

CHAPTER 1

INTRODUCTION

A. BACKGROUND OF STUDY

In the Islamic financial system, the central bank should be the center of Islamic banking which have to realize the goals of socio-economics at Islamic economy. The central bank is the primary agency be load for implementing the country's monetary policy. The aims of Monetary policy according to Islamic economics to create socio-economic justice and equitable distribution of income/ safety for all people on the basis of universal brotherhood.¹

According to the function, the central bank should be an authority to produced money by coordination with the government, to manage the internal and external stability. The central bank should be able to act as banker of government and commercial banks. The central bank have to prepared for clearing and arrangement of checks and transfers, as well as a lender

¹ Andri Soemitra, 2009, *Bank dan Lembaga Keuangan Syariah*, (Jakarta: Kencana Prenadamedia Group), p.55

of last resort. It also had to guide, supervise and publish regulation of commercial banks.²

In the world of business and trade, human being wants all of things to be practical, efficient and effective particularly in payment track. For every transaction that takes place in the markets there is a process that concludes the transaction. In general terms that will mean some kind of exchange taking place between the two parties to the trade.³ Then, the people didn't use the payment instruments by money, but to produce the worth letters/ securities as cash payment or credits payment. Transfer is the activity of sending money through banks. Transfer can also means transference money from one account to another account with different objectives, both within the city, outside and abroad.⁴

² M. Umer Chapra, 2000, *Sistem Moneter Islam*, (terj. *Towards a Just Monetary System*, Jakarta: Gema Insani Press), p. 102-103.

³ David Loader, 2002, *Clearing, Settlement and Custody*, (New York: Butterworth-Heinemann), p. 1

⁴ Kasmir, 2013, *Dasar-Dasar Perbankan*, (Jakarta: Rajawali Press), p. 169

In this case, check or giro also be used to facilitate financial transactions in this matter. If we get a check or giro from a customer of bank, then automatically we will cash in a check or that giro to the bank publisher of checks or giro. It will be a problem if the giro or checks were far from our location, it takes the time to cash in the check or the giro. It makes the new problem if we get a lot of check or giro from different banks. Besides the factor of time we need to consider the cost to those who charge for them, and mention the safety of money at the time charged. Therefore, the banks prepared billing tool that known as clearing services.⁵

One of the tasks of Bank Indonesia as stipulated in Law No. 23 of 1999 on Bank Indonesia, it is to regulate and keep the operation of payment systems.⁶ Clearing is a service solution of debts between banks by method of mutual submission securities to be cleared in clearing houses. Solution of debts is giro collection or checks collection through bank. While the scrips are securities or worth letter such as check, giro and other accounts receivable letter. Clearing institute is an institution

⁵ Kasmir, *Dasar*, p. 172

⁶ UU No. 23 of 1999 on Bank Indonesia

established and coordinated by the Bank Indonesia every activity day. The Banks that participating clearing called clearing participant and it's a bank that has obtained a license from Bank Indonesia.⁷

In life, human can not be separated from buying and selling. In order to facilitate the payment process, it can be done through transfer, clearing or orther similar things. Transactions by giral money most dominant done rather than cartal money. This is to facilitate transaction according the place or distance from both sides. Although it has many benefits, payment by giral money have some laxity if not accompanied by systems and rules. Then, some people designed by abusing the system of payment giral money to take profit from their activities.

The profit obtained is not in accordance with existing procedures or the party conducts banking activities outside the official regulation of Bank Indonesia. As the withdrawal of a blank check, the bank then provides an overdraft service to the client. It can be said to be unfair because the bank does so without the

⁷ Kasmir, *Dasar*, p. 172

consent of the relevant customer and requires the customer to comply with regulations stipulated by the bank.

On the one hand the bank helps the customers to transfer money, but it is in Islam contains the value of gharar and can be said one form of usury. In the case of overdraft service, the bank requires the customer to return the loan at approximately 5% above the highest interest rate in the bank within one month. That's why this service is better not done.

Clearing is one of the tasks of Bank Indonesia within banking development at Indonesia. The transaction which be able to process by clearing system include debt transfer and kredit transfer that follow by exchange of scrips, scrips of debt although scrips of credit. It have to clear implementation, systematic realization, appropriate with the stipulation of central bank in order that aims of Bank Indonesia be reached and not abused by irresponsible parties.

