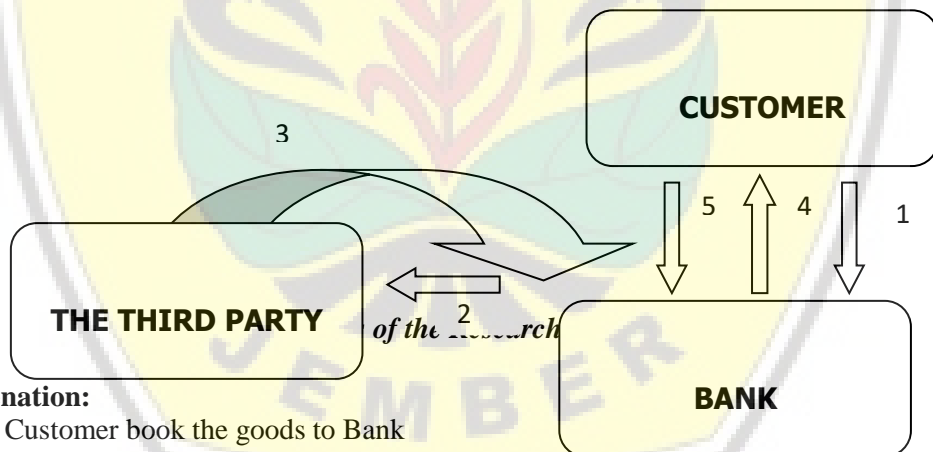
One of financing products of the Islamic Bank is *Murabaha*. Etymologically, *Murabaha* or *Al-Murabaha* derives from the word *Ribhu*, which means profit in the process of buying and selling of goods.¹⁷ According to *Fiqh* scholars, *Murabaha* is a form of sale where the cost of the selling goods as well as the profit on the sale is known to both parties, the purchase and selling price and the profit must be clearly stated at the time of the sale agreement,¹⁸ while terminologically, the definition of *Murabaha* contract is the sale and purchase of goods with the cost of goods plus certain profits agreed. In the practice, *Murabaha* is one type of sale and purchase with a profit margin, which means buying and selling of goods at purchase price plus price of profits that have been agreed.¹⁹

There are two system of *Murabaha* Financing, those are:

1. *Murabahah* with *Bai' u Salam* System.
2. *Murabahah* with *Bai' u Istishna* System.

The scheme of *Murabaha* is illustrated as follows:²⁰

FIGURE 2:
The Scheme of Murabaha Financing



Explanation:

1. Customer book the goods to Bank
2. The Bank buys goods from Supplier/ the third party
3. Supplier/the third party send goods to bank
4. Bank sells goods to customer
5. Payment by customer

¹⁶See Article 1 point 13 Law Number 10 of 1998 on Banking.

¹⁷Burhanuddin (I). *Op. Cit.*, p. 82.

¹⁸Moh.Zuhri. *Terjemah Fiqih Empat Madzab Buku ke 3*. (Bandung : Asy-Syifa, 1994).

¹⁹Muhammad Syafi'I Antonio, *Modal, Op Cit.* p. 101.

²⁰ Muhammad Syafi'I Antonio, *Bank Syariah dari Teori ke Praktik* [Bank Syariah Practice to Theory]. *Op Cit.* p. 113.

2. Method

2.1. Type of Research

This research belongs to normative legal research to analyze *Murabaha*-Based Credit card. Normative research is commonly called as doctrinal research, which means the purpose of the research is the provide systematic clear explanations on the law that regulates certain legal aspect, to analyze the relationship between one law and another, to explain difficult parts of certain law, even to predict the development of one law in the future.²¹

2.2. Types and Sources of Legal Materials

This research is based on normative-prescriptive legal materials. It is used to examine legal problems that is not only including textually in the positive legal substance or norms, but also examining the principles and values relating to credit card based on *Murabaha* contract, *Maqasidh Shariah* theory, and utilities theory. Sarjono Soekanto divides three types of legal materials, i.e., primary, secondary, and tertiary legal materials²²

2.3. Legal Material Research Technique

In this study, the collection and research of legal materials is done by using systematic literature method that is investigating documents related to *Maqasid al-shariah*, Credit card, *Murabaha* contract, literature and constitution which explain *Murabaha* contract mechanism.

