

Manchester Journal of Transnational Islamic Law & Practice

About

The Manchester Journal of Transnational Islamic Law & Practice (formerly the Journal of Islamic State Practices in International Law) was founded in 2005. The Journal is independent of any State, school of fiqh or institutional affiliation and has a diverse and global editorial board. It is indexed on Scopus and available both in electronic and printed forms.



Aims of the Journal

The principal objectives of the Manchester Journal of Transnational Islamic Law & Practice (MJTILP) are to provide a vehicle for the consideration of transnational forms of Islamic law and practice. Transnationalism in Islamic law is taken broadly as communications and interactions linking Islamic thoughts, ideas, people, practices and institutions across nation-States and around the globe. In recent times, research in Islamic law has shaped narratives based on nation-States, demographics, diasporic communities, and ethnic origins instead of developing around a central core. Contemporary issues of Islamic law are increasingly linked to geographical locations and ethnic or parochial forms of religious beliefs and practices. Expressions like American, European, British, Asian, and Arab Islam have widely gained acceptance.

Despite the growing importance of dialogue to develop shared understandings of issues facing Islamic law and proposing coordinated solutions, the contemporary research and scholarship has not developed harmoniously and remains piecemeal and sporadic. Researchers and practitioners of Islamic law are drawn from a wide variety of subjects and come from various regions of the world but have insufficient institutional support for sharing information and comparing experiences. Innovation in various strands and paradigms of Islamic law and practice is stifled because there are limited spaces where evolutionary, collaborative and interdisciplinary discourses can take place. This in turn hampers the ability to build on past research and record best practices, negatively impacting a consistent and orderly development of the field. There is a need to constitute a world community of Islamic law scholars based on interactions and aspirations moving across linguistic, ethnic, geographical and political borders.

The MJTILP is inspired by the need to fill these gaps. It provides a platform to legal and interdisciplinary scholars and researchers for critical and constructive commentaries, engagements, and interactions on Islamic law and practice that are built upon configurations in contemporary contexts. It welcomes contributions that look comparatively at Islamic law and practice that apprise and inspire knowledge across national boundaries whether enforced by a State or voluntarily practiced by worldwide Muslim communities. We are equally interested in scholarships on encapsulated cultural worlds, diaspora, identity and citizenship that are embedded and circumscribed by religious ties. As it has been the practice of the journal since its establishment in 2005, it also has a specific interest in issues relating to the practice of Muslim States in international law, international law issues that may concern Muslim countries, and all aspects of law and practice affecting Muslims globally.

Printed and bound by Antony Rowe Ltd. Eastbourne UK
ElectronicPublications.Org

Manchester Journal of Transnational Islamic Law & Practice

MJTILP

Volume 19

Issue 3

2023

ISSN 2633-6626

Editor-in-Chief

[Dr Ahmad Ghouri](#), Senior Lecturer in Commercial Law & Director of Internationalisation
University of Sussex, UK.

Deputy Editor-in-Chief

[Dr Amna Nazir](#), Reader in Law & Associate Director Centre for Human Rights, Birmingham
City University, UK.

[Dr Fatemeh Sadeghi Givi](#), Research Associate, Institute for Global Prosperity, University
College London, UK.

Associate Editors

[Dr Muneer Abduroaf](#), Senior Lecturer, University of the Western Cape, South Africa.

[Dr Zubair Abbasi](#), Lecturer, University of Bradford, UK.

[Dr Bader Aldosari](#), Assistant Professor, University of Prince Sattam Bin Abdul Aziz,
Kingdom of Saudi Arabia.

[Dr Muhammad Asif Khan](#), Associate Professor, Department of Law, NUST, Islamabad,
Pakistan.

[Dr Ahmed Al-Dawoody](#), Legal Adviser for Islamic Law and Jurisprudence at the
International Committee of the Red Cross (ICRC).

[Dr Ashraf Booley](#), Senior Lecturer in Law, University of Western Cape, South Africa.

[Dr Hossein Esmaeili](#), Associate Professor, Flinders University, Australia.

[Dr Oumama Emad Ali Hamasha](#), Assistant Professor, University of Jordan.

[Dr Mohammad Hedayati-Kakhki](#), Visiting Professor, Durham University, UK.

[Dr Tareq Moqbel](#), Research Fellow in the Study of Love in Religion, Regent's Park College,
University of Oxford, United Kingdom.

[Dr Eleni Polymenopoulou](#), Assistant Professor, Hamad Bin Khalifa University, Qatar.

[Dr Ayesha Shahid](#), Assistant Professor, Coventry University, UK.

[Dr Adnan Trakic](#), Associate Professor, Department of Business Law and Taxation, Monash
University Malaysia.

[Dr Emine Enise Yakar](#), Associate Professor, Recep Tayyip Erdoğan University, Turkey.

[Dr Abubakri Yekini](#), Lecturer in Law (Conflict of Laws), University of Manchester, UK.

[Dr Ali Shirvani](#), Assistant Professor, Law School, Northwest University Xian, China.

[Dr Haroun Rahimi](#), Assistant Professor of Law, American University of Afghanistan,
Afghanistan.

[Dr Salah Al-Ansari](#), Lecturer in Islamic Studies, Muslim College London, United Kingdom.
[Dr Shahnaz](#), Assistant Professor, School of Law, University of Kashmir.

Assistant Editors

[Diana Carina Azoitei](#), The University of Law, UK.
[Afrin Khan](#), Assistant Professor, Kirit P. Mehta School of Law, NMIMS, India.
[Amr Arafa Hasaan](#), PhD Candidate, The Amsterdam Centre for International Law, University of Amsterdam, The Netherlands.
[Shahzeb Shahid](#), LLB University of the Punjab, Pakistan.
[Muhammad Hassan](#), LLM, Institute of European Studies, Vrije University Brussels, Belgium.
[Shaheer Ahmed](#), M.A. Arabic and Islamic Studies, Georgetown University, USA.
[Dr Aishat Akere](#), PhD in Molecular Biology, University College London, UK.
[Muhammad Hammad Sarwar](#), LLM, University of Amsterdam, The Netherlands.
[Mashair Idris Kheiralla Sirour](#), PhD in Shariah, University of Khartoum, Sudan.
[Dr Beata Polok](#), Assistant Professor, Dar Al-Hekma University, KSA.

Book Review Editor

[Dr Kahlid Bashir](#), Lecturer, University of Aberdeen, UK.

Recent Legal Developments Editor

[Dr Mohamad Janaby](#), Lecturer in International Law, University of Glasgow, UK.

Editorial Board

Prof Asma Afsaruddin, Indiana University, USA.
Prof Asad Q. Ahmed, University of California, Berkeley, USA.
Imam Qari Asim MBE, Leeds Makkah Masjid and DLA Piper, UK.
Prof Dr Mohd Ma'Sum Billah, King Abdul Aziz University, KSA.
Prof Mohamed Elewa Badar, Northumbria University, UK.
Prof Ilias Bantekas, Hamad Bin Khalifa University, Qatar.
Prof Ann Black, University of Queensland, Australia.
Prof L. Ali Khan, Washburn University, USA.
Prof Bashar H. Malkawi, The University of Arizona, USA.
Prof Nakib Muhammad Nasrullah, University of Dhaka, Bangladesh.
Prof Muhammad Munir, International Islamic University, Islamabad, Pakistan.
Prof A F M Maniruzzaman, Portsmouth Law School, University of Portsmouth, UK.
Prof Jeff Redding, The University of Melbourne, Australia.
Prof Javaid Rehman, Brunel University, UK.
Prof Ihsan Yilmaz, Deakin University, Australia.
Prof Luqman Zakariyah, Federal University of Kashere, Gombe, Nigeria.
Prof Nehaluddin Ahmad, Sultan Sharif Ali Islamic University, Brunei Darussalam.
Faisal Kutty, Associate Professor, Southwestern Law School and Associate Professor of Law Emeritus, Valparaiso University, USA.

Contents

Articles:

- Covid-19 and the Demonisation of Muslims in India**
S. M. Aamir Ali, Darshi Sharma, Anuttama Ghose 1
- Discursive Discourse on the Breakdown Theory of Divorce and its Application in the Shari’ah-Compliant Maldives Family Act of 2000**
M. Z. M. Nomani, Faizan Mustafa, Mohammad Rauf 34
- Cultural Relativism and Women’s Rights in Islamic Personal Law in Saudi Arabia**
Beata Polok, Mariana Dussin, Dareen Abdulmohsen 51
- Approaches of the Religious Court Judges in Indonesia to Settle Joint Marital Property Disputes**
Sukiati, Nurasih, Milhan 71
- Legal Analysis of the Customary Practices in the Resolution of Family Disputes in Pakistan**
Zeeshan Ashraf Qureshi, Mohammad Azam Hussain, Ain Husna Mohammad Arshad 82
- Indonesian Muslim Women Ministers: Participation and Significance of the Muslim Women’s Movement in Indonesia since the Early Reformation to the Present**
Fajar Apriani, Thalita Rifda Khaerani 102
- Proving Murder by Qasamah (Oathtaking): A Historical Analytical Study**
Maher Haswa, Ibrahim Alqatawneh, Ahmed Fekry Moussa 115
- Streamlining Religiotaainment: The Influence of Da’wah Content in Digital Space on the Life of the Samarinda Muslim Community in Indonesia**
Nurliah, Rina Juwita 128
- The Practice of Mohuyula (Mutual Cooperation) and Transformation of Local Culture Based on Islamic Law and Values in Gorontalo Coastal, Indonesia**
Zulkarnain Suleman, Zulfitri Zulkarnain Suleman 138

