

***TAWARRUQ*, ITS ESSENCE AND ITS TYPES: MAINSTREAM *TAWARRUQ*
AND ORGANIZED *TAWARRUQ***

by

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Preface

Praise be to Allah, Lord of the world and peace be upon His Messenger and peace be upon His Messenger's Family and Companions.

There are some small contracts and systems which may be the subject of certain legal developments, due to the practice of the people. Those people may have the desire to achieve a harmony between their commercial activities and the *Shari'ah*, which are on the basis of halal and haram in civil and commercial contracts, where halal and haram are the main characteristic of such contracts. However, the rules may be permissible in their simple understanding, due to necessity or need, and then these rules become prohibited, because of its misuse by the trader for contract, and he does not scrutinize the legal consequences of such abuses, which may lead them to deal with interest-based loans. The above mentioned is applied on the contract of *tawarruq*, *'inah*, mainstream *tawarruq*, organized *tawarruq* and reverse *tawarruq*. Therefore, this requires investigating each contract to know precisely the rule of the *Shari'ah*. This paper is organized, as follows:

Chapter one: Definition of *tawarruq*, the need for *tawarruq*, parties to a *tawarruq* transaction and the difference between *tawarruq* and *'inah*.

Chapter two: Types of *tawarruq*, including classical *tawarruq* and contemporary *tawarruq*; the concept of each type of *tawarruq*, the legal controls of each and the legal rule of each; elaboration and clarification of organized *tawarruq* in terms of its concept, its mechanism, its control, and the opinions and evidence given by scholars.

Chapter three: The concept and legal rule of reverse *tawarruq*.

Chapter four: Conclusion and draft of academic resolution.

Chapter one: Definition of *tawarruq*, the need for *tawarruq*, parties to a *tawarruq* transaction and the difference between *tawarruq* and *'inah*

Literal meaning

Tawarruq is the root word of *tawarraqa*. This word is designated for animals which eat the leaves of trees. Furthermore, the word means silver coin and in this sense, it is designated to someone who has an abundance of silver coins. Afterwards, the Arabs used this word largely to connote silver coin Dirham. Allah said, "So, send one of you with this silver coin of yours to the town, and let him find out is the good lawful food." (Surah Al-Kahfi: 19). And the tradition has specified the amount of *zakah* for silver when the Prophet pbuh said, "*Zakah* of silver is quarter of tenth¹ (2.5%)". By *tawarruq*, the creditor becomes rich, since he has liquidity, either in the form of silver coins or in the form of contemporary paper money.

Technical meaning

Buying a commodity on deferred payment basis and then selling it on cash basis to a person other than the buyer, i.e. at a lower price.

Parties to a *tawarruq* transaction

1. Seller (*muwarriq*) or creditor;
2. Buyer (*mustawriq* or *mutawarriq*), i.e. the one who is looking for liquidity; and
3. Subject matter: Commodity.

Therefore, the need or the necessity compels the buyer (*mustawriq*) to purchase a commodity, in order to achieve his objective, which is to obtain liquidity to satisfy his

¹ Narrated by Al-Bukhari, chapter on *Zakah*.

needs, such as for settling debts, merchandizing, buying objects for himself or his wife, getting married and so on and so forth.

In fact, this term (*tawarruq*) is exclusively used by the \times anbalis. Furthermore, Ibn Tayyimiyyah mentioned *tawarruq* in his book (collection of *fatwas*)², and Ibn Al-Qayyim mentioned the term in his book (*A'lam Almuq'een*)³. After he clarified *'inah*, the scholar Mar'i bin Yusuf Al- \times anbali Almaqdisi stated that in his book (*ghaiyatul Muntaha Fi aljam'i byn Aliqna'i wal Muntaha*), "If somebody needs liquidity and he buys something equals to 100 by something equals to more than 100 to get cash⁴, then it is acceptable and if he does the opposite, it is acceptable as well. However, other Schools of Thought discussed *tawarruq* in the chapter on *'inah*.

Definition of *'inah*

'Inah is defined as the sale of commodity on credit and repurchasing it for a lesser amount in cash. For example, somebody buys a commodity from a seller at a deferred price of let say, 1,000 and the buyer resell the commodity to the seller at a cash price of 900. Actually, *'inah* is a fake sale, which is used as a means of usury (interest), and not to conclude a genuine sale. In fact, *'inah* is a loan with interest, which is offered by the first seller. In this sense, the seller lent 900 to the purchaser, who has to return 1,000 at the due date. So, the difference is 100, which is the interest of lending 900. This arrangement corresponds to what the conventional banks are doing⁵. Typically, an *'inah* sale is done with the first seller or with a third party⁶.

² Collection of *fatwas*, Vol. 29, p. 442.

³ *A'lam Almuq'een*, Vol. 2, p. 20-21.

⁴ This means that if he buys 100 at cash price by something equals to more than 100 at deferred price.

⁵ *Al-Durr Almuhtar wa Radul Muftar*, Vol. 2, p. 255 & 290.

⁶ Imam Abu hanifah considered that the contract of *'inah* is void if there is no third party is involved as the middle man between the seller and the buyer. This is an exemption from Abu Hanifah's rule when he said, "Bad incentive or bad intention breaches the contract." Hence, selling to a third party does not breach the contract.

In the case of *tawarruq*, the second sale is usually done with a third party, and not with the first seller. For example, a purchaser buys a refrigerator or washer on deferred basis, and he sells that refrigerator to a third party (not to the first seller), at a lesser price (in cash), in order to get liquidity to cover his needs.