Based on this matter, the author will explain the emplementation of clearing according to Islamic Economic Law. What kind of contract that used in

clearing mechanism, and how the right and obligations that must be owned by the user clearing, how is mechanism of clearing especially in transactions of economy which can not separated by man, and is the overdraf included usury in Islam. Beside of that this reseach use description method to explain and answer the problem of this thesis.

B. PROBLEM FORMULATION

Based on the background issues that have been mentioned above, the problems of study are:

1. How is clearing mechanism according to Islamic Economic Law Review?
2. How does the right and obligations of the users of clearing in the agreement banking service?

C. PURPOSE OF STUDY

Regarding to the problem of the study, the objectives are composed as the following:

1. Objective purposes
 - a. To know the procedure and implementation of the clearing system based on Islamic law.

- b. To know the right and obligations of the clearing users (customer and bank) in fulfilling the contract according Islamic sharia/ law.

2. Subjective Purposes

- a. To develop a theory that has been received by the writer during the class and train the ability of authors in the manufacture of scientific papers.
- b. To get answers to the problems written in this paper.

D. SIGNIFICANCE OF STUDY

This research is expected to give some significant contributions, such as:

1. Theoretical purpose

This study expected to give contributions to the theory of law, especially concerning how the procedures, the implementation of the clearing system based on perspective in Islamic Economic Law. To give substance and inputs as well as a reference for further research conducted.

2. Practical purpose

Results of research are expected to be used as input to the other relating to the subject related to

clearing system. And give information to readers of thesis and the general public on the system, the implementation of the clearing system and whether the system give the needs of human life in sharia.

E. LITERATURE REVIEW

Based on data, the author found some previous research that discusses the clearing, they are:

First, Wulan Anggraeni Zega in her research under the title "*Tinjauan Yuridis Terhadap Pelaksanaan Kliring Sebagai Pengatur Arus Pembayaran Uang Giral pada PT. Bank Rakyat Indonesia (Persero) Cabang Kisaran*", mentions the role of Bank especially PT. Bank Rakyat Indonesia (Persero) Case study at Kisaran in terms of the implementation of clearing to expand and smooth payment giral traffic, the conditions to use clearing and legal effect of implementation clearing and security action in the implementation of clearing to avoid the crime practices by clearing. It's same situation with this research including the implementation of clearing service and the difference of

the writer's research is the writer discusses position of clearing according to Islamic Economic Law.⁸

Second, Agung Ismarwanto as practitioner of Islamic Banking in a journal by title "*Analisis Akad Transaksi Kliring Dan Fasilitas Jasa Overdraft Pada Perbankan Konvensional Berdasarkan Hukum Islam*". It mentions that in clearing consist an agreement or engagement so-called contract, some conventional banks have been providing overdraf services to their bonafide customers. Overdraf is one type of credit transaction between the customer and the bank. While the overdraft practices has many elements cause these services is prohibited, as an element of exploitation, opportunistic fashion elements, and elements of injustice. This research discussing usury contained in the overdraf services also. The similarity of this thesis in the contract of clearing , so the writer in her research more emphasis on Islamic law, appreciating clearing in

⁸ Wulan Anggraeni Zega, 2007, *Tinjauan Yuridis Terhadap Pelaksanaan Kliring Sebagai Pengatur Arus Pembayaran Uang Giral pada PT. Bank Rakyat Indonesia (Persero) Cabang Kisaran*, (Medan: Universitas Sumatera Utara)

terms of economics and law. Or it can be said to complement previous research.⁹

Third, Khairunnisa in her research "*Peranan dan Proses Kliring Nasional Dalam Perbankan Pada Bank Sumut Syariah Medan*" describes that Sharia Bank Medan used the System Realtime Gros Settlement (RTGS) for nominal cost up to Rp.100.000.000,00 in clearing credit. This Bank also carry out the payment clearing debt and clearing credit in their activities. And the National Clearing Process of Indonesia Bank at Sharia bank Medan done by online only. The difference of the writer's research is the writer discusses position of clearing according to Islamic Economic Law although this reseach in same situation of systematical of clearing service.¹⁰

