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AKAD TABARRU' (QARDH, RAHN, HIWALAH)	
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ABSTRACT :	
Akad 'Tabarru' is a contract to seek benefits hereafter, therefore the contract of tabarru' does not seek commercial profit but hopes for the pleasure of Allah SW'T, and the general form of lending money is a tabbru' contract there are 3 types of contracts, namely: Qardh (lending property (money) to others without expecting anything in return), Rahn (withholding property as collateral for the loan given), Hiwalah (Transfer of rights or obligations carried out by someone).	
Key words: <i>akad tabarru', Qardh, rahn, hawalah</i>	

INTRODUCTION

MHumans as social beings cannot be separated from relationships between other humans to meet the needs of life or relationships with God which are regulated in the jurisprudence of muamalah. Muamalah jurisprudence is a sharia law that deals with human actions in life, muamalah itself is widely found, especially in the economic sector which is closely related to the existence of contracts, this is not much different from handover transactions.¹

The Prophet did not give detailed rules, which means that the Qur'an and Sunnah only provide basic principles and philosophies related to prohibitions that should be avoided unless there is a postulate or hadith that forbids them.² Therefore, the contract is an alliance between ijab and qobul agreed by both parties with the intention to make a contract that has new legal consequences for the contractor.³ Akad itself is not only profit-oriented but also oriented to social

¹ Betti Anggraini, *Akad Tabarru' In Muamalah Fiqh Review*, UINFAS Bengkulu, 2022, p. 2

² Arif Fauzan, *Tabarru Principle'*, UNISA Kuningan, Al-Amwal, Vol. 8 No. 2, Year 2016, p. 401

³ Eka Nuraini Rachmawati, et al, "Akad Jual Beli di Persefektif Jurisprudence and its Practice in the Indonesian Capital Market", *Jurnal Al-USudari* Vol. XII, No. 4, December 2015, p. 786.

values by leaving aside profits, this activity is commonly known as akad tabarru' or in Arabic tabarru; meaning goodness.⁴

Akad tabarru' is any agreement that involves a non-profit transaction or non-profit transaction, this transaction is not a business transaction but to help.⁵ Therefore, the contract of tabarru 'does not seek commercial profit but hopes for the pleasure of Allah SWT. If the contract wants profit or profit in it, it does not include tabarru' but a tiplah contract. For this reason, the author will focus on discussing the tabarru contract. Akad tabarru' has categories namely: wakalah, hiwalah, kafalah, wadiah, grant, waqf, rahn, qord.

Methods

This research is a type of library research, namely research whose object of study uses library data in the form of books as data sources.⁶ This research was conducted by reading, studying, and analyzing various existing literature, in the form of the Qur'an, hadith, books, and research results.

Result

Akad tabarru' is an agreement that involves a non-profit transaction with its essence not for commercial profit.⁷ The purpose of this contract is to help, in this contract the party who does good cannot withdraw rewards, the rewards come directly from Allah SWT, but the party who does good can ask his counter part to simply cover the costs incurred for transactions (admin costs) but not take profits. The following is a representative description of the tabarru contract':⁸

A. QORDH

Literally qordh is a share of property given to others, in terms qordh is a contract to borrow property to others with a return such as.⁹ Therefore qordh is lending property (money) to others without expecting anything in return, and if the borrower rewards the lender it must be in accordance with sincerity and not forced.

⁴ Ibid, *Akad Tabarru' In Review of Fiqh Muamalah*, p. 6

⁵ Ibid, *Akad Tabarru' In Review of Fiqh Muamalah*, p. 6

⁶ Sutrisno Hadi, *Metodelogy Research*, Andi Offset, Yogyakarta, 2002, p. 9.

⁷ Arif Fauzan, 'Tabarru Principles', UNISA Kuningan, *Al-Amwal*, Vol. 8 No. 2, Year 2016, p. 404

⁸ Ibid p. 405

⁹ Dimyauddin Djuwaini, *Introduction to Fiqh Muamalah*, Pustaka Belajar Yogyakarta, 2015, p. 254

In KHES Chapter 1 Article 20 Qardh is the provision of funds/bills between LKS and the borrower and making payments in cash/installments within a certain period.¹⁰

According to the fuqaha, qardh is an agreement of two people bearing each other, one party hands over property to the other party to trade with a determined share of the profit according to mutual terms.

