



ANALYSIS OF THE CONCEPT OF *TAWARRUQ* IN THE PERSPECTIVE OF SHARIA ECONOMIC LAW

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Article history: Received: January 24 2023, Accepted: March 2, 2023 Published: March 25, 2023

Abstract: *One of the muamalah's issues that receives considerable attention in Islam is the economy. The most emphasized thing in the economy is the issue of usury. Usury is regarded as a vibrant economic activity, far from the values of justice. To get cash without doing usury methods, some parties are bargaining. But, some parties have debated the tawarruq transaction about its halalness. The research method used is qualitative descriptive analysis to analyze the concept of tawarruq from the perspective of sharia economic law. This study found that some ulema has different opinions about whether or not tawarruq is allowed. Some ulema argues that tawarruq is permissible and Islam has been introduced as a solution to meet the need for liquidity. However, others are of the view that tawarruq is a contrived muamalah maliyah activity to cover up the usury element and circumvent the dharurah situation in need for liquidity, even though the essence of this transaction is still classified as usury activities. In Indonesia, the tawarruq contract is currently not allowed to be used as a product of Islamic financial institutions. However, this contract should only be practiced in commodity trading transactions as contained in the Fatwa DSN-MUI No. 82/DSN-MUI/VIII/2011 concerning Commodity Trading Based on Sharia Principles on the Commodity Exchange.*

Keywords: *Tawarruq, Fatwa DSN-MUI, Sharia Economic Law.*

Abstrak: Salah satu masalah muamalah yang mendapat perhatian cukup besar dalam Islam adalah ekonomi. Hal yang paling ditekankan dalam ekonomi adalah masalah riba. Riba dianggap sebagai sebuah kegiatan ekonomi yang zalim, jauh dari nilai-nilai keadilan. Untuk mendapatkan uang tunai tanpa melakukan cara *ribawi*, beberapa pihak melakukan *tawarruq*. Namun, transaksi *tawarruq* menjadi perdebatan oleh beberapa pihak mengenai hukum kehalalannya. Metode penelitian yang digunakan adalah analisis deskriptif kualitatif dengan tujuan untuk menganalisis *tawarruq* dalam perspektif hukum ekonomi syariah. Dari penelitian ini, ditemukan bahwa beberapa kalangan ulama berbeda pendapat mengenai boleh atau tidaknya *tawarruq*. Sebagian ulama berpendapat bahwa *tawarruq* dibolehkan dan telah diperkenalkan Islam sebagai solusi untuk memenuhi kebutuhan akan likuiditas. Namun, sebagian lainnya berpandangan bahwa *tawarruq* adalah sebuah kegiatan *muamalah maliyah* yang dibuat-buat untuk menutupi unsur riba dan mengakali keadaan darurat dalam kebutuhan akan likuiditas, padahal esensi dari transaksi ini masih tergolong kepada kegiatan *ribawi*. Di Indonesia, akad *tawarruq* saat ini belum diperbolehkan untuk dijadikan produk lembaga keuangan syariah. Namun, akad ini hanya boleh dipraktikkan dalam transaksi perdagangan

komoditi di bursa sesuai Fatwa DSN-MUI No. 82/DSN-MUI/VIII/2011 tentang Perdagangan Komoditi Berdasarkan Prinsip Syariah di Bursa Komoditi.

Kata Kunci: *Tawarruq*, Fatwa DSN-MUI, Hukum Ekonomi Syariah.

Introduction

As a perfect religion, Islam has given comprehensive rules to regulate human activities on earth. These rules are beautifully listed in the Qur'an and as-Sunnah.¹ No single side of human life escapes the laws of Islam, whether it is a matter of worship or *muamalah*. One of the *muamalah* issues that has received considerable attention in Islam is the economic problem. As a perfect religion, Islam has provided comprehensive life guidelines for humans in economic activities. So many words of God are passed down to govern people on how to carry out economic activities that God has done correctly. One of the things that God emphasizes most is the issue of usury.² Usury is regarded as a vibrant economic activity, far from the values of justice. Therefore, Islam encourages humanity to abandon the practice of usury. In addition, many Hadiths of the Prophet prohibit humans from carrying out usury activities.

In Islamic law, problems related to the economy will not be separated from *muamalah*, such as buying and selling, savings and loans, accounts receivable, etc. Islam has explained a lot about the basic principles of *muamalat*, including that whether the transaction is valid or not must know five things: *maisir*, *garar*, *haram*, usury, and *batil*. The most crucial element is usury in every transaction, such as buying and selling and accounts receivable.³

God has justified buying and selling as a way for people to carry out economic activities properly. However, sometimes human economic needs cannot be met by buying and selling, considering that humans do not need goods but cash that can be used to meet various life needs. Islam has allowed humans to meet cash needs by borrowing from people on the principle of *qard* (without additional interest).⁴ However, problems will arise when no one is willing to provide *qard* loans, on the one hand a person urgently needs cash to carry out their economic activities for consumption and production.

