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Issues in the Application of *Wakalah* (Agency) in E-wallet

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Abstract

E-wallet or digital wallet is an online application or service that allows a person to perform electronic transactions with other parties through the exchange of digital money (e-money) for a product or service. Its use is growing over time and it is said that Malaysia is the top country in its use in Southeast Asia. To date, there are more than 50 applications offered in the market by various vendors; bank and non-bank. From Sharia point of view, various issues arise regarding the status of e-wallet. Among the issues raised are the status of underlying contract according to Sharia since it will affect the status of e-money in the e-wallet itself. Furthermore, the issue of whether the e-wallet cashback is considered *riba* (usury) or not and its relation to *qard* (loan). However, in 2020, Bank Negara Malaysia (BNM) has determined that the e-wallet system is compatible with the *wakalah* (agency) agreement. Therefore, the objective of this study is to analyse e-wallet compliance to the standards of *wakalah* contract. This study focuses on the system that connects between users and e-wallet providers only. It is only limited to Touch n 'Go e-wallet, Grabpay and Boost, which are widely used by Malaysians. The study uses qualitative approach based on content analysis to obtain data from primary and secondary sources. Ultimately, this study reveals that these three e-wallets have not met the *wakalah* contract standards set by BNM.

Keywords: e-wallet, e-money, Wakalah, Agency, Qard

Introduction

E-wallet is a wallet application that requires "top-up of cash money" to the application either using online banking or a prepaid card. The transferred money will be converted into e-money and put into an e-wallet account and used to make payments via online or in person.

This e-wallet acts as a replacement for the physical wallet, which allows one to save money by simply using the application without having to carry physical cash to make a transaction (Kamarulbaid, 2019). E-wallet requires e-money. Money needs to be deposited into the e-wallet online before being converted and kept in the form of e-money which allows for any payment transaction. The value of e-money in the e-wallet is equal to the actual value of the deposited money. In some cases, e-wallet is based on credit and debit cards. Users are not required to deposit any funds into the e-wallet. When payment for a transaction is made, the payment source comes from the user's debit card or credit card (Kenton, 2019).

There are more than 50 e-wallet providers competing in the market today (Celcom, 2021). There are even e-wallets that have terminated their service such as Vcash in December 2019 (Valyou, 2019). Among the companies that are gaining ground by Malaysians are Touch 'n Go eWallet, Grabpay and Boost. All three are among the five most used e-wallets in Malaysia (Celcom, 2021). Based on this fact, three e-wallets represent scope of the study due to the large number of users. These e-wallets require e-money deposit into their account and not e-wallets operated by banks such as MAE Maybank.

Among Sharia issues raised is the issue of the contract that underlies the e-wallet. Ahmad (2019) argues the use *qard* contract combined with cashback or reward offered by the e-wallet provider. However, in May 2020 Bank Negara Malaysia clarified that the agreement between the user and the e-wallet provider is a general *wakalah* agreement (BNM, 2020). However, there is no monitoring process involved to ensure e-wallet providers comply with Bank Negara Malaysia's resolutions. Based on this ground, it motivates this study to explore in depth to what extent the providers have achieved the compulsory resolution. Therefore, this article analyses Sharia compliance status of Touch n 'Go, Grabpay and Boost e-wallet according to the concept of *wakalah*. This will contribute to user's ability to choose the Sharia-compliant products or providers that comply with Sharia according to the standards imposed by Bank Negara Malaysia.

Research Methodology

This study is based on a qualitative method through content analysis to unravel the problems related to the status of Touch n 'Go eWallet, Grabpay and Boost whether it meets the concept of *wakalah* or not. The information referenced in this study was obtained through inductive methods by tracing the primary and secondary sources that are relevant to the issue of this study and inferring the data that reinforce as well as explain the problems in this issue. Data analysis was conducted using deductive methods through the understanding of Islamic arguments and the opinions of scholars and the production of what is related to the issue of this study. The data collected after inductive and deductive are worked on and interpreted along with the views of the authors to answer the questions of this study, then explain the status of Touch n 'Go eWallet, Grabpay and Boost whether they comply with the concept of *wakalah* or not.