According to hanafiyah, qardh is an agreement between two parties who enter into a cooperation agreement in profits to manage property handed over to other parties.

According to Malikiah, qardh is a gift from the first party to another party in the form of valuable property.

In Islam qardh and accounts receivable are permissible, permissible if in their implementation in accordance with the provisions, procedures and rules that have been established and do not contain elements of fraud (gharor), usury, and carried out voluntarily, and qordh is recommended with the aim of helping each other in good.¹¹

In borrowing, Qordh is divided into 2 types, namely:¹²

1. Qordh Al-Hasan, lending something to another person which the person who is loaned has no obligation to repay. This can mean that when we lend something to someone else and know that the person who borrows will not return it, this is usually due to the economic ability of the borrower.
2. Al Qordh, lending something to another person with the obligation to return what was borrowed to the lender. In accordance with Fatwa DSN-MUI No. 19/DSNMUI/IV/2001 concerning Al Qordh .

The legal basis of qordh is as follows:

Al Quran:

¹⁰ Mhd, Fakhurrahman Arif, *Qardh In Islamic View*, STAI An-Nadwah Kuala Tungkal, Vol 2 Edition 2, year 2019, p. 37

¹¹ Ahmad Hendra Rofiullah, *Islamic Legal Views on the Akad and Practice of Qordh*, Vol 3 No. 2, 2021, p. 45

¹² Abdul Ghofur Anshori, *Fundamentals of Islamic Covenant Law in Indonesia*, Citra Media, Yogyakarta, 2006, p.123

Q.S At-Taghabun : 17¹³

إِن تَقْرَضُوا اللَّهَ قَرْضًا حَسَنًا يُّضَاعِفْهُ لَكُمْ وَيَغْفِرْ لَكُمْ وَاللَّهُ شَكُورٌ حَلِيمٌ

It means: "If you lend Allah a good loan, He will multiply (in return) for you and forgive you. Allah is Most Grateful and Most Compassionate."

The above verse describes that those who lend to Him with good loans while on earth with sincerity and a relieved heart will have their rewards multiplied. One good will be rewarded with ten to seven hundred rewards, and will even be multiplied more than that, according to his steadfast sincerity in the heart. In addition, his sins will be forgiven by God. He is the Most Merciful, multiplies the reward for those who obey Him, again the Most Merciful. God does not inflict punishment on sinners, even though his sins and iniquities are piled up.¹⁴

Q.S Al-Baqarah (2) verse 245:¹⁵

مَنْ ذَا الَّذِي يُقْرِضُ اللَّهَ قَرْضًا حَسَنًا فَيُضَاعِفَهُ لَهُ أَضْعَافًا كَثِيرَةً وَاللَّهُ يَقْبِضُ وَيَبْسُطُ وَإِلَيْهِ تُرْجَعُونَ

It means: "Whoever will lend to Allah, a good loan, Allah will multiply the payment to him by many times and Allah constricts and expands sustenance, and to him you are returned"

¹³ Titi Martini Harahap, et al, Sharia Economic Law Analysis on the Implementation of Akad Qardh, STAIN Mandailing Natal, Vol 19 No 1, year 2022, p. 69

¹⁴[https://quran.nu.or.id/attaghabun/17#:~:text=Jika%20kamu%20meminjamkan%20ke%20pada%20Allah,\(balasan\)%20untukmu%20dan%20mengampunimu](https://quran.nu.or.id/attaghabun/17#:~:text=Jika%20kamu%20meminjamkan%20ke%20pada%20Allah,(balasan)%20untukmu%20dan%20mengampunimu). Retrieved December 3, 2023

¹⁵ Imam Jalaluddin Al-Mahalli, Imam Jalaluddin As-Suyuthi, Translation of Tafsir Jalalain Following Asbaabun Nuzuul Volume 1, (Bandung: Sinar Baru Algensindo, 1997), p. 137

The above verse explains that giving loans sincerely is only to achieve the pleasure of Allah SWT. Allah Almighty gives a multiplied reward, Allah's advice to spend some of the property in the way of Allah, solely for the benefit of man himself and instructs him to be grateful for the blessings of the gift because by being grateful will increase the number of blessings.¹⁶

Q.S Al-Hadiid verse 11:¹⁷

مَنْ ذَا الَّذِي يُقْرِضُ اللَّهَ قَرْضًا حَسَنًا فَيُضَاعِفَهُ لَهُ وَلَهُ أَجْرٌ كَرِيمٌ

It means: "Who (will) lend God with a good loan? He will multiply (the reward) for her, and for her (be given) a very glorious reward (heaven)."