Tawriq

Tawriq is what is practised between conventional banks with their clients, where these banks directly offer cash to the clients at a certain percentage of interest (e.g. 7%). However, there may be a commodity involved in this transaction. Therefore, the client has to pay back the principal amount plus interest, according to the dates agreed. In case of default, the interest is compounded. Accordingly, this transaction is actually the trading of unadulterated money without a commodity involved in the transaction, like Arabic saying in the pre-Islam, "You have to settle your debt. Otherwise, you have to pay interest." So, the debtor has to repay the money or the creditor extends the period and increases the amount of money to be paid as well. Therefore, the interest doubles, despite the principal being the same. This is actually usury, which is unanimously prohibited⁷. Usury is prohibited by the Qur'an, such as verse 275, surah Al-Baqarah, which states, "Allah has allowed trade and has prohibited *riba*". In addition, usury is prohibited by the Sunnah. The Messenger of Allah has damned four persons who deal with usury: who consumes *riba*, who gives *riba*, the two witnesses of *riba*, and who registers the *riba*⁸. So, the two (debtor and creditor) are damned. Furthermore, there is a consensus among Muslims on that *riba* is prohibited. In other words, *tawarruq* is a loan (exchanging the amount of loan by another one). Moreover, there is no mediator, which is the sale of a commodity, either by means of *'inah* or *tawarruq*. Ibn Taymyyah said that the Muslim rulers have to penalize those who deal with *riba*, to demand from the debtor to return the principal amount only, and to eliminate interest. Accordingly, if the debtor is bankrupt

⁷ Collection of *fatwas*, Vol. 29, p. 418.

⁸ Narrated by the five (Sunan Abu Dawood, Sunan Al-Nasa'i, sunan Al-Termidhi, sunan Ibn Majah and Musnad Imam Ahmad).

and he has some properties that can be used to settle the debt, then he should settle the debt from those properties⁹.

Briefly, *tawarruq*, securitization of debt, and issuing security or bond means to create bonds for other people's debt. These bonds represent the period of the debt (from lending until maturity). These bonds are tradable in the secondary markets and subjected to different exchanges and trades. Therefore, the bonds can now be converted into liquidity, i.e. after they are merely obligations on the debtor. This process is adopted by a Malaysian company is called Cagamas, i.e. on basis of joint *mudarabah*. Accordingly, Cagamas guarantees the capital and gives back the amount of investment to the stakeholders, i.e. in the case of losses. Simply, Cagamas's way is to buy debt on cash basis but lower than the original amount (by way of discount bill) and includes a certain commodity to represent the price of purchase (by way of '*inah* sale). However, '*inah* is merely a bridge to *riba*, where the benefit is derived from the difference between the sale and purchase price. This way (the practice of Cagamas) clearly violates the contract of money exchange (money with money) because:

1. No actual delivery of the subject matter and in the meeting place;
2. It is against the opinion of majority of the scholars who do not allow the sale of '*inah*, which is actually a means to *riba*; and
3. Non-permissibility of discount bill (sale of debt by cash at a price lower than the original amount). Despite of permissibility of engaging in the securitization of debt on the basis of exchanging those securities by present corporeal commodity¹⁰ but selling the debt by means of *tawarruq* (*tawriq* of debt) is not permissible according to the consensus of the scholars. However, this type of sale (*tawriq* of debt) cannot be traded in secondary market, even if the consideration is delivered on spot cash, whether the cash is from the same type of security or not. There are some reasons for the prohibition of the *tawriq* of debt, as follows:
 - a. It contains deferred *riba* (*nasi'ah*);

⁹ Collection of *fatwas*, Vol. 29, p. 419.

¹⁰ Where the amount of security of bond is conspiring as price of commodity.

- b. It is not subjected to the rules of commodity, because the debt which is represented on the bill cannot take the rules of commodity, since the bill holder is not the owner of the said commodity; and
- c. It is against the tradition of sale of gold Dinar by silver Dirham or vice versa¹¹, because there are two conditions that have to be fulfilled in such a sale:
 - i. It should be at the current price; and
 - ii. It should be delivered at the meeting place.

It is clear from the above mentioned that the prohibition of such a sale is due to the fact that the sale contains interest. Initially, interest is prohibited because it is exchanging of loan with loan with extra money. Ibn xajer clarified that when he said that although the sale of ‘*inah* theoretically, is valid, since it fulfills the conditions of sale, but in fact, the sale of ‘*inah* contains tricks and cheating, which are the cause of sin for those who practice the sale of ‘*inah*¹². However, *sukuk muqara’ah* (*sukuk* of debt) is permitted by the Fiqh Academy in its resolution (5) D 4 / 80 / 88). *Sukuk muqara’ah* is based on the *musharahah* relationship between stakeholder and issuer, and not on debt relationship. Unanimously, it is not allowed for the issuer to guarantee the capital of *sukuk*, but it is allowed for a third party, such as the government to guarantee the capital of *sukuk*.

Chapter two: Types of *tawarruq*, including classical *tawarruq* and contemporary *tawarruq*; the concept of each type of *tawarruq*, the legal controls of each and the legal rule of each; elaboration and clarification of organized *tawarruq* in terms of its concept, its mechanism, its control, and the opinions and evidence given by scholars.

The concept of *tawarruq* is like ‘*inah*, where *tawarruq* contains all the prohibited pretexts, such as the narrowed meaning of ‘*inah*, explicit usury, loan, sale of debt, transfer of debt, debt scheduling, buy or sell of *nasi’ah* (deferred payment of *ribawi*

¹¹ The tradition is narrated by Ibn Umar, Sunan Abu Dawood.

¹² Fat’ul Bari. Vol. 12, p. 337.

items), buying something at a marked up price, and selling something to the first seller or to somebody else at a price lower than the original purchase price. This wide used concept of *tawarruq* is understood from the speech of Ibn Taymiyyah, where he mentioned that some people use tricks (like pre-Islamic people) to cheating Allah¹³:

First: The seller sells a commodity to a buyer at deferred price and the buyer resells the commodity to the seller at a lower cash price. There is an incident that happened to the mother of the son of Zaid bin Arqam when she said to ‘A’ishah (may Allah be pleased with her), ‘I bought from Zaid a slave at 800 deferred price and I sold him to Zaid at 600 cash price. However, ‘A’ishah said, ‘What a bad you bought and sold! Tell Zaid that he has spoiled his jihad with the Messenger of Allah, unless he repents. The mother of son of Zaid said, ‘O mother of believers, what if I just take my capital? ‘A’ishah responded her by reading verse, “So whoever receives an abomination from his Lord and stops eating riba shall not be punished for the past; his case is to Allah (to judge)” (Surah Al-Baqarah: 275)¹⁴.