To get cash without doing usury methods, some parties who make transactions are called *tawarruq*. The so-called *tawarruq* transaction has become a debate by some parties regarding its halalness. A number of parties are of the view that the so-called *tawarruq* as an activity is made up so that the element of usury is not visible, even though its essence is usury activity.⁵ On the other hand, *tawarruq* is considered permissible in Islam as a solution to meet cash needs.⁶ Based on the study literature, there are several similar studies on *tawarruq*,

¹Zainuddin Ali, *Hukum Ekonomi Syariah* (Jakarta: Sinar Grafika, 2008), 4.

²Asep Dadan Suganda, "Analisis Teori Bai' Tawarruq dalam Muamalah Maliyah", *Jurnal Islamiconomic*, Vol. 6, No. 1, 2015, 2.

³Suraya Ismail, "Bai' Bithaman Ajil Home Financing In Malaysia: An Evaluation", *International Journal of Education and Research*, Vol. 3, No. 1, 2015.

⁴Muhammad Syafi'i Antonio, *Bank Syari'ah: dari Teori ke Praktik* (Jakarta: Gema Insani, 2001), 131.

⁵Asyraf Wajdi Dusuki, "The Application of Commodity Murabahah in Bursa Suq al-Sila' Malaysia vis-avis Jakarta Future Exchange Shari'ah Indonesia: A Comparative Analysis", *Research Paper ISRA*, No. 49, 2013, 6.

⁶Asyraf Wajdi Dusuki, "Can Bursa Malaysia's Suq al-Sila' (Commodity Murabahah House) Resolve The Controversy Over Tawarruq?", *International Shari'ah Research Academy for Islamic Finance (ISRA)*, No. 10, 2010, 8.

including Aishah (2015),⁷ Samsuri (2015),⁸ Suganda (2015),⁹ and Adawiyah.¹⁰ The review of the article emphasizes more on the concept of *tawarruq* in general and its application operationally. This article's study differs from previous research, namely that it emphasizes more on the analysis of sharia economic law theory. Based on this, *tawarruq* is an exciting problem to study using the sharia economic law approach.

The concept of *Tawarruq* in Islam

From a linguistic point of view, *tawarruq* comes from Arabic, *warq* or *wariq* or *waraqa*, which means silver money, dirham, or silver metal. Earlier generations used *tawarruq* to obtain silver or dirhams.¹¹ The word *al-wariq* is used in Q.S. Al-Kahfi verse 19:

وَكَذَلِكَ بَعَثْنَاهُمْ لِيَتَسَاءَلُوا بَيْنَهُمْ قَالَ قَائِلٌ مِّنْهُمْ كَمْ لَبِثْتُمْ قَالُوا لَبِثْنَا يَوْمًا أَوْ بَعْضَ يَوْمٍ قَالُوا رَبُّكُمْ أَعْلَمُ
بِمَا لَبِثْتُمْ فَابْعَثُوا أَحَدَكُمْ بِوَرِقِكُمْ هَذِهِ إِلَى الْمَدِينَةِ فَلْيَنْظُرْ أَيُّهَا أَزْكَى طَعَامًا فَلْيَأْتِكُمْ بِرِزْقٍ مِنْهُ وَلْيَتَلَطَّفْ
وَلَا يُشْعِرَنَّ بَكُمْ أَحَدًا

"And so we awakened them so that they would ask each other questions among themselves. said one of them: How long have you been (here?)". They replied: "We are (here) a day or half a day". Said (another one): "God, you know better how long you've been (here). Then tell one of you to go into the city with this silver bill of yours, and let him see which is the better food, then let him bring the food for you, and let him be meek and never tell your thing to anyone." (Q.S. Al-Kahfi [18]: 19)

The sentence "Then tell one of you to go to into the city with this silver bill of yours (*wariq*)" means *tawarruq*, which means asking for money and he means more generally to ask for money from silver or gold or banknotes. In addition, it is called *tawarruq* because when buying the item for a fee, the buyer does not intend to use or use it but only wants to make it a way towards obtaining cash. This *tawarruq* contract involves two parties. The beginning consists of a purchase on credit between the buyer and the seller of an asset, and then the second rank where the buyer then sells in cash to a third party.¹²

Etymologically, the word *tawarruq* is defined as a leaf. That is, multiplying treasures. So, *tawarruq* is defined as the activity of bearing money. According to Ibn Taimiyah, *tawarruq* is a person buying goods at the highest price and then selling them to someone else (not the first seller) in cash out of a desire to get some money immediately. For example, if a person buys an item for 100 dirhams because he needs money, then the item is resold for 90 dirhams, so *tawarruq* is a kind of *bai al-inah*.¹³

Technically, the O.I.C Fiqh Academy defines *tawarruq* as "A person (*mustawriq*) who buys goods on a payment basis to sell the goods at a low price to get cash".¹⁴ According to the Accounting and Auditing Organization Islamic Financial Institutional Shariah Standard

⁷Siti Aishah, Kasmon, dkk, " *Tawarruq* Berdasarkan Kredit Prabayar Telefon: Tinjauan Terhadap Produk Pembiayaan di RHB Islamic Bank", *Jurnal Umran – International Journal of Islamic and Civilizational Studies*, Vol. 2, No. 3, 2015.

⁸Ali Samsuri, "Membincang Konsep *Tawarruq* dalam Dunia Perbankan Dewasa Ini", *Universum*, Vol. 2, No. 3, 2015.

