

TAWARRUQ, ITS CONCEPTS, ITS PRACTICES AND ITS ECONOMICS IMPLICATION ON ITS PROMOTION BY ISLAMIC BANKS

by

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In the name of Allah, praise be to Allah, and may His peace and blessings be upon our Prophet Muhammad, his Household, Companions and those who follow him.

Tawarruq began to take effect under the Islamic umbrella by several banks since 1421 H, i.e. in the Kingdom of Saudi Arabia. It was operationalized under various names, such as easy *tawarruq*, blessed *tawarruq*, charitable *tawarruq* and so on and so forth. This was followed by other banks in Bahrain, Kuwait, Qatar and United Arab Emirates. Banking *tawarruq* can be defined as, “a customer’s requirement of cash, by appointing the bank to sell a commodity on his behalf in a present market, i.e. after he had bought it from it on credit (deferred basis)”. On the other hand, it also takes the same meaning, which means that banking *tawarruq* is, “The bank sells a commodity by the proxy in the market instantly, which has been sold to the customer on credit, so that the customer obtains cash.”

Wariq linguistically means Dirham from silver. So, *tawarruq* means seeking *wariq* (silver dirham), where the silver dirham (money) is profitable cash in the past. However, today’s meaning of *tawarruq* is “seeking cash” (circulating cash, whatever the type of the currency may be). In modern economic terminology, *tawarruq* is “to sell a specific commodity in seeking for liquidity.”

Based on this general meaning on *tawarruq*, someone can have a commodity or an asset, either for himself or bought for the purpose of trading, which can be sold to get cash. So, *tawarruq* is a sale which must be distinguished from the sale that is defined in economics and law. From the economic aspect, *tawarruq* can be distinguished that it is “a specific sale for attaining liquidity”. There might be a ‘need’ to repay the debt due for payment, which can not be deferred, or it might be for the purpose of traveling or immigration or spending or treatment or marriage or other things. It may result in

getting the cash immediately through *tawarruq* as a plan of the *mutawarriq* (someone who deals with *tawarruq*) for the use of liquidity, which he gets the most benefit on it. Afterward, the *mutawarriq* will be responsible to sell the commodity or an asset he owns, either for trade or for possession, purposefully for getting cash that will be invested or used in a contract expected to yield, whether sooner or later. This is how *tawarruq* makes “sale on *tawarruq*” a special sale, which is different from the generally known meaning, which the seller chooses the best price for his commodity or the price he likes to sell his commodity at.

Among the jurisprudential sources that used the term *tawarruq* to mean seeking for cash through the buying and selling of commodities, the *mutawarriq* does not possess anything he sells, until he gets the cash he wants. Then, he will buy with increased credit, which he will sell in the market, so that he can get what he wants. No problem for someone to buy a commodity at USD100, for example, to sell it USD50, if he is dire need of USD50. Ibn Muflih mentioned in *Furuu'* (vol 6/ p. 467) about *tawarruq* that, “If someone needs cash and buys what is equivalent to one hundred with two hundred, there is no problem”. He then said, “It is disliked to do so, as our scholar prohibits it.”

There is a clear link between the concept of *tawarruq* and *'inah* in the lexicon and the jurisprudential sources. According to *kasshaaf qinaa' 'an matn iqnaa'* - (vol 9/ p.19), “*'inah* is when someone buys the commodity on credit, then takes in its replacement at an instant cash. According to the *Mazhar* (vol 1, p. 116) *'ayn* is a name given to a type of gold. Silver is called *wariq*, as *'ayn* is called cash”. So, *'inah* is not different from *tawarruq*, as its aim is to get liquidity.

As per *tawarruq* now, the definition of *'inah* according to the jurisprudential and linguistic sources cannot be prohibited. *'Inah* can be defined as *Salaf*. It can be said, “This commodity is sold on *'inah* basis, that is on credit. Sale on credit is allowed without any disagreement, if its conditions are fulfilled. In the *Sharh Kabeer* of Ibn Qudaamah (vol 4,p.46) “Sale on credit is allowed unanimously. It is not disallowed, except if it is only done as trade.” According to Ibn Muflih in *Furuu'* (vol 6, p. 467), “Ahmad disliked that a man deals with sale on credit, even if it is allowed.”

