



QARD WAL IJARAH: A STUDY ON HAJJ FINANCING IN INDONESIA

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Abstract: *Hajj financing product held in Indonesia due to the quota of hajj limited and the cost of going hajj is more expensive than before. But, there are some sharia issues which pertain to the implementation of the qard wal ijarah contract in the reality which is different with what the sharia committee decides. The purpose of this study is to criticize the implementation of the contract in reality and describe its implications both positive and negative. This research uses qualitative research method by using documentation such as hajj report, books, and articles. The results of this study describes that Hajj financing on the one hand give the positive impact (masalah), while on the other hand has the negative impact (mafsadah). This research contributes to the government and the sharia committees in order to regulate back Hajj management system and also its contract since there are several issues regard the implementation of the contract of hajj financing which is indicated non sharia compliant.*

Abstrak: Produk pembiayaan haji yang diselenggarakan di Indonesia dikarenakan kuota haji yang terbatas dan biaya haji yang lebih mahal dari sebelumnya. Namun ada beberapa persoalan syariah yang berkaitan dengan pelaksanaan akad qard wal ijarah pada kenyataannya berbeda dengan apa yang diputuskan oleh komite syariah. Tujuan dari penelitian ini adalah untuk mengkritisi pelaksanaan kontrak dalam kenyataan dan menggambarkan implikasinya baik positif maupun negatif. Penelitian ini menggunakan metode penelitian kualitatif dengan menggunakan dokumentasi berupa risalah haji, buku, dan artikel. Hasil penelitian ini menjelaskan bahwa pembiayaan haji di satu sisi memberikan dampak positif (masalah), sedangkan di sisi lain berdampak negatif (mafsadah). Penelitian ini memberikan kontribusi kepada pemerintah dan komite syariah dalam mengatur kembali sistem manajemen haji dan juga akadnya karena terdapat beberapa permasalahan terkait pelaksanaan akad pembiayaan haji yang terindikasi non syariah compliant.

A. Introduction

Hajj worshiping to *Baytullah* Mecca Al-Mukarramah is one of the pillars of Islam and a duty for every Muslims that able to do from physical, mentality, inventory and also the transportation **Invalid source specified..** Therefore, not all Muslims called to fulfill this worship, except for those who are capable as expressed in the Qur'an:

فِيهِ آيَاتٌ بَيِّنَاتٌ مَّقَامُ إِبْرَاهِيمَ وَمَنْ دَخَلَهُ كَانَ آمِنًا وَلِلَّهِ عَلَى النَّاسِ حِجُّ الْبَيْتِ مَنِ اسْتَطَاعَ إِلَيْهِ سَبِيلًا وَمَنْ كَفَرَ فَإِنَّ
اللَّهَ عَنِّيَ عَنِّيَ عَنِ الْعَالَمِينَ (البقرة: 97)

"In it are manifest signs (for example), the Maqâm (place) of Ibrâhim (Abraham); whosoever enters it, he attains security. And Hajj (pilgrimage to Makkah) to the House (Ka'bah) is a duty that mankind owes to Allâh, those who can afford the expenses (for one's conveyance, provision and residence); and whoever disbelieves [i.e. denies Hajj (pilgrimage to Makkah), then he is a disbeliever of Allâh], then Allâh stands not in need of any of the 'Alamîn (mankind and jinns)" (Al-Baqarah: 97)

Capable of traveling including physical ability, material, and spiritual are the requirements of a Muslim for hajj. For this condition, physical and spiritual can be filled easily by a Muslim, but, the condition of material is difficult (Hadi, 2011). In addition, a pilgrim can register his name to ministry religion of affairs with paying down payment of hajj cost. However, this payment does not guarantee a pilgrim to be able to perform pilgrimage in the next session. In some areas, a candidate must wait four years or more. In these circumstances, the fundamental problem that has to be faced by Muslims is that, may they borrow money to pay the down payment as enrollment of hajj? When a financial institution offers a service to help getting portion of the pilgrimage, May it asks a fee of that service? Indonesia has the largest amount of Muslim citizen in the world that having enthusiasm in doing hajj worshiping, nevertheless to get hajj seat booking that needs years of time making hajj applicant needs longer time to do this hajj worshiping, and this problem becomes a chance for sharia banking to create product innovation so called hajj financing.