The above verse explains that whoever spends his wealth in the way of Allah well without expecting praise and without heartache, will be multiplied in reward and for him the great reward in the Hereafter, which is heaven.¹⁸

Q.S Al-Maidah (5) verse 2:¹⁹

وَلَا تَعَاوَنُوا عَلَى الْإِثْمِ وَالْعُدْوَانِ وَاتَّقُوا اللَّهَ إِنَّ اللَّهَ شَدِيدُ الْعِقَابِ

Meaning: And please help you in doing good and piety, and do not help in sinning, it is very heavy torment".

¹⁶<https://quran.nu.or.id/albaqarah/245#:~:text=Siapakah%20yang%20mau%20memberi%20pinjaman,%20baginya%20berkali%20kali%20lipat.,> retrieved November 5, 2023

¹⁷ Kahar, et al, *Al-Qardh (Borrowing and Borrowing) in the Perspective of the Quran*, UIN Alauddin Makassar, vol. 7 no. 2, yr 2022, p. 2003

¹⁸ [https://tafsirweb.com/10707-surat-al-hadiid-ayat-11.html,](https://tafsirweb.com/10707-surat-al-hadiid-ayat-11.html) retrieved December 3, 2023

¹⁹ Ministry of Religious Affairs of the Republic of Indonesia, *al-Qur'an and its Translation*, (Surabaya: Al-Hidayah, 1971), 157

The above verse explains to help each other in terms of goodness, doing Allah's commandments, piety and fear of his prohibitions, such as committing immorality, enmity, because it violates Allah's law which will be severely tortured.

Hadith:

HR. Ibn Majah and Ibn Hibban:²⁰

It means: "A Muslim who wants to give a loan twice to a fellow Muslim is like giving alms once."

In the hadith above contains a meaning related to the virtue of giving loans to others, that the reward of giving loans can be greater than the reward of alms.

HR. Khamsah:²¹

عن أبي أفع قال: اختلف النبي ﷺ إلى الله عليه وﷺ لم يكره فجاءته إبل الصدقة فأمرني أن أقضي الرجل ﷺ كرهه ، فقلت : إني لم أجد في الإبل إلا جملاً خيلاً اعيا فقال : أعطه إياه فإن من خير الناس أحسنهم قضاء

That is: that the Prophet (peace be upon him) once borrowed a young camel from a man. Then there came to him the camel cattle from zakat and he commanded me to pay the debt of a young camel to the man. So I said: I found him nothing but the better one, much older." The Prophet replied, "Give him a camel, surely the best man is the one who is best at paying debts."

²⁰ Rahmat Syafe'I, *Fiqih Muamalah*, p. 152

²¹ Shaykh Manshur Ali Nashif, *Crown of Hadith Trees of the Prophet SAW* Volume 2, (Bandung: Sinar Baru Algensindo, 1993), p. 677.

The above hadith explains that the added value we provide when we pay off, is promised or conditioned and agreed at the beginning. In fact, it is forbidden, because it includes usury. The added value that is recommended is that which we provide when paying off debts, on our own initiative as borrowers, which is given as gratitude to the person who owes, without any prior agreement.²²

Opinion of scholars in the book *Hawasyi'ala Multaqa alabhiru fi al fiqh 'al al Mazhabi al Hanafi*, volume 3 page 159:²³

That is: "scholars are of the opinion regarding the law of loan, after they agree on its legal permissibility, then a *jumhur ulama* from the Hanafiyah, Malikiyah, and Hanabilah schools, that the original law of the loan is recommended."