Fourth, Jesica Martina Pangau in her research "*Peran Bank Indonesia Terhadap Pelaksanaan Kliring*

⁹ Agung Ismarwanto, *Analisis Akad Transaksi Kliring Dan Fasilitas Jasa Overdraft Pada Perbankan Konvensional Berdasarkan Hukum Islam*, (Yogyakarta: Praktisi Perbankan Syariah)

¹⁰ Khairunnisa, 2009, *Peranan dan Proses Kliring Nasional Dalam Perbankan Pada bank Sumut Syariah Medan*, (Medan: Universitas Sumatra Utara)

Antar Bank” describes that operator of clearing is Bank Indonesia, the calculation of interbank debt accounts can be implemented more easily, saving time, effort and cost. As well as important rule and regulations for the clearing participant to have checking account at Bank Indonesia and make a deposit clearing collateral balance. This thesis has the similarity of position clearing at bank with the thesis that writer will write it but this research does not include the law of clearing, then the writer comes to discuss about clearing according Islamic Economic Law.¹¹

The first discussed about the role of Bank especially PT BRI in term of the implementation of clearing to expand and smooth payment of giral traffic and the effort to avoid the crime practices caused by clearing. The second explained about contract of clearing and overdraft services which some conventional banks have been providing overdraft services to their bonafide customers and it was based on Islamic Law . The third told about Sharia Bank

¹¹ Jesica Martina Pangau, 2015, *Peran Bank Indonesia Terhadap Pelaksanaan Kliring Antar Bank*, (Lex Privatum, Vol.III, No.1, January-March)

Medan used the system realtime gros settlement (RTGS) for nominal cost up to Rp.100.000.000,00 in clearing credit transaction and done it by online. And the fourth discussed about the operator of clearing in his country is Bank Indonesia, so all of the regulations of clearing comes from Bank Indonesia. But all of the literature above were not discussed about mechanism of clearing according to Islamic Economic Law and the right and obligations of the users of clearing in the agreement banking service. So this research tries to know the mechanism of Clearing According to Islamic Economic Law.

F. THEORITICAL FRAMEWORK

Jurisprudence (Fiqh) is part of the rules which a Muslim is bound by in his life such as ritual worships (*'ibādāt*) and social transactions (*mu'āmalāt*). Therefore studying Fiqh is the compulsory matters for Muslims.¹² The Four Theories of *Fiqh Muamalat*, they are:¹³

¹² Abu Tariq Hilal, 2007, *Understanding Usul Al-Fiqh (principles of islamic Jurisprudence)*, (New Delhi: Revival Publications), p. 7

¹³ Abdullaah Jalil,dkk, 2014, *The Four Introductory Theories of Fiqh Muamalat*. (Negeri Sembilan: Wisdom Publication), p. 17

1. Theory of Ahliyyah (Legal Capacity)
2. Theory of Māl (Property)
3. Theory of Milkiyyah (Ownership)
4. Theory of *'Aqd* (Contract)

The theory of *'aqd* will be the basic matter in this thesis and it portrays the framework or structure of a contract in Islamic jurisprudence. As we know, humans are social beings who can not live without the help of others, or dependency one another. In interaction is not the permissibility of adverse or detrimental to other side. The concept of pleasure is the one used in dealing with others. In transaction consist an agreement or engagement so-called by contract.

Contract is simply defined as an act or set of acts which is established between the two parties or more, creating obligation by which one may exact some performance of another and the other is bound to that performance. In Islamic law, all contracts are automatically concluded by a valid expression of an

offer by one party and its acceptance by the other party.¹⁴

The term *wakālah* is an example in this case, when we don't do things we could represent our business to another side. The second side may be institutions, agencies or individuals. One of product in Banking services, "clearing" is a form of the *wakālah*. In Article 16 of Law No. 23, 1999, that the Clearing is an exchange activities paper or electronic financial data among banks on behalf of banks and customers that results of calculations completed in a certain time.¹⁵

Etymological, *wakālah* have some understanding among other: (*al-hifzh*) it's means of protection, or (*al-kifāyah*) it's means sufficient, or (*al-dhamah*) it's means dependent, or (*al-tafwīdh*) it's means the delegation which hand over in command or *wakīl*.¹⁶

¹⁴ Hideyuki Shimizu, *Philosophy Of The Islamic Law Of Contract*, (The Institute of Middle Eastern Studies International University of Japan: Imes Working Papers Series No. 15), p.12

¹⁵ UU No. 23 in article 16 of 1999

¹⁶ Hendi Suhendi, 2010, *Fiqh Muamalah*, (Jakarta: Grafindo Persada), p. 231.