Some scholars also allow sale on credit, as *tawarruq* with conditions that if the commodity is sold for deferred payment, not buying the same commodity from the seller who is a debtor that needs money. Other thing than this, '*inah* is *haram*. In order to affirm this meaning, "Misbah munir fii gariib sharh kabeer" (vol 6,p.467), quoted that, "*Inah* is defined by the scholars that when someone sells his property on credit, then he buys it in the same sitting, at a cash price, so that he can free himself from *riba*. This sale is referred to as '*inah*, because the buyer of that commodity on credit takes in its replacement in cash. This is *haram*, due to the fact that the buyer conditions the seller to buy it from him at a known price (instant cash). If there is no condition between both of them, then Imam Shafi allowed it, as the sale is free from the things that invalidates it. A few past scholars prohibited it. They said that, '*inah* is the sister of *riba*. If the buyer sells to a non-seller at an instance, it is also '*inah*, but it is allowed by the consensus."

The correlation of meaning can be affirmed between '*inah* and *tawarruq*, as in the fatawah qubrah (vol 9, p.35): "the linguists say: '*inah* is originally *salaf*, *salaf* comprises instant price and commodity. Most of the time, a person is said to deal with '*inah* when he buys things on credit, as if it is derived from immediate property, from the verb it is formed, because it is a type of it. So, it is to spend the immediate property for the profit, and taking it for the need."

This is same as *tawarruq*, if the aim is to get paper (liquidity). Abu Ishaq Jaozajaniy says, "I thought '*inah* is derived from a need of someone for the property, like gold and paper money, through buying a commodity and to resell it with the property he wants to buy. He does not have a need for the commodity. So, '*inah* is the same commodity."

The relationship that exists between *tawarruq* and '*inah* is the interest that the person has in both types of transactions, i.e. getting cash, and his need for two sales, in which one of them is credit, which subsequently has the indebtedness. This is what makes the research about the reality of *tawarruq* compulsory. This necessity is confirmed by the Hadith, "If you use '*inah* in transaction and follow the cow's tail (you pursue the worldly material), your enemies will have power over you." This Hadith shows how

risky an *'inah* transaction is, in which we have to have the concern for. Let us find out about the *tawarruq*, to see if the meaning of *'inah* could be found in it.

According to the Fatawah of the Permanent Committee for Scientific Research (vol 15, p. 233), the issue of *tawarruq* is mentioned in it as, “When someone buys a commodity on credit, so that he can sell it in the market to the non-debtor, which he can benefit from its amount, if the debt becomes payable, it will be paid to its owner who bought it on credit. The sale by installment is allowed, the saying that it is disallowed should not be considered, due to the fact that it is uncommon, and it has no back up evidence. The issue of *tawarruq* is a disagreed issue among the scholars, the true saying is that, it is allowed.” This fatawah was passed by Abdul Azeez Ahl Sheikh, Abdul Azeez Ibn Baaz and others. This fatwah should not be considered as something legalizing banking *tawarruq*, that is practised by some banks in this day, i.e. under the umbrella of Islam. It is true that this *fatwah* contains an expression about “buying a commodity on credit that will be resold in the market to a non-debtor”, this is an important criterion regarding the ruling on lawfulness of *tawarruq* or its unlawfulness, but the organized banking *tawarruq* has other descriptions that are compulsory to pay attention to.

The difficult question that is compulsory for us now is that why do some Islamic banks invent new product under the name *tawarruq*, even to the growth of Islamic banks? Despite having knowledge about the interrelatedness of its concept and its applications in the jurisprudential sources as *'inah* is generally disliked and completely prohibited in some situations? Is it done with the goal of developing banking activities under the Islamic umbrella through any practical possible means? To what extent will this type of banking activity last Islamically, if there is a doubt in legality of these means or saying without its illegality?

On the other hand, why are other Islamic financial products free from dubious issues? Regarding this, which can be used for the development of Islamic banking and for the economy of Islamic countries? Or that the banking *tawarruq* that was invented was for the purpose of getting profit and expanding the activity of banks, whatever it may be and that the term *tawarruq* is derived from the Islamic jurisprudential books for a new banking product that was meant, which majority of customers think that it is

legal? Is it behind that, except if the activity of banks is to practice this product at the expense of the aims of Islamic banking?