Hajj financing is a funding product in sharia bank particularly to lend some fund for customer to get seat booking of hajj and customer expected to pay off the money before go to Mecca in forthcoming hajj session. The financing used in two agreements i.e. Al-Qadr and Al-*Ijarah* which the agreements to lend some funds for the customer to go hajj and go provide the service in order to handle the seat booking in ministry of religion affairs with reward in the form of *ujrah* (fee), Such agreements regulated in Fatwa DSN-MUI No.29/DSN-MUI/VI/2002 (Hadi, 2011).

Hajj financing product held in Indonesia due to the quota of hajj limited (one per one thousand Muslims) and the cost of going hajj is more expensive than before which makes most Muslims just having dream of going hajj. Yet by utilizing this service, anyone can fulfill the fifth pillar of Islam. Another reason of the government provides this product is that to help Muslims to register for the forthcoming hajj session.

However, there are some sharia issues which pertain to the implementation of the contract in the reality which is different with what the sharia committee decides. In addition, the implementation of the product also has negative and positive impacts which associated with management of Hajj in Indonesia. From these issues, this paper attempts to criticize the implementation of the contract in reality and describe its implications both positive and negative.

B. Literature Review

Hajj Financing Contract In Indonesia

Islamic financial institution uses two contracts in this financing which is called *qard wal Ijarah*.

Qardh

The word "*qard*" derived from Arabic word means "cutting-off a portion". The Hanafis describe "the contract legally as one in which a fungible property is paid from one party to another in exchange for a later payment if an equivalent amount". From the Hadits of Rasulullah, he says:

"One day I ascended to heaven, I saw writing on the door of paradise that read: 'Every charity is rewarded ten-fold, and every loan is rewarded eighteen-times' I said; 'O jibril, why is a loan rewarded more than charity?'. He said: because a person may ask for charity when he does not need it, but the borrower only borrows in cases of dire need" (Narrated by Ibn Majah and Al Bayhaqi on the authority of Anas Ibn Malik)

According to the Hadits, thus loans are highly recommended for the lender and permissible for the borrower (Al-Zuhaylis, 2001, p. 372). Therefore, *qard* is a kind of gratuitous loan given to needy in fixed period without requiring the payment of interest or profit. The receiver of *qard* only required to repay the original amount of the loan.

Al Ijarah

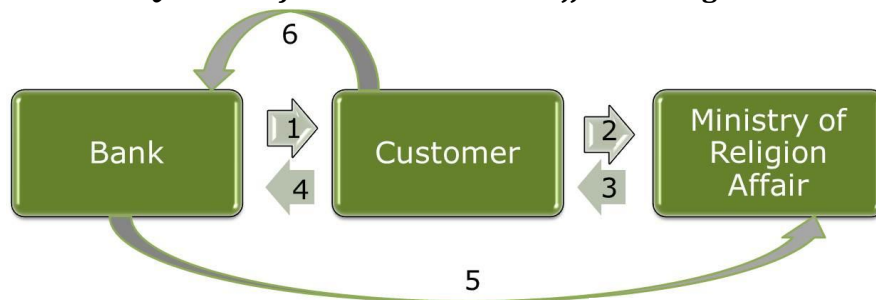
Ijarah defined in *fiqh* as a possession of a usufruct or benefits for consideration in the Fiqh (Hidayat, 2013). This term is used to denote two things:

- a. To employ the services of a person on wages given to him as consideration for his hired services.
- b. It relates to the usufruct of assets and properties. It means to transfer the usufruct of a particular property to another person and exchange for a rent claim from him.