While the terminology, *wakālah* means represents or extending any work or business to others to act on behalf of people who represent the problem and time specified.¹⁷ Definition other say, *wakālah* refers to a contract in which a party, as principal (*muwakkil*) authorizes another party as his agent (*wakīl*) to perform a particular task in matters that may be delegated, with or without imposition of a fee.¹⁸ Qur'an said:

وَالْتَعَاوَنُوا عَلَى الْبِرِّ وَالتَّقْوَىٰ ^{١٩}

Therefore, God considers that *wakālah* is a noble form of cooperation that paved the way for other people to get out of trouble. God himself will repay the kindness of people helping brother in trouble.

وَكَذَٰلِكَ بَعَثْنَاهُمْ لِيَتَسَاءَلُوا بَيْنَهُمْ ^ج قَالَ قَائِلٌ مِّنْهُمْ كَمْ

لَبِثْتُمْ ^ط قَالُوا لَبِثْنَا يَوْمًا أَوْ بَعْضَ يَوْمٍ ^ج قَالُوا رَبُّكُمْ أَعْلَمُ بِمَا

¹⁷ Moh. Saifulloh Al Aziz S, 2005, *Fiqh Islam Lengkap*, (Surabaya: Terbit Terang), p.412.

¹⁸ Central bank of Malaysia, 2015, *Wakālah Concept Paper*, Malaysia, p.7

¹⁹ QS. Al-Maidah verse 2

لَبِثْتُمْ فَابْعَثُوا أَحَدَكُمْ بِوَرِقِكُمْ هَذِهِ إِلَى الْمَدِينَةِ فَلْيَنْظُرْ

أَيُّهَا أَزْكَى طَعَامًا فَلْيَأْتِكُمْ بِرِزْقٍ مِّنْهُ وَلْيَتَلَطَّفْ وَلَا يُشْعِرَنَّ

بِكُمْ أَحَدًا ﴿١٩﴾

And thus we woke them up so they asked each other among themselves. said one of them: how long will you be (here?) ", they replied:" We have stayed (perhaps) a day or half a day. "Says (other):" Your God knows best how long you are (here). Then send some one of you to go to town with your silver money, and let him see Which better food, then let him bring the food to you, and let him apply blandly and do not let the recount to someone.²⁰

This verse create the departure of one ash-hābul kahfi acting for and on behalf of his colleagues to represent them in choosing and buying food.

Some verses of al-Quran and al-Hadith in principle *wakālah* advocated as a means to prostrate to

²⁰ QS. Al-Kahfi verse 19

his fellow human beings, to help trouble of life and the means of human life, is not intended to benefit, nor the means to exploit.

Wakalah allowed for fee or without fee (*wakālah bil ujr* or *wakālah bidūni ujroh*), it is based on the behavior of the prophet did in the delegation the alms to his workers and the Prophet gave the benefit of their ward. Because of this benefits or fees the representative must do a good job until the fulfillment of the wishes of the *muwakkil*.²¹

In Islamic Law, wakālah or agency arises where one person authorises another to replace him in the exercise of his civil rights.²²

Bank services are all activities performed by the bank directly or indirectly related to their duties and functions as an intermediary institution. Clearing is one of the main forms of bank services to solve debts

²¹ Wahbah az-Zuhaili, 1989, *al-Fiqh al –Islāmi wa Adillatuhu*, Fourth Edition (Damaskus: Dar al-Fikr), p151

²² Abdur Rahman I. Doi, 2011, *Shari’ah The Islamic Law*, (Malaysia: A.S. Noordeen), p.367

interbank clearing in the form of paper or securities in a particular area.²³

Receipt is a tool payment traffic demand deposits are taken into account in the clearing. According SEBI No. 14/8 / UPBB on 10th September of 1981 consisting of:

- a) Checks
- b) Giro
- c) Proof of Acceptance Transfer
- d) Money Order for Transfer
- e) Debit Note
- f) Credit Notes

Expressed in rupiah and full nominal value, and has matured at a time when it be clearing.

