

# Classification of the Contract; Tabarru Lending Money, Qardh, Rahn, Hiwalah

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**Abstract:** Tabarru 'Lending Money, Qardh, Rahn, Hiwalah Islamic financial institutions in practice have two categories of contracts, there are so-called Tijarah contracts and Tabarru' contracts. expect rewards, which include tabarru' contracts including qardh, Rahn, Hiwalah contracts, in this scientific paper will explain the concept of pillars, terms, types, and Tabarru' contract practices in Islamic financial institutions. The methodology in this scientific paper uses a qualitative descriptive methodology which describes the classification of the contract; tabarru' lending money, qardh, rahn, hiwalah. Tabarru' Lending Money, Qardh, Rahn, Hiwalah, it can be concluded that from each tabarru contract such as qardh in its transaction activities, additional transactions are not allowed, if there is an additional qardh contract from each loan then the status of the law is usury. Likewise with rahn or sharia pawning does not apply interest from each rahn contract, but in a rahn or sharia pawn contract there is a maintenance fee for goods used as collateral or collateral. As for the hawalah contract, it is permissible to do ad-Dain (assets that are still in the form of debt), not to alAin (assets whose goods are concrete, usually interpreted as goods), or in other words, the hawalah contract is valid if the muhal bih is not in the form of goods debt (alAin).

**Keywords:** Islamic Financial Institutions, Tijarah, Tabarru'.

**Abstrak:** Tabarru' Meminjamkan Uang, Qardh, Rahn, Hiwalah Lembaga keuangan syariah dalam praktiknya memiliki dua kategori akad, ada yang disebut dengan akad Tijarah dan akad Tabarru'. mengharapkan imbalan yang meliputi akad tabarru' termasuk akad qardh, rahn, hiwalah, dalam karya tulis ilmiah ini akan menjelaskan konsep rukun, syarat, jenis, dan praktik akad tabarru' pada lembaga keuangan syariah. Metodologi dalam karya tulis ilmiah ini menggunakan metodologi deskriptif kualitatif yang menjelaskan klasifikasi kontrak; tabarru' meminjamkan uang, qardh, rahn, hiwalah. Tabarru' Meminjamkan Uang, Qardh, Rahn, Hiwalah, dapat disimpulkan bahwa dari setiap akad tabarru seperti qardh dalam kegiatan transaksinya tidak diperbolehkan adanya tambahan transaksi, jika ada penambahan akad qardh dari setiap pinjaman maka status hukumnya adalah riba. Begitu juga dengan rahn atau gadai syariah tidak berlaku bunga dari setiap akad rahn, namun dalam akad rahn atau gadai syariah ada biaya pemeliharaan atas barang yang dijadikan agunan atau agunan. Adapun akad hawalah diperbolehkan melakukan ad-Dain (harta yang masih berupa utang), tidak kepada al-Ain (harta yang barangnya konkrit, biasanya diartikan sebagai barang), atau dengan kata lain akad hawalah sah jika muhal bihnya tidak berupa hutang barang (alAin).

**Kata kunci:** Lembaga Keuangan Syariah, Tijarah, Tabarru'.

## **Introduction**

Developments in Islamic financial institutions today have experienced rapid development, with the existence of Islamic financial institutions so that it brings a positive response from the community, especially the Islamic community in general, the wider community. (Y. Janwari, 2016) Islamic financial institutions make an economy based on Islamic principles in its development, both in Islamic financial institutions and in Islamic non-bank institutions, in its activities play a role in instilling prosperity for people's lives so that they avoid practices that violate sharia rules.

In practice, financial institutions are divided into two forms of contracts, there is what is called a *tijarah* contract which aims to benefit from each transaction, and a *tabarru* contract which aims not to gain aims at helping each other which is included in the *tabaru* contract including *qardh*, *rahn*, *hiwalah*.

In the opinion of Wahbah al-Zuhaili, in his book *al-Mu'amalat al-Maliyah al-Mu'asirah* which was quoted by Prof. Dr. Jaih Mubarak, that what is meant by *qardh* according to the language of *al-qardh* means part (*al-qath'*) because the lent property is part of the property of the party giving the loan. (J. Mubarak, 2019) Etymologically, *Rahn*'s explanation has several meanings, including *al-tsubut* (fixed/constant/permanent), implicitly *Rahn* is making assets as collateral for money; or something used as collateral for a debt. (J. Mubarak, 2019) *Al-Hawalah* is moving or transferring (*al-intiqal*) in terms of transferring debt from the responsibility of the *muhil* (the debtor/*al-madin*) to the responsibility of the *muhil 'alaibh* (the party who is obliged to pay) with the same amount of debt. (J. Mubarak, 2019)

In this scientific writing, the author will focus on discussing the pillars, conditions, types and implementation of *qardh*, *rahn*, *hiwalah*, along with examples of implementation in Islamic financial institutions. So that you can know between practice and theory in accordance with sharia provisions.