Based on the above legal sources, *qardh* is highly recommended in Islam, it can even become mandatory if the debtor needs it most and becomes haram if used for immorality. To refuse *qardh* can be done in several situations, such as the inability of the loan recipient, not returning on time, harming the lender, dishonesty, this is permissible in Islam.²⁴

Ijma's postulates related to Qardh:

Scholars agree that *qardh* is a *muamalah* practice that is permissible and justified in Islam. This refers to the practice of lending and borrowing that has occurred since the

²² <https://www.rumahfiqih.com/fikrah-558-berilmu-sebelum-berutang.html>, retrieved November 5, 2023

²³ <https://islam.nu.or.id/syariah/hukum-menolak-meminjamkan-uang-pada-orang-lain-dalam-islam-hLsZU>, diakses pada tanggal 14 Oktober 2023

²⁴ <https://islam.nu.or.id/syariah/hukum-menolak-meminjamkan-uang-pada-orang-lain-dalam-islam-hLsZU>, diakses pada tanggal 14 Oktober 2023

time of the Prophet of Allah. Until now there has been no prohibition regarding qardh and it is something that cannot be separated in life.²⁵

Pillars and Terms of Qordh:

According to the number of scholars of the pillars of qardh there are 3 namely: first, two people who make agreements; second, capital; Third, ijab and qobul. While the qardh requirements are: the amount of the qardh loan must be known; the nature of the qardh loan and its age should be known if it is in animal form; know the amount and characteristics of the borrowed property; Qardh is illegitimate from a person who does not have something that can be lent.²⁶

Application in Islamic banking:²⁷

1. As a complementary product as proof of customer loyalty in refunds.
2. As a customer facility that requires fast funds, for example because it is stored in the form of deposits, this is part of another financing package to facilitate customers to transact.
3. As a product contributing to very small businesses funds are taken from zakat, infaq and waqf.

B. RAHN

Rahn in etymology is fixed and long, according to the terminology means collateral, elegance.²⁸ Rahn or lien, which holds one of the borrower's possessions as collateral for a

²⁵ Ibid, *Al-Qardh (Pinjam Meminjam) Dalam Perspektif Al-Quran*, hlm 205

²⁶ Ahmad Wardi Muslich, *Fiqh Muamalah*, (Jakarta: Sinar Grafika Offset, 2010), hlm 278.

²⁷ Ilda Hayati, Application of Akad Tabarru Wadiah and Qard in Sharia Banking, *Jurnal Al Falah* Vol.1 No. 2 2016, p. 200.

²⁸ Nasrun Haroen, *Fiqh Muamalah*, (Jakarta: Gaya Media Pratama, 2000), p. 251.

loan he receives or debt collateral.²⁹ According to KHES, rahn is the possession of the borrower's property by the lender as collateral. According to jumhur ulama rahn is an agreement to make valuable objects to be used as collateral in accordance with the agreement between the debtor and the debtor.³⁰ According to Fatwa DSN-MUI No. 25/DSN-MUI/III/2002 concerning Rahn, rahan is an activity of holding goods as collateral for debts.³¹ According to some scholars regarding rahan, namely:³² According to Shafiyah and Hanabiah Rahn scholars is to make goods as debt collateral that can be used as debt payers if the debtor cannot pay. Hanafiyah scholars define rahn as making an item as collateral for receivables that may be used as a payer of receivables. Malikiyah scholars define rahn as something of value that is property taken from its owner as collateral for debts.

In the rahn of goods given must have benefits, for the benefit of the pawned goods, Imam Ahmad argues that he can benefit by adjusting the maintenance costs incurred, and is not allowed to sell, endow or rent collateral without the consent of the procurer.³³

Legal basis of rahn:

Al Quran

Q.S Al-Baqarah verse 283:³⁴

وَإِنْ كُنْتُمْ عَلَىٰ فَرٍٍ وَلَمْ تَجِدُوا كَاتِبًا فَرِهْنِ مَّقْبُوضَةً فَإِنْ آمِنَ غَضُّكُمْ غَضًّا

²⁹ Nurul Ichsan, 'The Concept of Akad 'Tabarru' in Islam, Vol 3 No. 3, 2015 p. 68

³⁰ Calvin Alief Junitama, et al, Rahn(Pawn) in the Perspective of Muamalah Jurisprudence, Complications of Islamic Law (KHES) and Civil Law, Vol 12 No. 1, Year 2022, p. 29

³¹<https://putusan3.mahkamahagung.go.id/peraturan/detail/11eaeced42b52e508679313432333535.html>, retrieved October 14, 2023

³² Anita Ritqi P, *Risk Aspects of Gold Pawn Products at Pegadaian Syariah Cinere Branch*, (Thesis UIN Syarif Hidayatullah, Jakarta, 2011), p. 20.

