



## Wakalah: Legal Analysis and Its Aspects

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### ABSTRACT

Wakalah is a concept in Islamic law that allows a person to appoint a representative or agent to carry out tasks or transactions on their behalf. A wakalah agreement is an agreement where the first party gives power or mandatory to the second party. It is impossible for each individual to handle all matters only by themselves. Therefore, Allah SWT has established rules about how the wakalah contract can be carried out, providing benefits for us. Wakalah comes from words “wakalah-yakilu-waklan”, which means submission or giving authority to a representative. Wakalah can be interpreted as handing over tasks that a person can carry out independently to another person, so that the person carries out these tasks throughout his life. This paper aims to provide an in-depth analysis of wakalah from the perspective of Islamic law, as well as identifying the key aspects involved.

## **INTRODUCTION**

In Arabic, wakalah can mean delegation (al-tafwidh) or authority (al-hifzhu), among other things. One of the contracts permitted according to Fiqh Muamalah is wakalah. To enable murabahah financing to proceed, the bank must first give permission to the consumer to purchase the product. The wakalah contract, in a broad sense, refers to any agreement in which a person agrees to delegate a power or responsibility to another person. The fatwa on the Wakalah Bi Al-Istitsmar contract issued by the National Sharia Council of the Indonesian Ulema Council (No. 126/DSN-MUI/VII/2019) defines wakalah. The principle allows delegating certain legal tasks to a representative based on the terms of the wakalah agreement.

The principal (muwakkil) as referred to in this fatwa can be an individual or a legal entity, depending on the circumstances, who grants the authority to carry out wakalah. However, the person or organization authorized to perform wakalah (representation) can be a human, legal entity or non-legal entity, or both. According to the Modern Fiqh Muamalah Textbook, a wakalah contract is the delegation of responsibility to another person when the original authority figure is unable or too ill to perform it themselves. A person uses a wakalah contract when they need the help of others or when they are unable to perform a task themselves and must rely on others to complete it.

## **LITERATURE REVIEW**

Islamic teachings on the law of wakalah are based on verse 19 of Surah Al-Kahfi. This surah, connected with the narrative of Ashabul Al-Kahfi, permits the use of wakalah. According to verse 19 of Surah Al-Kahfi, Allah establishes wakalah. People need this system, which is one of the factors. The fact that some people are unable to complete everything themselves seems to be the issue. Therefore, this concept is important to delegate authority to another party. To perform wakalah, one must act as an agent representing the counterparty. Verse 55 of Surah Yusuf also provides a legal basis for the wakalah contract. In his letter, Prophet Yusuf shows his willingness to be a spokesperson. Specifically, regarding the economy of Egypt, he is ready to take action and perform his duties.

The purpose of the wakalah contract is to perform someone else's tasks or duties while they are still alive. The individual appointed to execute the wakalah contract (al-Wakil) must have the capability to replace the person who entrusts the mandate (muwakkil). The law prohibits the delegation of authority to an insane person, a minor, or someone incompetent in carrying out their official duties.

## **METHODOLOGY**

This study employs a dynamic and adaptable methodology to explore participants' perspectives using qualitative research techniques. Studying situations from both parties' viewpoints is the essence of normative legal studies. In qualitative research, the researcher pays close attention to the details necessary for the study, such as conducting field surveys and observing the constantly changing conditions in the area to determine the status of a natural object. The author chose descriptive research as their preferred method. An in-depth exploration of a subject and the explanation of social phenomena and events can be carried out through descriptive research. Any facts or information can be provided accurately and methodically through descriptive research.

## **RESEARCH RESULT AND DISCUSSION**

Research on Islamic law has produced several types of Islamic banking service contracts, including al-Rahn, Wakalah, Kafalah, and Hiwalah. Additional contracts are necessary when dealing with Islamic banking services. To be legally valid according to Sharia law, an Islamic banking product, especially a service product, must include these supplementary contracts. The purpose of these additional arrangements is not to generate profit but to facilitate the implementation of financing. However, the option to request reimbursement for costs associated with contract execution is included in these supplementary agreements. The reimbursement fees are substantial enough to cover the actual costs.

Sharia financing contracts, including those involving L/C bookkeeping, collections, money transfers, or Murabahah, require a wakalah contract, wherein the customer authorizes the bank to act on their behalf in performing a particular service. It is crucial for wakalah contracts involving Islamic banking products to have a comprehensive understanding of what, how, and why the contract is executed. To ensure that Islamic financial service products meet Sharia requirements, this paper discusses the principles of fiqh related to the wakalah contract and its application.

One definition of wakalah is the duty of a representative, while another definition, wakala-yakilu-waklan, means to delegate or assign responsibility. The Shafi'i school of thought believes that wakalah means "to declare or delegate authority" (al-muwakkil) to another person (al-wakil) to perform a task that the delegator can complete themselves, as long as the task is completed while the grantor is still alive. Tawkiel means appointing someone to take over something or delegating a responsibility to someone else, derived from the verb wakalah, which means to care for, restrain, or apply knowledge or improvement on behalf of someone else. When one party cannot perform a task themselves, they may enter into a wakalah contract to authorize another party to do it. A wakalah

contract is a legal document used by someone when they seek the assistance of another person to complete an activity they are unable to perform themselves.

The masdhar word *wakilah* (or *wakalah*) means "to delegate," "represent," or "protect" in its etymological roots. The Arabic word for surrender, *wadhafa*, is cognate with the term *wakala*, from which the word *wakalah* originates. *Al-Hifzu*, which means "to care for" or protect.