Hence, *Al Ijarah* can be defined as a contract of proposed and known usufruct with a specified and lawful return or compensation for the effort or work which expended.

Qardwalljarah is a contract that used by the Islamic institutions to make the customer register of hajj easily. After the sharia committee issues the fatwa, most Islamic financial institutions offer hajj financing to the customer and they use *Al Qardh* contract to help the customers for paying the registration fee (down payment) of hajj and in same time they also use *Al Ijarah* contract to provide service of registration process for Hajj. From this contract the Islamic financial institution get compensation (*ujrah*) because of the services they provide (Widyarini, 2011).

DIAGRAM 2.1
Scheme of Al Qard wal Ijarah Contract on Hajj Financing in Indonesia



Illustrated from: (Magfuroh, 2010)

According to Magfuroh (2010), these are steps of al *Qard wal Ijarah* contract on hajj financing in Indonesia:

1. The customer goes to the bank to request hajj financing under *Qard wal Ijarah* contract.
2. After the bank approves, the customer go to the Ministry of Religion Affairs to register of hajj.
3. The customer obtains the registration letter then they have to give the letter to the bank.
4. The bank proceeds by making a payment to get seat number and year of departure for the customer.
5. The customer have to pay all the loan (al-Qard) as well as *ujrah* in deferred payment until certain period and continue to put the money in saving account to fulfill total cost of hajj before the departure.

Fatwa of Sharia Committee

The Sharia Committee issues the fatwa of hajj financing contract in Indonesia (Hidayat, 2013, these are:

1. In hajj services, it allowed for Islamic financial institutions to get fee (*ujrah*) by using *Al Ijarah* concept.
2. If needed, Islamic financial institutions can help the customers to pay the hajj financing by using *Al-Qardh* concept.
3. Provision of services for hajj financing must not be required by the provision of loan (*al Qard*).
4. Total of *ujrah* for *al Ijarah* contract cannot be based on the amount of money in *Al Qardh* contract which given by Islamic financial institutions to the customers.

According to the fatwa, it can be seen that there are two objects in this contract which are money and services. It means by using *al Qardh* (loan) contract, the bank can help the customer to pay registration fee and the customer only return the money as much as the amount of borrowed. The fatwa also states that the Islamic financial institutions can help the customers to get seat of hajj from the Ministry of Religion Affair and they can get fee (*ujrah*) base on *al Ijarah* contract but the fee should be based on effort they make, not based on the amount of loan they give as mentioned in point 4.

Moreover to maintain the sharia rules, the Sharia Committee also decides in point 3 that the provision of hajj service cannot be considered as a requirement to get the loan. *Al-Qard* as a single contract cannot be combined by other contract because it may considered as a *riba* transaction. From the fatwa it can be understood that *Al-Qard* and *Al Ijarah* contract must be separate. This is also become an argument that they are not use new term of name of the contract, rather, they still use the original term of the contracts namely *Qard wal Ijarah* (*Qard* and *Ijarah*) contract

C. Results and Discussion

Polemic in Hajj Financing

In recent times there are many advertisement from sharia bank companies in Indonesia launch hajj financing product, in which they say that the cost of travel may be paid installment so as to make easier for those who want go for hajj. There are polemics about hajj financing, some may agree and the others may not. Here are several issues related to polemic in Hajj Financing.

Istitha'ah Issue

Hajj is one of the pillars of islam, one of its most important fundamentals. Performing the hajj become an obligatory for the one who already fulfill the requirement of hajj which is moslem, sanity (*aql*), maturity (*baligh*), capability (*istitha'ah*) or being able to do it includes being able to afford it. As stated before in Surah *Al-Baqarah*: 97,

Allah mentions that the person who obligated to perform hajj is the one who have capability in term of financial and phisical ability.