The classical meaning of *tawarruq*, which contains two sales in one, in which it is a sale to get cash. Some cases about classical *tawarruq* shall be mentioned and its interrelatedness with the sale of *'inah*. These cases will help us to pass ruling after that on organized banking *tawarruq*, which is widespread nowadays: A person who needs cash immediately and he does not find a person who can lend him money, and he does not want to take loan with *riba*, so that he will not fall in *haram*. He then resorts to buying a commodity on credit, which makes him to become a debtor. He then sells this commodity at the moment to get the cash he wants. Credit sale itself has no problem, as far as its legal conditions are fulfilled, as it is mostly known that the commodity bought on credit outnumbers to pay instantly. However, the important matter is that: how will the *tawarruq* be run? Can the *mutawarriq* sell the commodity that he buys on credit to the same seller who sells to him? Or to another person?

These two situations are different

The first situation: The majority of scholars are of the opinion that if someone sells a commodity to the same seller, then the sale is considered as *'inah* that is dispraised by the Prophet pbuh. The *mutawarriq* here basically needs cash, which he cannot get, except through *riba* (this indicates the loss of sense of honour between the Muslims and the preference to selfishness and love of money), he thought that if he buys a commodity on credit from someone, and then sells the same commodity instantly (at a lower price), then he will be saved from *riba*. The dealer of *tawarruq* has made a mistake, and the seller who sells to him on credit then buys from him the same commodity on instant payment also is at fault, as the contract involves the dealer with *tawarruq* to get an amount of cash instantly, which is equivalent to the debt or more than it from the seller. The increase in the amount is the difference between the two prices, i.e. credit and immediate. This is not different from the interest-based loan, despite that it includes two sales, in which both sales are *halal!* Some sources like (furuu' Ibn Muflih: vol 6,p.467) claim that, "If someone needs a cash, and buys something equivalent hundred with two hundreds it is alright". This is not considered to be a part of that.

The second case is when someone buys on credit to sell it in the market to another person, who is like “a third party” in the process of *tawarruq*. In this case, there is a difference between the two positions:

(1- The first position): If the third party has a relationship with the first seller of the commodity (agency or partnership in trade), then the sale can be made to him directly from the dealer of *tawarruq* (*mutawarriq*) or through a fourth party (agency). Whatever it may be, the sale is completed immediately to the third party or made through his agent or more. So, the dealer of the *tawarruq* (*mutawarriq*) has become a debtor with the credit for the commodity to the first seller, which he took an instant amount less cash which is the cash for the commodity, through the mediators of this seller. This position in the second case is not different to the core from the first previous case, which is an defamed sale of *'inah*, either be the third party a partner to the first seller in his trade or an agent for him in selling and buying, or acts on behalf of dealer of *tawarruq* (*mutawarriq*) in selling to the third party through his agent.

Some claim that deceit that contains the intention of not falling into *riba* is better than doing *riba* straightforward. This might be true in an individual necessary situations, nothing can be said than “perhaps”, because only Allah has the knowledge of the intentions (say, if you conceal what is in your mind or expose it, Allah knows it: Al ‘Imran: 29). However, if the practice of *tawarruq* becomes rampant, the evil of this deception on *riba* in *tawarruq* will become bigger than the evils of dealing with *riba* directly. That is because those who deceive think that they are far from *haram*. So, they go on in destructive usurious practice. This calamity piles up and the socioeconomic destructive effects by *riba* will occur in both situations. If people openly engage in *riba* or conceal it through sale (Allah the Exalted says, “Allah exterminates *riba*”, Baqarah verse: 276). The sin of dealing in *tawarruq* is not different from the sin of *riba* as we perceived. It is like someone who eats up the property of others unlawfully.

The scholars have addressed this case of *tawarruq* under what is so called sale of *'inah*. The sin in this transaction confirms that the first seller knows that the two sales are for his own benefit and that there will a debt will be incurred by the *mutawarriq*, which is more than the cash that he receives. However, the *mutawarriq* who deceives

to get the amount of money in exchange for debt, which exceeds the amount carries the sin of *riba*, if he knows that the third party who bought the product from him in cash was an agent or a partner to whom he firstly bought the commodity from with credit. However, if he did not know the matter truly, then he did not intentionally engage in *riba*. So, his sin is minimal or to say that he is not guilty or Allah Knows better (Abdullah bin Hanzdholah who was washed by the angels said, "The Messenger of Allah may Allah bless him said: Dirham of *riba* (interest money) ate by a man, which he knows is severe than the thirty-six grains (...; Musnad Ahmad-(vol44 /p.439) the reporters of Ahmad are all authentic reporters. It was also narrated by Tabaraani in Kabeer, and Al Muhzhir in tarqeeb and tarheeb – book of transactions, vol 4 / 2711).