The Concept of *Wakalah*

The Shariah Advisory Council of Bank Negara Malaysia (2020) has issued a resolution regarding their stance on the e-wallet system, stipulating that the e-wallet system must operate based on the concept of *wakalah*. This is as described in the resolution;

Based on the above consideration, the SAC is of the view that *wakalah* appears to be one of the suitable Shariah contracts that appropriately governs the rights and obligations of the contracting parties in an e-money transaction. The SAC ruled that the application of *wakalah* in the e-money transaction may be structured as follows:

- The approved issuer offers agency services to make settlement on behalf of the user to the merchant
- The user places the fund in a registered e-money account with the approved issuer; and
- The approved issuer establishes a trust account/dedicated deposit account to store

funds placed by the user, and shall be used for settlement to merchant or refund to the user.

Wakalah signifies handing over one's job to a person who is able to perform it while he is still alive (Syarbini Khatib, 1997). According to Bank Negara, *Wakalah* refers to a contract where a party, as principal (*muwakkil*) authorizes another party as his agent (*wakil*) to perform a particular task on matters that may be delegated, with or without imposition of a fee.

A *wakalah* contract must have all of the following elements:

- a) the principal and agent (collectively referred to as contracting parties);
- b) the offer (*ijab*) and acceptance (*qabul*) to enter into the *wakalah* contract; and
- c) the subject matter of the *wakalah* contract (BNM, 2016)

Touch n 'Go eWallet

Prior to the existence of this Touch 'n Go eWallet, Touch' n Go was well known for its integrated electronic payment system entities and single ticket system for toll fare payments on highways. The company was incorporated in October 1996 where it launched its services in March 1997 on the Metramac Highway and the PLUS Highway (Touch N Go, 2021). CIMB owns 52% of Touch 'n Go while MTD Capital Bhd and PLUS Expressways Bhd have 28% and 20% respectively (Zainul, 2018). For more than two decades, the company has continued to offer services to consumers and various upgraded services to facilitate their use in line with the development of the times. Among the services considered the latest is Touch 'n Go eWallet.

The e-wallet service was launched on 24 July 2017 in collaboration with Alipay a subsidiary of Ant Financial Service Group as quoted via the Edge Market website on that date (Syafiqah, 2017). Ant Group is an innovative technology company creating infrastructure and platforms to support the digital transformation of the services industry. The China -based company was officially formed in October 2014, it is from Alipay, which was launched in 2004 (AntGroup t.th).

Touch 'n Go eWallet has been licensed by Bank Negara Malaysia among 48 non-bank e-money users (use of e-money other than banks) (BNM, 2021). In addition, this company is one of the platforms to implement the government's agenda towards the implementation of digital cashless in the future as this company has been selected for the ePENJANA program, which is part of the National Economic Regeneration Plan (PENJANA) aimed at increasing expenditure and promote digital implementation in the country (BERNAMA, 2020).

Grabpay

Grab Company as it is known is popular with unofficial taxi service through location sharing system. Nevertheless, the company offers a variety of services such as delivery of goods, food ordering, insurance, and more. Grab also offers a digital payment service called Grabpay e-wallet. The company started in a small leased area of Kuala Lumpur in 2012, today the small company has become known as Grab, the largest mobile technology company in Southeast Asia that connects millions of users with millions of drivers, businesses, and businesses (Grab, 2021)

Like Touch N Go eWallet, Grabpay also includes 48 non-bank e-money users (use of e-money other than banks) licensed by Bank Negara Malaysia (BNM 2021). Apart from that, this

company is one of the platforms used by the government to stimulate Malaysians to spend through digital means such as Touch N Go eWallet in the ePENJANA (BERNAMA 2020) initiative.

Boost

Boost is an e-wallet application owned by Axiata company that was published in 2017 (axiata 2021). Axiata Group is one of the largest telecommunications companies in Asia through the expansion of operations in 10 countries. Among them are Robi telco in Bangladesh and Smart telco in Cambodia.