³³ Sri Sudiarti, *Contemporary Muamalah Jurisprudence*. (Medan: FEBI UIN SUPress, 2018), p.224

³⁴<https://putusan3.mahkamahagung.go.id/peraturan/detail/11eaeced42b52e508679313432333535.html>, diased on October 14, 2023

It means: "And if you are on the way when you do not have a scribe, let there be dependents held."

The above paragraph does not stipulate that the guarantee shall only be made conditionally in transit, not in cash, and there is no clerk. But this verse only states that in such circumstances it is permissible to do muamalah by means of guarantees, all muamalah agreements must be written by scribes and witnessed by witnesses, but it is intended that Muslims always pay attention and scrutinize the muamalah that will be done. If the muamalah is a muamalah that is usually done every day such as buying and selling done in the market, then such muamalah does not need to be written and witnessed.³⁵

Hadist

HR. Bukhari, Kitab Ar-Rahn says that:

It means: "From Aisha, the Holy Prophet (peace be upon him) bought food cashlessly from a Jew by pawning his armor."

According to the agreement of fiqh experts, the incident of the Prophet (peace be upon him) reddening his armor, was the first ar-rahn case in Islam and was carried out by the Holy Prophetsa himself. Based on the above verses and hadiths, the scholars of fiqh are unanimous in saying that the contract of ar-rahn is permissible, because there are many benefits contained in it in the framework of relations between human beings.³⁶

³⁵ <https://quran.nu.or.id/al-baqarah/283>, retrieved December 3, 2023

³⁶ Ibn Qudamah, *Al-Mugni*, (Riyadh: Maktabah ar-Riyadh al-Haditsah), Vol. IV, p. 337.

HR. Tirmidhi, Bukhari and Abu Daud:³⁷

It means:
"Vehicles may be boarded if they are used as collateral, and cattle milk may be drunk if they are used as collateral, and those who board and drink their milk must pay for it."

The purpose of the hadith is to protect the right and serve to pay the debt if the debtor is unable to pay, the lien recipient may use the mortgaged object according to the income he gives to the object, nothing more. One must be fair in everything that falls within one's power and one's actions.

Ijma

The scholars agreed to allow the rahn contract. This scholarly agreement is based on human nature that cannot live without the help and assistance of his brother. In addition, based on the fatwa of the National Sharia Council No. 25/DSNMUI/III/2002, dated June 26, 2002, it is stated that, loans by mortgaging goods as collateral for debt in the form of rahn are permissible. Jumhur ulama argues that rahn is decreed at the time of not traveling nor at the time of traveling.³⁸

Kaidah Fiqh

Basically, all forms of muamalat can be done unless there is a reason that forbids it.

³⁷ Betti Anggraini, *Akad Tabarru' In Muamalah Fiqh Review*, UINFAS Bengkulu, 2022, p. 61

³⁸ Muhammad Sholekul Hadi, *Pegadaian Syariah*, (Jakarta: Selemba Diniyah, 2003), Cet. I, p. 52.

Types of Rahn

In sharia principles, pawns are known as Rahn. Rahn, which is regulated according to Sharia Principles, is distinguished into 2 types, namely:³⁹

a. Rahn Takmini

It is a form of pawn, where the mortgaged goods are only transferred ownership, but the goods themselves are still controlled and used by the pawner.

b. Rahn Hiyazi

In the event that the mortgaged is in the form of an object that can be taken advantage of, the lien recipient can take the benefit by bearing the cost of maintenance and maintenance. Rukun dan syarat rahn⁴⁰

There are 4 pillars, namely: those who accept pawns; the pawn; pawned property or objects; contract. The agreement can be canceled if the pawned goods have not been received that received the pledge. There are 3 Rahn requirements, namely: First, a person who has been legal to buy and sell (reasonable and mumayiz), second, sighat, third, debt (in the form of debt that can be utilized, must be clear).