2.4. Legal Material Analysis Technique

The steps of doing legal research are identifying legal facts and eliminating irrelevant cases, collecting relevant legal and non-legal materials, examining issues or problems related to collected materials, then arranging or formulating conclusion in form of an argumentation that addresses the legal issues or problems, and provides prescriptions based on the argumentation that are formulated into the conclusions.²³ Then, those legal materials are compiled systematically and orderly to provide prescriptions on what should be determined related to problems of the research.

3. Result and Discussion

3.1. Maqashid Al-Shariah in the Islamic Business Transaction

In the Islamic world, many scholars of Islam discuss the teachings of *Maqasidh Al-Shariah* that demands human to get *maslahah* (welfare or benefits) in their life. Whether specifically in a particular form of study or linked to other disciplines according

²¹Dyah Ochtorina Susanti dan A'an Efendi. *Penelitian Hukum (Legal Research)*. (Jakarta: Sinar Grafika, 2014), p. 10.

²²Dyah Ochtorina Susanti. Disertasi: *Pembentukan Persekutuan Komanditer (Commanditaire Vennootschap) Berdasar Akad Musyarakah* [Formation of Commanditaire Vennootschap Based on Musyarakah Contract]. (Malang: Doctoral Program of Law of Universitas Brawijaya, 2011), p. 35.

²³Peter Mahmud Marzuki. *Penelitian Hukum* [The Legal Research]. Revised Ed. 12th Publication. (Jakarta: Prenadamedia Group, 2016), p. 212.

to the goals and needs. Recently, M. Umer Chapra often associates economic discourse with the teachings of *Maqasid al-shariah*.²⁴

Regarding to *Maqasid al-shariah*, Ahmad Al Mursi Husain Jauhair, in his book "*Maqasid al-shariah fi-al Islam*", citing the opinion of Asy-Syaitibi, divides *maslahah* into two categories, namely *dhauriyyah* and *ghairu dhauriyyah*.²⁵ *Dhauriyyah* is the most fundamental as the main purpose and basic of Islamic law including five aspects known as *al-kulliyat al-khums*. The second category is divided into *hajj*, which is the benefits for human to be able to work and improving human life such as renting, profit sharing, etc., and *tahsini* which means benefits referring to moral and ethics that leads someone to *murū'ah*.²⁶

The realization of *Maqasid al-Shariah* could be based on its specific and general goodness and advantages.²⁷ Based on the teachings of *Maqasid al-shariah*, the existence of credit card is expected to maintain its advantages for the parties involved in the contract to preserve national economic stability, because the existing Islamic credit cards causes people or costumers to be more consumptive without maintaining the function and use of the cards.

Maslahah 'ammah is benefits or goods for public interest, while *Maslahah khashshah* is the benefit of private interest (individual).²⁸ The law is strategic that Ibn 'Ashur emphasized how important *Fuqaha* (Islamic Jurist or expert in *fiqh*) mastered this teachings²⁹. Related to this, Viewing its function, the credit card included into *maslahah khashshah* because it is expected to be more beneficial to the parties involved in the credit card agreement, the credit card is needed because the conditions of the time indeed demands the existence of the Credit cards.

Religion and economy cannot be separated, because philosophically the existence of economy actually existed clearly in Q.S. Al-Jumuah Verse 10, as follows:

"But when the Prayer is ended, disperse in the land and seek Allah's Bounty, and remember Allah much so that you may prosper."