Ibn Qudaamah also mentioned in his (sharh kabeer- vol 4 / p. 45-46) that, "Ahmad was narrated to have said that, if someone sells a product in cash, then the seller buys it more than the amount he sold to the buyer on credit, Ahmad said according to the narration of Harb that, this is disallowed, only if the commodity changes, because that is a means to *riba*, as the issue of '*inah* is concerned. But if he purchases it with another good or at an amount lesser than the price or its kind on credit that is allowed, regarding what has been stated in the issue of '*inah*, if he buys it in cash more than its first price, this also is like '*inah*, based on the disagreement mentioned on that, our scholar said if it is likely to have purchased it with the same amount or more than it, if that is not a trickery, but it suddenly occurred not intended, as a sale is originally *halal*, only that '*inah* was prohibited because of its side effect, this does not contain *halal* sale, because *halal* sale is mostly encouraged to do." he said, 'At every position, it has been said that '*inah* is not allowed, as the seller repurchases what he sold, or it is not allowed for his agent also, because he represents him, another person can do it either his father or his son, as they are not the seller, whether father or son, or the other person because they are not the seller who bought on credit, they are considered as alien (to the transaction)."

(2 - The second situation): If the *mutawarriq* (a person dealing with *tawarruq*) sells in the market for a third party who had no relationship at all (as partnership or agency) with the first seller who sold goods on credit. If the sale is completely done in the market directly, or by proxy of *Almutawarriq*, then the censured sale of '*inah* has been removed, according to the Hadith of our Prophet Muhammad pbuh. The

Almutawarriq can get the cash amount he wants instantaneously against the goods sold to the third party. This case does not involve any conduct in breach of the sale, which Allah makes *halal*, as long as the conditions of the sale are fulfilled in the first sale that was carried out on credit and the second one that was conducted in the market at the current price. *Tawarruq* is completely done here, through *almutawarriq* borrows and becomes the debtor of the first seller, with credit price until he pays it.

However, there are good reasons that make this transaction disliked, based on moral socio Islamic perspective. These is because if the *mutawarriq* is in dire need of money because of compelling circumstances, how can he get help from the zakat funds or find a good loan from his brothers? Where is the Islamic character with Muslims? In this sense, we include an excerpt from the Musnad of Abu Ya'lah al-Moasili (vol11 / p. 415), he said "Abu Khaitham narrated a hadith to us, from Ismail ibn 'lawayyah, from Laith, from Abdul Malik, from 'Atah, said: Ibn Umar said: We arrived at a time, by which none of us deserves Dinars and Dirhams from his Muslim brothers, until later, that everyone of us loves others to have Dinars and Dirhams among his Muslim brother, and I heard the Messenger of Allah may Allah bless him, says, 'If the people withhold Dinars and Dirhams, transact in *'inah*, follow the cow tails (that is busy with cultivation, or pursuing worldly affairs), and left the jihad, Allah will put the humiliation on them, it will not be lifted from them until they return to their religion."

The statement of jurists on two sales, which one of them is credit for getting cash liquidity:

These situations are narrated in the voluminous *fiqh* books. While presenting them, we found in some of them that *tawarruq* or *'inah* (whatever the term used to obtain cash liquidity through two sales which one them is on credit) is allowed in some cases, and not allowed in others, and it is also *haram* in some. According to Hashiya radd muhtaar (vol 5 / p. 405), it was stated in it that, "The scholars differ on the interpretation of *'inah*, which was forbidden." Some said, "It is when someone who is in need goes to another, seeking to borrow ten Dirham from him but the lender does not want to lend him because he wants interest. So, he says, I cannot lend money to you, but I will sell this dress to you. If you want with twelve Dirhams and its price is ten, so that you can sell it in the market for ten Dirhams. The borrower is satisfied

with the condition to sell the commodity in the market. Then, the owner of the dress gets two Dirhams and the buyer was lent ten Dirhams.”