Istita'ah (literally "capacity") usually refers to physical and financial capability of performing the hajj. A Muslim who fulfils this condition called a *mustati'*(Wikipedia, 2013). Two of five scholars who is Maliki and Hambali formulate Istita'ah consists of three elements. First is physical istita'ah Muslim. Hajj is not obligatory for the sick and the elderly; Second, istitha'ah terms of security (al-istitha'ah al-amaniyah); ie safe journey to Mecca, which is safe from crime and war. It is not life-threatening state of war and criminals as well; Third, in terms financial istitha'ah (*Al-Istitha'ah Al-Maliyah*); means having provisions for the *Hajj* journey and the means of conveyance for it. If the likes of these are not possessed, something such as money or another commodity should be available for possible use to obtain the required provisions. It is a condition that the individual should financially can afford his return trip. For shafi'i scholar, they added into more detail *Hajj* to become obligatory, the individual can afford expenses of departure and return (Iqtishad Consulting, 2013).

In addition, the Muslim should have whatever is imperative for a living and sustenance such as a residence, food supply, vehicle, household appliances, automobile and the like, in accordance with his social standing and honour. In case he lacks these things, he should possess money or anything else with which he could provide them. As an explanation about elements of istita'ah, is it a person who is not included in the requirements above should perform hajj? For example a person owes a debt, so how about if he takes on a loan in order to do Hajj? Is he should borrow money to go for Hajj?

If someone is not can afford to perform Hajj, tries to obtain a loan to cover its expenses, he is not become mustati'. The Hajj that he performs is not be considered the required Hajj of Islam. Another one who can afford to pay *Hajj* expenses but has debt as well, then, He can go to Mecca if he has time for repayment and he is confident when repayment time comes he can afford to repay his debt. The same rule applies to a case when repayment time approaches, yet, the creditor agree to defer repayment and the debtor is confident that he can repay it at the determined time. Apart from these two cases, Hajj will not be regarded as obligatory.

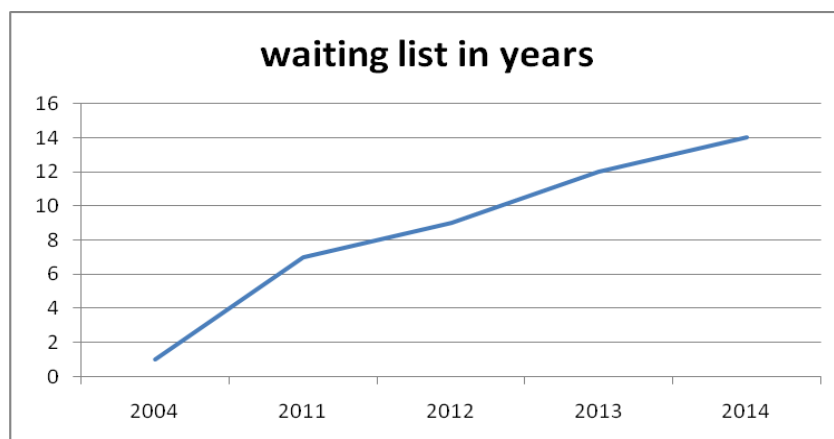
Waiting list issue

The issue of waiting lists to perform Hajj appears in Indonesia since 2005. At that time, the government tries to implement a new system namely "open all year savings system" which resulted in the change of management system in Islamic Community Counseling and Implementation of hajj (BPIH). The new system firstly implemented in 2005 through Decree No.DG BIPH D/163/Year/2004 which the government concerns

toward the registration system of Hajj (Ministry of Religion Affair, 2004). The implication of changes in the system is the opening of savings account by the pilgrims to have opportunity in the registration and the installments payment of the cost of Hajj to the money collected and in accordance with the current cost because the cost of the Hajj each year keep changing, so, the pilgrims have to pay down payment up to 20 million rupiahs (around \$2,125) to get seat booking in forthcoming hajj session. At the same time, Shariah Committee already authorized fatwa about hajj financing in 2002.