⁹Asep Dadan Suganda, "Analisis Teori *Bai' Tawarruq* dalam Muamalah Maliyah", *Jurnal Islamiconomic*, Vol. 6 No. 1, 2015.

¹⁰Engku Rabiah Adawiyah, "Islamic Law Compliance Issues in Sale-based Financing Structures as Practice in Malaysia", *Malayan Law Journal*, Vol. 3, 2003.

¹¹Al-Shirazi, Majd al-Din Muhammad, *al-Qamus al-Muhit* (Beirut: Dar al-Fikr, 1990), 1194.

¹²Resolusi Syariah dalam Keuangan Islam, BNM, 2005, 2nd Ed.

¹³Mardani, *Fiqh Ekonomi Syariah Fiqh Muamalah* (Jakarta: Kencana, 2012), 189.

¹⁴The International Council of Fiqh Academy, *Tawarruq: Its Meaning and Types* (Classical Applications and Organized *Tawarruq*, 2009), 179.

(A.A.O.I.F.I.), *tawarruq* is a commodity purchase contract on a formidable basis through buying and selling or *murabahah* contracts. The commodity is then sold in cash to parties other than the original seller.

In Arabic, the root word of *tawarruq* is "*wariq*" which means the symbol or character of silver. *Tawarruq* can also be interpreted as looking for silver, money, or treasure,¹⁵ the same as the word *ta'allum*, which means seeking knowledge, studying, or school. The word *tawarruq* can be interpreted more broadly: looking for cash in various ways. It can be by looking for silver, gold, or other coins. According to Ibn Faris, *al-waraq* is a treasure given to the leaves of a tree, for a tree will look worn out and suffer if the leaves fall, like the poor.¹⁶

In *al-Mu'jam al-Wasith's* dictionary, *al-wariq*, with the letter "*ra*" bottom line, means silver that has been processed or is still raw. In terminology, the term *tawarruq* is widely found in Hanbali *fiqh* books. They define it as "A person buys goods in installments, then sells the goods in cash to a third party (other than the first seller) at a lower price to get cash or liquidity."¹⁷ Ibn Taimiyah explained that *tawarruq* is a person buying goods from someone in a non-cash way and reselling the goods in cash to a third party (not the first seller) to want to get money/capital, then he takes advantage of the sale. Therefore, this problem is called *tawarruq* because people buy the item not to utilize the thing but is used to get money quickly.¹⁸

In another discussion, Ibn Taimiyah said that *tawarruq* buys goods secretly and then sells them to people who owe them blatantly because this transaction is not intended to trade but to seek capital. Salaf ulema includes usury, as corroborated by the opinion of Umar bin Abdul Aziz.¹⁹ Ibrahim Fadhl Dabu defines *tawarruq* as an activity where a person buys a commodity on credit at a specific price, then sells it to get liquidity (money) to another party (in cash) at a lower than the original price. If the person sells it to the first seller, it becomes a prohibited transaction called *bai al-inah*.

Nibrah Hosen interprets *tawarruq* as various ways to obtain cash or liquidity. There are three formations of *tawarruq*:

1. A person who needs liquidity (cash) buys a product by way of credit and sells it to another party by cash without being noticed by the other party of his intentions.
2. A person (*mutawarriq*) who needs cash asks for a loan from a seller who refuses to lend his money. Still, if the seller wishes to sell his goods by way of credit at a cash price, then *mutawarriq* can resell the item to another person at a lower or higher price. Forming these two *tawarruq* transactions is acceptable and permissible to ulema without any debate.
3. Almost the same as the number two formation, except that the seller sells his goods at a price more expensive than the market price to the *mutawarriq*, as a result of payment in installments. Experts in sharia economic law are still debating this formation.²⁰

The term *tawarruq* was introduced by Hanbali. *Tawarruq* among Shafi'i followers is known as *ẓarnaqah*,²¹ which means to increase or develop. In sharia economic law, *tawarruq* means a structure that can be carried out by a *mustawriq*/*mutawarriq*, that is, a person who needs liquidity. A *tawarruq* transaction is when a person buys a product through credit (payment in

¹⁵Sa'ad bin Turki al-Khatlan, *Fiqh al-Mu'amalat al-Maliyah al-Mu'ashirah* (Riyadh: Darul Shoma'i, 2012), Cet. II, 114.

¹⁶Abu al-Husain Ahmad Ibnu Faris Zakaria, *Mu'jam Maqayis al-Lughah* (Beirut: Darul Fikr, 1979), Jilid 6, 101.

¹⁷Abu Hasan, Alaudin Ali bin Sulaiman al-Mardawi, *Al-Inshaf fi Ma'rifat al-Rajih Minal Khilaf* (Kairo: Maktabah Ibnu Taimiyah, 1347 H), Cet. I, Jilid 11, 195.

¹⁸Ibnu Taimiyah, *Majmu' Fatawa* (Madinah: Al-Munawwir, 1465 H), 302-304.