Constitutional Amendments in Algeria: Getting Through the Bottleneck <i>Samia Abdellaoui</i>	152
Health Insurance Cover in the Light of Islamic Law <i>Manswab Mahsen Abdulrahman, Ahmad Abbas</i>	165
The Assessment of Indonesia’s Religious Courts in Resolving Shari’ah Banking Disputes According to the Principles of Justice <i>Weny Almoravid Dunga, Mohamad Hidayat Muhtar, Lucyane Djaafar</i>	179
Ending the Debate of Islamic Law Permissibility of Digital Wallet Through the Lens of Fiqh Adaptation <i>Fauzul Hanif Noor Athief, Lukmanul Hakim, Imron Rosyadi, Azidni Rofiqo</i>	194
Constructing Islamic Law and Islamic Business Ethics for a Sustainable Halal Industry Economy <i>Wazin, Tulus Suryanto</i>	212
Ihya al-Mawat: Islamic Law Perspectives on the Concept of Land Occupation in International Law <i>Agus Triyanta, Saufa Ata Taqiyya</i>	224
The Principle of Non-refoulement as ‘Urf in Muslim Societies <i>Malahayati Rahman, Laila M. Rasyid, Yulia Yulia</i>	233
Navigation Rights in Islamic Tradition and Modern International Law <i>Nehaluddin Ahmad, Norulaziemah Zulkiffle</i>	251
Recent Legal Developments:	
Saudi Arabia’s Vision 2030, Shariah, and Contemporary Legal Trends: The Transformative Power of Law in Guiding Reforms <i>Mohammad Bashayreh</i>	267
Ensuring Privacy of Personal Data: A Panoramic View of Legal Developments in Personal Data Protection Law in Saudi Arabia <i>Siddharth Kanojia</i>	270
The Consumer Protection Bill 2022: A Quantum Leap of Consumer Policy in Saudi Arabia <i>Shaya Abdullah Alshahrani</i>	277
New Saudi Personal Status Law Codifies Key Women’s Rights <i>Nadia Ahmad</i>	285
The Empowerment of Women in the Kingdom of Saudi Arabia’s Workforce <i>Beata Polok, Mariana Dussin</i>	292

Moral Damages in the New Saudi Civil Transactions Law: The End of a Controversy <i>Nawel Ben Sassi</i>	301
The Recognition of the One-Person Company in the Kingdom of Saudi Arabia <i>Bouthaina Ali Noureldeen Atwan</i>	308
Achieving Legal Certainty in Civil Dealings: An Overview of the Saudi Civil Transactions Regulation <i>Nisreen Mahasneh</i>	313
 Book Reviews:	
<i>Rediscovery and Revival in Islamic Environmental Law: Back to The Future of Nature's Trust</i> Samira Idllalène, Cambridge University Press, Cambridge, 2021, xxiv + 164 pp. ISBN 978-1-108-48878-5 <i>Muhammad Wajid Munir</i>	322
<i>Islamic State as a Legal Order to Have No Law but Islam, between Shari'a and Globalization</i> Federico Lorenzo Ramaioli, Routledge, Milton, Abingdon-On-Thames, 2022, v + 210 pp. ISBN: 978-1-032-20257-0 <i>Absar Aftab Absar</i>	327
<i>Islamic State as a Legal Order; To Have No law but Islam, between Sharī'a and Globalisation</i> Federico Lorenzo Ramaioli, Routledge, Oxfordshire, 2022, 212 pp. ISBN 9781003262916 <i>Faizan Akbar</i>	331

Ending the Debate of Islamic Law Permissibility of Digital Wallet Through the Lens of Fiqh Adaptation

Fauzul Hanif Noor Athief*

Lukmanul Hakim**

Imron Rosyadi***

Azidni Rofiqo****

Abstract: Muslim scholars have given various opinions on the permissibility of digital wallet in Islamic law. The differences in these opinions have produced inconclusive results leaving the Muslim user of digital wallet perplexed. This article collects all of the scattered opinions of Muslim scholars on digital wallet and presents their critical review. Focusing on GoPay as Indonesian leading digital wallet, this article has adopted a systematic literature review method in collecting, classifying, and synthesising such opinions. A critical review of the collected opinions was then carried out using *fiqh* adaptation (*takyif fiqh*) approach, which allows a Muslim scholar to give *fatwa* (Islamic ruling) precisely on any modern issues through its four steps of analysis: 1) *marhalatu al-tashwir* (the depiction stage); 2) *marhalatu al-takyif* (the adaptation stage); 3) *marhalatu al-hukm* (the judgment stage); and 4) *marhalatu al-ifta'* (the *fatwa* stage). This research finds that out of 18 articles, researchers referred to four different contract schemes for digital wallet: 1) *wadiah* (savings) in 4 articles; 2) *qardh* (loan) in 3 articles; 3) *ijarah* (lease) in 7 articles; and 4) *sarf* (money exchange) in 1 article. Another 3 took a comparative approach to these contract schemes. While each of these contract schemes has its consequences on the permissibility of any type of discount provided by GoPay, the underlying assumption is that the GoPay services that fall within either of these contractual schemes are permissible under Shariah. Applying *fiqh* adaptation, this article concludes that the majority of these existing studies do not incorporate GoPay's terms and conditions as well as Bank Indonesia's regulations so they fail at the depiction stage (*marhalatu al-tashwir*). This article recommends that *wadiah* (savings) is the most appropriate underlying contract.

Keywords: Islamic Law; GoPay; Digital Wallet; *Fiqh* Adaptation; Systematic Literature Review

I. INTRODUCTION

Development and change are inherent inevitabilities that cannot be evaded. In the past, human reliance on individual capabilities for complex computations has been superseded by calculators in various forms. Whereas human settlement patterns were once dictated by the abundance of natural resources, contemporary living conditions allow individuals to reside in apartments while still satisfying their daily needs.

The business landscape nowadays also exhibits dynamic nature of development and change where we can see the advancement of various financial institutions. A noteworthy development in this realm is the emergence of banks, obviating the need for individuals to physically

transport pure gold by enabling them to possess a mere piece of paper denoting ownership of gold stored in a bank, although this system eventually underwent modifications.¹

Business development is accompanied by advancements in technology. Various forms of transactional bookkeeping that were previously conducted in physical format have now transitioned into digital data.² The once-physical nature of money has given rise to digital currency and digital wallet where the value is stored within data and transactions are recorded and distributed through the internet.³ The idea of digitisation was introduced by Chaum long before the dawn of the 21st century, and Worthington anticipated the eventual emergence of a cashless society.⁴ The process of money digitisation has persisted and led to the creation of cryptocurrencies, which currently garner significant attention. The success of cryptocurrencies has spurred a race to develop new forms of digital currencies, exemplified by a company in Indonesia that has introduced Inacoin.⁵

The COVID-19 pandemic has further amplified the adoption of cashless payment systems, both globally and in Indonesia, because the preventive measure for the spread of COVID-19 require people to conduct transactions without any physical contact.⁶ Cashless payment methods in Indonesia are facilitated by platforms such as GoPay, Dana, Ovo, LinkAja, and Shopee Pay. These companies offer users convenient cashless payment options, incorporating enticing features such as discounts and cashback incentives. Among the extensively researched payment systems, GoPay has emerged as a prominent focus of a majority of existing studies. This is not surprising, considering that GoPay can be regarded as the pioneer of cashless payments in Indonesia. Moreover, GoPay's integration with the Gojek platform has resulted in a significantly larger user base compared to its competitors.⁷ Additionally, GoPay has spearheaded the implementation of various features within its system including discounts, cashbacks, and other promotional incentives.

* Assistant Professor, Universitas Muhammadiyah Surakarta, Faculty of Islamic Studies, Surakarta, Indonesia, fauzul.hanif@ums.ac.id.

** Assistant Professor, Universitas Muhammadiyah Surakarta, Faculty of Islamic Studies, Surakarta, Indonesia, lukmanul.hakim@ums.ac.id.

*** Assistant Professor, Universitas Muhammadiyah Surakarta, Faculty of Islamic Studies, Surakarta, Indonesia, ir120@ums.ac.id.

**** Assistant Professor, Universitas Darussalam Gontor, Islamic Economics Department, Ponorogo, Indonesia, azidnirofiqo@unida.gontor.ac.id.

This research is supported by funding received from the Research and Innovation Department Universitas Muhammadiyah Surakarta (grant number 16.17/A.3-III/LRI/I/2022).

¹ Muhammad Zubair Abbasi, 'The Ascent of Money: A Financial History of the World' (2010) 52 *International Journal of Law and Management* 332.

² Zoltan J. Acs, Abraham K. Song, László Szerb, David B. Audretsch, and Éva, 'The evolution of the global digital platform economy: 1971–2021' (2021) 57 *Small Business Economics* 1629-1659.

³ Mohamad Al-Laham, Haroon Al-Tarawneh and Najwan Abdallat, 'Development of Electronic Money and Its Impact on the Central Bank Role and Monetary Policy' (2009) 6 *Issues in Informing Science and Information Technology* 339.

⁴ D. Chaum, 'Blind Signatures for Untraceable Payments.', *Advances in cryptology* (Springer 1983); Steve Worthington, 'The Cashless Society' (1995) 23 *International Journal of Retail & Distribution Management* 31.

⁵ Filka Catur Windiastuti and Fauzul Hanif Noor Athief, 'Inacoin Cryptocurrency Analysis: An Islamic Law Perspective' (2019) 2 *Journal of Islamic Economic Laws* 152.