The above verse shows that human is commanded by God to seek God's gifts on earth as fully as possible. The prosperity certainly will not come to us if we do not have

²⁴Lihat M. Umer Chapra. *Islam and the economic Challenge*. (Herdon: The Islamic Foundation and The International Institute of Islamic Thought, 1995) dan Umer Chapra. *The Islamic Welfare State and its Rule in the Economy* dalam Khurshid Ahmad (ed). *Studies in Islamic Economics* (Jeddah and United Kingdom : International Centre for Research in Islamic Economics and the Islamic Foundation, 1976), p. 144-147.

²⁵Ahmad Al-Mursi Hussain Jauhar. *Maqashid Syariah*, ter. Khikmawati. (Jakarta: Amzah, 2010), p. xiv-xv.

²⁶Ibid, p. xv-xvi.

²⁷Moh. Thoriquddin. *Pengelolaan Zakat Produktif Perspektif Maqashid al-Syariah Ibnu 'Ashur* [Productive Zakah Management in the Perspective of Maqashid al-Shariah Ibnu 'Assyria]. (Malang: UIN-Maliki Press, 2015), p. 47.

²⁸Ika Yunia Fauzia dan Abdul Kadir Riyadi. *Prinsip Dasar Ekonomi Islam Perspektif Maqashid al-Syariah* [Principle of Islamic Economy in the Perspective of Maqasid al-shariah]. (Jakarta: Penerbit Kencana Prenadamedia Group, 2014), p. 103.

²⁹Ika Yunia Fauzia dan Abdul Kadir Riyadi. *Prinsip Dasar Ekonomi Islam Perspektif Maqashid al-Syariah*. [Principle of Islamic Economy in the Perspective of Maqasid al-shariah] (Jakarta: Penerbit Kencana Prenadamedia Group, 2014), p. 101-102.

an effort and pray to God. Allah has set prosperity, it depends on human to optimize and manage it as well as possible.

The process of buying and selling is legalized by Islam, in one condition that the process is lawful and does not harm any party. The benefits for the parties indeed lays the function of the existence of *maqashid Shariah*, because without having benefits, it certainly will harm one party.

The basis of Islamic economics is to trade and also explore the gifts of Allah on earth with the applicable law, rather than not functioning its usefulness. It is illustrated in Q.S. Al Baqarah verse 275, which means:

"Those who eat Riba (usury) will not stand (on the Day of Resurrection) except like the standing of a person beaten by Shaitan (Satan) leading him to insanity. That is because they say: "Trading is only like Riba (usury)," whereas Allah has permitted trading and forbidden Riba (usury)....."

The above verse explains that what is forbidden by Allah is *Riba* (usury), while buying and selling is lawful. Indeed usury must be avoided by humans. Economic activity or commerce is allowed by God, but the process of spending the treasures certainly should not be excessive or miserly. This means that human are obliged to meet the needs of their life and it certainly requires the treasure. For those who are stingy or miserly, the needs will be difficult to meet and it will give negative impact for human life. Based on this condition, the basic principle of Islamic economics is that people can meet the needs of the life adequately, and not excessively waste their treasure.

Based on the above description, achieving benefits (*maslahah*) is the basic principle of Islam based on the Qur'an and is expected to gain happiness in the world and the hereafter. On earth *Maslahah* may be achieved by making protection on the five aspects of *Maqasid Al-Shariah* which is the precondition of achieving *maslahah* in the hereafter.

The purpose of *Shariah* can be seen from two sides, namely a) from the *Shariah* Maker side, i.e., Allah and His Messenger; and b) the human side as the executor of the law itself. At the level of *Shariah* Maker, then aim are; first, to meet the primary needs of human life (*daruyyat*), secondary needs (*hajiyyat*) and tertiary (*tahsiniyyat*); second, to be obeyed and carried out in everyday life; and third, to be properly obeyed and practiced by humans, they need to improve their ability to understand *Shariah* itself. It is precisely the prerequisite to achieve the benefit of life from the aspect of God as the maker of the Law.