In the same source (Hashiyah Radd Mahtaar : vol 5/ p. 461) said, "A man comes to the dealer (trader) and asks for a loan. The merchant requests from him a profit in fear of *riba*. So, the trader sells for him a garment equivalent ten with 15 on credit. So, he will sell it in the market with ten, then he has 15 on credit." He added, "He can lend him fifteen Dirham, then the borrower will sell a cloth 10 of it worth 15, he will then take the Dirham that he lent him as a price of cloth. So, 15 will remain on him on credit." It was also mentioned in the features of '*inah*, "The dress will return to him, as if the trader has bought it in the first and the second from the buyer to pay the price to the first buyer. But if he did not buy it from the first buyer so that he can not buy less than what he bought before paying the cash price." Despite these practices, which appear as legal, he added, "Mohammed said, 'this sale, in my heart, is like unto the mountains dispraised invented by those who eat *riba*. The Messenger of Allah dispraised them and said, "If you doing '*inah*, and you follow cow's tail, then you will be disgraced and your enemy will overcome you, that is you are busy with the worldly materials and forgetful of jihad. In a report, "The bad among you will be set unto you, and the good among you beg Allah and He will not listen to you". "Then, he added in the Fathu by saying: 'that which is in my heart that, everything will be returned to the seller or part of it like the cloth, five of loan or fifteen of it return to him. This is a sign of its prohibition. If the commodity or cloth is not returned to him, it is *makruh*. The credit is represented by an amount, the loan is not compulsory. It is only *mandub*. Whatever does not return to him, is not considered '*inah*."

In *tuhfatu muhtaaj sharhu minhaaja* (vol 17/ p. 185), he said that it is *makruh*, "Every sale, in which there is disagreement on its lawfulness, then it is like a trick of *riba*." He said, including the sale of '*inah*, and then he defined it in (vol. 17/p. 186) it is, "When a person sells a commodity at a deferred price, and then delivers it to the buyer, then he buys it with a little cash, in order to be sold with a big amount from him." This is the case, why it was prohibited by majority of the scholars.

Third: *Tawarruq* adopted by some banks in an orderly fashion, under the slogan of

Islam. There is a semblance of the model of *tawarruq* (which is not one), which is practiced by some banks under the umbrella of Islam, they are as follows:

1. The bank will purchase a quantity of a commodity (or goods) to its account for the purpose of *tawarruq*, which will be announced (the bank can buy it at the request of customers). It is known that the purchases made through agents of the bank or the international market (and most of the goods purchased by the bank are metals, which do not include gold or silver and most of these markets are in London: London Metal Exchange) and the remaining amount after purchasing the goods will be stored by the international certificate of the company that sells it, including the benefit of having the goods stored, its number, quantity and its specifications;
2. Bank announced its readiness to meet the demand of customers who want to do *tawarruq* that is "access to cash liquidity" by selling them "on credit" the amount of goods (goods) in the existing stores, or buy them based on the order, i.e. for the same purpose;
3. The relationship will be determined between the bank and the dealer with *tawarruq*, through the "terms and conditions of sale by installments," which depends on the terms of the contract of *murabahah* to buy, or a sale contract term;
4. The bank investigates the case of the customer and the financial ability, to make sure there is debt owned by the customer;
5. The customer who deals with *tawarruq* will write a request to purchase a quantity of goods through the model prepared by the bank in advance, and this quantity is determined in the form that commensurates with the amount of money that he is requesting;
6. The customer will accept, and has the knowledge in advance that the price at which the bank sells the commodity is more than the price he will receive from the sale of such goods for his account, and that, the bank will process this sale in the market under the contract of agency (after the customer purchases and receives the product);
7. Whether the sale has been completely done with the customer based on the contract of *murabahah* or an advance contract on (the actual cost the bank bought the product) plus a marginal profit of the bank (by which the prevailing interest rate is calculated) which makes the customer the debtor of the bank

with the money to be paid on installment, in which the value is the same with the duration of payment;

8. The best is that according to the *Shari'ah*, the customer (the buyer) sees the product after selling it to the bank prior to the time for reselling it. But the banking practices of *tawarruq* is for the customer to act on behalf of the bank to receive the goods and becomes a physical possession by legal receipt;
9. The bank will act on behalf of the customer to sell the same amount of goods sold to him (customer) by proxy in the market, i.e. at the current price. The customer will bear the fluctuation of prices while selling his product. In the most cases, the sale procedures will be done by the bank's customers who were charged for that. Most *tawarruq* procedures were done by agents abroad, i.e. through the London Metals Exchange;
10. The client receives the money obtained by the bank from the sale. Then, the bank deposits the money in its private account. The customer bears the administrative expenses of the agency, which are required for the completion of the process; and
11. The customer pays the bank his debt, which resulted in the *tawarruq* process, in accordance with the terms of sale by installment (as it was agreed for the amount of the premium and the repayment period).