Second: There is a *ribawi* transaction between two persons, let’s say A and B. In this transaction, both went to a merchant to buy a commodity at a certain price. So, A buys the commodity in cash and he sells it to B at a deferred price. B in turn sells the commodity to the merchant at a cash price that is lower than the initial purchase price. Therefore, the merchant serves as the intermediary between A and B, but with a commission. Definitely, this mechanism constitutes usury.

Third: If there is a loan between two persons and the creditor has something extra upon the debt. For example, the creditor lends 100 to the debtor and at the same time, the creditor sells a commodity to the debtor at a price of 500. Another example is in *ijarah*, where an employer employs another for 100. Afterward, that employee wants to rent a

¹³ Collection of *fatwas*, Vol. 29, p. 440-445.

¹⁴ Narrated by Addaraqutni but in the chain, there is Al’ahliyyah binti Iff’ is weak (Nailu Alwġar, Vol 5, p 206).

shop from the employer. So, he rents out the shop to the employee at 150. In fact, 150 includes the salary of the employee plus 50. Obviously, this also constitutes usury. The Messenger of Allah said that it is not allowed in the contract of sale to stipulate a loan, two sales in one contract, sale inside of sale, guarantee of profit, and sell something that is not owned”¹⁵. Tarmidhi said that this tradition is good and authentic and the Prophet pbuh prohibited combining loan with sale.

In *tawarruq*, the intention of the purchaser is not to possess the good, but to get liquidity. Actually, the purchaser is unable to get a loan or *salam*. Hence, he looks for commodity to buy and sell, in order to get liquidity. Ibn Taymiyyah (may Allah have mercy on him) clearly stated that *tawarruq* is disapproved (*makruh*), according to the correct opinion of two opinions of scholars. Additionally, Imam Ahmad has two opinions on *tawarruq*, and the correct one is to disapprove it. Umar bin Abdul Aziz said *tawarruq* is the loop of usury. Moreover, Ibn Abbas said that if you evaluate a commodity and pay the evaluated price on the spot, then it is permitted. On the other hand, if you evaluate a commodity and pay more than the evaluated price on deferred basis, then it is considered as usury, since the intention is to get the money. However, this is the meaning of *tawarruq*, which is to evaluate a commodity now and buy it at price more than the evaluated price (but on deferred basis). For instance, a person tells his friend, “I have this commodity and I want 1,000 as the price for it”, or he may he bring someone to evaluate that commodity and sell the commodity to his friend at a price more than the evaluated price, but on deferred basis. Obviously, this is prohibited in the tradition.

The summary of the characteristics of *tawarruq* is as follows:

1. There is no intention to possess the commodity but actually, the sale of the commodity is used as a cover for the real intention, which is to get immediate liquidity and pay back more than that obtained liquidity in the future;

¹⁵ This tradition was corrected by Ibn Khuzymah and alĀakim. Furthermore, the tradition is narrated by Ibn Āiban and AlĀakim (Muntaqa Alakhbar ma‘Nail AlawĀar, Vol 5, p 179).

2. *Tawarruq* consists of two deals: First is buying the commodity from a person, and second is to sell the commodity to a third person at an agreed amount;
3. In *tawarruq*, the commodity is sold to a third person, while in *'inah*, it is sold to the first party. Both *tawarruq* and *'inah* gives the same result, and both are practised by people who deal with *riba*, as mentioned earlier;
4. *Tawarruq* is a trick that is forbidden by the *Shari'ah*, because the Prophet pbuh said, "If you are performing Umrah or Hajj and you caught an animal by chance, then the animal is permissible, but if you hunt or order someone to hunt the animal, then it is not allowed to eat that animal"¹⁶. Moreover, Yahiya bin Abi Eshaq said, "I asked Anas bin Malik about somebody who lends to his brother and his brother returns the money with a gift. Anas responded him and he said that the Prophet pbuh said that if anyone has lent money to the debtor and at the time of maturity, the debtor returns the debt with gift or offers to carry the creditor on the back of an animal, then the creditor should not accept it, unless if there is a pre-relationship between the creditor and debtor"¹⁷; and
5. *Tawarruq* contains usury. Ibn Taymiyyah said that the effective cause (*'illah*) of *riba* is found in *tawarruq*, where there is an increase in the cost of selling and buying the commodity, and a loss occurs in the sale. Therefore, the *Shari'ah* does not allow inferior damage and at the same time, allow a higher damage. That means *tawarruq* is really financing with interest, which is higher than the interest of a usurious contract.

Scholars' views and evidences in *tawarruq*

There are two scholarly views on *tawarruq*. The first view is that *tawarruq* is permitted, either by absolute permission or disapproved permission and the second view is that *tawarruq* is prohibited. The scholars who allow *tawarruq* are Abu xanifah, Abu Yusuf, Shafi' and Ahmad. However, there is another opinion by Imam Ahmad that is he disapproved *tawarruq*. Moreover, the Shafi' school, Umar bin Abdul Aziz, Mohammed

¹⁶ Narrated by sunan Abu Dawood, Sunan Ibn Majah, Sunan Annsa'i and Sunan Altermidhi.

¹⁷ Narrated by Ibn Majah.

bin Al-ḥasan Al-Shaibani and Al-ġāfi Al-ānafi disapproved *tawarruq* as well. Alkamal bin Alḥmmam said that *tawarruq* is against the superior opinion of the *Shari'ah*¹⁸. Additionally, those scholars consider *tawarruq* as *'inah* and they relate that 'Ai'shah had permitted *tawarruq*. On the other hand, the Fiqh Encyclopedia stated that the majority of scholars permit *tawarruq*, regardless of the name *tawarruq*, where ḥanbali scholars called it *tawarruq* and other scholars did not call it by that name.