⁶ Radoslaw Kotkowski and Michal Polasik, 'COVID-19 Pandemic Increases the Divide Between Cash and Cashless Payment Users in Europe' (2021) 209 *Economics letters* 110; Wenti Ayu Sunarjo, Siti Nurhayati and Ari Muhadrono, 'Consumer Behavior toward Adoption of Mobile Payment: A Case Study in Indonesia during the COVID-19 Pandemic' (2021) 8 *The Journal of Asian Finance, Economics and Business* 581.

⁷ See: '10 Top Fintech Companies in Indonesia' *InvestinAsia* (Jakarta: 29 July 2023) <<https://investinasia.id/blog/top-fintech-companies-in-indonesia/>> accessed 13 September 2023.

GoPay is seamlessly integrated into the broader Gojek ecosystem.⁸ It serves as the default payment method for various Gojek services, ensuring its widespread acceptance and use throughout Indonesia. Just like any other digital wallet, GoPay starts with account creation. Users fund their wallets through bank transfers, ATM deposits, or cash deposits. The balance within GoPay can be used for ride-hailing, food delivery, e-commerce payments, utility bill payments, QR code payments and many others. In addition, users have the flexibility to transfer funds from their GoPay wallets to other GoPay users or their personal bank accounts. Withdrawal is also allowed by GoPay, and depending on users' bank policy, specific charges might be levied to the users. Since not all the digital wallet balance is used, there will be floating funds, a term referring to the balance of money stored in a user's GoPay digital wallet. Floating funds essentially represent the available money within the GoPay wallet that can be used flexibly as needed. To attract more users, GoPay frequently runs promotional campaigns and offers cashback rewards to incentivise users to opt for GoPay as their preferred payment method.

The presence of various advancements and innovations in life has become a significant topic of discussion within the realm of Islamic jurisprudence (*fiqh*). The Muslim community holds particular concerns regarding the Shariah legitimacy of these developments and innovations. *Fiqh* (Islamic jurisprudence) is expected to address these concerns by providing the Islamic bases for various modern issues. It is required to offer insights into whether these advancements and conveniences are permissible, conditionally permissible, or entirely prohibited under Islamic law. For doing so, *fiqh* adaptation is developed to help Muslim jurists in responding to new issues (*al-waqai' al-mustajiddat*) by combining the divine guidance of Qur'an and Sunnah, the abundant literature of *fiqh* in the Medieval Era, and the newly developed habits under modern society.⁹ Indeed, *fiqh* adaptation is not a new concept. It has been adapted by many jurists in order to formulate Islamic legal opinions in the context of *muamalah* (business) for which no precedents were found. Thus, we can see the application of *fiqh* adaptation in solving legitimacy questions of many modern financial products, for example, *takaful* (insurance) and *ijarah mausufah fi al-dhimmah* (leasing for pre-existing object).¹⁰

In response to the curiosity of the Indonesian Muslim community, numerous scholars have sought to examine the Islamic legal standing of GoPay since its inception in 2015. This interest arises from the ambiguity surrounding the status of funds stored within GoPay as well as the countless of discounts offered which are perceived as financial benefits linked to the floating funds and potentially implicating the issue of *riba*. These studies encompass various forms, including many undergraduate and master's degree theses and journal articles. Interestingly, the conclusions drawn in these studies differ. For instance, Aji's thesis concludes that the

⁸ The Gojek ecosystem is a multi-service platform that provides access to a wide range of services. The ecosystem is a single app that allows its users to order food, find transportation, make digital payments, shop, have access to hyper-local deliveries, get a massage, and experience another two dozen services. The ecosystem connects and integrates driver-partners, customers, SMEs business as well as third party payment providers. See, for more detail: Tori Santo Tomas and Felicia Lo, 'A Super App Connecting Drivers and Communities' *AIM2Flourish* <<https://aim2flourish.com/innovations/a-super-app-connecting-drivers-and-communities>> accessed 13 September 2023

⁹ M'Uthman Syabir, *Al-Takyif Al-Fiqhi Li Al-Waqai' al-Mustajiddat Wa Tatbiqatuh Al-Fiqhiyyah* (Dar Al-Qalam 2014) 61-85.

¹⁰ Abu Umar Faruq Ahmad, Abu Talib Mohammad Monawer and Lukman Ayinde Olorogun, 'Takyif Fiqhi on the Permissibility of Ijarah Mawsufah Fi Al-Dhimmah: A Critical Analysis 1' (2020) 17 *International Journal of Islamic Thought* 1-14; Muhammad Ali Jinnah Ahmad and Lokmanulhakim Hussain, 'Fiqh Adaptation (Takyif Fiqhi) for the Concept of a Performance Fee in Takaful' (2013) 195 *ISRA International Journal of Islamic Finance* 1-9.

underlying contract for GoPay transactions is *wadiah* (savings).¹¹ Conversely, Thoha's published journal article concludes that the contract occurring in GoPay and serving as the basis for transactions is *qardh* (loan).¹² On the other hand, Komarudin analyses GoPay from the perspective of *ijarah* in his undergraduate thesis, yielding different results from the aforementioned studies.¹³ Another conclusion is offered by Wijaya, who states that the contract underlying GoPay transactions is *sarf* (money exchange).¹⁴ As all these four are permissible contracts in Islamic law, the underlying assumption is that the GoPay services that fall within either of these contractual schemes are permissible under Shariah.

Nevertheless, each conclusion carries its own implications regarding the Islamic legal status of GoPay usage. In the context of *fiqh* research in Indonesia, it is not uncommon to find that research findings are not highly accurate. This is primarily due to the fact that many studies are the products of undergraduate or graduate assignments, which often lack comprehensive mastery of Islamic legal analysis. For example, responding to existing inaccuracies in the relevant research, Alam attempted to correct various opinions related to the Islamic law of contracts, specifically in the context of the core and plasma contracts in the poultry farming industry.¹⁵ The variations in opinions, rulings, research findings, and conclusions often result in confusion among layman readers, who are unable to decide conclusively which opinion to follow. The lack of a definitive conclusion often leads readers to share conflicting information with their close associates, further exacerbating the confusion and eventually leading to never-ending debates on important innovations of *muamalah*.

Therefore, the objective of this article is to collect and compile existing research on the Islamic legal aspects of GoPay with the aim of examining and categorising their respective conclusions. Additionally, this article critically evaluates the methodological foundations upon which these conclusions are based. Evaluation through the application of *fiqh* adaptation will clarify how the previous studies fail to capture the details of digital wallets comprehensively. The ultimate goal is to provide an exhaustive *fiqh*-based analysis of the Islamic rulings regarding GoPay through *fiqh* adaptation. Going through this article, readers will no longer need to individually review multiple GoPay research studies and independently synthesise the results, a process that can be potentially hazardous within the realm of *fiqh* because synthesising scholars opinion is one of *mujtahid's* (*scholar of Islamic law*) task which cannot be done by layman. Moreover, readers will benefit from more conclusive findings, allowing them to confidently determine the permissibility or impermissibility of GoPay usage.

The following discussions in this article are divided into five parts. Part II elaborates more on the conceptual understanding of *fiqh* adaptation. It is then followed by methodology on how this study collects and synthesises literature of previous studies in Part III. Meanwhile, part IV will elaborate on the Islamic legal opinion on the permissibility of GoPay and how these Islamic rulings are constructed according to the previous research. Part V discusses the application of *fiqh* adaptation and how the final product of Islamic opinion is derived through the process. Finally, part VI provides a summary of conclusions.

¹¹ Aji Aji, 'Analysis of Islamic Economic Laws on GoPay Transaction' (Bachelor's Thesis, Universitas Islam Negeri Sunan Gunung Djati 2019) 67-76.

¹² Aris Badaruddin Thoha, 'The Legal Status of GoPay Transaction: An Islamic Perspective' (2019) 17 *Fahma* 47-59.

¹³ Komarudin Komarudin, 'Analysis of GoPay Payment from Ijarah Contract Perspective (A Study of PT. Gojek at Serang City)' (Bachelor Thesis, Universitas Islam Negeri Sultan Maulana Hasanuddin 2019) 57-63.

¹⁴ Hendra Wijaya, 'Takyif Fiqh of Online Transportation Service Payment through Electronic Money (GoPay and OVO)' (2018) 4 *Nukhbatu 'Ulum: Jurnal Bidang Kajian Islam* 187.

¹⁵ Azhar Alam, Novia Pradina Putri and Fauzul Hanif Noor Athief, 'Literature Review on Cooperation Contract between Companies and Chicken Farmers in Islamic Law Perspective' *Conference: International Conference Religion, Spirituality & Humanity* (2020) 25-40.