Discussion and analysis

Banking *tawarruq* is not consistent with classical *tawarruq* that was addressed by most of the Muslim scholars in the past, which aims at getting cash to a person who needs it, i.e. by purchasing goods on credit. The classic *tawarruq* is allowed in one case that is to resell the commodity at a lesser price to whom it was purchased from. In cases of fear not be a pretext to usury by fraudulent collusion or trick, it is then prohibited in other cases, due to the fact that it is not different from the dispraised '*inah* contract that the seller of the goods benefit from selling on credit from the buyer again at a lower price, for making it the sale allowable by Allah as a means to *riba*. Therefore, this should be carefully studied to ensure the reputation of our religion and the future of Islamic banking, and we must see what is really going on now in a number of Islamic banks under the Islamic umbrella name regarding *tawarruq*.

The research on banking *tawarruq* indicates that:

1. The similarity between the classical and banking *tawarruq* is on the general meaning of *tawarruq* that is the request for the liquidity will be achieved if someone purchases the commodity on credit and then sells it immediately, which makes him a debtor against the cash he obtained. The details and procedures for the process are different, which are quite needed now to judge banking *tawarruq*, as required in the past to judge or *tawarruq* and ‘*inah*;
2. In case of classical *tawarruq*, the relationship of the first product seller ends (the seller on credit who is a debtor) with *mutawarriq* for his indebtedness. If the *mutawarriq* sells the product presently in the market to another person, who does not have a relations with the first seller. This denies the suspicion of usury about *tawarruq* in this particular case. However, in contemporary banking *tawarruq*, the relationship of the seller of goods is based on credit with the bank, which continues with *mutawarriq* until he will resell the commodity which he sold in the market (either directly or by proxy) in cash. This situation is comparable to that of classical *tawarruq* cases, in which the seller sells on credit to help the buyers to sell the goods in the market, often at a lesser cost). This situation is disliked, as it is seen to lead to *riba*. Why does the seller interfere to sell on credit in order to resell instantly? Does he have an interest in this second sale? If there is, then there is way that it can lead to ‘*inah*, which has to be protected, so that it can not only be a *tawarruq*, which the buyer can use as evidence to buy on credit “increment” that will be a benefit of the first seller. But some scholars assert that this case is a pure *riba*. According to (p. 295, vol 8, chapter a man helping another can he buy from him or sell it – p. 294) in the musannaf of Abdul Razak bin Hammam San’ani: he said, "Saad bin Saahib bin Yasar said, ‘Abdul Malik bin Abu Asim said to him that, his sister told him: she wanted to buy a commodity on credit (‘*inah*) ask it for me, he said: I said: I have the food, then I sold it with gold on advanced payment then she agreed, she said: help me find who can buy it from me, I said: I can sell it for you, he said: I sold it for her, then I doubted what I did, I asked Sa’eed bin al-Musayyib he said: were you not his owner? said: I said: I am his owner, he said: That is purely usury, he said: take your capital and return the rest to her.";

3. The bank runs *tawarruq* as a "banking product" from A to Z; it advertises it in terms of providing cash to the clients. It accepts the demands of clients and examines their financial capabilities and security. The bank receives and returns the product by proxy, against payment of the bank's necessary expenses by the *mutawarriq*. This systemic combination for managing *tawarruq* has never occurred before, its similarities have ever been practised, either in classical *tawarruq* or *'inah*. As the bank is a new institution that ever operates on this kind of operation before, and it is known that the profit of bank is as a result of "banking services", and it is also known that the service sale is not different from the commodity sale in terms of earning (past or presently). It should not be understood that the bank will provide services to *mutawarriqeen* by purchase, sale, agency, by free without a charge for such service expenses. Not so, these are banking functions against a payment to the bank, which requires continuation for profit making. This means that buying and selling on credit are linked with the banking services. Therefore, banking *tawarruq* is said to include two contracts which cannot be completely done without the third one, which is sale on credit which is being resell in cash, which cannot be completely done except with banking services. However, it is not alright to say that the bank is just a middle man in the second sale of the goods and that there is no benefit for it than to complete the process of *tawarruq* for the benefit of the customer. Organization of banking *tawarruq*, as mentioned, confirms the benefit of the bank from the first and second of the commodity, by the services of the bank for the sale. And nothing of that can be compared to *'inah*, which was known centuries ago. The truth is that banking *tawarruq* is part of the "banking integrated sale", which entails being the *mutawarriq* debtor, a debt that has an increase due to the deferred payment. As this case demonstrates the issue that the loan was a foundation of usury. In Mabsoot - (vol. 16/p.369), "It was reported that, it is *makruh* for someone to tell other: lend me, and for the lender to say: no, until I sell something to you, this was *makruh*, in order to prevent the occurrence of *'inah* that is when he sells something of ten to equivalent fifteen, which the borrower will sell with ten, so that the lender will get an increase, this is the meaning of loan which brings a benefit." The difference between what was popular in the past decade and what is currently done as said by Sha'bi is very