Evidences of this view (for those who permitted *tawarruq*):

1. The Qur'an - Allah says, "Allah has allowed trade and has prohibited *riba*" (surah Al-Baqarah: 257). They argue that the word trade denotes the generality of all types of trade and permits every sale, where *tawarruq* is like any other sale. Moreover, *tawarruq* is permissible on the basis of the legal maxim that says, "The principle of sayings, actions, contracts and conditions is permissibility." However, citation by such evidence is acceptable, unless if there are evidences that forbid such a sale. There are many evidence in the Sunnah that forbid *'inah* and *tawarruq* sale. Therefore, it is not suitable to cite by general verses or general maxims, although there are specific evidences that prohibit some types of sales. Evidently, *tawarruq* and *'inah* are prohibited by explicit Sunnah;
2. The Sunnah - They quoted the tradition of Abu Sa'id Alkhudri and Abu Hurirah when the Prophet pbuh appointed a person as the governor of Khaibar, that governor brought to him an excellent type of dates (from Khaibar). The Prophet pbuh asked, "Are all the dates of Khaibar like this?" He replied, "By Allah, no, O Allah's Apostle! But we barter one Sa' of this (type of dates) for two Sa's of dates of ours and two Sa's of it for three of ours." Allah's Apostle said, "Do not do so (as that is a kind of usury) but sell the mixed dates (of inferior quality) for money, and then buy good dates with that money."¹⁹ Furthermore, Muslim narrated this tradition in his Sahih, but with a minor difference, i.e. that the Prophet pbuh says,

¹⁸ Alkasani. *Bdai' Alġnāi'*, Vol 5, p 199, Alshwkani. *Fateġ Alqadir*, Vol 5, p 207, Aldur Almkhtar wa Raddul Mġtar, Vol 4. P 225, Alnawawi. *Rwaġatul Talbin*, Vol 3, p 416, Ibn Qudamah. *Almughni*, Vol 4, p 175 onward, Almardawi. *Alinġlaf*, Vol 4, p 337 and Albahuti. *Kashaf Alqina'*, Vol 3, p 186.

¹⁹ Sahih Albukhari, No. 2089.

- “Sell that good dates by commodity and then buy whatever dates you want”²⁰. So, they (the scholars who permit *tawarruq*) said that in the previous traditions, there are two separate contracts. Clearly, these traditions prove that the second contract is not with first seller. So, these traditions are different from traditions that prohibit *‘inah*, and the intention of the contract is not to get usury, although the contract is not done with the first seller. Adversely, the intention of *tawarruq* is merely to get liquidity and the role of the contract is to merely cover this intention. Hence, it is not sensible that the Prophet pbuh was to approve such tricks;
3. They cited the legal maxim that says, “The original rule about all things is permissibility”. Dr. Wahabah says that this legal maxim is appropriate for things where there is no evidence on its prohibition. However, there is a legal maxim that clears the previous maxim, which is, “The original rule about all useful things is permissibility and the original rule about all harmful things is prohibition”. Visibly, *tawarruq* and *‘inah* are the bridge for prohibited *riba*. The intention of *tawarruq* and *‘inah* is not to conclude the contract, as far as to get liquidity. Therefore, this citation is not useful, because *tawarruq* is included in the tradition that prohibits *‘inah*;
 4. According to the ‘Hanafi and Shafi’ Schools of Law, they validate a contract if the contract satisfies the required pillars and conditions. Furthermore, these Schools judge the external form of a contract and they do not pay attention to principle that states, “should avoid things that lead to the breach of the *Shari’ah*”. They consider this principle if there is a text that prohibits such things. It may be said that there are obvious traditions that prohibit *‘inah* and of course, *tawarruq* is included within the meaning of those traditions, such as the tradition that was narrated by Ibn Umar and the tradition that was narrated by ‘Ai’sha. The tradition that was narrated by Ibn Umar says “If people hoard dinar and dirham, deal with *‘inah*, indulge in cultivating and planting, and leave jihad, Allah sends ordeal

²⁰ Sahih Muslim, No. 1594.

down on them and He does not remove the ordeal unless they adhere to Islam.”²¹ Abu Dawood narrated the tradition, but with a minor difference, where the Prophet pbuh said, “If people deal with *‘inah*, indulge in cultivating and planting, and leave jihad, Allah makes them humiliated and He never changes their situation unless they go back and stick to Islam”. Aldara Quġni narrated from Ibn Isahaq Alsubai‘i and he narrated from his wife that his wife and the mother of son of Zaid bin Arqam came upon ‘Ai’sha and the mother asked ‘A’ishah (may Allah be placed with her) I bought from Zaid a slave at 800 deferred price and I sold him to Zaid at 600 cash price. However, ‘A’ishah said what a bad you bought and sold! Tell Zaid that he has spoiled his jihad with the Messenger of Allah, unless he repents. The mother of son of Zaid said, ‘O mother of believers, what if I just take my principal amount? ‘A’ishah responded her by reading a verse, “So whosoever receives an abomination from his Lord and stops eating *riba* shall not be punished for the past; his case is to Allah (to judge)” (surah Al-Baqarah: 275). Alshawkani said that this tradition proves that it is not permissible for someone to sell a good at deferred price to repurchase that good at cash price with a discount, i.e. before he gets the deferred price. But if the intention is to trick and to get immediate liquidity and after some days, return that liquidity with extra money, then that is obviously *riba*; and

5. *Tawarruq* is in line with reason, because *tawarruq*:
 - a. Satisfies the need of the people;
 - b. Achieves the people’s interests and that of the Shari’ah; and
 - c. In fact, it fulfills the interest of the people, and does not make the life of people difficult.