After such two rules authorized and implemented, the number of people who want to perform the hajj continue to increase. As a result, if people register hajj in 2005 as shown by the graph, they have to wait until 1 year which can be much longer to wait until 14 years if they registered in 2014 (Ministry of Religion Affair, n.d). Consequently, for those who are fulfilled the requirement in term of physical and financial capability to perform or who are categorized as *mustati'*, they have to wait longer than the person who takes Hajj financing which the person is basically not qualified to perform the Hajj.

GRAPH 3.1
Waiting List of Hajj in Year



Source: Data of Ministry of Religion Affair

Another implication is, as displayed by the graph above, the waiting list for hajj is reportedly 12 years long in 2013 up to 14 years long in 2014. Because of the waiting list, the amount of money that already reserves at the bank collected by Indonesia's Ministry of Religion reach up to \$5.4 trillion, such huge money built up in reserves from deposits made by the millions of its citizens seeking to make the pilgrimage each year (McDuling, 2014). Unfortunately this potential asset has not been managed efficiently since Hajj management system is still centralized under Ministry of religion.

Combining a benevolence contract with contract with profit that will benefit the lender

Using *Qardh* in the form of bailout funds of pilgrimage from the ban to the Hajj applicants and charge the applicants in the form of *ujrah* (fee) however; it raises non-sharia compliant issue between societies since it is not in accordance with the hadith the prophet who states that:

عن عَبْدِ اللَّهِ بْنِ عَمْرٍو قَالَ قَالَ رَسُولُ اللَّهِ -صلى الله عليه وسلم- لَا يَجْلُ سَلْفٌ وَيَبَّعُ وَلَا شَرْطَانُ فِي بَيْعٍ وَلَا رِبْحٌ مَا لَمْ تُضْمَنْ وَلَا يَبَّعُ مَا لَيْسَ عِنْدَكَ

'Abdullah bin 'Amr said: 'The Messenger of Allah -peace and prayer of Allah be upon him- said: "It is not permissible to transact a loan combined with a sale, or to stipulate two conditions in one transaction, or to make a profit on something that you do not possess, or to sell something that is not with you." (Narrated by Abu Daud, in hadith no. 3506; the status is good).

According to the hadiths, the contract of *Al-Qard wal Ijarah* for hajj fund is contrary to the hadith Hajj of the Prophet above because the two products are combined on the contract. The other reason, this *Ijarah* contract can be used by the lender to take profits from loans that are included in the bank on loans that bring benefits (profits). Based on fatwa of Sharia Committee, "the provision of services for hajj must not be required by the provision of loan (*al Qard*)". It means that *al Qard* and *al Ijarah* contract must be separated. *Al Qard* is given cannot because the customer want to take the Hajj services from the Bank. However, in reality bank offers *Al Qard* to the customer by requirement that the customer must be take *Ijarah* contract from the bank so the bank can ask the customer to give *ujroh*.

Moreover, naturally, *Al-qard* is *tabarru'* or charity fund to help Muslim by giving free-interest loan. Since it is soft and benevolent loan, it is permitted for the customer if they cannot pay back the loan or they want to reschedule maturity of debt payment. Nevertheless, in fact that the customer must finished the loan in certain period before they go Mecca without any right to reschedule time of payment. *Al Qard* in nature is risky for the bank but it is natural in sharia. If someone wants to get high profit they also have to ready to take high risk (Widyarini, 2011). The reason of helping the customers to perform the fifth pillar of Islam is a good thing as Muslim should help each other. However, the way to help by using these two combined contracts should be evaluated and taken into awareness of sharia compliance consideration. Banks' function as financial intermediary and commercial institution however will put profit motive in applying all contracts.