II. TAKYIF FIQH (FIQH ADAPTATION)

The dynamism of societal development is inherently linked to the various innovations in business transactions practised by the Muslim community. To ensure that these transactions align with Shariah principles, it is imperative for scholars, particularly in addressing new innovative transactions, to play an active role. The legal rulings formulated by scholars to address these new transactional phenomena are commonly referred to as *fatwas*.¹⁶ In this context, Muslim jurists respond to new transactional phenomena by referencing Islamic legal texts and employing the fundamental principles of *usul fiqh* (principles of Islamic jurisprudence), a process referred to as independent legal reasoning (*ijtihad*). In this modern era, legal reasoning has become almost synonymous with the concept of *tarjih* (weighing up and preference) as explained extensively by Ahmed Gad Makhlof.¹⁷ *Tarjih* in pre-modern Islamic legal literature refers to a process of weighing up and preference over several legal findings among jurists based on the authenticity of evidence and the soundness of legal deduction process either within the school of law (*intra-madhab*) or between different school of law (*inter-madhab*). *Tarjih* in the modern era is used to develop new legal doctrines through a collective *fiqh* institution based on comparisons between legal rulings found in the heritage of Islamic legal literature. *Tarjih* is accompanied by the process of *takhayyur* (selection), which has also evolved in the modern era from its original meaning during pre-modern juristic understanding.¹⁸

However, the effort of jurists to produce legal rulings collectively in the contemporary era through *tarjih*, which nevertheless has the characteristic of *ijtihad* (legal reasoning), must be based on a standardized legal deduction method. It is only in this sense that *tarjih* will have its authority to produce unbiased legal rulings. Makhlof also noticed this and elaborated how *fiqh* bodies in Indonesia, e.g., Muhammadiyah and Nahdlatul Ulama, and in Middle East countries, e.g., Academy of Islamic Studies in Egypt as well as Islamic Fiqh Academy and International Islamic Fiqh Academy in Saudi Arabia, have developed their own standards of *tarjih*.¹⁹ Likewise, the Egyptian House of Fatwa (*Dar al-Ifta al-Misriyyah*) and a number of Al-Azhar scholars also use their own standards in the legal deduction process for answering the current issues by applying *takyif fiqh* (*fiqh* adaptation). However, unlike the other methods and standards that are officially adopted by a *fiqh* body, *fiqh* adaptation or *takyif fiqh* is a more versatile way of reasoning since it is not tied with any *fiqh* body and it already incorporates the method of *tarjih* in its classical understanding of preferring appropriate opinions based on the soundness of evidence. In its modern concept of *ijtihad*, *takyif fiqh* provides a more comprehensive answer for adaptation through its four stages of reasoning as compared to the method of *tarjih*.

As a way of modern *ijtihad*, *takyif fiqh* represents a significant phase within the process of formulating *fatwas* for new issues that lack clear legal guidance in Islamic jurisprudence. It involves returning the phenomenon under examination to its fundamental problem (the original issue) in order to derive a legal ruling.²⁰ This methodology is employed by Dar al-Ifta' al-

¹⁶ Yeni Salma Barlinti, 'The Urgency of Fatwa and Fatwa Institution on Islamic Economics' (2017) 42 Jurnal Hukum & Pembangunan 92-121.

¹⁷ Ahmed Gad Makhlof, 'Continuity and Change of Traditional Islamic Law in Modern Times: Tarjih as a Method of Adaptation and Development of Legal Doctrines' (2023) Oxford Journal of Law and Religion 1-20.

¹⁸ *ibid*

¹⁹ *ibid*.

²⁰ Syabir (n 9) 27-31.

Mashriyyah, the official *fatwa* institution of Egypt.²¹ This process of *fatwa* formulation comprises four stages: 1) *marhalatu al-tashwir* (the depiction stage); 2) *marhalatu al-takyif* (the adaptation stage); 3) *marhalatu al-hukm* (the judgment stage); and 4) *marhalatu al-ifta'* (the *fatwa* stage). Each stage necessitates meticulous analysis, typically undertaken by a *mujtahid* (scholar of Islamic law), where input from subject matter experts is also sought in complex matters.²²

Marhalatu al-tashwir (the depiction stage) involves providing a comprehensive analysis of the phenomenon in question. *Tashwir* is akin to *tasawwur* (depiction) in the field of logic, signifying knowledge or a conceptual understanding of an object accompanied by judgments.²³ During this stage, a *mujtahid* examines the phenomenon to gain a detailed description encompassing its constituent elements, as well as its influences and consequences. This stage is certainly very challenging, considering that the expertise of a *mufti* (person giving *fatwa*) often does not extend beyond the field of jurisprudence. On the other hand, the topics discussed may fall into the realms of medicine, finance, pharmacy, and so on. Therefore, during this depiction stage, it is recommended to conduct a detailed document analysis or collaborate with experts in their respective fields.²⁴

Marhalatu al-takyif (the adaptation stage) entails relating the analysed phenomenon to established legal principles. In this stage, after acquiring a comprehensive understanding of the issue along with its detailed analysis, the *mujtahid* establishes a logical connection between the phenomenon and existing legal frameworks. To illustrate, after gaining a detailed understanding of the drugs in question, the *mujtahid* identifies commonalities by considering their nature, elements, and effects, thereby establishing a correlation with alcohol for which a clear *hukm* (legal rule) is found in Qur'an and Sunnah. The *takyif* (adaptation) stage adheres to specific principles that ensure a thorough legal adaptation, which are as follows:²⁵

1. *Al-waqi'ah al-Mustajiddah* (the new issue): This term refers to a fresh problem that makes as the initial step in the *fiqh* adaptation phase, where a *mujtahid* engages in *ijtihad* (reasoning) to determine a *fatwa*. To clarify, the new issue is not necessarily supposed to be confined to *fiqh muamalah* (business or civil interactions), it may encompass various domains such as economy, politics, law, social aspects, health, and others.
2. *Al-asl al-fiqhy* (the original case): *Al-asl al-fiqhy* pertains to the foundational case to which the new problem is referred for its legal resolution. This case incorporates legal rulings derived from Islamic sources like Qur'an, Sunnah, *Ijma'* (consensus), *Qiyas* (analogy), *Qaidah Kulliyah* (general maxim), and the *ijtihad* (reasoning) of jurists.
3. *Al-ahkam al-asl al-fiqhy* (the original rule): *Al-ahkam al-asl al-fiqhy* represents the legal rulings derived from the fundamental case mentioned earlier. These rulings can be categorised as *taklifi* (obligatory, prohibited, recommended, disliked, neutral) and *wad'i* (causal, conditional, and preventive factors).
4. *Manat al-hukm* (the effective cause): *Manat al-hukm* refers to the *'illah* (legal cause), which signifies the reason or rationale behind the establishment of a particular legal ruling in the fundamental case. For instance, the prohibition of drugs stems from their

²¹ Soleh Hasan Wahid, 'Fatwa Dynamic from Classic to Contemporer: Analysis of Islamic Economics Fatwas of DSN-MUI' (2019) 10 Yudisia: Jurnal Pemikiran Hukum dan Hukum Islam 193.

²² Syaumi Ibrahim Allam, 'Ta'shilu Fiqh Al-Thawari' (2020) 43 Dar Al-Ifta' Al-Mashriyyah 29-39.

²³ Muhammad Nuruddin, *The Science of Logic (Mantiq)* (Keira Publishing 2019) 47.

²⁴ Allam (n 22) 29-39

²⁵ Khairuldin and others, 'Al-Takyif Al-Fiqhi and Its Application in Islamic Research Methodology' (2020) 7 Journal of Critical Reviews 462.

intoxicating properties and ability to impair one's faculties, similar to alcoholic beverages.

5. *Mutabaqah* (the application): This stage involves establishing a coherent connection between the fresh problem and the problem in the fundamental case by delineating both problems and analysing their similarities and differences.

These five principles are fundamentally different from *qiyas* (analogy) in its narrow sense since *qiyas* necessitates the two compared cases (original case and new case) to share common underlying cause. While *qiyas* is a powerful tool for *mujtahid*, not all *hukm* (rulings) of new phenomenon can be derived based on *qiyas* due to its limited scope.

The subsequent two stages of *fiqh* adaptation are *Marhalatu al-hukm* (the stage of legal determination) and *Marhalatu al-ifta' aw tanzil* (the stage of *fatwa* issuance). In the former stage, a *mujtahid* reviews the outcomes of the problem delineation/description phase and the established connection with existing *fiqh* principles, relying on relevant evidentiary foundations from various Islamic legal sources.²⁶ The latter stage encompasses the implementation of the law in real-life circumstances, considering the consequential implications that arise from its application. A *mufti* (person giving *fatwa*) must ensure that the resulting legal rulings align with the *maqasid al-Shariah* (objectives of Islamic law) and do not impose undue hardships on the community. This can only be ascertained through a comprehensive consideration of the consequences (*maalat*) resulting from the application of such laws.²⁷

III. COLLECTING THE AVAILABLE STUDIES ON GOPAY

To collect and review all previous literature, this study adopts a qualitative methodology employing the systematic literature review (SLR) as the data collection approach. In essence, SLR serves as a model for identifying and selecting pertinent scholarly works, followed by a critical examination and independent analysis based on the predetermined research questions.²⁸ SLR finds extensive application across diverse disciplines such as medicine, applied sciences, and social humanities.²⁹

The decision to utilise SLR in this article is based on several considerations. Firstly, SLR has been widely employed in the domain of Islamic studies at large,³⁰ including the specific context of Islamic economics.³¹ These studies collectively demonstrate that while the genesis of SLR

²⁶ Allam (n 22) 29-39.

²⁷ *ibid.*

²⁸ Hannah Snyder, 'Literature Review as a Research Methodology: An Overview and Guidelines' (2019) 104 *Journal of business research* 333.

²⁹ Mark Petticrew and Helen Roberts, *Systematic Reviews in the Social Sciences: A Practical Guide* (John Wiley & Sons 2008) 265.

³⁰ Nur Farhana Baharuddin and others, 'Fakhr Al-Din Al-Razi: A Systematic Review on Literature Found in Indonesia' (2018) *International Journal of Civil Engineering and Technology* 705-714; Norsaleha Mohd Salleh and others, 'Living Sunnah According to Fazlur Rahman: A Systematic Literature Review' (2020) 4 *Al-Burhān: Journal of Qur'ān and Sunnah Studies* 127; Intan Pujiani and Taufik Rahman, 'Understanding the Veil According to Hadith: A Systematic Qualitative Study' *Gunung Djati Conference Series* (2021) 863-872.