## **Method**

The methodology in this scientific paper uses a qualitative descriptive methodology which describes the classification of the contract; tabarru' lending money, qardh, rahn, hiwalah.

The types of data in this study include the following explaining the concept of pillars, conditions, types, and Tabarru contract practices in Islamic financial institutions.

Data sources in scientific papers use secondary data sources, the data obtained in this paper are obtained from books, articles, journals, the internet, so the author can explain the concept of pillars, terms, types, and Tabarru' contract practices in Islamic financial institutions.

## **Result and Discussion**

### **Tabarru Akad Concept; qardh, Rahn, Hiwalah.**

#### a) Definition of Qardh

Contracts that are based on the principle of helping each other do not prioritize making profits, this contract is known as the tabarru contract, one of the tabarru contracts is in terms of borrowing money or in Arabic terms it is known as Qardh. (Usanti & Shomad, 2013)

In etimologis qardh is a word derived from qaradha. It means al-qath' (part), meaning part of the property owned by the person who lent it, in terms, it is giving or lending property to another person that can be billed or asked to return as much as what was lent, thus, there is no qardh in return or addition return value. (Hakim, 2022)

According to Malikiyah Qardh means that property that is given to another person with the aim of being loaned has economic value and benefits for the person who borrows it, and the property is not merely a gift but the property must be returned. Meanwhile, according to Hanafi, the assets that lend must be assets that can be measured, such as in terms of levels and scales, and in terms of

quantity. And according to Imam Syafi'i qardh loans must be of good value, while according to Hanabilah al-qardh giving loans to other people to be used and the items lent must be returned at a predetermined time.

The essence of qardh is a form of help and compassion for those who borrow and also this qardh is not a suggestion for profit alone, while when repaying a debt in qardh there is no additional or reward, but upholds mutual help fellow human beings and high social values.

#### b) Dasar Hukum Qardh

The word of Allah SWT regarding qardh in the letter Al-Hadiid verse 11, explains that what is meant by a good loan is in the book of tafsir ibn katsir, Umar bin al-Khaththabab states infaq in the way of Allah.

Hadith History of Imam Ibn Majah, Ibn Hibban, and al-Baihaqi from Abdullah Ibn Mas'ud, Prophet Muhammad SAW said:

مَا مِنْ مُسْلِمٍ يُقْرِضُ مُسْلِمًا مَرَّتَيْنِ إِلَّا كَانَ كَصَدِيقَةٍ مَرَّةً

Meaning: It is not a Muslim who gives loans to other Muslims twice, as if he had given alms once.

Kaidah fiqih muamalah:

كُلُّ قَرْضٍ جَرَّ مَنْفَعَةً، فَهُوَ رِبًا

Meaning: Every qardh contract that brings benefits is usury.

If the reward is given by the muqtaridh to the muqridh without being promised in the contract and does not make it a habit, the reward includes kindness, as Imam Ahmad and Muslim narrated that Rasulullah SAW. Said:

إِنَّ خَيْرَكُمْ أَحْسَنُكُمْ قَضَاءً

Meaning: Orang terbaik diantara kalian adalah orang yang memberikan imbalan pada saat membayar utang.

Qardh is a financial transaction product that refers to Law no. 21 of 2008, article 1 paragraph 25 letter d, article 19 paragraph 1 and d letter e, and article 21

letter b number 3, in this law explains that qardh is a loan contract to borrow funds from a customer with the condition that the loan must be returned in accordance with terms agreed between the borrower and the lender. (Hakim, 2022)

c) Qardh as a contract tabarru

Tabarru, the origin of the word birr in Arabic, which means goodness, the tabarru contract is any agreement that does not bring benefits or is non-profitable, in this transaction it is solely not a business transaction that seeks profit from every loan, the tabarru contract aims to uphold goodness the value of helping fellow human beings.