²¹ Narrated by Ahmad, Abu Dawood, Alġabarani and Ibn Alqaġġan, and he ratified the chain of the tradition. Ibn xajer in his book, *Bulugh Almaram* said that the men who narrated the tradition are trustworthy. Moreover, Ibn xahjer in another book (*Altalkhiġ*) said to me that the certifying of Ibn Alqaġġan is not good because if the men in the chain are trustworthy, that does not mean that the chain is good. However, there is a man in the chain is called Ala’mash. He did not hear from ‘Aġa’a (Muntaqa Alakhbar wa nial Alaġar, vol 5, p 206).

Dr. Wahabah said that this evidence is arguable, because we only accept interest if the interest is not against the *Shari'ah*.

Second view (the scholars that prohibited *tawarruq*)

The Maliki School of Jurisprudence, Umar bin Abdul Aziz, Ibn Tayyamiyyah, Ibn Alqiyyim, Mohammed bin AlÍasan Alshaibani and AlÍaÍkafi from the ×anafi School of Law¹ forbid '*inah* and *tawarruq*. Mohammed bin AlÍasan said, "I hate this sale so much and it is the invention of those who eat *riba*". In his book *Aldurr Almukhtar*, AlÍaÍkafi said, "The sale of '*inah* is disapproved (*makruh*) and condemned in the *Shari'ah*. '*Inah* hinders cooperation among Muslims, because loan is given to help other people and not to get any benefit from it. Therefore, '*inah* destroys this cooperation. The ×anafi School of Law stated that '*inah* is voidable (*fasid*). Therefore, a voidable (*fasid*) sale is like a prohibited usurpation of other people's property. However, the ×anafi School of Law differed on the classification of the prohibition of '*inah*. Is it definite prohibition (*karahatu taÍrim*)² or not? Furthermore, the ×anafi School of Law provides a brief definition for '*inah*, which is , "Selling goods at a profit to the borrower at deferred price and the borrower sells it at price less than the sale price, in order to settle his debt. In this sense, *tawarruq* is like '*inah*."

Ibn Taiyymiyyah said, "If the buyer does not resell the commodity to the first seller but to somebody else, then in this case, the sale is called *tawarruq*. However, there is a disagreement among the scholars, i.e. in terms of disapproving *tawarruq*. Umar bin Abdul Aziz and Imam Ahmed in one of his opinions disapproved *tawarruq*. Umar bin Abdul Aziz said that *tawarruq* is the basis of *riba*" and this opinion is stronger than other opinions³.

The evidence of the second view (prohibiting *tawarruq*)

1. First is the tradition of Ibn Umar, which has been mentioned earlier. Generally, '*inah* is any transaction, in which the intention is to obtain liquidity in the present, by exchange commodity for a higher deferred price. This includes bilateral '*inah* (resell to the first seller) and triangular '*inah* (sell to third party), which is

- tawarruq*. The second is tradition of ‘Aisha, which was mentioned earlier as well. But it was narrated that Shaf’i said that the tradition of ‘Aisha is not correct;
2. *Tawarruq* is actually like the sale of a forced person (sale of *talji’ah*). *Talji’ah* is something is enforced on a person to do it, and he does not have any choice. For example, two persons agree to conclude a contract of selling a house in front of people and in order to make the sale more credible, they witness some people on the contract but secretly, the two parties admit that there is no sale. The ‘sale’ agreed upon earlier was done because they are afraid of the unfair ruler⁴. In fact, this is the meaning of the sale of *talji’ah*, and it is prohibited. Moreover, according to the ṡanafi School of Thought, this sale is voidable. However, the Prophet pbuh prohibited the sale of *talji’ah*, sale of *gharar* and the sale of fruits before it ripens⁵. Additionally, there is another tradition that witnesses for this tradition, i.e. that was narrated by ṡoziyfah when Prophet pbuh said, “... unless the compelled person sells something which is prohibited. the Muslims are brother to each other. So, there is no cheating and betrayal among them.” Ibn Alqiyyam said, “Usually, ‘*inah* is practised by somebody who is forced to get liquidity from another person who has that liquidity, **but does not want to give him the liquidity as loan**. Instead, he sells to the ‘compelled person’ a commodity to get profit, much as a seller wants to profit from selling. Therefore, there are three cases for a forced person, as follows:
 - a. If he returns the commodity to the seller, then it is called ‘*inah*;
 - b. If he sells the commodity to a third person, then it is called *tawarruq*; and
 - c. If he returns the commodity to someone who is involved in the transaction between the forced person and the first seller, then in this case, the person is called *mu’alel alriba*, which means he is making *riba* permissible.

However, these three cases are practised by those who deals with *riba* and the lesser evil of these cases is *tawarruq*”. Umar bin Abdul Aziz disapproved *tawarruq*, and he said that *tawarruq* is the basis of *riba*. Imam Ahmad gave two opinions on *tawarruq*; one is allowing it and another one is disapproving it. In the latter, he indicates that the person who deals with *tawarruq* may be forced to do

so. However, this is Imam Ahmad's understanding, but usually, anyone who deals with *tawarruq* is actually compelled to engage in it. Ibn Alqiyam said, "My sheik (Ibn Taymiyyah) prohibited *tawarruq*, and people asked him again and again to allow it, but he still prohibited *tawarruq*. Furthermore, he added that the 'illah of *riba* is achieved in *tawarruq*. However, *tawarruq* is worse than *riba*, because *tawarruq* entails a higher cost and losses. Therefore, the *Shari'ah* does not forbid a lower harm (*riba*) and allows a higher harm (*tawarruq*)⁶." Dr. Wahabah said that the two previous traditions are arguable, where both are weak. Therefore, they do not provide proof. Alkhaḏībi stated that the tradition of the sale of a forced person has in its chain an unknown man; we do not know who that man is. In his book, *Almuḏalla*, Ibn ḫazam established that the two traditions, i.e. of Ibn Umar and 'Aisha are *mursal*⁸. So, it not allowed in the *Shari'ah* to accept *mursal*⁹. However, the Shafi'i and ḫanbali Schools of Law allowed the sale of compelled persons but generally, the sale is disapproved (*makruh*) by the majority of jurists¹⁰.