³¹ Azhar Alam and others, 'Efficiency Studies of the Sharia Insurance Industry: A Systematic Literature Review' (2022) 13 *Insurance Markets and Companies* 90; Muhamad Subhi Apriantoro and others, 'The Potential of Islamic Mutual Funds: Research Stream and Future Direction' (2023) *Iranian Economic Review* 1; Indri Supriani and others, 'A Bibliometric Analysis of Zakat Literature from 1964 to 2021' (2022) 5 *Journal of Islamic Economic Laws* 263; Fauzul Hanif Noor Athief, Aminudin Ma'ruf and Faris Shalahuddin Zakiy, 'Surviving amidst

lies in the medical field,³² scholars have expanded its application to various disciplines including the search and compilation of knowledge within the general Islamic studies sphere. Furthermore, in order to address the problem of existing conflicting rulings, it is necessary to collect a wide range of previous studies that have examined the legitimacy of GoPay. Conducting SLR is considered an appropriate approach for gathering the scattered literature. Additionally, as SLR emphasises the importance of transparency in the literature search process and follows explicit rules and a structured methodology,³³ its use has provided structured and sound bases for the conclusions made in this article. In this article, the SLR steps taken to conduct the SLR are explained below:

1. Determination of keywords: The search process involves utilising specific keywords such as “akad gopay,” “gopay Islam,” “hukum gopay,” “fatwa gopay,” and “gopay transaction.” These keywords are used to search various scholarly article databases.
2. Selection of databases: Three databases are selected for this study, namely Google Scholar, Garuda, and DOAJ. Google Scholar is chosen due to its status as the largest search engine and provider of scholarly articles. It enables access to a wide range of Indonesian-language articles, including theses that are available in university repositories. Garuda indexing is included to ensure comprehensive coverage, as not all Sinta-accredited journals are indexed by Google Scholar. Additionally, DOAJ is utilised as it is a prominent indexing site for many international journals, offering open access to articles that may not be captured by Google Scholar.
3. Determination of time period: Given the emergence of GoPay, this study has focused on articles published between 2016 and 2022. Articles from outside this time frame are not included in the search. The results of steps 2 and 3 are reproduced in Table 1.

Table 1: Keywords Used for SLR Method

Keywords	Quantity	Source
Akad Gopay	1	Google Scholar
Akad go-pay	7	Google Scholar
Hukum go-pay	39	Google Scholar
hukum gopay	11	Google Scholar
gopay islam	15	Google Scholar
go-pay islam	23	Google Scholar
fatwa gopay	2	Google Scholar
fatwa go-pay	6	Google Scholar
gopay transaction	2	Google Scholar
go-pay transaction	1	Google Scholar

Pandemic: Indonesian Islamic Microfinance Experience’ (2022) 10 International Journal of Advanced and Applied Sciences 119.

³² David Tranfield, David Denyer and Palminder Smart, ‘Towards a Methodology for Developing Evidence-Informed Management Knowledge by Means of Systematic Review’ (2003) 14 British journal of management 207.

³³ Stefan Korber and Rod B McNaughton, ‘Resilience and Entrepreneurship: A Systematic Literature Review’ (2017) 24 International Journal of Entrepreneurial Behavior & Research 1129.

4. Data filtering: Duplicate articles and those that do not align based on their title and abstract to the formulated problem are excluded from the analysis. Figure 1 depicts the result of this step.

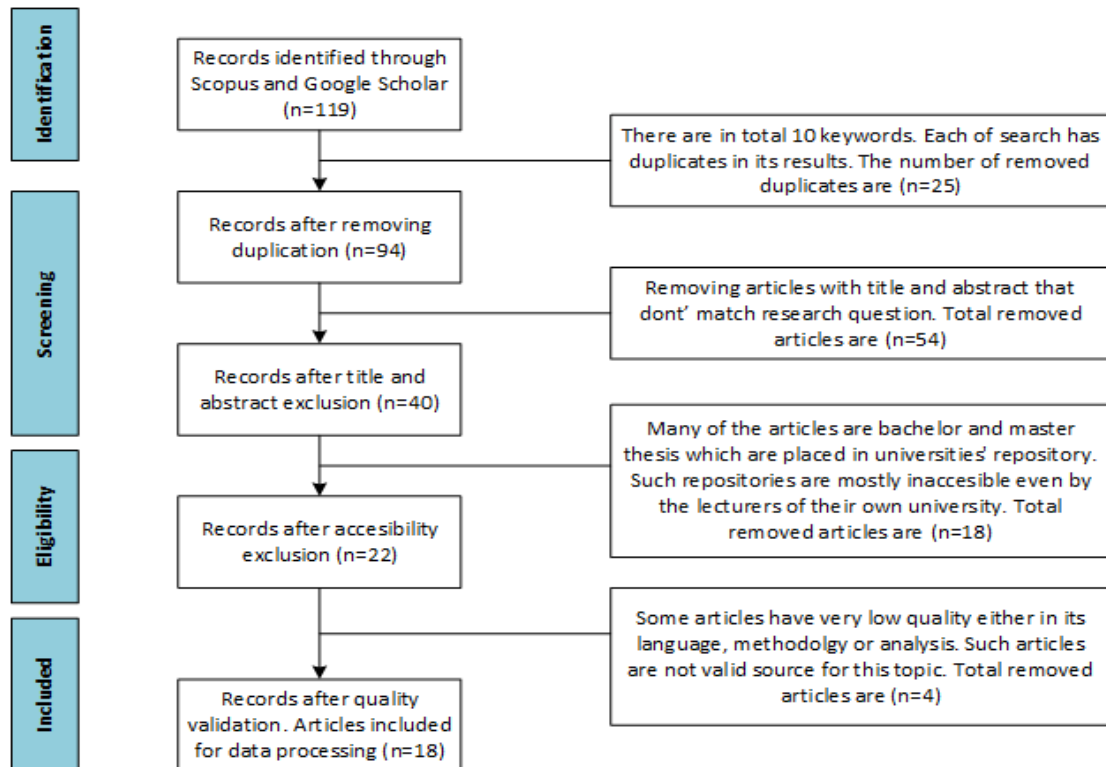


Figure 1: Systematic Literature Review Procedure and Results

5. Synthesis and data management: The findings related to GoPay are synthesised and organised based on the contract schemes proposed by each study, which closely reflect the actual usage of GoPay in practice. If there are instances where multiple studies unanimously support the *qardh* (loan) contract scheme, when some researchers argue that it involves *riba* (usury) while others disagree, subgroups have been created to accommodate these differing perspectives.

The management of data obtained through this process follows a critical review model. Burls defines a critical review as a systematic process that evaluates research results to assess the study's validity.³⁴ Grant & Booth highlight the strength of critical review in comparison to other literature review models, as it has the capacity to provide solutions or insights into various perspectives on a specific topic.³⁵ Therefore, a critical review is well-suited for examining, elaborating, synthesising, and ultimately identifying the strengths and limitations of each study pertaining to the legitimacy of GoPay.

³⁴ Amanda Burls, 'What is critical appraisal?' (2014) Hayward Medical Communications 1-8.

³⁵ Maria J Grant and Andrew Booth, 'A Typology of Reviews: An Analysis of 14 Review Types and Associated Methodologies' (2009) 26 Health information & libraries journal 91.

IV. OPINIONS ON THE CONTRACT OF GOPAY

After conducting the SLR, this research found there are 18 studies match the criteria. These manuscripts is comprised of undergraduate and master's degree theses as well as journal articles. Based on the analysis of these selected 18 studies, it was found that GoPay, as a financial product, is grounded in four types of underlying contracts: *wadiah* (savings), *qardh* (loan), *ijarah* (leasing), and *sarf* (money exchange). Among these, *wadiah* (savings) was identified as the underlying contract in four studies, while *qardh* (loan) has emerged as the predominant contract for GoPay in three studies. Seven studies advocated for *ijarah* (leasing) as the most appropriate contract for GoPay, while only one study proposed *sarf* (money exchange) as the contract for GoPay. Furthermore, three studies focused on comparing the arguments supporting *ijarah* (leasing) and *qardh* (loan). The selection of these underlying contracts by researchers was based on different considerations.

A. GoPay is Based on the Wadiah (Savings) Contract

According to Meividaryani, the utilisation of *wadiah* contract as the primary foundation for GoPay aligns with the decision made by Nahdlatul Ulama.³⁶ Especially, the specific type of *wadiah* contract referred to is *wadiah yad dhamanah* (unrestricted savings), which entails that the party with whom savings are entrusted assumes the responsibility of replacing the deposited savings (can be money or other items of value) in the event of damage resulting from personal utilisation.³⁷ Meividaryani argues that during the top-up process, customers essentially entrust their money to GoPay, while still having the ability to utilising it themselves.³⁸ An essential aspect highlighted by Meividaryani is that the presence of the *wadiah* contract empowers GoPay to employ the deposited funds to pay for various Gojek services. Consequently, the nature of the *wadiah* contract transforms from *amanah* (trust) to *dhamanah* (custody). The transition from *amanah* to *dhamanah* in Islamic finance signifies an evolution in the level of responsibility and liability for managing deposited funds. In *dhamanah*, the institution guarantees the safety of the deposited funds and is fully liable for any losses while having the opportunity to use the fund to the best of institution's interest.³⁹ Meividaryani also added that the promotions offered by GoPay can be perceived as a form of permissible giving (*athaya*) in accordance with the Fatwa DSN-MUI No:86/DSN-MUI/XII/2012 on Gifts in Fundraising for Islamic Financial Institution. This fatwa was issued by National Sharia Board-Indonesian Council of Ulama.⁴⁰

Susilo concurs with the assertion that the contractual basis for GoPay is the *wadiah* contract.⁴¹ According to Susilo, the distinguishing feature of the GoPay top-up transactions reflects the essence of *wadiah*, wherein the entrusted item (in this case the balance) can be withdrawn at any time without specifying a duration of the entrustment.⁴² Similarly, Yoesoef explicitly states that Gojek customers exchange their money for GoPay and subsequently entrust it, and the

³⁶ Elvianita Meividaryani, 'Analysis of Islamic Contracts Regarding Go-Pay Practices in the GoJek Application' (Institut Ilmu Alquran 2020) 69-76.