As explained in the Word of Allah SWT, in Surah Al-Maidah verse 2 as follows:

﴿ يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَحِلُّوا سَعَايَ اللَّهِ وَلَا الشَّهْرَ الْحَرَامَ وَلَا الْهَدْيَ وَلَا الْقَلَائِدَ وَلَا  
أَمْمِينَ الْبَيْتِ الْحَرَامِ يَبْتَغُونَ فَضْلًا مِّن رَّبِّهِمْ وَرِضْوَانًا ۗ وَإِذَا حَلَلْتُمْ فَاصْطَادُوا ۗ وَلَا  
يَجْرِمَنَّكُمْ شَنَاٰنُ قَوْمٍ أَن صَدُّوكُمْ عَنِ الْمَسْجِدِ الْحَرَامِ أَن تَعْتَدُوا ۗ وَتَعَاوَنُوا عَلَى الْبِرِّ  
وَالتَّقْوَىٰ ۗ وَلَا تَعَاوَنُوا عَلَى الْإِثْمِ وَالْعُدْوَانِ ۗ وَاتَّقُوا اللَّهَ ۗ إِنَّ اللَّهَ شَدِيدُ الْعِقَابِ ۗ﴾

Meaning: O you who believe! Do not violate the symbols of the sanctity of Allah, and do not (break the honor) of the sacred months, do not (disturb) hadyu (sacrificial animals) and qala'id (marked sacrificial animals), and do not (also) disturbing people who visit Baitulharam; they seek the grace and pleasure of their Lord. But when you have finished ihram, then you may hunt. Do not let (your) hatred of a people because they hinder you from the Masjidil Haram, pushing you to do excess (to them). And help you in (doing) virtue and piety, and do not help each other in sin and enmity. Fear Allah, indeed, Allah is very severe in punishment. (Kemenag, n.d)

This verse explains that Allah commands to help each other with piety, because with a sense of mutual help in humans a sense of affection and belonging

to fellow Muslims will arise so that a high sense of brotherhood is established.  
(A. Masruri, 2018)

d) Pillars and Terms of qardh provisions

The pillars of the qardh contract are as follows:

1. Muqridh (da'in), namely the party that lends assets or has receivables (claim rights)
2. Muqtaridh (madin), i.e. parties who receive property loans or who have debts (obligatory payments)
3. Al-Qardh (al-ma'qud 'alaih), namely the loaned property that must be returned to the owner.

In a qardh contract, there are parameters (dhawabith) regarding conditions and prohibitions. In general, these parameters concern three things: the property that is the object of the qardh contract, the contract personnel (muqridh), and the nature of the qardh contract.

The terms and conditions for qardh assets in terms of ownership apply to the terms and conditions of al-mabi (objects that are traded), qardh assets change ownership from the property of muqridh to the property of muqtaridh so that muqridh must have the right to transfer ownership of the goods being qardh.

- 1 Assets that may be used as the object of a qardh contract must be assets that are mitsaliyat (equivalent) in terms of quality, quantity and measure, the scales and dimensions must all be agreed upon.
- 2 Akad personnel, because the person who makes a qardh contract must be able to make a kad because in a qardh contract there is no reward in transferring the assets
- 3 Mastery (al-qabdh) of a qardh contract is imperfect, unless the object of the contract is transferred
- 4 Taking the benefits of qardh, in qardh it is not permissible to take advantage of every qardh contract because the qardh contract is a tabarru contract. (J. Mubarak, 2019)

As for other literature, qardh requirements include:

1. Two Contracting Parties

In a qardh contract, what is referred to as two people who are in contract are the muqridh (the person who gives the loan), there is what is called the muqtaridh, the person who is in debt. Both of them have the following conditions:

a. Baligh

Both parties must have reached puberty, in the sense of being adults because in carrying out a lending and borrowing transaction there must be an element of responsibility.

b. Muqarid

This muqarid means that doing this qardh contract must be the parties who have the authority to carry out a qardh financing contract.

2. Assets owed (qardh)

Assets that can be owed as a condition for forming a qardh contract are as follows:

- a. Referring to the opinion of the Hanafiyah scholars that qardh must be a measurable treasure.
- b. According to Malikiyah, Syafiiyah, Hanabilah, any assets that can be used as buying and selling salam cannot owe services.
- c. If there is delivery, a qardh contract is invalid if there is no delivery of goods in the contract.
- d. In the debt-receivable contract it is not permissible to take advantage.
- e. Legal property according to Islam to be utilized.
- f. Debt becomes the responsibility of the debtor.
- g. The assets owed must be clear
- h. In repaying debt, may be bound by time or not given a limit.