Apart from Boost, the company is already popular with the telecommunications brand Celcom (Axiata, 2021). This company is the first to pioneer 4G services in Malaysia. Established on 12 June 1992 as TM International Bhd (TMI) which is one of the mobile and international operating branches of Telekom Malaysia Bhd (TM). It was later separated from Telekom and listed on the Stock Exchange in 2008. Khazanah Nasional along with other multinational companies hold more than 60% of Axiata shares (Nikkei Asia, 2021).

With multinational companies as part of the shareholders of the axiata group, especially Khazanah Nasional, it facilitates Boost to include 48 non-bank e-money users (use of e-money other than banks) licensed by Bank Negara Malaysia including Touch N Go eWallet and Grabpay (BNM, 2021). To stimulate Malaysians to spend digitally, the Malaysian government has appointed Boost along with Touch N Go eWallet and Grabpay as the digital payment medium by channelling RM30 through the e-cash program (BERNAMA, 2019) and RM50 through the ePENJANA program (Faisal, 2020) into e-wallet accounts of Malaysians which registered on one of these mediums.

Wakalah Application on All Three e-wallets

These three e-wallets are not problematic in terms of customer and agent (collectively referred to as contracting parties) and the offer (*ijab*) and acceptance (*qabul*) to enter into the *wakalah* contract but problematic in the subject matter of the *wakalah* contract.

Muslim scholars have agreed that *wakalah* is invalid and impermissible if the subject matter involve things that are impermissible as mentioned by (Ibn Qudamah, 1997). According to BNM (2016) the subject matter of *wakalah* must comply with sharia and the representative must know the permissibility of the subject matter. The Shariah Advisory Council of Bank Negara Malaysia stresses that no product bundling or cross-selling involving Shariah non-compliant products allowed (BNM, 2020).

Through observation, the subject matter of the *wakalah* in Touch 'n Go, Grabpay and Boost e-wallet is prone to impermissible items. The *wakalah* is deemed legal if the purchase involves halal food, top up for mobile phone credit, payment of water bills and etcetera and vice-versa. Among illegal subject matter of *wakalah* are as follow:

Liquor

The ruling of liquor is already known to be impermissible based on the Quran, Hadith and *Ijma'* (consensus) (Al-Syata, 1995). Through observation, all three e-wallets permit liquor purchase transactions for example HG Wines & Spirit liquor company allows its liquor to be purchased

through Touch n 'Go eWallet, Grabpay and Boost as stated in their website (HGWN, 2021). In addition, Carlsberg and various wine brands can also be purchased with Touch n 'Go eWallet and Boost through the Lazada platform (Lazada, 2021). Similarly, convenience stores such as 7 Eleven, liquor can also be purchased with Touch n 'Go e-wallet (7eleven, 2021).

Gambling

According to Ibn Taymiyyah (2005), gambling represents taking one portion of one's property, then at stake whether one gets revenue or does not get anything. The consensus of scholars states that all kinds of gambling are forbidden (al-Qurtubi 2006). Looking at the records of the three e-wallets, there are online gamblers who offer payments through them, among them is the Ecwon gambling website which offers payments from Touch n 'Go eWallet, Grabpay and Boost (Ecwon, 2021).

Swine

According to al-Qurtubi (2006), any parts of swine such as meat and fat are forbidden by consensus. Pork sales are available on the Lazada (2021) platform, which accept Touch n 'Go and Boost e-wallets. The same goes for other platforms such as Lamboplace (2021) which accept Touch n 'Go eWallet, Grabpay and Boost.

Conventional Insurance

Muzakarah Jawatankuasa Fatwa Majlis Kebangsaan Hal Ehwal Ugama Islam Malaysia (a national Sharia consultative council) at 80th meeting on 1 - 3 February 2008 discussed the General Insurance. *Muzakarah* has ruled that conventional insurance is not Sharia compliant. (e-fatwa, 2011)

All three e-wallets offer insurance payment services. Touch n 'Go eWallet offers insurance packages to its users in collaboration with Allianz, AIA and Hong Leong Assurance companies (Touch n' Go eWallet 2021) (AIA 2021) (Hong Leong Assurance, 2021).