³⁷ *ibid.*

³⁸ *ibid.*

³⁹ Hussain Kureshi & Mohsin Hayat, *Contracts and Deals in Islamic Finance: A Users Guide to Cash Flows, Balance Sheets, and Capital Structures* (Singapore: John Wiley & Sons 2014) 99-109.

⁴⁰ DSN-MUI, Fatwa number 86/DSN-MUI/XII/2012 <<https://dsnmu.or.id/kategori/fatwa/page/7/>> accessed 14 September 2023.

⁴¹ Agus Agung Susilo, 'GoPay Transactions at Online Taxi Companies: Comparison of Qardh and Wadi'ah Contracts' (Bachelor Thesis, Universitas Islam Negeri Maulana Malik Ibrahim 2018) 47-69.

⁴² *ibid.*

process does not involve any form of borrowing.⁴³ Siddik's study, however, primarily focuses on comparing the agreement of Nahdlatul Ulama with the *wadiah* contract model against Al-Irsyad's viewpoint, which advocates for the use of the *qardh* (loan) contract in the GoPay mechanism.⁴⁴

A more comprehensive investigation was conducted by Maulana,⁴⁵ who concluded that the GoPay contract is based on the *wadiah* contract, taking into consideration the terms and conditions of GoPay balance usage and the regulations set forth by the Bank Indonesia. The terms and conditions explicitly state that GoPay is prohibited from using customers' funds for any purposes other than the customers' own needs, making *yad amanah* as most suitable nature of *wadiah* contract for GoPay according to Maulana.

B. GoPay is Based on the Qardh (Loan) Contract

Dewi explicitly argues against using *wadiah* as the primary basis for the contractual framework of GoPay.⁴⁶ This, according to Dewi, is due to the fact that GoPay is not a financial institution which can accept savings from customers as any general bank has the right to do.⁴⁷ Moreover, GoPay utilises customers' funds in its digital wallet, which deviates from the nature of the *wadiah* contract. According to Dewi, the *qardh* (loan) contract is deemed more suitable for underpinning the transactional scheme of GoPay. This enables customers to withdraw the funds lent to GoPay at their convenience while granting GoPay the freedom to utilise these customer funds. Consequently, discounts offered in GoPay are considered prohibited.⁴⁸

Razi conducted a similar study and arrived at the same conclusion, advocating for the use of the *qardh* (loan) contract as the basis for GoPay.⁴⁹ Razi asserts that customers initially deposit funds into the virtual wallet, and these funds are subsequently deducted when used.⁵⁰ This perspective was taken from the famous Indonesian Islamic scholar, Erwandi Tarmizi.⁵¹ As a result, Razi concludes that transactions involving discounts in GoPay are prohibited, while cash transactions or GoPay transactions without discounts are permissible.

Toha's research, on the other hand, presents a slightly different perspective suggesting that the underlying contract for GoPay is *qardh* (loan) while discounts remain permissible.⁵² Toha's study distinguishes between Gojek as an entity, specifically PT Aplikasi Anak Bangsa, and GoPay as PT Dompot Anak Bangsa. The discounts are not regarded as usurious since they are

⁴³ Isra Firdaus Yoesoef, 'Analysis of Promos in the Form of Cashback Using Go-Pay Payment System in the Perspective of Wadi'ah Contracts (Case Study of Gojek Company, Banda Aceh Branch)' (Bachelor Thesis, Universitas Islam Negeri Ar-Raniry 2022) 36-51.

⁴⁴ Abdul Siddik, 'GoPay Law According to the Views of Nahdlatul Ulama Figures and the Al-Irsyad Association' (Bachelor Thesis, Universitas Islam Negeri Sunan Kalijaga 2019) 102-104.

⁴⁵ Muhammad Alfi Maulana, 'Analysis of Discount and Cashback on GoPay Digital Wallets According to DSN MUI Fatwa and Bank Indonesia Regulations' (Bachelor Thesis, Universitas Islam Negeri Syarif Hidayatullah 2019) 55-69.

⁴⁶ Tita Riskiana Dewi, 'The Legality of GoPay Services in Gojek App According to Fatwa No. 116/DSN-MUI/IX/2017 on Islamic Electronic Money and Bank Indonesia Regulation on Electronic Money.' (Bachelor Thesis, IAIN Jember 2019) 73-77.

⁴⁷ *ibid.*

⁴⁸ *ibid.*

⁴⁹ Fauzul Razi, 'GoPay Practice Analysis on the GoJek Application for Non-Cash Transactions in the Perspective of Qard Contracts' (Bachelor Thesis, Universitas Islam Negeri Ar-Raniry 2019) 66-70.

⁵⁰ *ibid.*

⁵¹ Erwandi Tarmizi, 'Harta Haram Muamalat Kontemporer' (2018), Bogor: Berkat Mulia Insani 283-284.

⁵² Thoha (n 12) 47-59.

provided by Gojek, which is the application owner, rather than by GoPay. Thus, the decision to offer discounts lies within the discretion of Gojek, unrelated to GoPay.⁵³

Other studies, such as those conducted by Hafizah, Siddik, and Khaqi, primarily focus on comparing *qardh* with other contracts without explicitly endorsing a particular standpoint regarding the contractual framework of GoPay.⁵⁴

C. GoPay is Based on the Ijarah (Lease) Contract

The studies conducted by Erawati and Apriliana, Ismawati, Komarudin, Lutfi, Nasution, Pamungkas, and Sya'bandi yield the conclusion that the *ijarah* (leasing) contract is the most appropriate foundation for GoPay.⁵⁵ These seven scholarly works represent the majority of studies in favour of *ijarah* in comparison to other contract types. The majority of these studies concur with and reference the opinion of Oni Sahroni,⁵⁶ who is an expert in Islamic commercial jurisprudence in Indonesia and a member of the National Shariah Council (Dewan Syariah Nasional) of the Indonesian Ulema Council (MUI). Moreover, these studies commonly cite the Fatwa DSN MUI 101/DSN-MUI/X/2016 on “Akad Al-Ijarah Al-Maushufah fi Al-Dzimmah” (Lease on a Nonexistent Object).⁵⁷

Overall, these seven studies argue that the balance within GoPay cannot be withdrawn as cash, thereby rendering the transactions between customers and GoPay as an agreement in which GoPay provides services to customers in exchange for the funds initially deposited. Therefore, the financial scheme amounts to a transaction of services between GoPay and customers, whereby the future delivery of benefits has been explicitly and comprehensively stated.⁵⁸ Specifically, the customer assumes the role of the lessee (*ajir*), while Gojek serves as the leased object (*muajjir*), and the customer's deposit in GoPay represents the upfront fee (*ujrah*) paid in advance.⁵⁹ The leased object pertains to the service or benefit of delivering and purchasing goods from various Gojek merchants.

It is important to note that among the studies which conclude that the contract underlying GoPay is *ijarah* (lease), not all agree that the various discounts and promotions received by customers are permissible. Aprilia & Erawati stated that the discounts received are pure

⁵³ *ibid.*

⁵⁴ Sylvia Gunasera Hafizah and Sylvia Gunasera, ‘Islamic Law Review of Digital Transaction Services in Financial Technology (Studies on Gopay Services PT. Gojek)’ (Bachelor Thesis, Universitas Lampung 2018) 42-60; Siddik (n 44) 102-104; Faisal Khaqi, ‘Legal Stauts of GoPay Transactions in Islam (Comparison of The Fatwa Council of Tarjih and Tajdid Muhammadiyah and The Fatwa Council of Al Irsyad Association)’ (Bachelor Thesis, Universitas Islam Negeri Sunan Kalijaga 2020) 78-81.

⁵⁵ Desi Erawati and Eka Sri Apriliana, ‘Review of the implementation of DSN MUI Fatwa No. 101 of 2016 concerning al-ijarah al-maushufah fi al-dzimmah regarding the go-pay feature’ (2019) 10 *At-Taradhi: Jurnal Studi Ekonomi* 157-167; I Ismawati, ‘Review of Islamic Law on Differences in Cash and Gopay Payments for Online Ojek Services (Case Study of Online Go-Jek Drivers in Bandar Lampung)’ (Bachelor Thesis, Universitas Islam Negeri Raden Intan Lampung 2018) 76-85; Komarudin (n 13) 57-63; Riza Qani’atul Lutfi, ‘Analysis of Differences in Go-Pay and Cash Payment System Transactions in the Perspective of Conventional Law and Islamic Law (Study on Go-Jek Online Transportation Service Drivers)’ (Institut Agama Islam Negeri Kediri 2019) 122-124; Luthfiyah Yasmin Nasution, Rizal Agus and Ermyna Seri, ‘GoJek Cash Payment System Implementation Based on Islamic Economic Perspective’ (2021) 2 *Prosiding Konferensi Nasional Social & Engineering Polmed (KONSEP)* 477-488; M Sukma Ridlo Pamungkas, ‘Payment Gateway in the Perspective of Islamic Law and Positive Law (Case of GoPay and LinkAja)’ (Bachelor Thesis, Institut Agama Islam Negeri Tulungagung 2020) 99-108; Sya'bandi Sya'bandi, ‘GoPay Payment Contract on the GoJek Application: Islamic Economic Laws Perspective’ (Bachelor Thesis, Universitas Islam Negeri Raden Fatah 2019) 56-63.