Rahn's Expiration Procedure

It can be concluded that rahn's contract ends with the following:⁴¹

- a. The goods have been handed back to the owner.
- b. Rahn pays the debt.
- c. Sold by order of a judge by order of rahn.
- d. Debt relief by any means, even if there is no consent from the rahn party.

Application of rahn contract:

Rahn in Islamic banks is also usually given as collateral for loans or financing provided by Islamic banks to customers. As long as the person who pawns the goods is a

³⁹https://an-nur.ac.id/rahn-pengertian-sifat-dasar-hukum-rukun-dan-syarat-serta-jenisnya/#Dasar_Rahn_gadai, retrieved December 3, 2023

⁴⁰ Hendi Suhendi, *Fiqh Muamalah*, (Jakarta: PT. Rajagrafindo Persada, 2016), pp. 107-108.

⁴¹ Sayyid Sabiq, *Fikih Sunnah*, (Bandung: Al Maarif, 1987) vol. 13, p.145

person who has the competence to do activities, namely puberty, reasonable and able to manage, then the person may make rahn transactions.

A. HIWALAH

Hiwalah is the transfer of rights or obligations that a person performs.⁴² Menurut ulama merupakan suatu pemindahan beban dari orang yang berutang menjadi tanggungan orang yang berkewajiban membayar utang.⁴³ According to scholars such as:⁴⁴ Hanafi scholars mean hiwalah is to transfer the burden of people who owe debts to others who have the responsibility of paying debts as well, according to Imam Maliki, Shafii, Hambali hiwalah is the transfer of rights to demand payment of debts from one party to another. Akad hiwalah aims to take over receivables from other parties who are willing to bear it with a value equal to the face value of the debt.

Dasar Hukum Hiwalah:

Q.S Al-Baqarah ayat 282:⁴⁵

يَا أَيُّهَا الَّذِينَ آمَنُوا إِذَا تَدَايَنْتُمْ دَيْنٍ إِلَىٰ أَجَلٍ مُّسَمًّى فَاكْتُبُوهُ وَلْيَكْتُب بِيَدِكُمْ كَاتِبٌ
بِالْعَدْلِ وَلَا يَأْب كَاتِبٌ أَنْ يَكْتُبَ كَمَا عَلَّمَهُ اللَّهُ فَلْيَكْتُبْ وَلْيُمْلِلِ الَّذِي عَلَيْهِ الْحَقُّ
بِوَلِيَّتٍ مِّنْ اللَّهِ وَلَا يَبْخَسَ مِنْهُ شَيْئًا

It means: "O believers, if you owe receivables for a fixed time, let you record them. Let one of you write it correctly. Let not the recorder refuse to write it down as God has taught him. Let him record (him) and the debtor dictate (him)."

Surah Al-Baqarah (2): 282, explains that in accounts receivable or transactions that are not cash should be written down so that when there is a dispute it can be proven. In

⁴² Ibid, *Akad Tabarru' In Muamalah Fiqh Review*, UINFAS Bengkulu, 2022, p. 24

⁴³ Ibid, *The Concept of Akad Tabarru' in Islam*, Vol 3 No. 3, Year 2015 p. 69

⁴⁴ Novanda Eka Nurazizah, *Implementation of Akad Hiwalah in Islamic Economic Law in Sharia Banking*, IAIN Ponorogo, Vol 2 No 1, year 2021, p 86

⁴⁵ Paoji Adnan, *Akad Hawalah (Fiqh Pengalihan Hutang)*, Pascasarjana UIN Sunan Gunung Djati Bandung, Vol 1 No 2, tahun 2022, hlm 140

this activity, two witnesses who are fair and do not harm any party. This witness is a person who witnessed the process of receivables directly from the beginning of the contract.⁴⁶

H.R Bukhori Muslim:⁴⁷

عَبْتِيفَاءُ الْمَلِكِ كَدْحًا عَبْتًا إِذْ أُوِّمِلَظِيْنِغَالِطَم

It means: "Procrastination by the rich is persecution, and if one of you is included (transferred) to one who can afford it, then follow."