Regarding to the human side as the implementer of the law (the subject), the goal of *shariah* is to achieve a happy and prosperous life under one condition that they are able to obtain the beneficial. On the contrary, they are also capable of preventing the harmful in life. Such condition depends on the attitude and commitment of human in the capacity as *mukallaf* given responsibility by God as the Law Maker. The fundamental purpose of *Shariah* is to gain the benefit, not only in the world, even the most important in the hereafter. Thus, it is logical if the teachings of *Maqasid al-shariah* affirmed that in pursuing the benefit, human also need to repel any kind of harm, both for themselves and others widely. Indeed it is the essence of Islamic teachings as *rahmatan lil'alamin* for life.

Maqasid al-Shariah is the basic development of system, practice, and even Islamic banking products in this multidimensional era. The order of *maqasid al-Shariah* is assessed by the majority of scholars as clear path for the journey of Islamic banking in answering the dynamic contemporary issues, because it is based on benefits and welfare. The concept of *maslahah* is the aim of *syara'* (*Maqasid Shariah*) from the establishment of Islamic law. *Maslahah* here means *jalbul manfa'ah wa daf'ulmafsadah* (promoting benefit and repelling harm).³⁰

Islamic Economy also positioned the existence of *maqasid al-Shariah* as a benchmark, so it is expected to give benefits. *Mujtahid* (Muslim jurists qualified to interpret the Islamic Law) in the field of Islamic economy have applied *Maqasid al-shariah* in the process of analysis of the economy including Islamic banking products. *Maqasid al-shariah* must also be able to have implications in the economic behavior of Muslim individuals, whether as consumers or producers. All economic activities should be aimed for the *maslahah* that can maintain *Maqasid al-shariah*.³¹

Simply, it is understood that in order to preserve wealth, Islam proposes the laws of *muamalah* and carries out economic activities in addition to the prohibition of destructive measures such as cheating. This provision is certainly related to the provision to maintain the life, because the purpose of running *muamalah* activity also aims to maintain the life which also related to *Maqasid al-shariah*. It is also related to the provision of keeping the lineages indirectly. Directly related to the provision of maintaining religion, because the basic values of *muamalah* law is taken from the base of religion that is universal.

While the provision to keep this treasure also related to the provision to maintain their intellectual, because the tendency to satisfy the needs of life in excess makes people lose their sense. To carry out economic activities, various facilities for protecting property are required, for example banking, pawnshops, insurance institutions, *baitul maal wattamwil* (BMT), etc. Without this institution, money-cycle activities can be done, for example by saving money at home or making small business, or borrowing money, but the presence of these institutions is very helpful for the people to save and manage their finances. At the tertiary stage, the choice to determine which bank is desired is left to local stability and capacity. At this stage, the card institution chosen for its operation is in accordance with the basic values of Islam and its basic principles, so that the development of these institutions that surely accommodate the values and basic principles of Islamic economics is urgently needed (*daruriyyah*) as an effort to keep treasures with legal and clean process. Therefore, the researcher will put forward the role of *Maqasid al-shariah* as a form of legal protection against the parties in Islamic business transactions.

Thohir Ibnu Asur said all the teachings of *syaria*, especially Islam, came with a mission for the *maslahah* of mankind in the world and the hereafter. It means that all the teachings in the Qur'an and *Sunnah* become the proposition of *maṣlahah*. Therefore,

³⁰Ayief Faturrahman. *PendekatanMaqāṣid Syarī'ah : Konstruksi Terhadap Pengembangan Ilmu Ekonomi Dan Keuangan Islam* [Maqasid Shariah Approach: Construction Against the Development of Economics and Islamic Finance]. *JurnalHunafa: Studia Islamika* Vol. 11, No. 2, December 2014: p. 211.