¹⁹Wahbah Al-Zuhaili, "*Tawarruq*, Its Essence and Its Types: Mainstream *Tawarruq* and Organized *Tawarruq*", dalam [www.kantakji.com/fiqh/Files/Markets/a\(65\).pdf](http://www.kantakji.com/fiqh/Files/Markets/a(65).pdf).

²⁰Nibra Hosen, *Tawarruq*, dalam <http://nibrahosen.multiply.com/journal>.

²¹Muhammad bin Ahmad bin Al-Azhar Al-Azhari al-Harawi Abu Mansur, *Al-Zahir fi Gharib Alfaz Syafi'i* (Kuwait: Kementerian Wakaf dan Urusan Agama, 1399 H), Cet., I, 216.

installments) and resells it to a third person who is not the product's first owner in cash and at a lower price.²²

Tawarruq is a form of buying and selling agreement that involves three parties. When the owner of the goods sells his goods to the first buyer at a price and delayed payment, the first buyer resells the goods to the final buyer at a price and cash payment. The delayed price is higher than the cash price, so the first buyer is like getting a money loan with a delayed payment.²³

Types of *Tawarruq*

a. Type 1: Classical *Tawarruq* (*Tawarruq al-Fardi*)

Tawarruq al-fardi is the first buyer to buy goods in installments from the first seller and sell them to third parties in cash at a low price to get cash immediately. In this type, the third party has no direct relationship with the first seller. The seller of the first item should not be associated with the sale in cash made by the buyer of the goods afterward. Hanafi, Shafi'i,²⁴ and Hanbali see this *tawarruq* transaction as valid and based on sharia principles. This form of *tawarruq* transaction is also accepted and used by several sharia bodies, such as the Shariah Supervisory Council of the Al-Rajhi Bank, Saudi Arabia, Kuwait Finance House, and the Malaysian Sharia Agency.

b. Type 2: Organized *Tawarruq* (*Tawarruq Munazzam*)

O.I.C Fiqh Academy defines *tawarruq munazzam* as "A buyer (*mutawarruq*) buys goods in a tough way within and outside the country, and the financial institution acts to arrange agreements through agents, directly between the buyer and the financial institution at a lower price. Ibraheem Musa Tijani argues that two other types of *tawarruq* fall into the *tawarruq munazzam* type, namely *tawarruq al-masrafi* and reverse *tawarruq*. In addition, he also made a comparison between *tawarruq al-fardi* and *tawarruq munazzam*.

Legal Basis of *Tawarruq*

Experts differ on the law of *tawarruq*. Some argue that the law is *mubah*, *haram*, and *makruh*. Clerics who say the law of *tawarruq* is *mubah* reasoned that this transaction differs from *bai' al-'inah* because the goods do not return to the first seller.²⁵ The experts who allow *tawarruq* are based on the general rule that the law of origin in buying and selling is *halal*. There is a legal basis for *tawarruq*:

1. Qur'an

a. Al-Baqarah Verse 257:

اللَّهُ وَلِيُّ الَّذِينَ آمَنُوا يُخْرِجُهُم مِّنَ الظُّلُمَاتِ إِلَى النُّورِ وَالَّذِينَ كَفَرُوا أَوْلِيَاؤُهُمُ الطَّاغُوتُ يُخْرِجُهُم مِّنَ
النُّورِ إِلَى الظُّلُمَاتِ أُولَٰئِكَ أَصْحَابُ النَّارِ هُمْ فِيهَا خَالِدُونَ

"God is the protector of the faithful; He brought them out of darkness (paganism) to light (faith). And the infidels, the protectors of whom are demons, who bring them out of the light into darkness (paganism). They were the inhabitants of hell; they are eternal in it." (Q.S. Al-Baqarah [2]: 257)

²²Muhammad Nadrattuzaman Hosen & Amirah Ahmad Nahrawi, "Comparative Analysis of Islamic Banking Products Between Malaysia and Indonesia", *International Journal of Academic Research in Economics and Management Sciences*, Vol. 1, No. 2, 2012, 126.

²³Ascarya, *Akad dan Produk Bank Syariah* (Jakarta: Rajawali Pers, 2011), 143.

²⁴Muhammad Nadrattuzaman Hosen & Amirah Ahmad Nahrawi, "Comparative Analysis of Islamic Banking Products Between Malaysia and Indonesia", 126.

²⁵Asmak Ab Rahman dkk, "*Bai' al-Tawarruq* dan Aplikasinya dalam Pembiayaan Peribadi di Bank Islam Malaysia Berhad", *Shariah Journal*, Vol. 18, No. 2, 2010, 362.

b. Al-Maidah Verse 1:

يَا أَيُّهَا الَّذِينَ آمَنُوا أَوْفُوا بِالْعُقُودِ أُحِلَّتْ لَكُمْ بَهِيمَةُ الْأَنْعَامِ إِلَّا مَا يُتْلَى عَلَيْكُمْ غَيْرَ مُحِلِّي الصَّيْدِ وَأَنْتُمْ حُرْمٌ إِنَّ اللَّهَ يَحْكُمُ مَا يُرِيدُ

"O people of faith, fulfill those covenants. It is justified for you, the beasts, except that which shall be read to you. (That is) by not justifying hunting while you are working on the hajj. Verily God ordained the laws according to his will." (Q.S. Al-Maidah [5]: 1)

From the Qur'an, none of them forbid *tawarruq* transactions and can even be used as *hujjah* to allow it. *Tawarruq* is a series of buying and selling transactions consisting of buying and selling in cash and buying and selling on credit. The Qur'an is clear that Allah justifies buying and selling either in cash or in a formidable manner.