The explanation of the hadith is that the Messenger of Allah told the debtor, if the debtor owes to the one who can afford it, let him accept it, and let him collect it to the one who is laundered. Thus his rights can be fulfilled. Ulama' agreed to allow the contract of hawalah with a note, hiwalah is carried out on debts that are not in the form of goods or objects, because hawalah is the process of transferring debts not the transfer of objects.

Word Rasulullah SAW:⁴⁸

It means: "slowing down the payment of debts made by the rich is an act of tyranny, if one of you is transferred to someone who easily pays debts then let him switch."

⁴⁶ <https://quran.nu.or.id/al-baqarah/282>, diakses pada tanggal 3 Desember 2023

⁴⁷ Ibid, *Implementasi Akad Hivalah Dalam Hukum Ekonomi Islam Di Perbankan Syariah*, hlm

⁴⁸ Syahpawi, *Hivalah as a Solution in Overcoming Bad Loans in Islamic Banking*, p. 168

HR. Ahmad Hanbal:⁴⁹

يُطْمَ أَنْعُ ظَهْيِ وَإِاحِيمِ أَحذَكِي عَةً غُ فَهَيْسْتَحْم

It means: "Whoever is transferred to the rich/able should be obeyed."

The purpose of the above hadith is the transfer of the burden of debt from muhil (one who owes debt) to the responsibility of muhal'alaih (one who is obliged to pay the debt), the transfer of the right to demand or responsibility for one's debt to claim from the first party to the other party on the basis of the agreement of the parties who give the debt.

According to ulama (ijma) the act of hiwalah can be done. The Hanafi School divides Hiwalah into several parts. In terms of the object of the contract, namely: 1. Hiwalah al-haqq (transfer of rights), if what is transferred is the right to claim debt. 2. Hiwalah ad-dain (transfer of debt), if the transferred is obliged to pay the debt.

Ijma'

The scholars agreed to allow hiwalah, because this is in line with the basic rule in the field of muamalah, that all forms of muamalah are permissible in Islam unless there is an explicit proposition prohibiting it. Hiwalah is allowed on debts that are not in the form of goods / objects, because hiwalah is the transfer of debt therefore it must be on money or financial obligations.⁵⁰

Harmony and hiwalah requirements:⁵¹

According to jumhur ulama consists of: the first party; second party; third parties; debts of the first party to the second party; third party debts to the first party; contract. While the requirements for hiwalah are:

⁴⁹ Ibid, *Hiwalah as a Solution in Overcoming Bad Loans in Islamic Banking*, p. 168

⁵⁰ Muhammad Syafi'i Antonio, *Bank Syari'ah from Theory to Practice*, (Jakarta: Gema Insani, 2012), p.25

⁵¹ Ibid, *Hiwalah as a Solution in Overcoming Bad Loans in Islamic Banking*, p. 170

- Requirements for the first party: baliq and sensible; the existence of consent and otherwise it will be considered invalid.
- Conditions for the second party: toddler and sensible; the presence of consent.

Types of Hiwalah

In terms of the object of contract, hiwalah is divided into two types, namely:⁵²

- a. Hiwalah al-Haq, that is, if the transferred person has the right to claim debt (transfer of rights).
- b. Hiwalah ad-Dain, that is, if the transferred is obliged to pay debts (transfer of debts / obligations).

Hiwalah contract application

Akad tabarru' is a non-profit agreement to help. Akad tabarru' is categorized into several contracts including Qard, Rahn and Hiwalah. These three contracts are contracts that do good by expecting rewards from Allah SWT alone, therefore this agreement is not intended to seek commercial benefits but to do good. Scholars agree that qardh is a muamalah practice that is permissible and justified in Islam. This refers to the practice of lending and borrowing that has occurred since the time of the Prophet of Allah. The scholars agreed to allow the rahn contract, based on the fatwa of the National Sharia Council No. 25/DSNMUI/III/2002, dated June 26, 2002 stated that, loans by mortgaging goods as collateral for debt in the form of rahn are permissible. Hiwalah is permissible on debt that is not in the form of goods / objects, because hiwalah is the transfer of debt therefore must be on money or financial obligations.

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⁵² <https://an-nur.ac.id/pengertian-hiwalah-dasar-hukum-rukun-dan-syarat-jenis-hiwalah-masa-berakhirnya-dan-hikmah-hiwalah/>, retrieved December 3, 2023

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