³¹Rahmawati, *Maqashid Al-Syari'ah Dalam Ekonomi Islam*. *Jurnal Syariah* [Maqasid al-shariah in the Islamic Economy], 2014, p. 104.

although the source of *syara'* (Islamic Law) does not mention about the benefits directly, but there are some arguments that can indicate the existence of *maslahah* in Islamic Law. Thus, it is unreasonable if there is a legal product that burdens the community in carrying out their economic transactions.

Provision of Islamic business transaction regulated in the constitution certainly cannot be separated from *muamalah* problem in the Islamic law, so it takes a proper understanding to be able to accommodate various interests in society because existed in one interest. Protection of certain interests ensuring that Islamic business transactions are conducted in accordance with the allowed provisions must be analyzed appropriately, including the use of Credit cards in order not to violate the principles of Islam.

The problem in the credit card is part of *muamalah* problem which is basically *ta'aqqulî (ma'qûlah alma'nâ)*. It happens because it continues to evolve in accordance with the development of the mindset in managing human life. Thus, there will be fundamental things that should be regulated to be obeyed by humans (*ta'abbudî*) so that *muamalah* will always be maintained.

Humans are given the freedom to develop transaction process. The problem of *muamalah* which is part of flexible legal products will always evolve and will adapt to the development of complex human civilization. Therefore, it needs efforts to actualize the values of *Shariah* and to distinguish it from un-Islamic *muamalah*.

One of the basic methods of developing Islamic law in the study of *muamalah* is *maqasid al shariah* which is a study on the purpose of the establishment of Islamic law. In this context, there are several opinions that can be expressed; first, to realize the good and to avoid the bad, or to repel harm and promote benefit. Second, *taklif* must lead to the realization of human benefit or interest, whether in the world or in the hereafter, that the goal of *Shariah* is to create benefits.

The use of Credit cards must be able to act as means of *Shariah* or Islamic transactions that bring benefit or goodness, and realize the benefit to the parties without conflicting with the values and principles in Islamic economics. The application of Credit cards in business transaction in the understanding of *Maqasid al-shariah* means that the credit card must be able to bring the benefit and legal protection for the parties.

3.2. *Maqasid Al-shariah* as A Legal Protection toward Parties in Murabaha-Based Credit card

Legal protection certainly cannot be separated from the legal objectives that integrate and coordinate various interests in the community in one traffic interest. The diversity of interests that exist in society makes protection of certain interests can only be done by limiting the various interests of other party. In this context, the interests of law are directed to the matter of human rights and interests. Thus, the law has the highest authority to determine human interest that needs to be regulated and protected.³²

Regarding to the use of Credit card, legal interest is to ensure the whole process of transaction to be in accordance with the principle of national and Islamic economic law. It needs argumentation support that might explain that business transaction using credit card may protect various parties' interest without harming principle of Islamic

³² Satjipto Raharjo, *Ilmu Hukum* [The Law Science]. (Bandung: Alumni, 1982), p.55.

Economic Law. One of the efforts to build the argument is to ensure that there exist benefits and goodness obtained from business transactions using Islamic credit card without violating the provisions of Islam. One thing that can be done is to build argumentation based on *maqashid al-shariah* approach.

Izzuddin bin Abd al-Salam in his book *al-Qawa'id al-Shugra* explains that *maqashid al-shariah* is meaning or wisdom.³³ He further discloses that *Shariah* is established to remove the difficulties of human, to repel harms, to realize the benefit for the people, to permit the good, and forbid the vicious. According to Izzuddin's opinion, then *maslahah* is important for human life.³⁴

Syaithibi opines that the substance of *maqashid al-shariah* has a limit in determining the *maslahah* as the purpose of the *Shariah*. Therefore, Islamic Credit cards intended for the benefit of the *Shariah* will be limited by five points. In other words, *maslahah* as the goal of the *Shariah* must be in line with the maintaining faith or religion, life or physical self/body, intellect or knowledge, offspring or lineage, and wealth or property.

Credit cards that do not apply the system of interest in payments cannot be directly assessed in accordance with Islamic economic values. Therefore, to know the value of *maslahah* of credit card, it should be observed through various aspects such as market segment, customer behavior, and custom or habits of customers that go along with it.