Stipulation Ujrah (fee) is not based on Ijarah Contract

The other concern of this contract is addressed on the stipulated *ujrah* as the considered fee. Refer to Fatwa no. No.29/DSN-MUI/VI/2002 by the national shariah committee, it is stated that the Islamic financial institutions are allowed to get the fee (*ujrah*) as they will administer the registration process to the Hajj coordinator. Hence, the fee charged should not be based on the amount given as Hajj financing but on the efforts made. In practice, Islamic banks determine *ujrah* differently depend on nominal of loan which customer needed even though they stipulate fixed amount in every year.

What has been practiced in the earlier launching of the fatwa was all the Islamic banks launched the Hajj financing up to three years as tenure. One of the Islamic banks (BRI Syariah) shown that for Funds Haji for Rp. 18,000,000 for 36 months then *ujrah* for management services Hajj portion is Rp 4,455,000 and if the customer only borrowed for a period of 3 months then the fee is only Rp 360,000. Meanwhile, what had been practiced at Bank Syariah Mandiri is for Rp. 18,000,000 financing in 24 months, the *ujrah* is Rp 3,200,000 and Rp 1,750,000 for 12 months tenure (Widyarini, 2011). Thus, it can be seen that the loan has the element of profit (benefit) since the nominal of *Ujrah* based on the amount of *Al Qard* they give not based on the cost of service. Ali Ra. says that

“Rasulullah pbuh said: Every loan which brings benefits (to the creditor) amounts to riba.”(Ibnu Hajar al-`Asqalani, *Bulugh al-Maram min Adillah al-Ahkam*, Matba`ah al-Salafiyah, 1928, p. 176).

In *al Qardh* contract, if the contract gives benefits to the lender, then it is prohibited according to the Hadits as it is tantamount to *riba*. Most jurist (The Hanafis, The Malikis, The Syafi'is and The Hambalis) agree that any loans that result in a benefit to the lender is forbidden (Al-Zuhaylis, 2001). Even, the basic condition requires the borrower to give a free accommodation or at a cheap price to the lender, and giving a reward or gift in return for the lender's kindness. The idea of giving additional amount as *hibah* by a borrower is recommended in Islam. However, it must not be stipulated in the contract so as to avoid the element of *riba*.

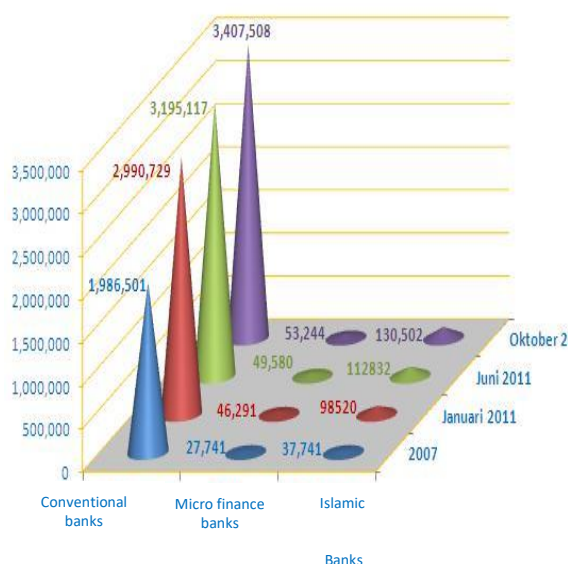
As many contradict opinion and critics arise on this contract, the Sharia Committee finally limited the tenure of financing up to only 12 months. This rule however brings the new atmosphere and indirectly educated the bank to redefine the capable customers, and improved the quality of sharia-compliant financing made by the bank. After the regulation applied, some of the banks decided not to continue the financing while what we found as the updated difference in the charged fee for the customers is as follows:

Amount of Fund	3-month fee	6-month fee	9 -month fee	12-month fee
Rp 20,000,000	Rp 700,000	Rp 1,250,000	Rp 1,800,000	Rp 2,400,000
Rp 25,000,000	Rp 900,000	Rp 1,600,000	Rp 2,250,000	Rp3,000,000
Rp 30,000,000	Rp 1,000,000	Rp 1,900,000	Rp 2,750,000	Rp 3,600,000

The Argumentation of Maslahah in Hajj Financing

Indonesia is the world's populous Muslim nation has big potential to develop its Islamic financial system. Yet, the Islamic financial institution in this country still is still far behind when compared with conventional bank as described from the graph of total asset between Islamic banking and conventional banking in 2007 and 2011.