minimal. *Mutawarriq* who comes to the bank is looking for cash liquidity, which has been known by such indebtedness to the bank and all the procedures required by the bank without mentioning the details until it gets what it wants! In fact, this loan, which is obtained by *mutawarriq* has no difference in its condition with any other loan that can be obtained from the *riba*-based bank. This is because the *mutawarriq* gets cash roughly equals to the market price of the commodity which is sold on credit, this advanced payment will be determined (in accordance with the contract for the sale of *murabahah* for buying or for sale in advance) at the market price plus the so-called profit of the bank, which is equals to the interest rate!;

4. The process of banking *tawarruq* includes numerous conditions with the nature of its organization, which are; the condition that the *mutawarriq* will buy the product from the bank at a price by which he has to accept selling it to the bank at a lower price (and what is the legal justification for this restriction in the price? With the possibility that the equality of the deferred price and the cash price is based on the market), appointing the buyer (*almutawarriq*) the bank as agent to resell the goods, and no dissolution of agency (Khalid bin Ali Mushaeqih; banking *tawarruq* through the sale of metal. These conditions, although some people claimed that they were considered because they were not written in the contract, they were practically and effectively, conditions that were considered in the process of *tawarruq*. There is evidence from the Sunnah of the Prophet pbuh that banking *tawarruq* is actually something that is forbidden by the Messenger of Allah and peace be upon him, according to the narration of Abdullah bin Umar, that, the Prophet peace be upon him said, "Giving condition of *salaf* and sale is not allowed, as stipulating two conditions for a sale is not allowed" (narrated by Imam Ahmad and Abu Dawood in the book of contracts: chapter a man selling what he does not have, and al-Tirmidhi in contracts, he said it is good and authentic Hadith - chapter of it is *makruh* to sell what you do not have). Banking *tawarruq* is a contract with conditions which put the *mutawarriq* into indebtedness;
5. *Mutawarriqun* (those dealing with *tawarruq*) are suspicious of dealing with usury, as they do not care than to get cash that is eventually deposited in their accounts through buying, selling and the agency. They do not pay attention to what they buy, its quality and how the contract should be done in the first

place. The *mutawarriq* buys a commodity stored in a warehouse, which has not been seen and received, which cannot be sold until the bank is appointed as an agent to do that. All of these are based on paper transactions which encourage a mere transaction in the commodity markets. All this confirms that *mutawarriq* uses banks to get loan, with no difference to the loan of interest rate but it is more complex, because it entails documentation which is trying to hide the reality of usury (do those people do not know that "Nothing hides for Allah from the things in the heaven and earth(5)" Al-Imran). The banks misuse the *fatwa* regarding the legitimacy of *tawarruq*, as they misused contract of agency. The *mutawarriqun* are aware of this. So, they do not have any excuse;