3. Shigat Ijab and Qabul

In accordance with the pillars of qardh, the legal requirements for qardh are consent and qabul with the parties who carry out the qardh contract.

e) Qardh Implementation in Financial Institutions

The implementation of qardh contracts is usually in sharia financial institutions in the distribution of productive zakat funds, productive zakat is distributed in accordance with provisions that do not conflict with sharia principles, namely by giving it to hasnaf which has eight groups, with the existence of productive zakat aims to improve the standard of living of zakat recipients . Usually this practice is a collaboration between BAZNAS and Islamic banks, BAZNAS as collector of productive zakat funds, and Islamic banks are channelers of funds with transaction models in banks such as qardh. (A. Masruri, 2018)

c. Rahn concept

a) Meaning of Rahn

Rahn in fiqh literature, etymologically has several meanings including, al-tsubut (fixed/constant/permanent), al-dawam (permanent/continuous), al-habs (withhold). Implicitly is:

خَعَلَ الْمَالِ وَثِيقَةً بِدَيْنٍ أَوْ مَا جُعِلَ وَثِيقَةً مِنَ الدَّيْنِ

Meaning: Making assets as collateral for debt; or something used as collateral for a debt.

Al-Rahn is property that is withheld from the borrower's property for a loan in the form of money borrowed, the object being held is an asset that has economic value, it can be interpreted in short that what is called rahn is a guarantee of a debt or pledge. (Syafii, 2019)

Rahn is also often called al-habsu which means to hold, and according to the Shari'a is property that is used as collateral that has value in the item, so that it can be used as collateral. The owner of the goods is called rahin, there is someone who lends is called murtahin, while the assets or goods are called rahn. S. Sabiq, 2006)

As for according to the scholars such as the Hanafiah scholars, it is actually holding something that allows payment of the debt of the detained person. Meanwhile, according to Syafi'iyah scholars, it is to make objects as collateral for debts (part of which) will be used as a means of paying the debt if the debtor fails

to pay the debt. And according to Malikiyah scholars, rahn is marhun or collateral items not used as payment instruments directly for debts that fail to be repaid, but collateral items must be sold first and the proceeds from the sale are used to pay off the defaulted debt.

b) Dasar Hukum Rahn

Word of Allah SWT, in the Qur'an Surah Al-Baqarah: 283

﴿ وَإِنْ كُنْتُمْ عَلَىٰ سَفَرٍ وَلَمْ تَجِدُوا كَاتِبًا فَرِهْنَ مَقْبُوضَةً ۖ فَإِنْ أَصَابَكُمْ بَعْضُهَا فَلَْيُوَدِّ الَّذِي أُؤْتِمِنَ أَمَانَتَهُ ۗ وَلِيَتَّقِ اللَّهَ رَبَّهُ ۗ وَلَا تَكْتُمُوا الشَّهَادَةَ ۗ وَمَنْ يَكْتُمْهَا فَإِنَّهُ أِثْمٌ قَلْبُهُ ۗ وَاللَّهُ بِمَا تَعْمَلُونَ عَلِيمٌ ۝ ﴾

Meaning: And if you are on a trip and you don't get a writer, then there should be collateral held. However, if some of you trust some of the others, let that trusted person fulfill his trust (his debt) and let him fear Allah, his Lord. And do not hide testimony, because whoever hides it, verily, his heart is dirty (sinful). Allah is All-Knowing of what you do.

The hadith narrated by Imam al-Daruquthni from Abu Hurairah r.a. from Rasulullah SAW, he said:

لَا يَغْلُقُ الرَّهْنُ مِنْ صَاحِبِهِ الَّذِي رَهْنَهُ ، لَهُ غُنْمُهُ وَعَلَيْهِ غُرْمُهُ

Meaning: Cannot be separated from the ownership of pawned goods from the owner who pawns them. He benefits and bears the risk.

The hadith narrated by Imam al-Daruquthni from Abu Hurairah r.a. pleased with the habit of rahn which was often carried out by the Arab jahiliyah community in the past, namely the object that was used as collateral (marhun) immediately became the owner of murtahin, if the marhun could not return the money or debt, the custom was rejected and canceled according to syara'.