3. *Tawarruq* is a trick of *riba*, as Ibn Alqiyam conveyed from his Sheikh, Ibn Taymiyyah. Ibn Taymiyyah said that Allah has prohibited *riba*, because it has much harm. These harm are actualized in *tawarruq* and *'inah*, with additional cheating, deceiving, pain and so on and so forth. Moreover, the intention is not the sale itself, but the intention is to sell money with money. Furthermore, they (the parties of the sale) make the transaction longer and eventually, they fall into *riba*. So, they are the people of *riba* and they are tormented in this world, before they are tormented in the Hereafter ...¹¹. Dr. Wahabah says that we can argue that the intention of the *mustawriq* (who seeks liquidity) is to avoid *riba*. Hence, he did not go to the conventional banks. Instead, he left them and take *tawarruq*, with the aim of avoiding the prohibition; and
4. *Tawarruq* has many risks and damages. Therefore, dealing with *tawarruq* leads to an increase in the debt, as the *mustawriq* buys a commodity at 100 and he sells it at 50, which results in him losing money. Dr. Wahabah says that the *mustawriq* knows his circumstances and situations; hence, he is not going to lose.

Preference

By scrutinizing the two views, we can say that in its initial concept, *tawarruq* is permissible, due to the principle of easiness, which seeks to make the life of people easy, realize their interests and push burden away from them. Moreover, the initial concept should not refer to *riba* and should be used in cases of necessity and pressing need. This means that *tawarruq* should only be used in certain cases, because the origin of things is permissibility. Alshālibi said that when we look attentively at *tawarruq*, we can permit it on basis of permissibility, and not based on emergency cases (necessity), because the prohibitions have been permitted to keep burden away. It was reported from Ali and ‘Aisha that they allowed *zarnaqah* (*‘inah*) on the condition that the commodity should not be sold to the first seller, at a price that is lower than the purchase price. This opinion has been adopted by the Fiqh Academy. However, I am going to clarify the decision of the Fiqh Academy about organized *tawarruq*, because organized *tawarruq* is daring to eat *riba*, luxurious things, and there is no need or necessity for it. Mostly, organized *tawarruq* is a trick to *riba*.

Organized *tawarruq* or *tawarruq* financing

Generally, it is currently practised in Islamic banks, because there are some scholars who have allowed organized *tawarruq* in its basic concept. One of those who allowed organized *tawarruq* is the Fiqh Academy, i.e. in its fifteenth session, 1419/1998. However, certain conditions were specified. The decision states that:

Firstly, *tawarruq* is defined as buying a commodity from a seller who possesses it at a deferred price, and then the buyer sells the commodity to a third person, in order to obtain liquidity.

Secondly, according to majority of the scholars, *tawarruq* is legally permissible, based on that the origin of things is permissibility and Allah says, “Allah has allowed trade and has prohibited *riba*” (surah Al-Baqarah: 275). In this sale of *tawarruq*, no *riba* is intended and the general concept of *tawarruq* does not look like *riba*. However, there is a need for this sale to settle a debt or to get married.

Thirdly, this sale is conditioned by that the buyer should not resell the commodity to the first seller, either directly or at price lower than the purchase price. If the buyer sells to the first seller at a price lower than the purchase price, then the sale is prohibited, because it is considered as an *'inah* sale. *'Inah* is prohibited in the *Shari'ah*, because it is a trick of *riba*. Therefore, in this sense, the contract is prohibited.

Later on, in its seventeenth session 1424/200, the Fiqh Academy issued the second decision that states:

Firstly, the current *tawarruq*, as practiced by some banks is not permissible. The practice is like this: the bank plays a classical role, where they arrange to buy a commodity (not gold or silver) from the international commodities markets at a deferred price, i.e. on behalf of the *mustawriq* (who wants liquidity). Then, as a stipulated condition, either in the contract or stipulated by customary, the bank has to continue playing the role of the *mustawriq's* agent, i.e. in terms of selling the commodity to somebody in cash. Afterwards, the bank delivers the price to the *mustawriq*.

Some of the reasons that make this sale prohibited are as follows:

1. Due to the continuation of being the *wakil* in the contract of *tawarruq* to sell the commodity or to make arrangements to sell the commodity, this makes the contract similar to the prohibited *'inah*. Furthermore, it does not matter whether the agency role is stipulated in the contract or due to customary practices;
2. In many cases, there is no actual delivery of the commodity, which clearly violates one of the pillars of a valid contract, that states that a commodity must be handed over to the purchaser; and
3. Effectively, this transaction involves providing financing to the *mustawriq*, in which the *mustawriq* would return the principal plus an extra amount. The process like this: the bank gives cash to the *mustawriq* to conduct buying and selling, which are mostly just premised on formality. The objective of the bank is to

obtain extra money from the original capital that they have given to the *mustawriq*.

However, this *tawarruq* is not like the classical *tawarruq*, which is known to jurists. There are some differences between classical *tawarruq* and the *tawarruq*, which is practiced by some banks today. Classical *tawarruq* is based on buying an actual commodity at deferred price. Consequently, the purchaser holds the commodity before he sells it for cash, with the goal of satisfying his need for liquidity, which he **may or may not get**. Furthermore, the bank takes the difference between deferred price and cash price. The difference is an extra amount, which is not the right of the bank to take it. Additionally, the bank justifies this extra amount by saying that the bank is involved in the transactions of the *mustawriq*. So, the bank deserves this extra amount. However, those transactions are mere form and not real transactions.

It is obvious from the above decision that *tawarruq* is done between the client and the bank, by making the bank an agent to sell the commodity to somebody else. Obviously, this is against the *Shari'ah*, because there is no actual holding of the commodity, and the client appoints the bank to be his agent to sell the commodity at a deferred price. In fact, there is no commodity at all, but what happens is that the bank is given the authority (*wakalah*) to buy the commodity and to sell it at cash price and then, pass the price to the client. The truth here is that this is a trick to borrow money with interest, where the bank gives money to get a bigger amount of money, in exchange for time.