Total Asset Indonesia Banking In 2007 and 2011 (Million)



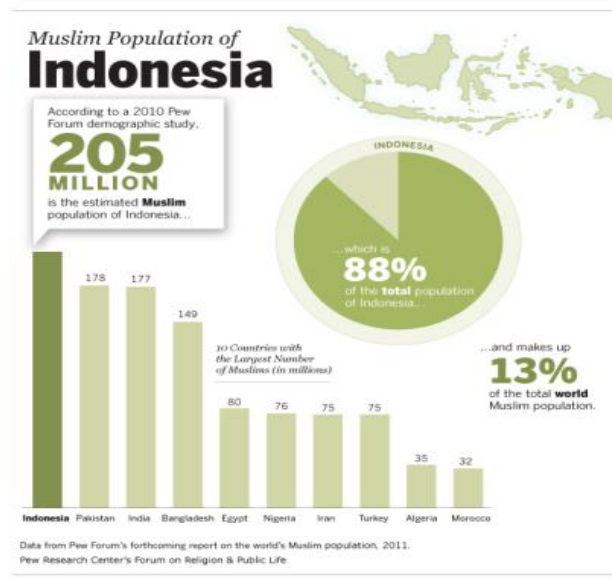
In 2007, Islamic banking's asset in Indonesia is only around 2 per cent of conventional banking's asset. Because of the dynamical Islamic banking, in 2011 the total proportion of total asset toward conventional banking increases about 4 per cent.

It is indicated that Islamic Banking in Indonesia still has opportunity to increase more their asset. Moreover Indonesia has around 88 per cent Muslims of total population. Nevertheless, not all the Muslims are well-educated in term of understanding of their religion, even, about Islamic banking product

Source: (Bank Indonesia Data Statistic, 2011)

Hajj. This condition makes the government tries to create new Islamic banking product to give a change for Islamic banking have a role in the management of Hajj funds.

Through this product, it can be proved that it increases a number of customers and also total asset of Islamic bank significantly (Republika Online, 2011) since the spirit of Muslim in Indonesia toward Hajj performance is very big. Thus, the presence of this product makes them interested to do come to Islamic bank.



Source: (PewResearch , 2011)

In addition, The large potential asset from Hajj funds can be seen from total of down payment in November 2013 reach around 58 trillion rupiah and it predicted increase up to 100 trillion in 2018 (Ministry of Religion, 2013). Such a big funds, if can be collected by Islamic banking can boost Islamic banking growth faster. Moreover, fortunately, The Ministry of Finance has started to use the fund to buy more sharia-compliant government bonds, or sukuk, reducing its exposure to the foreign investors who own about a third of Indonesia's sovereign debt ((The Financial Time, 2014)). This could reastically play key role in developing the country's Islamic and finance market and reduce its reliance on offshore fund. This fund can help Indonesia to diversify source of funding away from global bond.

D. Conclusion

Hajj financing on the one hand give the positive impact (masalah), while on the other hand has the negative impact (mafsadah). However it should be understood that Indonesia has the largest number of Muslims in the world. Thus, banking product for hajj purposes is very important for the Muslims. This is a great potential asset for the development of Islamic banks. Hence, it is important for the government and the sharia committees to regulate back Hajj management system and also its contract since there are several issues regard the implementation of the contract of hajj financing which is indicated non sharia compliant

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