This is another meaning of *wakalah*. Several scholars have proposed various interpretations of *wakalah*. Their opinions are as follows:

1. According to Hashbi Ash Shiddieqy, in *wakalah*, one party appoints another party as their acting successor (*bertasharruf*), and both parties enter into a contract of power delegation.
2. Sayyid Sabiq defines *wakalah* as the act of delegating authority over tasks that fall within one's jurisdiction.
3. The scholars of the Maliki school define *wakalah* as "an action whereby a person represents themselves to another person to perform an action that is their right." This type of *wakalah* does not involve the transfer of authority after death, as that would imply a bequest.
4. To enable another person to carry out what has been authorized on behalf of the principal, the term "*wakalah*" must be used, as stated by the Shafi'i scholars. Experts have agreed on the validity of the *wakalah* contract, which is often used in Islamic banking for charitable purposes. Sharia law permits such arrangements as they facilitate the distribution of resources; in the context of Islamic banking, the bank connects capital providers with those in need, and the bank takes a portion for its services.

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According to Muhamad Ayub, the types of Wakalah consist of:

- a) Wakil-bil-kusoomah (taking over various disputes/cases on behalf of the principal)
- b) Wakil-bil-taqazi al-Dayn (debt collection)
- c) Wakil-bil-Qabaza al-Dayn (debt ownership)
- d) Wakil-bil-bai (trade agency)

Wakil-bil-shira (agency for purchasing) the Pillars and Conditions of Wakalah. As stated in the DSN-MUI Fatwa No: 10/DSN-MUI/IV/2000, dated April 13, 2000, concerning Wakalah. The legal basis prescribed in the Wakalah contract is as follows:

- a. The principal (al Muwakkil)
- b. The agent (al Wakil)
- c. The matter/task delegated (al Taukil)
- d. Declaration of agreement (Ijab and Qabul)<sup>2</sup>.

#### Wakalah Terms

- a. The person granting authority (al-Muwakkil) must be legally capable, meaning they must be of legal age and sound mind, which can be male or female, visible or invisible, and in good or bad health condition. The agent (al-Wakil) must fulfill the following obligations:
  - a) Possess sufficient knowledge background regarding the matters entrusted to them, be trustworthy, and capable of performing the tasks requested of them; conversely, act lawfully for themselves and others.
  - b) Designed to be clearly addressed to the designated representative, this position is filled directly by the delegator. Refrain from abusing their position of authority or exceeding the limits set by those in power.
  - c) The person receiving the authority assumes full responsibility for any losses caused by their actions, even if the grantor is unaware of them.

Things that are permissible in Wakalah, everything that has characteristics, may be legally owned by al-Muwakkil, accepted and approved by syar'a, and can be the object of a contract or a task that can be completed by others. Such as: buying and selling, leasing, debt transfer, responsibility, business cooperation, currency exchange, salary disbursement, income distribution, reconciliation, and so forth. Pernyataan Akad Ijab-Qabul Niat tulus para pihak

untuk menukarkan barang dan jasa yang berwujud serta segala keuntungan lain yang berkaitan dengan transaksi, yang dinyatakan secara tertulis atau lisan.

Here is the translation of the text:

a. Termination of Wakalah and Termination of Wakalah:

- a) It is hereby stated that no power of attorney, whether granted, issued, or withdrawn, shall be valid if the principal becomes permanently incapacitated or deceased.
- b) If the person granting authority and the person receiving it disagree on anything, the rule is to consider the statement of the recipient, supported by a witness, as final. This is especially applicable if the authorized goods are lost. The statement of the beneficiary, supported by facts, is final in case of payment disputes. As a general rule, the statement of the authorized person is considered valid if they are trusted to perform such actions, even if the authorized person commits illegal actions with the impression that the grantor ordered them to do so.

Termination of Wakalah

- a. One of the contracting parties passes away, or loses legal capacity.
  - b. The activity or task that is the subject of the contract is terminated by both parties.
  - c. The contract is cancelled by the granting party to the receiving party, which is then known by the receiving party.
  - d. The receiving party resigns with the knowledge of the granting party.
  - e. Loss of ownership rights over the goods by the granting party.
- Dasar Hukum Wakal

Because it is necessary for human survival, Islam mandates al-wakalah. Some people do not have the time or resources to handle everything that needs to be done. A person may need to appoint someone to act on their behalf for specific tasks.

1. Qs. Al-Kahfi ayat 19
2. Qs. Yusuf ayat 55
3. Qs. An-Nisa ayat 35

## **CONCLUSIONS AND RECOMMENDATIONS**

Research findings on the law of wakalah may vary based on research methodology and target audience. The need for legal protection for both parties in wakalah transactions, the agent's obligations towards ethical norms, and the importance of clarity in wakalah construction are some broad conclusions that can be drawn.

Among the legal evidences for wakalah are as follows: the necessity of clear rules in wakalah practice to safeguard the interests of all parties; the importance of fully understanding the responsibilities of agents and clients; and the significance of upholding the values of justice and transparency in executing wakalah.

In line with the teaching of how imperfect this world is, the wisdom of wakalah contracts emphasizes the necessity of mutual assistance in goodness rather than in wrongdoing or transgression.

This individual will not be able to do everything on their own, as seen in the form of their agreement.

#### **ADVANCED RESEARCH**

In writing this article the researcher realizes that there are still many shortcomings in terms of language, writing, and form of presentation considering the limited knowledge and abilities of the researchers themselves. Therefore, for the perfection of the article, the researcher expects constructive criticism and suggestions from various parties.

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