2. Hadith

Tawarruq is one of the *al-bay'* transactions that belong to the universal of all *al-bay'* transactions, considered legal even though there is not one verse from the Qur'an and one Hadith quote, and there is not a single act of the companions of the Prophet Muhammad S.A.W. that states *tawarruq* is prohibited. One of the historical Hadiths of Bukhari and Muslims is proven to have supported this transaction.

وعن أبي سعيد الخدري وأبي هريرة رضي الله عنه أن رسول الله صلى الله عليه وسلم استعمل رجلا على خبير فجاءه بتمر جنيب فقال رسول الله صلى الله عليه وسلم: أكل تمر خبير هكذا؟ فقال: لا، والله يا رسول الله! إنا لنأخذ الصاع من هذا بالصاعين والصاعين بالثلاثة، فقال رسول الله صلى الله عليه وسلم: لا تفعل! بع الجمع بالدرهم ثم ابتع بالدرهم جنيبا.

"It is narrated from Abu Sa'id al-Khudri and Abu Hurairah ra that the Messenger of Allah appointed a person as an official in Khaibar, then he came before the Messenger of Allah with high-quality dates. The Messenger of Allah asked: "Are all Khaibar dates of this quality?" he replied: "By Allah, no Messenger of Allah, one sha' date like this, we can exchange it for two sha' dates of another kind and two sha' (dates like this) for three sha' dates of another kind." The Prophet said: "Do not do it, but sell everything with dirham money and then with that money, you can buy good quality dates."²⁶

This hadith indicates that a method is allowed to avoid usury. All are buying and selling media, and the terms and conditions of the buying and selling transaction have been met, free from prohibited factors. The intention to get better qualities of dates does not invalidate their structure. This shows the legality of buying and selling transactions where different preferences and intentions using a medium can be carried out explicitly and implicitly free from usury. So to get liquidity with this medium (*tawarruq*) should be allowed if necessary. The problem of a tough transaction at a price higher than the cash price that is debated in determining the law of *tawarruq* can be explained by the hadith below:

²⁶Al-Hafizh Ibnu Hajar al-Asqalani, *Terjemah Bulughul Maram*, terj. Abu Ihsan al-Atsari (Bandung: Pustaka At-Tibyan, 2013), 385.

عن صهيب رضي الله عنه أن النبي صلى الله عليه وسلم قال ثلاث فيهن البركة: البيع إلى أجل
والمقارضة وخلط البر بالشعير للبيت لا للبيع. رواه ابن ماجه

"It is narrated from Shuhaib ra that the Prophet S.A.W. said: "There are three things in which there is a blessing; trade with a tempo, al-qiradh and mixing bur wheat with sha'ir wheat for food at home, not for sale." (H.R. Ibn Majah No. 387)

The hadith can be used to explain that transactions on credit on the *tawarruq* structure are not contrary to sharia. As for the problem of the price difference between sales in cash and on credit, it is actually in the same conditions as *murabahah*, which is widely applied by Islamic banks today. In practice, the price of goods sold is higher than the cash price. Even the amount of price depends on the payment period.

***Tawarruq* in Sharia Economic Law Review**

In looking at *tawarruq* transactions, some ulema differs in opinion about the law. This can be spelled out in table 1:²⁷

Table 1. Ulema Opinion on *Tawarruq*

Ulema	Opinion	Reason
Jumhur Ulema	Allowed	Defined as buying and selling
Bin Baaz	Allowed	It is different from bai al-inah and it is possible to make it easier for people to meet their needs
Ibn al-Uthaymin	Allowed	One type of loan is allowed by buying an item with the payment in installments, then selling it to someone else
Ibn Taimiyah	Forbidden	Same with bai al-inah. However, it is allowed on the condition that: That a man is short of money is not permissible; The contract does not cover usury activities; obtaining cash in an acceptable way, such as by way of a loan
Abu Hanifah	Forbidden	Yes, if it involves a third party (not a sale and buyback)

Source: Ascarya (2007); Suganda (2015), data processing

There are two opinions among ulema about this *tawarruq* law:

1. *Tawarruq* is forbidden

This is the second account of Imam Ahmad and the opinion of 'Umar ibn 'Abdul 'Aziz and corroborated by Ibn Taimiyah and Ibn Qoyyim.²⁸ The reason that this trade is as if someone is selling dirhams with more dirhams or borrowing dirhams and paying them with more dirhams as compensation for the waiting period. This trade is similar to usury, although not real usury.²⁹

2. *Tawarruq* is allowed

This is the opinion of most Hanafiyah and Hanabilah, except for Imam Malik and Ibn Taimiyah who considered *tawarruq* forbidden and fell into the category of *makruh*.

²⁷Mardani, *Fiqh Ekonomi Syariah Fiqh Muamalah* (Jakarta: Kencana, 2012), 189.