Creation of Islamic banking products should be based on the purpose of the product created, such as these qualifications i.e., avoiding usury (*riba*), *gharar*, *maysir*, *isrof* or excessive consumption, exploitation, etc. Therefore, the good value or benefit of Credit cards should meet those qualifications.

Viewing from the principles of *fiqh muamalah*, *maslahah* or goodness of Credit cards consist of these following principles, are:³⁵

- a. All forms of *muamalah* are permissible unless there is a proposition that forbids it.
- b. Difficulties may bring ease.
- c. Need can take an emergency position.
- d. Something that applies according to the custom is the same as something that applies according to *syara'* (as long as it follows the Islamic Law).
- e. Repelling *mafsadah* (damage) should be prioritized rather than taking the benefit.

Based on the above *fiqh* principles, we can also look at the benefit of credit card products, because as previously discussed, the study of credit card transaction with *maqashid al-shariah* approach cannot be released in the study of *maslahah*.

Realizing *maslahah* for humans is called *jalb al-manafi'*. In this context, the existence of Islamic Credit cards can facilitate the development of economic transactions aimed at non-cash transactions, so that Muslims have alternative options that are practical and in accordance with the *Shariah*.

³³Izzuddin bin Abd al-Salam. *Al-Qawa'id al-Shugra*. (Beirut: Dar al-Fikr al-Mu'ashirah, 1996), p. 10.

³⁴*Ibid*, p. 11

³⁵See Fatwa of National Islamic Council-Majelis Ulama Indonesia (DSN-MUI) No. 54/DSN-MUI/X/2006 on *Syariah Card*.

Avoiding or preventing damage and disrepute often termed as *dar 'al-mafasid*. At this level, the need of non-cash transactions is increasing as the number of similar banking products which are non-*shariah*, it is necessary to develop *shariah* products that can prevent Muslims from using non-*shariah* products. The development of *shariah* products as intended is implemented in the Credit cards. It is therefore important to ensure the transaction of credit card is truly in line with the religious guidance.

One of the functions and benefits of credit cards is the security to transact. The use of Credit cards for the purposes of several transactions, whether cash withdrawals, payments, shopping and others continues to grow. The existence of credit card make someone (customers) feels safe when they make transactions with other parties.

In this context, according to the teachings of Islam to create a security for itself and for its environment, *shariah* credit cards have the same functions. Credit cards can support the objectives of Islamic law to create a security, especially property security. Therefore, keeping property safe is one of *maqasid syariah* which is categorized as *maqashid al dharuriyyah* and some define as *maqashid ammah*, which is the general purpose of Allah in making the whole law.

In terms of *Shariah*, the use of credit card should meet five foundational goals of *maqasid al-shariah*. These are the preservation of:

1. faith or religion (*din*)
2. life (*nafs*)
3. intellect or knowledge (*'aql*)
4. lineage / progeny (*nasl*)
5. wealth or property (*maal*)

3.3. The Appropriateness of Murabaha-Based Credit Card and Maqashid Al-Shariah

The development of credit card transaction is relatively new in *muamalah*. Although the National Islamic Council-Majelis Ulama Indonesia (DSN-MUI) has issued fatwa regarding *shariah* credit cards, but determining the right type of contract, viewed from the opinion of the previous scholars, is not easy. Thus, determining the guidelines which are really appropriate with the types of contracts established by the previous *fuqaha* is problematic.

Previously, there are 3 (three) types of contracts in the Islamic credit card, those are *kafalah*, *qardh* and *ijarah*. In its development, it is necessary to examine the credit card contract based on *murabaha*. Previously, several types of *murabaha* application in Islamic banking practices can be divided into three categories, namely:

- 1) The first type of *murabaha* is a consistent type of *fiqh muamalah*.
- 2) The second type is similar to the first type, but the exchange of ownership directly from the supplier to the customer, while the payment is made directly to the first vendor/supplier.
- 3) Third type, the bank conducts *murabaha* contract with the customer, and at the same time represent (*akad wakalah*) to the customer to buy goods on their own.