The hadith narrated by Imam Bukhari and Imam Muslim from Aisyah r.a., Rasulullah said:

أَنَّ رَسُولَ اللَّهِ عَلَيْهِ وَسَلَّمَ إِشْتَرَى مِنْ يَهُودِيٍّ طَعَامًا وَرَهْنَهُ دِرْعًا مِنْ حَدِيدٍ

Meaning: Rasulullah saw. Buying food from a Jew (which is not paid in cash). He made his armor (for combat gear) a charm.

In Islamic law, from the consensus of the scholars regarding the permissibility of (Ja'iz) rahn/pawning. Because the rahn contract is a permissible contract because in the rahn contract there are goods controlled by murtahin which allow payment of debt using the marhun if the owner of the item cannot pay the debt then the item is sold to replace the debt with permission from the court and from the owner of the item the.

#### c) Rukun and Syarat

The pillars and legal terms of rahn, before the rahn contract is carried out, the contract must be carried out first. Akad according to Mustofa az-Zarqa' is a legal bond that is carried out by two or more people, according to the majority of scholars there are 4 (four) pillars of rahn, namely:

- 1 Shigat (lafadz ijab and qabul)
- 2 A man of faith (rahin and murtahin)
- 3 The treasures that were enshrined in marhun, and
- 4 debt (marhun bih) (Manahaar, 2019)

#### d) Rights and Obligations of the Parties

Rights and Obligations of the Sharia Pawning Parties 8 According to Abdul Aziz Dahlan, that the rahin and murtahin parties have rights and obligations that must be fulfilled. While the rights and obligations are as follows:

- 1 Rights and Obligations of Murtahin
  - a. Pawnholder Rights:
    - 1) The pawn holder has the right to sell marhun, if the rahin at maturity cannot fulfill its obligations as a debtor. While the proceeds from the sale of marhun are taken in part to pay off marhun bih and the rest is returned to rahin.

- 2) The pawnholder is entitled to reimbursement of costs incurred to maintain the safety of the marhun.
- 3) As long as the marhun bih has not been paid, the murtahin has the right to hold the marhun submitted by the pawn giver (retentie right).

d. Liability of the Pledge Holder:

- 1) The pawn holder is liable to be responsible for the loss or decrease in marhun prices, if this is due to his negligence.
- 2) Pawn holders are not allowed to use marhun for their own interests.
- 3) The pawn holder is obliged to notify the rahin before the marhun auction is held.

e. Rights and Obligations of Sharia Pawn Providers. Pledge Giver's Rights:

- 1) The pawn giver has the right to get the marhun back, after the pawn giver has paid off the marhun bih.
- 2) The pawn giver has the right to demand compensation for damages and loss of marhun, if this is caused by murtahin's negligence.
- 3) The pawn giver is entitled to the remainder of the sale of marhun after deducting the cost of paying off the marhun bih, and other costs.
- 4) The pawn giver has the right to ask for the return of the marhun if murtahin has clearly abused the marhun.

f. Liability of the Pledge Giver:

- 1) The pawn giver is obliged to pay off the marhun bih he has received from murtahin within a predetermined timeframe, including other costs that have been determined by murtahin.
- 2) The pawn giver is obliged to give up the sale of his marhun, if within a predetermined period of time the rahin cannot pay off the marhun bih to murtahin. (Manahaar, 2019)

g. Collateral and Collateral

In terms of language, guarantees and collateral are the same, but they are different if they are explained according to the domain of legal science regarding business. In business practices at financial institutions,

guarantees and collateral are strictly distinguished. For example, someone applies for financing to an Islamic bank, then the bank conducts an analysis of the financing application, with the result being accepted or rejected the customer's financing application, and the customer says that the financing he proposes will be paid from the salary he receives every month from where he works, then the bank asks for additional guarantees to support the financing application, to be used as a second guarantee, namely a house guarantee, in the view of the bank that what is called a guarantee is the ability or ability of the customer to pay his debts. In this illustration, the applicant's salary becomes collateral in paying the principal debt to the bank, so that the first guarantee becomes the first tool in paying off the debt. Whereas the house is used as the second collateral as an alternative if the customer cannot pay the debt, thus the guarantee and collateral are the same entity, namely as the same tool, namely as a medium of exchange/media to pay off the customer's debt, but the position ranking is different, collateral is a solution The first is to pay their debts/obligations, while collateral is the second solution (second guarantee) for customers in order to pay their debts/obligations. (J. Mubarak, 2019)