Grabpay offers insurance to their consumers in collaboration with CHUBB and Hong Leong Assurance (Ann Williams 2020) (Hong Leong Assurance, 2021). For Boost users they can buy and pay for insurance offered by Boost in collaboration with Great Eastern (Boost, 2021) and pay for Prudential, Hong Leong Assurance and Gibraltar BSN (Prudential, 2021; Hong Leong Assurance 2021; Gibraltar BSN, 2021).

Deferred Gold Purchases

Gold is one of the six *ribawi* (usury-related) items agreed upon by scholars. When gold is bought with a delayed or a deferred delivery then *riba al-yad* and *al-nasa'* will occur. *Riba al-yad* represents deferment of delivery from one of the parties, which involves *ribawi* items without any deferral agreement. While *riba al-nasa'* is a postponement of delivery from one of the parties, which involves *ribawi* items due to the existence of a postponement agreement (Syarbini 1997). Lazada (2021) platform offers this kind of gold purchase. Even though contemporary scholars have discussed the issue of real and constructive *taqabud* (possession) related to buying and selling gold online, it is observed that there is no constructive *taqabud* for the purchase of gold in Lazada because there is an agreement to deliver until a certain period and coupled with possible fraud on purchases in Lazada (Perlis 2020).

Conventional Cigarettes, Electronic Cigarettes and Vapes

Scholars differ on the ruling of smoking. According to al-Bayjuri (2016), there are three opinions regarding the law of smoking, the first is impermissible, the second is reprehensible and the third is obligatory.

However, contemporary scholars and fatwa councils around the world have condemned smoking, especially the Malaysian National Fatwa Council which ruled that smoking is illegal on 23 March 1995 (JAKIM, 1995). Similarly, electronic cigarettes and vapes were condemned as illegal by the National Fatwa Council on 21 December 2015 (JAKIM, 2015). The reason for banning is the existence of harm in smoking (JAKIM 1995) (JAKIM, 2015).

Touch n 'Go eWallet allows cigarette purchase transactions such as cigarette purchase at Shell petrol stations (Touch n 'Go eWallet 2021) and at 7 Eleven (7 Eleven 2021). In addition, there are also vape shops that offer the use of Touch n 'Go eWallet in their stores such as for example at EKI Vape Station (EKI Vape Station, 2020) and Xrokok (Xrokok, 2020). Grabpay can be used in Vape Empire (Vape empire, 2021) while Boost can be used in Xrokok like Touch n 'Go eWallet (Xrokok, 2020).

Loans With Interest

Loans with interest are clearly prohibited as mentioned by (*Al-Islami*, 1985). According to Nair (2022), Touch 'n Go (TnG) Group targets to disburse around RM300mil this year after launching *GOpinjam*, an inclusive digital personal loan product available in TnG eWallet and delivered 100% electronically. *GOpinjam* was developed in partnership with CIMB Bank Bhd which offers personal loans as low as RM100 to a maximum of RM10,000 for Malaysians aged between 21 and 63 years of age. The flexible repayment period ranges from one week to one year, with no hidden fees for early settlement. Interest rate starts from 8% until 36% per annum (Touch 'n Go, 2022). This represents usury as mentioned in the Touch 'n Go website. It is not Sharia-compliant since the product originates from conventional banking (Touch 'n Go, 2022).

Of the seven products mentioned above, it is clear that all three e-wallets do not meet the *wakalah* concept standards. However, this matter is up to the users of this e-wallet whether they make transactions on illegal things or not. If the user does not make an illegal transaction, then the matter is included in the scope of the concept of *wakalah* in Islam, if not so then it is considered a different law.

Cashback and Reward Status

Cashback and reward will affect the *wakalah* contract if both are considered *riba*. This is because if it is considered *riba* then the underpinning concept of this e-wallet is a loan (*qard*) and both are interest from the loan. If it is not *riba* then both are mere *hibah* (gift) or *jualah* (promise to reward).

According to the guidelines by The Shariah Advisory Council of Bank Negara Malaysia: "Under the Guideline, the approved issuer is responsible to prudently manage the funds received from the user. The approved issuer is also allowed to invest the funds and subsequently utilises the return. This can be construed as a loan (*qard*) from the user to the approved issuer". As mentioned by Bank Negara, the organisers can use e-money funds for loans to make profitable

investments. This is quite worrying for e-wallet users if the cashback and reward is considered *riba al-qard* (loan-based usury).