⁵⁶ Oni Sahroni, ‘Fikih Muamalah Kontemporer: Volume 3’ (2020) *Republika Penerbit* 17-27

⁵⁷ Erawati and Apriliana (n 55) 157-167; Pamungkas (n 55) 99-108.

⁵⁸ Nasution, Agus and Seri (n 55) 477-488.

⁵⁹ Lutfi (n 55) 122-124.

offerings from GoPay, rendering any discounts and promos are permissible in Islam.⁶⁰ Some other literature even explicitly refers to these offerings as *athaya*,⁶¹ which in the field of Islamic jurisprudence represents a form of gift-giving. On the other hand, Pamungkas argues that besides *ijarah* (lease), there are also elements of *wadiah* (savings) and *qardh* (loan) present simultaneously.⁶² This discrepancy leads Pamungkas to refer to Fatwa DSN MUI no.116/DSNMUI/IX/2017 on “Akad Al-Ijarah Al-Maushufah fi Al-Dzimmah”.⁶³

D. GoPay is Based on Sarf (Money Exchange) Contract

Only one study conducted by Karim & Misbahuddin has concluded that the contract underlying GoPay is based on *sarf*.⁶⁴ Karim & Misbahuddin initially compared four different schemes, namely, *qardh* (loan), *wadiah* (savings), *ijarah* (lease), and *sarf* (money exchange), and then inclined towards the *sarf* (money exchange) contract as the most appropriate description of the underlying contract scheme for GoPay. They did not favour *ijarah* (lease) contract because the transactions are conducted with GoPay, while the benefits are derived from Gojek. Similarly, the *wadiah* contract was deemed unsuitable as the GoPay company utilises customers’ funds for its own benefit.⁶⁵ As for the *qardh* (loan) contract, it was considered incompatible since the various discounts obtained through this contract were deemed to be prohibited.⁶⁶

Karim & Misbahuddin also concluded that, due to the utilisation of the *sarf* (money exchange) contract, all forms of discounts are not classified as *riba* (usury). According to their findings, discounts, vouchers, cashback, and other promotional activities that provide financial benefits to customers are considered to be gifts or grants.

V. APPLYING THE TAKYIF FIQH

A. Marhalatu Taswir (Depiction Stage: Incorporating the GoPay Term and Regulations and the Bank Indonesia’s Regulation)

From the discussions above, it is clear that there is a considerable disparity among different studies, and there is no consensus among them. Each study has a different perception of how GoPay and Gojek operate, leading to divergent legal conclusions. This is expected, given that Islamic jurisprudence recognises the possibility of such differences based on the principle that “issues that are still disputed (regarding their permissibility) should not be denied, but issues that have been agreed upon (regarding their permissibility) should be denied” (*la yunkaru al-mukhtalafu fihi, wa innama yunkaru al-mujma’u ‘alaihi*).⁶⁷

However, upon closer examination, the crux of the differences that arise in the issue of GoPay pertains to how the mechanism of GoPay itself is perceived. Many of the aforementioned studies conducted field research and interviews with various sources. However, as the interviewees may not be authoritative in explaining how the GoPay mechanism operates, the research findings will always differ due to the different and possibly incompetent views expressed by the interviewees. In this specific type of *fiqh* query, a more detailed and

⁶⁰ Erawati and Apriliana (n 55) 157-167.

⁶¹ Ismawati (n 55) 76-85.

⁶² Pamungkas (n 55) 99-108.

⁶³ *ibid.*

⁶⁴ Sulham Karim Made Aming and Misbahuddin Misbahuddin, ‘Go-Pay Transactions at the Indonesian Go-Jek Company (Makassar Branch) in the Perspective of Islamic Law’ (2021) 17 *Al-Mizan* (e-Journal) 89.

⁶⁵ *ibid.*

⁶⁶ *ibid.*

⁶⁷ Jalaluddin Al-Suyuthi, *Al-Asybah Wa al-Nadhâ’ir*, vol 1 (Darul Kutub Al-Ilmiyah 1990) 158.

authoritative source is the legal documents issued by the company and the regulations under which the company operates. These documents help jurists in understanding more about GoPay and serves as the important source during the depiction stage (*marhalatu al-tashwir*).

In the terms and conditions used by GoPay for its customers, several important points need to be noted:

1. The funds held in GoPay can be withdrawn by customers. This is clearly stated in the terms and conditions, clause 6, point e: “Withdrawal of GoPay electronic money balance can only be done by verified users up to the maximum amount of your GoPay electronic money balance at the time of withdrawal, minus applicable service fees. We will inform you of any changes to the applicable service fees.”
2. GoPay is not allowed to use customers’ funds. This is explicitly stated in the terms and conditions, clause 6, point j: “Your GoPay electronic money balance will only be used to fulfil our obligations to you and merchants. Your GoPay electronic money balance will not be used to finance activities that are not our obligations to you and merchants.”
3. GoPay can be used to store electronic money and various other payment instruments. This is clearly stated in the terms and conditions, clause 10: “The GoPay electronic wallet can be used to store your GoPay electronic money balance and payment instruments issued by others, including debit cards, credit cards, electronic money from other issuers, and other available payment instruments. When you link and/or store payment instruments in the GoPay electronic wallet through the Application and/or Official Partner Platforms, the linking and/or storage process is processed based on our electronic wallet permission.”
4. GoPay is a specialised payment system provider. This is evident in the terms and conditions, clause 12, point j: “You understand that we are a payment system service provider. GoPay does not have control, responsibility, or legal liability for goods or services paid for using our service.”
5. GoPay is not a bank and cannot accept deposits. This is stated in the terms and conditions, clause 9, point d: “We need you to understand that we are not a bank. Your GoPay electronic money balance is not considered a deposit under the legal definition related to banking.”
6. Various fees may arise from the use of GoPay. This is mentioned in all points of clause 21 in the terms and conditions.

According to factual information obtained from the official website and other credible digital sources,⁶⁸ it is important to note the following points:

1. Gojek, which has recently merged with Tokopedia, has officially changed its name to PT. GoTo Gojek Tokopedia, formerly known as PT. Aplikasi Karya Anak Bangsa.
2. GoPay is a subsidiary of Gojek under the official name PT. Dompot Anak Bangsa.
3. GoPay has been operating independently from the Gojek ecosystem since 2018.

These three points underscore the distinction between Gojek and GoPay as separate entities. This differentiation holds implications, as it means that any services offered by Gojek are

⁶⁸ See the official website: <<https://www.gojek.com/en-id/terms-and-condition/gopay/>>; also see: the mainstream news from <<https://www.cnbcindonesia.com/tech/20230516102935-37-437696/gopay-pisah-dari-gojek-tapi-bukan-spin-off>> accessed 14 September 2023.

exclusively carried out by PT. GoTo Gojek Tokopedia, following their established policies. For example, policies related to rewarding the most active users do not fall under the jurisdiction of GoPay or PT. Dompot Anak Bangsa's agreements. Similarly, funds deposited within GoPay can only be managed by PT. Dompot Anak Bangsa at their discretion. This distinction has the potential to reshape many scholars' perspectives regarding the four contract schemes for GoPay.

In addition, as a digital payment system provider, GoPay is subject to the regulations outlined in the Bank Indonesia Regulation No. 20/6/PBI/2018 on Electronic Money. Several important points should be noted in this regard:

1. Electronic money is considered a legal tender and a valid payment instrument in Indonesia. This can be implicitly inferred from Article 1, Clause 2, which states that "Electronic Money is a payment instrument that satisfies the following elements: issued based on a pre-deposited value to the issuer" and "electronically stored in a server or chip."
2. When money is topped up but not yet utilised by the customer, it is referred to as "float funds." This is explained in Article 1, point 17.
3. The issuer (in this case, GoPay) is required to allocate float funds to a BUKU 4 bank (a bank which has more than 2 billion USD capital), with a minimum of 30% in the form of demand deposits. According to Article 48, the remaining 70% can be allocated to "government securities or financial instruments issued by the government or Bank Indonesia; or accounts at Bank Indonesia."
4. Float funds are exclusively earmarked for fulfilling the issuer's obligations to its customers, as expressly specified in Article 49, with no other permitted usage.

These points provide a deeper insight into GoPay. Firstly, GoPay, like any digital wallet, exclusively maintains a digital balance based on customer deposits, electronically storing these funds. This fact dispels the notion by layman or researchers of currency exchange or any lending agreements between GoPay and its customers. Secondly, there is invariably a collective float fund held by customers. In Indonesia, all digital wallets, including GoPay, have the option of safeguarding this float fund in a BUKU 4 bank to ensure its security. The issue arises here as no Islamic bank is categorised as BUKU 4. Thirdly, while the float fund can be allocated to financial instruments, it serves solely as a secure storage measure since issuers cannot utilise these funds except for customers' needs.