#### h. The difference between Sharia Pawn and Conventional Pawn

Conventional pawnshops with sharia pawnshops have differences in their enforcement systems, including the following:

##### 1 Conventional Pawn System

- 1) In general, conventional pawnshops, as usual, come and bring goods that will be pawned objects, such as gold.
- 2) Items pawned are appraised and then valued to determine the amount of money that can be borrowed.
- 3) In a conventional pawn it bears interest like 1.15%. 2 weeks or 2.3% three months, and so on. Loan interest in accordance with the loan amount.
- 4) This loan fee calculation is calculated every 15 days and will then increase on the 16th day.

- 5) The holding period is 4 months.
- 6) The loan amount is subject to the due date when the loan must be repaid.
- 7) Given conditions if the debt and interest can not be paid then the guarantee will be auctioned off to anyone.

## 2 System Gadai Sharia

- 1) Islamic pawnshops do not apply an interest system and pawnshops do not take advantage of the interest system.
- 2) Sharia pawnshops only take advantage of the services of maintaining goods that are used as collateral.
- 3) Islamic pawnshops determine the amount of profit from the cost of maintaining collateral.
- 4) The fee used is the cost of keeping the goods.
- 5) In sharia pawnshops there is a loan contract and allows for collateral maintenance costs.

### d. Concept Hiwalah

#### a) Definition of Hiwalah

The word al-Hawalah is read in the first two forms, pronounced with the fathah line in the form of the letter ha so that it is read hawalah, some other scholars read with the kasrah line in the letter ha so that it is read hiwalah.

Hiwalah according to language, hiwalah is to move. Meanwhile, according to fiqh, hiwalah is transferring the obligation to pay debts from the dependents of the person who owes it to the person who receives the transfer of debt. (Nur Afifah, 2019) Meanwhile, according to Ali Fikri, in the book in the book *al-Muamalat al-Madiyah wa al-Adabiyah* quoted by jaih Mubarak in his book *Fiqh Muamalah Maliyah Akad Tabarru'* that hiwalah is moving or turning away, even though the word al-hiwalah is included in the word masdar which means is passive, its meaning is active, namely al-tahwil (moving). (J. Mubarak, 2019)

In terminology according to the Hanafiyah scholars, as according to Wahba al-Zuhaili, explains that al-hawalah is:

## نَقْلُ الْمَطَالِبَةِ مِنْ ذِمَّةِ الْمَدِينِ إِلَى ذِمَّةِ الْمُلتَزِمِ

Meaning: (contract) regarding the transfer of claim rights (prosecution), which initially must be billed to the muhil (the debtor/madin), moved and must be billed to the muhal alaih (guarantor/multazim).

### b) Hiwalah Legal Basis

عَنْ أَبِي هُرَيْرَةَ رَضِيَ اللَّهُ عَنْ النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ مَطْلُ الْغَضِيِّ ظُلْمٌ وَإِذَا تُبِعَ أَحَدُكُمْ عَلَى مَالِيٍّ فَلْيَتَّبِعْ. متفق عليه.

Meaning: From Abu Hurairah RA from the Prophet SAW said: "the delay of a rich person (in paying debts) is an tyranny. However, if one of you is transferred his debt to someone who can afford it, then he should accept it." muttafaq Alaihi. (Ahmad, 2010)

### Kaidah Fikih

## الضَّرَرُ يُزَالُ

Meaning: Danger (heavy burden) must be removed.

As for Ijma', in general, all scholars agree that hawalah is permissible. The hawalah contract may be made to ad-Dain (assets that are still in the form of debt), not to al-„Ain (assets whose goods are concrete, usually interpreted as goods), or in other words the hawalah contract is valid if the muhal bih is not in the form of goods debt ( al-„Ain). Because the hawalah contract means an-Naqlu or at-Tahwiil (transferring or transferring), and this can only be done for assets that are still in the form of debt, it cannot be done for al-„Ain (goods), so it is not valid to hold a hawalah contract for al-„Ain.

### c) Hiwalah terms and conditions

It is contained in the Fatwa of the National Sharia Council NO: 12/DSNMUI/IV/2000 the pillars of hawalah are:

- a. Muhil (one who owes and owes a debt)
- b. Muhal (one who owes money to muhil)

c. Muhal „Alaih (person who owes muhil and is obliged to pay debt to muhal).

d. Muhal Bih (muhil debt to muhal)

e. Sighat (consent). In the consent form the contract is stated in writing, through correspondence, or using modern means of communication.