However, Touch 'n Go, Grab Pay and Boost issuers do not stipulate rewards for every entry of e-money savings funds into their managed e-wallet accounts, contrary to interest in conventional bank account savings (Touch n' Go eWallet n.d.) (Grabpay 2022) (Boost n.d.). If there is such a reward, the matter is for a period and for certain people only, such as the RM2 cashback promotion after reloading RM10 through any bank into the Touch n' Go e-wallet account (Touch n' Go eWallet, 2020). In addition, banks also conduct promotions such as Standard Chartered offering cashback by simply reloading into Touch 'n Go eWallet and Grab Pay via credit card (Standard Chartered, 2021). Most Touch 'n Go, Grab Pay and Boost cashbacks are earned through purchase and service transactions. Rarely do they offer cashback via reload.

This coincides with what was stated by the Shariah Advisory Council of Bank Negara Malaysia (2020) after that: "The SAC ruled that there is no issue of *qard jarra naf'an* in the practice of rewards offered by the approved issuer based on the following considerations:

- *the qard contract is only a supplementary contract, which is different from the loan contract for deposit account offered by banking institutions;*
- *no inter-conditionality between the funds placed by the user and rewards given by the approved issuer;*
- *the rewards neither intended nor targeted to reward the amount placed by the user, but rather intended as a temporary marketing strategy to expand customer participation;*
- *the Guideline expressly prohibits approved issuers from issuing e-money at a monetary value that is greater than the amount received;² and*
- *the practice (*`urf*) in respect of utilization of the funds by the approved issuers creates a differentiation from normal banking business, which renders the card contract as a supplementary contract.*

As mentioned above, the loan contract (*qard*) in the e-wallet system is only a secondary contract; not the primary contract. In addition, the loan that is used may not be all the e-money stored in the user's account and e-money top up that offer rewards may not be used as loans, therefore it is not considered the main contract, contrary to what occurs in banking systems.

Apparently, the cashback, discounts and rebates offered by Touch 'n Go, Grabpay and Boost coincide with what was stated by Bank Negara's Shariah Advisory Council. These rewards are only meant to attract users to refill (top up) into the e-wallet account, as well as campaign to increase the registration of new e-wallet users respectively. Despite this, there is also the possibility that these rewards are a trick for usury by the e-wallet manager by borrowing e-money funds and then the interest (interest) is channeled through cashback rewards, discounts and rebates. However, it is difficult for the writer to convict the three e-wallets of doing *riba al-qard* (loan) tricks through cashback or other rewards because there is no clear *qarinah* (indication) that they intend for that purpose.

Therefore, the author argues that the cashback and reward of the three e-wallets is not usury that is prohibited unless it is promised on a regular basis that every entry of e-money funds

into the e-wallet account will be cashback or interest at a specified time without being tied to any other transactions such as conventional bank accounts. Therefore, the concept of these three e-wallets is still subject to the *wakalah* contract as long as they do not commit any illegal transactions.

Status of E-money Savings Account

The status of e-money deposits in Islamic financial institutions is very critical since it can affect *wakalah* contracts (BNM 2016). SAC of BNM (2020) has ruled that e-wallet issuers are obliged to place the funds received from the user in shariah-compliant trust accounts or dedicated deposit accounts. It is not known whether Touch 'n Go, Grabpay and Boost violate the directive, hence the method of Islamic legal maxim applies. According to al-Suyuti (1983), "everything is permissible unless prohibited".

Conclusion

Although Bank Negara Malaysia allows the use of e-money funds for investment loans, it is still not considered as *qard* (loan) as the main concept of contract because e-wallet acts as a transaction medium for any payment and not as an investment loan medium. Cashback and rewards earned by consumers are not permanent and can be interpreted as a grant (*hibah*) or commission (*jualah*). The e-money status does not violate Bank Negara Malaysia's resolution. Therefore, Touch 'n Go, Grabpay and Boost e-wallets comply with the concept of *wakalah* as long as the user does not perform any transactions that are prohibited by sharia.

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