²⁸Asmak Ab Rahman dkk, "Bai' al-Tawarruq dan Aplikasinya dalam Pembiayaan Peribadi di Bank Islam Malaysia Berhad", 362.

²⁹Muhammad Rawwas Qal'ah Jiy, *Al-Muamalah Maliyah al-Mu'ashirah* (Beirut: Dar al-Tanafus, 1999).

The reason for their thinking that the law of *tawarruq* is because it has fulfilled the conditions and pillars of buying and selling. Then, buying and selling *tawarruq* is not prohibited in sharia. Therefore it belongs to *al-ibahah al-ashliyah* (the basic law is indeed permissible), in accordance with the rule, "Basically all contracts are allowed unless there is a proposition that prohibits them". Ibn 'Utsaimin requires that *tawarruq* be allowed with several conditions:

- a. There is a need to carry out such transactions with a clear need.
- b. Getting his needs through *qard* (loan), *salam*, and others is difficult.
- c. The goods to be transacted should have been held and controlled by the seller.

The banning of *tawarruq* is not entirely appropriate. It is remembered that this transaction (pure *tawarruq*) was once applied in the time of the Messenger of Allah. Moreover, despite all conventions, it is undeniable that this transaction is needed by society. Therefore, the right thing is to impose restrictions, not prohibitions. The important point is that in addition to being justified by sharia law, the implementation of *tawarruq* is carried out in the context of fulfilling sharia objective and is in line with the logic of economic expediency. This means that this transaction can protect the community's needs and must be followed by the production process of goods and services (productive transactions).³⁰

According to the author, *tawarruq* can be applied if it is associated with Islamic banking activities. However, in order not to make usage errors that can cause this product to be incompatible with sharia, it is necessary to provide restrictions in using it:

1. Aspects of Purpose of Use
 - a. The use of this contract is only limited to the purposes of liquidity management of Islamic banks. This means that this contract is only used for liquidity products between fellow Islamic banks or between Islamic banks and Bank Indonesia as the authority. In other words, *tawarruq* is not for products marketed to customers, where Islamic banks intend to take advantage of this type of product. *Tawarruq* should not be the first choice to finance the community's products. Islamic banks must remain focused on financing that directly impacts the real sector.
 - b. *Tawarruq* should not be included in consumer products (including micro banking) or commercials from Islamic banking. Although Islamic banking has implemented the principle of prudential banking very strictly, when this principle clashes with the interests of achieving the financing target of Islamic banking, it is feared that Islamic banks will lose control so that the portfolio of products with the *tawarruq* contract will actually increase.
2. Commodity Aspects (Underlying) Transactions
 - a. Goods that are used as a means of the transaction are agro-halal commodities such as cocoa, copra, and the like, which have a limit on use. The existence of restrictions on the use of commodities that are used as underlying *tawarruq* is a way to show that *tawarruq* is not for transactions with speculation motives. Therefore, the use of metal commodities such as steel, copper, gold, and others that are actually durable must be prohibited.
 - b. This transaction must be real, not a quasi-contract. The point is that when this transaction occurs, there should really be a transaction of goods in general, the seller's desire to sell, and the buyer's desire to buy with goods that are clearly in form. If not, then Islamic banks will be trapped in the concept of *tawarruq* that has

³⁰M Aznan Hasan, "Why *Tawarruq* Needs To Stay; Strengthen the Practice, Rather than Prohibiting it," *Islamic Finance News*, Vol. 6, 35, 2009.

been applied in Malaysia and other parts of the world, be it the Middle East or Europe.

- c. In the *tawarruq* there must be a transfer of ownership. Commodities that are the object of trade must transfer ownership from the seller to the buyer without any requirements. If not done, Islamic banks in Indonesia will be stuck to the concept of *bai al-inah* where there is no transfer of ownership, and the implication is that the buyer must resell the goods at a lower price to get cash.

According to M. Nejatullah Siddiqi, the *tawarruq* contract has more economically *mafsadah* than the *maslahah*. The *tawarruq* contract was allowed by earlier ulema because: First, *fugaha* in those days was different. The macroeconomic analysis tools needed to find the *mafsadah* of the *tawarruq* effect did not exist then. Secondly, the *mafsadah* influence of *tawarruq* on the economy was not encountered then, as was inflation due to currencies because the current money is already based on debt between the real and financial sectors it is getting bigger. Rafik Yunus Al-Misri argues that the law of *tawarruq* varies depending on conditions, including:

1. If all three parties involved in *tawarruq* know that the main purpose of the buyer using the *tawarruq* transaction is to obtain cash, then all of their activities are prohibited.
2. If two parties discover that the seller has used a *tawarruq* transaction to get cash, they both make mistakes. But if they do not know the true intentions of the seller, then they have done nothing wrong.
3. A person can do *tawarruq* only in extreme need/urgency circumstances.