In the context of credit cards, the study of credit cards based on *murabaha* contract between the bank and the customer needs to be seen in appropriateness with the *shariah maqashid* approach as described in the previous section. Islamic Bank commits

murabaha with customer, while at the same time represents customer (*wakalah* contract) or ordered customers to buy, to meet their own needs.

The appropriateness of doing *murabaha* contract in credit cards has to be closely paid attention. One instrument to measure whether or not one product has fulfilled *Shariah* principles is to observe the contract and its various provisions that are applied on the product. Furthermore, it is important to be observed whether or not it is in accordance with *maqashid al syariah*.

Murabahah is a particular kind of sale where the seller expressly mentions the incurred cost of the sold commodity, adds a profit to the cost of the commodity and declares the profit he has earned on the commodity to the buyer. In banking, *murabaha* is the most important matter for the bank income, *murabaha* strongly dominates every product issued by Islamic Bank. Every product issued by the bank always requires the customer to provide collateral or warranties. Collaterals demanded by the bank as a prudent act in providing financing.

Murabaha is one of sale and purchase form, thus the pillars that should be met are the general sale and purchase essential principles. The application of *murabaha* in credit card should meet the general requisites of sale and purchase and further the specific conditions perquisites of *murabaha*. The operational problem that should be anticipated is related to the object of sale and purchase owned by the seller. Banks should intend contract in advanced to the owner of selling and purchasing objects in the outlet where credit card payment is received.

Therefore, some specific requirements that should be met in *murabaha* are as follows:³⁶

1. Knowing cost of goods
2. Knowing profits
3. Not using productive assets as an exchange.
4. The contract of first sale and purchase should be valid.

If the operation of the credit cards can meet this special requirement then at least *murabahah* contract can be applied in the Islamic credit card. Although it should be examined further to support the argumentation.

To understand the appropriateness of *Maslahah* contract applied in the credit card, five foundational goal of *Maqasidh al-shariah* should be met, namely:

1. Maintaining Faith / Religion (*din*)
Murabaha based credit cards prevent customers from usury (*riba*)
2. Protection of Self (*nafs*)
The Islamic law is to maintain the right of human to live and sustain their life. Thus, *murabahah*-based credit card becomes the solution to free the customers from the application of high interest due to stuck of installment.
3. Preservation of intellect ('*aql*)
Murabaha-based credit card is recommended due to its advantages, such as preventing the practice of usury (*riba*), giving profit for customers as they buy product according to the cost of goods.
4. Protection of Lineage (*nasl*)

³⁶Wahbah Zuhaili, *Al-Fiqh*, (Damaskus: Dār al-Fikr, cet. IV, 2004) p. 3767-3770.

Through *murabaha*-based credit cards, where customer and banks are free from the practice of usury which is forbidden (*haram*), the transaction products provide blessings for customers, the family and the lineage.

5. Preservation of Property or Wealth (*maal*)

The easiness and advantage of *murabaha*-based credit card guarantee the safety of customers' property.

Based on the above descriptions, *murabaha*-based credit card is applicable in this modern era, which demands practical and ease of a non-cash transaction, and as an anticipation of community's consumptive behavior to be in line with the Islamic value, further it is expected to provide more benefits both in the world and the hereafter.

4. Conclusion

Murabaha-based credit card is appropriate with the value of *maqasid al-shariah*. It is suitable to be applied in this advanced era for practical and easy non-cash transaction to anticipate consumptive behavior of the community to be in accordance with the Islamic Law that will be useful for life and beyond. Due to the fact that, *Murabaha*-based credit card has met the five fundamental goals of *maqasid al-sharia*, those are the preservation of faith, life, intellect, lineage, and wealth.

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