Receipts that are not mentioned above can only be taken into account as an attachment debt/ credit card that issued by the participants concerned. Worth Letter are valuable in clearing example: check, money order,

²³ Ikatan Bankir Indonesia, 2014, *Memahami Bisnis bank Syariah*, (Jakarta: PT Gramedia Pustaka Utama), p.104.

giro, credit notes and other letters which are all stated in rupiah and can be calculated according to the head clearing through clearing.

The receipts that use for clearing, they are:

- a) Checks
- b) Giro
- c) Money Order
- d) LLG
- e) Proof of Transfer
- f) Certificates of Deposit

G. RESEARCH METHOD

1) Types of Research

The research that writer used in this paper is a kind of library research. This study is literature study that based on book, which uses the conceptual analysis approach.²⁴ This study used by the writer to study about Clearing According to Islamic Economic Law.

²⁴ Moh. Nazir, 2005, *Metode Penelitian*, (Bogor: Ghalia Indonesia), p.93

2) Data Sources

In order to write this research, the researcher needs some data that classified into two part:

- a. Primary data sources are taken from some books, and paper.²⁵ The writer will used this method to search Clearing mechanism on based Islamic Economic Law.
- b. Secondary data sources which are collected from magazine, newspaper, website, blog, etc.²⁶ The writer will use this way to find more data and find decisions or others which interconnecting to title.

This study is descriptive analysis, which give expression to legislation regulations that regulated with law theories that become research object²⁷, the writer try to portray the clearing mechanism as payment transactions of giral money and suitability of Islamic Economics Law.

²⁵ Sugiono, 2009, *Metode Penelitian Kuantitatif Kualitatif, dan R&D*, (Bandung: Alfabeta), p.225

²⁶ Sugiono, *Metode Penelitian*.....p.225

²⁷ Zainuddin Ali, 2014, *Metode Penelitian Hukum*, (Jakarta: Sinar Grafika), p.106

3) Method of Data Collecting

In order to collect data, the researcher will use documentation methods. Literature data accessible by literature research which have a source from legislation regulation, books, formal documentation, publication, and result of the researchs.²⁸ Then, from these results, the writer then classify and systematically analyzed according to the way the writing of the results of the thesis.

4) Method of Data Analysis

To obtain a valid conclusion, the writer uses to clarify how the data resulting conclusions. The reasoning methods used are:

a. Deductive Method

A deductive approach begins by looking at theory, produces hypotheses from that theory, which relate to the focus of research, and then proceeds to test that theory.²⁹ The significance other that deductive method is a method that

²⁸ Zainuddin Ali, *Metode Penelitan*, p.107

²⁹ Sue Greener, 2008, *Business Research Methods*, (USA: Ventus Publishing), p. 16

begins from general statement to a specific statement. In this case the writer describe the implementation of the clearing mechanism in general and then analyzed from the perspective of Islamic law.

b. Inductive Method

Inductive Method is a method to conclude a secific statement,³⁰ that is an analysis by drawing conclusions from the fact that is specific to the facts of a general nature. In this case hold on clearing knowledge of Islamic law.

H. SYSTEM OF STUDY

To give an idea of the writing of this study, the authors will describe the systematics of this thesis into four chapters. In the first chapter of the researcher writes introduction the background of study, problem formulation, purpose of study, significant of study, theoretical framework, and system of study.

³⁰ Sugiono, *Metode Penelitian*, p.53

At the second chapter, the researcher explains the literary review which consist of an overview of Banking Services and Islamic Law.

The next chapter, the researcher will elaborate clearing concept and its mechanism based on Islamic Economic Law by mentioning Al-qur'an verses, jurisprudence of Islam and so on.

The last chapter is closing, which consist of the conclusion of research and then the suggestion for the next research in order to make this research more completeand perfect than this.