Based on points one and two, it can be said that *tawarruq* is allowed if it is not conditioned by the parties involved. Point three emphasizes that *tawarruq* is allowed only to meet urgent needs such as paying debts or seeking treatment.³¹ Wahbah al-Zuhaili asserts the characteristic of *tawarruq*, that is, its purpose is not to acquire commodities but is used to cover the intention of obtaining liquidity, *tawarruq* and *bai al-inah* are basically the same as the practice of usury.³² Wahbah Al-Zuhaili said *tawarruq* was forbidden, as there were visible signs that they intended to perform usury.³³

Tawarruq Agreement in Islamic Financial Institutions and Its Application

The Dewan Syariah Nasional (DSN) of the Majelis Ulama Indonesia (MUI) is an independent fatwa-giving institution, including giving fatwas on sharia products in Indonesia. DSN-MUI as a decision-making institution regarding Islamic banking and transaction products in Indonesia provides opinions on the practice of *tawarruq*. Until now, *tawarruq* has not been allowed in Indonesia.³⁴ The inability of the bargaining contract by the DSN-MUI is based on several reasons:

1. In accordance with the 17th Jeddah Islamic Fiqh Academy Conference, it prohibits the practice of *tawarruq munnaẓam* in force in some Islamic banks because the practice of *tawarruq munnaẓam* is only limited to transactions on paper to obtain cash.
2. One of the conditions of *mua'malah amaliyah* is the necessity of transparency and freedom from elements of fraud (*garar*) or cryptic (*syubhat*).

³¹Abu Muhammad Abdullah ibn Ahmad Ibn Qudamah Al-Maqdisy, *Raudbah al-Nazhir wa Jannah al-Munazhi* (Riyadh: Maktabah al-Rusyd, 1416 H), Cet. 1.

³²Wahbah Al-Zuhaili, "*Tawarruq, Its Essence and Its Types: Mainstream Tawarruq and Organized Tawarruq*", dalam [www.kantakji.com/fiqh/Files/Markets/a\(65\).pdf](http://www.kantakji.com/fiqh/Files/Markets/a(65).pdf).

³³Iqbal Zamir & Abbas Mirakhor, *An Introduction to Islamic Finance: Theory and Practice* (Singapore: John Wiley & Sons Pte Ltd., 2007), 91.

³⁴Agus Triyanta, "Implementasi Kepatuhan Syariah dalam Perbankan Islam (Syariah): Studi Perbandingan Antara Malaysia dan Indonesia", *Jurnal Hukum UII*, Edisi Khusus Vol. 16, Oktober 2016.

3. The *tawarruq* contract is greater than the *maslahat* when viewed in the public interest.³⁵

A *tawarruq* contract occurs when a person (a bank customer) buys a commodity or item in installments (not cash) from the bank, which previously the bank first purchased the item from the supplier. Then, the customer resells the goods, not from the original, where the goods were bought at a price lower than the purchase price from the bank.³⁶ Although this *tawarruq* contract is still not allowed to be used as a sharia banking product in Indonesia, this kind of *tawarruq* contract is allowed and practiced in commodity trading transactions on the stock exchange. Based on the Fatwa DSN-MUI No. 82/DSN-MUI/VIII/2011 concerning Commodity Trading Based on Sharia Principles on the Commodity Exchange, it is stated that commodity trading on the stock exchange, both in the form of physical handover trading and in the form of advanced trade, is legally permissible with the provisions regulated in the fatwa.³⁷

In contrast to most Middle Eastern and European countries that have previously implemented the use of bargaining agreements on Islamic commodity exchanges.³⁸ In this skim *tawarruq*, the surplus bank gets an order from the deficit bank to buy goods, so the surplus bank then buys commodities from the market with cash using a buying and selling contract, then sells them to the deficit bank in a *murabahah* way with an installment payment system. Then deficit banks sell these commodity goods with the aim of obtaining cash.³⁹ In its concept, first, Islamic banks define the purchasing broker and to whom the buyer sells the goods. This is what is prohibited in sharia because it is almost the same as *bai al-inah* but adds a third party. The second concept is that Islamic banks actually buy the goods from the market and sell them to consumers without reselling them to any party.

This *tawarruq* can help Islamic banks in a minimal world and have limited activities, especially in terms of increasing the liquidity needed in urgent circumstances. In addition, it can free banks from the obstacles faced by the balance sheets of these banks. This was done because of the enactment of financial accounting provisions that require the bank to pay attention to the principles of capital adequacy and the conditions of the bank to manage bad debts. Furthermore, it can also increase customer loyalty and will certainly add liquidity which is very beneficial for Islamic banks in the world.

Apart from Islamic banks, *tawarruq* is also helpful for Islamic economic activities. It can help the community if there is an emergency or urgent need, with bargaining transactions that are light, not burdensome, so it is expected to eliminate something that causes an emergency.⁴⁰ Therefore, to help mustawariq gain liquidity, the *tawarruq* contract is allowed because it is to avoid falling into usury. As the Fatwa DSN-MUI No. 82/DSN-MUI/VIII/2011 concerning Commodity Trading Based on Sharia Principles on the Commodity Exchange explains that *tawarruq* is not an investment or financing scheme. *Tawarruq* is only allowed because of *hajat* (there is a need) with conditions that must be met. Therefore, Islamic financial institutions should not *tawarruq* in meeting their operational liquidity needs to replace the receipt of funds through *mudharabah* products, *wakalah* for investment, mutual fund products, and others.