Initially, the above discussion is according to the decision of the Fiqh Academy in its eighteenth session, Musqā' 1425, i.e. when the Academy encouraged Islamic financial institutions to avoid *riba* and to avoid the pretexts that lead to *riba*, such as renewing a debt by cancelling the old debt¹ (Faskh Aldayn bi Aldayn).

Some models for organized banking *tawarruq*

First model: *Tawarruq* of international commodity *murabahah* with financial institutions

This is the model where Islamic banks buy the commodities at cash price and sell them at deferred price. Typically, the buyers from the Islamic banks are financial commercial institutions. Actually, the sale by this way is far from concept of *tawarruq*¹.

Second model: Taisiir Alahli²

This model is based on using *tawarruq* in personal financing, where the bank offers cash to those interested to obtain liquidity. The basic concept of this model is that the bank buys and possesses a commodity, and then sells it to the client on instalment basis. There is a possibility that the client can appoint the bank as his agent to sell the commodity on his behalf, and subsequently, deposit the proceeds into his account.

The procedures of this sale are as follows:

Firstly, the bank concludes an agreement called purchase of commodity agreement with a certain company. This agreement governs the general relationship between the bank as the purchaser and the company as the seller. According to this agreement, the bank buys a commodity, such as iron or copper and concludes the contract with that company by sending an offer and receiving an acceptance. Additionally, the offer and acceptance are done through fax. As it is known, the holding of commodity is a condition for any valid Islamic contract. Therefore, to fulfill this condition, the company issues a certificate of title, which proves that the bank possesses the commodity from the date of purchase. The certificate determines the number and the place of item of mineral, which has been sold.

Secondly, after possessing the commodity, the bank sells the commodity to their clients by retail and records the sold quantities on computer. Thus, the sold quantities will be deducted from the balance that the bank has with the said company.

Thirdly, the bank gets an agency from their client who bought the commodity. The agency is for the bank to sell the commodity to a third party, on behalf of the clients. After obtaining the money from the sale, the bank deposits the money into the client's accounts according to the quantity and the sale price. However, this process is governed by two relationships; first, the relationship between the bank and their clients, according to the contract of agency and second, the relationship between the bank and the company, according to offer and acceptance, which are performed through fax. The bank transmits the company which bought from the bank to the company which initially sold the commodity. However, *taysiir alahli* is permitted by the *Shari'ah* Committee of the bank. We can say that *taysiir alahli* is trick for financing.

Third model: *Tawarruq* to settle loans with conventional banks

Some clients deal with *tawarruq* to settle their debts with conventional banks. This model works like this: the client has a debt with a conventional bank. So, the bank settles the debt by shifting the debt into a new debt that emerges from a *tawarruq* transaction. The jurists call this process upside-down debt on debt. Ibn Taymiyyah mentioned, as noted previously that this is prohibited by the *Shari'ah*.

Legal opinion on these models

These models lack the basic concept of classical *tawarruq*, as there is no real possess for the commodity, and for the owner to sell the commodity. These models are not permissible, even to those who permit *tawarruq*, such as Abu xanifah, Abu Yusuf, Alshaf'i and Ahmad.

The bank does all the procedures without the *mustawriq* legally possessing the commodity. Therefore, the work of the bank here does not differ from a conventional bank, which is working on the basis of usury. Furthermore, there are many burdens and costs that the *mustawriq* have to bear. In the international bourse, there is what is called receipts of warehouses. These receipts contain the specifications of the commodity and the commodity is just stored in that warehouses. Actually, there is no delivery at all and the transaction is just something that is recorded in the computer. Therefore, these models

are actually loan with interest, since there is no commodity at all. Unanimously, these models are prohibited *tawarruq*, because the client concludes two contracts; first is the contract of purchase at deferred price and second is the contract agency that entitles the bank to sell what the client bought at cash price. After that, the money is deposited into the client's account, in order to enable him to get cash. On the other hand, the client has to return the cash with interest, which are benefiting those banks who are involved in the nominal transaction, without the existence of a commodity among the parties. When somebody asked Ibn Abbas (may Allah be pleased with him) about someone (seller) who sells silk to someone else (buyer) at deferred price and the seller purchases silk from the buyer at cash price but lower than the sale price, Ibn Abbas responded by saying that whatever they did is sale of money with money, with silk in between. Furthermore, Anas bin Malik was asked such a question and he said that this is what Allah and His messenger have prohibited. Additionally, as narrated in the Sunan, The Prophet pbuh said, "If anyone makes two sales combined in one bargain, then he should have the lesser of the two or it will involve usury³. However, those people have arranged two sales in one contract⁴ which means that if they agree to sell and resell again, they should have the lesser price of the two sales. Otherwise, the contract is a *ribawi* contract.

Ibn Taymiyyah said⁵ that the origin of this chapter is that the reward of deeds depends upon the intentions and every person will get the reward according to what he has intended. Therefore, if he intends to get the permissible, then that is fine. But if he intends to manipulate and to get the prohibited, then he gets what he has intended. Moreover, the condition is whatever has been agreed upon among the people and they consider that as a condition. Hence, that certain condition is approved by way customary practices.

To sum up, the practice of organized *tawarruq* is financing with interest that is much higher than the interest of conventional banks. In fact, the bank performs all the roles of play. Actually, the bank does the nominal contracts of sale and purchase and it does the nominal delivery as well. The role of the client is just to sign the papers and to accord agency to the bank to do everything subsequent to that. Practically, the bank gets an amount of money as cheques and the bank deposits the amount of the *tawarruq* into the

client's account. Obviously, this is a *ribawi* loan, and it concerns nothing with respect to '*inah* or classical *tawarruq*, because no commodity is possessed. Therefore, organized *tawarruq* is prohibited, according to the same evidences that have been mentioned earlier, i.e. with regard to classical *tawarruq*.