B. Marhalatu Takyif (Adaptation Stage)

In line with the existing studies, there are four possible contract schemes for GoPay, namely, *qardh* (loan), *wadiah* (savings), *ijarah* (lease), and *sarf* (money exchange). Based on the discussion in the *tasawwur* stage, the compatibility of these four contracts can be examined as follows:

1. *Qardh* (loan): Fundamentally, GoPay is a payment system provider. GoPay has also never stated that it is borrowing money from its customers. There is a requirement for GoPay to allocate a minimum of 30% of its funds in liquid assets and a maximum of 70% in investment assets as provided by the Bank Indonesia, to which GoPay must adhere. Furthermore, the GoPay terms and conditions explicitly state that customer

funds cannot be used by GoPay for its own benefit.⁶⁹ Based on these two important facts, GoPay does not engage in *qardh* contract since the consequence of using a *qardh* contract is that GoPay as a money lender has the right to use customer funds, whereas the terms and agreements stated that this is completely prohibited. In the case of top-up, it is essentially a process where the customer adds funds to their digital wallet. It involves the customer transferring their own money into the wallet for future use. It does not involve GoPay providing funds to the customer as a loan. The funds added to the digital wallet still belong to the customer. GoPay acts as a custodian, holding and facilitating the use of these funds on the customer's behalf. In a *qardh* transaction, the lender usually has ownership and control over the funds lent. In *qardh* transaction, there is typically an agreement to repay the borrowed amount, whereas we find no such agreement is stipulated by GoPay.

2. *Wadiah* (savings): Due to GoPay not utilising customer funds, it can be substantively interpreted that customers entrust their funds to GoPay in the form of *wadiah*. However, this does not classify the GoPay customer account as a savings account in the sense of a savings deposit with a bank. GoPay explicitly states that every user has the right to store their balance of money within the program whenever a user top-up their money. However, it should be noted that there are fees associated with both top-up and withdrawal transactions. Another aspect that needs to be discussed in the context of *wadiah* is the placement of float funds, a term referring to the balance within the digital wallet, and the benefits derived from such float funds. While GoPay does not utilise customer funds for its own benefit, float funds which are placed in liquid instruments will generate returns for GoPay. From a shariah point of view, such placement must be done in an Islamic instrument to ensure that the return is deemed to be legal under Islamic law. Otherwise, the overall *halal* status of the GoPay system may be jeopardised, as customers' funds could potentially be directed towards non-Islamic activities.
3. *Ijarah* (lease): Based on the arguments presented in various studies discussed above, it can be inferred that the *ijarah* contract is concluded with the future benefits derived from Gojek as the main object between transacting parties. This may have been relevant during the early stages of GoPay, but it is no longer applicable considering that GoPay has been separated from the Gojek ecosystem. GoPay now operates independently and can be utilized beyond the services of Gojek. Furthermore, GoPay has undergone further developments, including the introduction of the money withdrawal feature. If the underlying contract is *ijarah* (lease), the funds cannot be freely withdrawn whenever the customer desires.⁷⁰
4. *Sarf* (money exchange): Based on the study concluding that the underlying contract of GoPay is *sarf* (money exchange), it is observed that a transformation of currency value occurs from physical to electronic form. Nevertheless, this perspective conflicts with the reality that funds held within a digital wallet are simply preserved in electronic format. In essence, no transformation of the currency's physical attributes occurs; it retains its original form. The currency utilised remains unchanged and maintains its legal recognition and acceptance within Indonesia.

⁶⁹ See the explanation in the *marhalatu taswir* above regarding GoPay's terms and conditions clause 6 point j.

⁷⁰ Kureshi & Hayat (n 39) 91-97

C. Marhalatu Hukum (Judgment Stage)

Based on the aforementioned arguments, it can be concluded that the most appropriate contract for GoPay is the contract of *wadiah* (savings). This is because *qardh* contract is not appropriate since it contradicts the term and agreements of GoPay. Meanwhile, although *ijarah* seems to be an appropriate underlying contract for GoPay, it does not fit with its current development and expansion where GoPay can be used for many services, not only for Gojek. Lastly, *sarf* contract cannot be as GoPay's underlying contract since no currency alteration (exchange) occurs during the process. While concluding that *wadiah* appears to be the proper contract, there remain several issues to highlights which are the top-up and withdrawal fees, the return benefits from float funds, and the discounts offered by GoPay. To affirm that *wadiah* matches best for GoPay, these issues need to be addressed appropriately.

Firstly, concerning the fees associated with top-up and withdrawal transactions, these practices align closely with the principles of *wadiah* (savings) commonly observed in conventional banking where charges are imposed for the opening and closure of savings accounts. Additionally, it is permissible to allocate to customers the real costs incurred in facilitating the banking system for savings products.⁷¹ In the case of GoPay, the frequency of top-up transactions is significantly higher, involving smaller amounts as compared to the savings accounts typically operated by traditional banks. Similarly, regarding withdrawals, current practices in Islamic banking include the application of account closure fees, a practice that has been approved and acknowledged by shariah supervisory board of the bank.⁷² Consequently, these various fees can be regarded as a form of *ijarah*, with the object being the provision of management services for top-up and withdrawal processes.

Secondly, with regard to the float funds placed in a liquid financial instrument that generates return, it can be argued that the principle aligns with the concept of *wadiah* (savings) as commonly practised in the banking sector. Islamic banks have traditionally utilised these funds for various purposes while also ensuring their availability for immediate withdrawal upon request. Thus, the issuer of electronic money, GoPay in this case, is entitled to the return benefits generated from the float funds. This does not necessarily mean that GoPay utilise customers fund for its own benefit. Rather, it is a general act of placing cash in savings which, by the nature of the savings, generates return. Customers who prefer to retain their float funds rather than investing them or who wish to manage their own investment portfolios can maintain an appropriate balance in their GoPay accounts. Consequently, the issue of ownership regarding the return benefits from float funds can be addressed in this manner. However, it should be noted that the requirement to deposit float funds in a BUKU IV (a bank which has more than 2 billion USD capital) category poses a challenge, as no fully-fledged Islamic banks currently fall within this category as of mid-2023. Therefore, the principle of *darurah* (necessity) can be applied in this situation to accommodate the prevailing circumstances.⁷³

Lastly, in relation to the matter of discounts, given that the underlying contract is based on *wadiah* (savings), all forms of bonuses, discounts, rewards, points, and similar incentives offered by GoPay are deemed permissible. These offerings from GoPay are categorised as

⁷¹ Bambang Murdadi, 'Testing the Shariah Compliance of Wadiah Contract on Islamic Banking Product' (2016) 12 Value Added: Majalah Ekonomi dan Bisnis 1-16.

⁷² Fatwa DSN MUI No 43/DSN-MUI/VIII/2004 on Compensation (Ta'widh); AAOIFI Standard No 19 on Qardh; OIC's 13th Fiqh Resolution.

⁷³ Tawfique Al-Mubarak & Noor Mohammad Osmani, 'Applications of Maqasid al-Shari'ah and Maslahah in Islamic Banking practices: An analysis' (2010) 4 (6) International Seminar on Islamic Finance in India 96-98.

voluntary gifts or acts of goodwill, which is allowed in Islamic law.⁷⁴ These funds come from GoPay, not from the money deposited by customers. Furthermore, even if GoPay were to be categorised as *qardh* (loan) contract, it is worth noting that the majority of scholars in Malaysia argue that such bonuses do not constitute *riba* (usury) due to the fact that they are not promised in advance and are not provided on a regular basis.⁷⁵

VI. CONCLUSION

Discussions regarding the legitimacy of digital wallets under Islamic law have been going on for a long time but have not led to a consensus. Of course, this is understandable considering that differences of opinions are a part of the dynamics of *fiqh* which must be accepted. These discussions have also served as the venue where scholars and researchers have contributed their views that enriched the literature on Islamic jurisprudence. From previous studies that have been analysed in this research using systematic literature review method, 18 studies have specifically examined the Islamic legal aspect of GoPay. 4 studies concluded that *wadiah* (savings) is the most appropriate underlying contract, while 3 concluded that *qardh* (loan), 7 concluded that *ijarah* (leasing), and 1 concluded *sarf* (money exchange) is the underlying scheme of the GoPay contract. On the other hand, 3 studies are comparative in nature. Those studies that concluded that GoPay is based on *wadiah* contract have provided different reasonings and adopted different approaches to come to that conclusion. Studies that relied on *qardh*, some have concluded that the discount that arose from it is considered *riba*, while others disagree with it. In the case of *ijarah*, studies have also formed different opinions on the type of *ijarah* (lease), whether it is a regular *ijarah* or *ijarah mausufah fi dzimmah* (leasing for pre-existing object). Another observation based on the existing studies is that only 3 out of all studies have opined that the discount or benefits arising from GoPay is not permissible. It indicates that majority of the scholars are of the view that GoPay, and any other similar digital wallet, is permissible along with all types of benefits offered by the company.

In each previous study, there is a common misunderstanding among that has misled their views from the outset, i.e., the depiction stage (*marhalatu taswir*) of *fiqh* adaptation. GoPay, unlike what has been understood by previous studies, follows different rules and regulations that need to be highlighted in order to form an informed opinion on the underlying contractual scheme of GoPay. While incorporating Bank Indonesia's regulations and the terms and conditions of GoPay itself, this article concludes that *wadiah* is the most appropriate description of the scheme of contract used by GoPay. As regards the issue of Bank BUKU IV (a bank which has more than 2 billion USD capital), the Islamic legal maxim and concept of *darurah* (necessity) can be applied since there is no Islamic bank in Indonesia that fulfils this requirement.

This article delivers a useful conclusion for Muslims in general in the sense that users of GoPay and other similar service providers can rest assured about the Shariah permissibility of the digital wallet they are currently using. However, we acknowledge the apparent limitation of this research where we have only considered the specific case of GoPay. The terms and conditions and specific services provided by other digital wallets can be considered and analysed along the same lines followed in this article.

⁷⁴ DSN-MUI, Fatwa number 86/DSN-MUI/XII/2012 <<https://dsnemui.or.id/kategori/fatwa/page/7/>> accessed 14 September 2023.

⁷⁵ Khairi Aseh, 'Shariah Compliant Electronic Money in Malaysia: Key Concerns and Its Permissibility' (2020) 8 Archives of Business Research 1.