³⁵Aziz Budi Setiawan, "Perbankan Syariah: Challenges dan Opportunity Untuk Pengembangan di Indonesia", *Jurnal Kordinat*, Vol. VIII, No. 1, 2006

³⁶M. Iman Sastra Mihajat, "The Real *Tawarruq* Concept: The Product of Islamic Bank for Liquidity Risk Management", *International Journal of Excellence In Islamic Banking and Finance*, Vol. 4, No. 1, 2014.

³⁷Fatwa DSN-MUI No. 82/DSN-MUI/VIII/2011 tentang Perdagangan Komoditi Berdasarkan Prinsip Syariah di Bursa Komoditi.

³⁸Ibrahim Fadhil Dabu, "*Tawarruq*, It's Reality and Types," *International Sharia Research Academy for Islamic Finance*, 2010.

³⁹Nur Yuhannis Bt Ismon, "Legality of *Tawarruq* in Islamic Finance", *Tazkia Islamic Finance and Business Review*, Vol. 7, No. 1, 2012.

⁴⁰Suraya Ismail, "*Bai' Bithaman Ajil* Home Financing In Malaysia: An Evaluation", *International Journal of Education and Research*, Vol. 3, No.1, 2015..

Tawarruq should only cover liquidity shortfalls, avoid (minimize) customer losses, and overcome the operational difficulties of Islamic financial institutions.

The *tawarruq* contract is used by many Islamic countries and Muslim-majority countries as one of the Islamic banking contracts, such as in Middle Eastern countries and Malaysia. However, in Indonesia, this bargaining practice is not/has not been allowed to be used as one of the products of Islamic banking, due to its nature which some ulema categorize as transactions that tend to be *makruh*, even *haram*. Although the *tawarruq* product is not yet allowed to be used as one of the Islamic banking products, based on Fatwa DSN-MUI No. 82 of 2011, transactions that resemble this *tawarruq* are allowed to be carried out in terms of buying and selling commodities, with additional conditions that must be met at the time of the transaction.

This is different from what is implemented in Malaysia. The use of *tawarruq* has been applied to Islamic banking products in Malaysia, for example CIMB Islamic Bank. In the application, deposits usually use a profit-sharing system. However, some deposits use a fixed return system with a basic *tawarruq* contract and other contracts as support (hybrid) known as FRIA-I (Fixed Return Investment Account-i). Basically, FRIA-i products operate under a bargaining contract together with a *murabahah* contract, which is the purchase of certain goods at the original price plus a profit margin that has been agreed upon by both parties (seller and buyer) and subsequently the goods are resold to other buyers of goods (third parties) with a view to obtaining cash.⁴¹

Conclusion

In sharia economic law, a *tawarruq* transaction is when a person buys a product by way of credit, then resells it to a third person who is not the first owner of the product in cash and at a lower price. *Tawarruq* is one of the sharia transaction schemes that can be used as an alternative for parties who urgently need cash but do not get parties who can provide usury-free loans. In Islamic financing, this contract was developed by ulema to adapt to society's sociological and economic development over time. *Bai' al-inah* and *tawarruq* are two types of financing contained in the realm of sharia economic law. However, *tawarruq* seems to be still debating whether it is allowed or prohibited, while *bai' al-inah* is forbidden because the hadith forbids it. In traditional societies, this scheme is applied between individuals, whereas today it has begun to be applied in Islamic financial institutions abroad. One of the obstacles faced by the community in implementing this scheme is the lack of public understanding due to the limited literature on this scheme, especially the literature in Indonesian.

Some ulema argues that *tawarruq* is permissible and Islam has been introduced as a solution to meet the need for liquidity. However, others are of the view that *tawarruq* is a contrived *muamalah maliyah* activity to cover up the usury element and circumvent the *darurah* situation in need for liquidity, even though the essence of this transaction is still classified as usury activities. One of the developments in Islamic economic and financial products is Islamic commodity trading. In this case, came contemporary *tawarruq* that in ancient times did not yet exist and caused dissent among ulema. The ulema who allowed it stated that *tawarruq* is a helpful buying and selling transaction. Meanwhile, the ulema who banned it argued that *tawarruq* would only increase the amount of debt which means that mafsadah occurs because it is punished as *haram*.

Based on all the pro and con arguments about the position of *tawarruq* in sharia economic law, some contemporary ulema allows it as long as it does not indicate the direction of usury. In Indonesia, this *tawarruq* contract cannot be used as a sharia banking product.

⁴¹CIMB Bank, "Banking Products and Services-DASHBOARD, Fixed Return Investment Account-i", dalam <http://productdashboard.cimb.com>, 2011.

However, contracts such as *tawarruq* are only allowed and practiced in commodity trading transactions on the exchange. Based on the Fatwa DSN-MUI No. 82/DSN-MUI/VIII/2011 concerning Commodity Trading Based on Sharia Principles on the Commodity Exchange, it is explained that *tawarruq* is not an investment or financing scheme. *Tawarruq* is only allowed because of *hajat* (there is a need) with conditions that must be met. *Tawarruq* should only cover liquidity shortfalls, avoid (minimize) customer losses, and overcome the operational difficulties of Islamic financial institutions.

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