Chapter three: The concept and legal rule of reverse *tawarruq*

Reverse *tawarruq* is when the *mustawriq* is the financial institutions or banks, and not individuals. In this arrangement, the bank appoints a company (which deals with the international commodities markets) to buy a commodity and later on, the bank sells it. The role of the bank is just to pay the required amount and to collect deferred cheques for that amount. Furthermore, the bank gets the receipt of warehouse for the commodity. In fact, the bank does not possess the commodity and it is not in existence in the original whereabouts of sale. Therefore, there is no actual possession and delivery of the commodity.

Standard 30 clarifies the following things:

1. The definition of *tawarruq*;
2. Distinguishing between *tawarruq* and '*inah*; and
3. Stating the pillars of *tawarruq*, which are *muwarriq* (bank), *mutawarriq* (client) and the subject matter of *tawarruq* (commodity).

Furthermore, the standard states that the *mutawarriq* in reverse *tawarruq* sells the commodity to a third party, in order to get liquidity, according to provisions 4 and 5.

Provisions 4 and 5 state that:

1. The client has the right to possess the commodity. Therefore, there should not be any link between the contract of buying the commodity at deferred price and the contract of selling the commodity at cash price, either the link is stated by the contract, procedures or due to customary practices;
2. It is not allowed for the client to appoint the company (which deals with the international commodities markets) as his agent to sell the commodity that he has

- bought from the company. Additionally, it is not allowed for the company to appoint itself as an agent for the client. However, if the system does not allow the client to sell the commodity by himself, it is permissible for him to appoint the company as an agent, i.e. after actual possession of the commodity; and
3. The company should not deal with banks that lend the liquidity obtained via reverse *tawarruq* as interest-based loans. On the other hand, the company should deal with banks that uses the liquidity for Shari'ah-compliant purposes.

However, the standard established two controls for reverse *tawarruq*, as follows:

1. Reverse *tawarruq* is not a form of financing or investment, and it is permitted for legal need; and
2. Financial institutions should not assign an agent, even if the agency is given to a third party.

Chapter four: Conclusion and draft of academic resolution

Technically, there is a difference between *tawarruq* and *'inah*. *'Inah* is buying a commodity from a seller at deferred price and selling the good to the seller again at cash price, albeit at a lower price than the purchase price. On the other hand, *tawarruq* involves the purchase of a commodity at deferred price, either by negotiation or by *murabahah*, and then selling the commodity to a third party, in order to get cash. However, *tawarruq* and *'inah* are tricks that leads to *riba*. *Tawarruq* and *'inah* are containing types, such as sale of *'inah*, explicit *riba* and *faskh aldayn bi aldayn* and so on and so forth. These types are actually based on a pre-Islamic principle that states, "You have to return your debt. Otherwise, you have to pay interest."

Some scholars permit classical *tawarruq* and *'inah* on the basis that the commodity is sold to a third party. However, I allow classical *tawarruq* in case of extreme need, because there is no trick that leads to *riba*. Additionally, there is a difference between *tawarruq* and *tawarruq*, where *tawarruq* is exchanging a present loan by deferred loan with interest and maybe, there is a nominal sale of international goods that works as the medium.

I have mentioned the evidences of those who prohibited classical *tawarruq* and those who allowed it. In the case of organized *tawarruq* (which is carried out by individuals) and reverse *tawarruq* (which is carried out by institutions and companies), the opinion is to disallow them. Actually, organized *tawarruq* and reverse *tawarruq* contains *riba* and the contract of selling the commodity is actually just a veil or trick that leads to the prohibited. Therefore, organized *tawarruq* and reverse *tawarruq* should not be practised, because they are more dangerous than explicit *riba*, where the role of the bank is to finance by *tawarruq*, without possessing the commodity. So, the Islamic bank functions like a conventional bank. Moreover, even the speech of Ibn Abbas on *'inah* (selling of dirhams by dirhams and there is silk in between) is not applicable for this role, since the commodity is not intended. The process is restricted to the recording of receipt of warehouses, i.e. without possessing the commodity. The Fiqh Academy in Makkah considers financing by *tawarruq* as *riba*, and the Academy called upon Islamic banks not to deal with *tawarruq*. The Fiqh Academy in Jeddah advised all Muslims to stay away from all types and pretexts of *riba*. Therefore, *tawarruq* should be eliminated, because it contains a trick, which is worse than *riba*. In addition, even to non-Muslims who studies *tawarruq* opine that such a sale is against sound nature and unbiased thought.

Draft of academic resolution

Tawarruq means to purchase a commodity at deferred price, either by negotiation or *murabahah*, and then selling the commodity to a third party, in order to get liquidity. The parties to a *tawarruq* arrangement are *muwarriq* (who has the liquidity) and *mustawriq* (who seeks the liquidity). The subject matter of a *tawarruq* is the commodity. The process involved in *tawarruq* is to conclude a nominal contract of sale, in order to permit lending with interest. Actually, this is cheating and fraud and hence, *tawarruq* is prohibited in the *Shari'ah*. Practically, the *mustawriq* takes cash money at spot and he has to return the money with interest at deferred, due to opportunity cost. This in fact *riba nasi'ah*.

According to the majority of jurists, classical *tawarruq* is permitted in extreme need, i.e. in order to fulfill an emergency need, such as to settle a debt, get married and so on and so forth. In Islam, there are things that are prohibited, due to the means which leads to those things. Therefore, if anything is prohibited because of its means, it is permitted in case of necessity. So, *tawarruq* is permitted in cases of necessity and this whereby there is no trick for *riba*.

Organized *tawarruq*, reverse *tawarruq* or financing by money, which takes place between the client and the bank, is prohibited in the *Shari'ah* because:

1. There is no delivery and possession of commodity;
2. The contract is a nominal contract that covers *ribawi* transactions and loans with interest. Therefore, organized *tawarruq* and reverse *tawarruq* are actually tricks for *riba*, which is ethically and legally condemned.

Translated and edited by:

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