Each of the pillars of the hawalah contract has conditions, both related to personnel or legal subjects as well as related to the contract and its object..

Muhil requirements (MAdin)

The legal person or legal subject of the first hiwalah is the muhil, namely the party who transfers the obligation to repay the debt to the muhal 'alaih. Wahbah al-Zuhaili explains the muhil requirements as follows:

1 Legal Profession (mature and wise)

We already know that when a muhil has no mind, the hiwalah contract is invalid.

2 Ridanya Muhil

The hiwalah contract that is carried out by muhil is a contract that is carried out on the basis of one's own will. In legal theory, a hiwalah contract is valid if there is no coercion from other parties.

Muhil Conditions (Muhtal/Da'in)

The conditions for muhal according to Wahbah al-Zuhaili explain the three conditions regarding muhal are as follows:

1. speak law (mature and wise)

The hawalah contract is invalid if the muhal is unreasonable, like a madman, or a child under guardianship, and a person who is mumayiz.

2. Ridanya muhal

The hawal contract that is carried out by muhal is a contract that is carried out on the basis of one's own will. And the hiwa contract that is carried out by muhal is valid if it is not under coercion.

3. Majlis Akad

According to Abu Hanifah and Muhammad, that the qabul or statement of the hiwalah contract, done by the muhal, must be in the majlis.

## Terms Muhal 'alaih

### 1. Speak Law

The hawalah contract is invalid if the muhal 'alaih is unreasonable like a madman, a child who is still under guardianship and someone who has not yet been mumayiz.

### 2. Ridanya muhal 'alaih

The hiwalah contract that is carried out by muhal 'alaih is a contract that is carried out on the basis of one's own will and there is no coercion from any party.

### 3. Majlis akad

According to Abu Hanifah and Muhammad, that the qabul or statement of hiwalah contract, done muhal 'alaih must be in the council.

### d) Types of marriage contracts and their laws

In general, hiwalah contracts are divided into two: those that are absolute (hiwalah mutlaqah contracts), and those that are binding (hiwalah muqayadah contracts) among them are as follows:

1 Mr. A has receivables from Mr. B and Mr. B has receivables from Mr. C. Mr. B's debt to Mr. A is due, but Mr. B is unable to pay or repay it. So Mr. B asked Mr. C to pay or settle his debt to Mr. A and Mr. A agreed (Hiwalah muqayyadah)..

2 Mr. A has receivables from Mr. B. Mr. B's debt to Mr. A is due, but Mr. B is unable to pay or repay it. So Mr B asked Mr C to pay or pay off his debt to Mr A and Mr A agreed (hawalah MUtlaqah). (J. Mubarak, 2019)

### e) The end of the Hiawalah contract

1 Fasakh contract; In the view of the fuqaha', what is meant by fasakh contract is termination or termination of a contract before its goal is achieved. If the hawalah contract is annulled (fasakh), the muhal's right to request payment or settlement of the receivables is transferred to the muhil (muhal 'alaih is no longer a collectible party) or returns as the hiwalah contract has not yet occurred.

- 2 Al-tawa, the hawalah contract ends when the muhal 'alaih dies in bankruptcy while alive.
- 3 Muhai 'alaih has paid and/or paid off muhil's debt to muhal.
- 4 The muhal dies, while the muhal 'alaih is his heir.
- 5 The muhal gives charity or grants his receivables to the muhal 'alaih then he accepts it.
- 6 The muhai freed the muhal 'alaih from his obligation to pay off the muhil's debt.

### **Conclusion**

From this scientific writing journal entitled *Classification of Contracts; Tabarru' Lending Money, Qardh, Rahn, Hiwalah*, it can be concluded that from each tabarru contract such as qardh in its transaction activities, additional transactions are not allowed, if there is an additional qardh contract from each loan then the status of the law is usury. Likewise with rahn or sharia pawning does not apply interest from each rahn contract, but in a rahn or sharia pawn contract there is a maintenance fee for goods used as collateral or collateral. As for the hawalah contract, it is permissible to do ad-Dain (assets that are still in the form of debt), not to al-„Ain (assets whose goods are concrete, usually interpreted as goods), or in other words, the hawalah contract is valid if the muhal bih is not in the form of goods debt (al-„Ain).

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