6. It has been mentioned regarding classical *tawarruq*, even with the suspicion of interest in cases of usury, or a crime of *riba* in other cases, we have not read that one of those who sell on credit seeks *mutawarriq* who is insolvent for increase, if he fails to refund his debt. The debtor must be treated with ease if he is in a most difficult condition (a debtor in a hardship must be treated with ease, for you to do *sadaqah* is best if you know: The Cow 280), But in banking *tawarruq*, if the customer delays the payment of debt by installment, the bank will fine him additional payment for delay (as in the contract of *murabahah*, if payment is hard to be done). This fine multiplies the interest (O ye who believe, do not consume usury, many times over, and fear Allah, that ye may prosper, cow 130) justifies various pretexts that cannot be legitimately acceptable that these debt are spent for charitable purpose and they are credited into the bank's account (how it is spent for charitable purpose? And according to a Hadith by 'Adiyy bin Thabit by Abu Hazim from Abu Huraira, said, "Allah is Good, and He only accepts what is good"; Muslim, Tirmidhi, Ahmad and Daarimi and others: Maqaasid hasanah - (vol 1/p.65);
7. Banking *tawarruq* is not only for getting cash liquidity, whether for the purpose of consumption or production. And no doubt that the demand for cash can be economically justified, but when money is demanded through *tawarruq*, it becomes a different issue, especially when there is a strong suspicion of usury. What is the justification for the demand for liquidity from the *mutawarriq*? Are these justifications rationalized economically, based on Islam? In the area of promoting banking *tawarruq*, there are advertisements

like, "This will let you get access to cash quickly, for your required household needs, as you prefer it" (made-easy *tawarruq*) and "you will get cash you need in your account, be happy with the blessed financing *tawarruq*" and it is also found "you can have access to cash to meet your needs, no matter how". These advertisements or the like do not support the issue of maturity in expenditure according to the Islamic economic concept. In order to analyze the request of *Mutawarrriq* on cash, we say:

- a. If the person who engages in *tawarruq* do it for the necessities of living for himself or for his family (see the concept of five legal imperatives by Imam Al-Ghazali and Shatibi), then he has an excuse to do so. But has he exhausted all the ways to get the necessities of his living from relatives or companions or neighbours? Did he not find someone to sell a product to him on credit and then left to sell in the market without the mediation for getting the interests for himself without being suspected of interest? Or The Muslims' sense of honor has been taken that let them to be involved in banking *tawarruq* in particular, or this a trick from bank to get a *riba*-based loan in the end?;
- b. If the person is engaging in *tawarruq* without a need for livelihood or for family, doing *tawarruq* is a sin and relegated to stupidity. The debt is originally a humiliation for its seeker, which will remain on one's neck even if he dies martyred, until this debt is repaid. So, how can it be when *riba* is added to a debt which someone can initially get? In Sahih Al-Bukhari - (vol 8 /p.79) from Abu Hurayrah may Allah be pleased with him that the Messenger of Allah pbuh was brought a deceased who has debt to pay, he will ask, does he (deceased) leave a property, if he was told that, yes, he (deceased) has promised to pay, he will pray on him, if not, he will command the Muslims to say solat on the deceased;
- c. If someone with an experience in trade wants to engage in *tawarruq*, why does he not obtain liquidity through undisputed contracts? He will have the cash, which he wants, with a commitment to commodity delivery after a period of time agreed upon? Is this not a legal way which can safeguard him from falling into indebtedness?;
- d. If the *mutawarrriq* aims to obtain a large sum of money to be invested in a new project or for the expansion of an ongoing project, he would involve

himself in banking *tawarruq*, which is illegal and very risky, as previously stated. If we say that this investor has experience and competency in investment, he will soon find an Islamic bank that will finance his activities in many ways, such as through speculative partnership (*mudharabah*) and so on. But if this person is not competent to carry out investment activities, the risk is very huge to be involved in banking *tawarruq* and interest-based financing in the area of productive activity, which will collate risk of loss or gain with risk of debt (with interest), which might lead to the situation where the *mutawarriq* will be unable to reimburse the debt on time, if there is no gain or there is a profit, so no difference?; and

- e. Some Islamic banks, which do not see the legitimacy of banking *tawarruq* allow it with an exception, i.e. if the *mutawarriq* aims at obtaining the liquidity which will get rid of his conventional banking debts, and he wants to open a new page in the Islamic transaction (bank). The advocates say that such an exception is considered because the *mutawarriq* wants to repent! And we want to know when did Islamic banks started to become an institution that accept repentance from Allah's slaves? What if the *mutawarriq* returns to what he has been doing before and then repent again? Can the repentance of the *mutawarriq* be accepted when he does it again and again? If it does, then there is no difference between those banks which allow *tawarruq* and practice it. In fact, this exception lacks legitimate logical argument, especially if it was confirmed that the banking *tawarruq* sales as (as decided by the board of *Shari'ah* investigation in the banks) is based on *riba*. It may not be used to clarify *ribawi* transactions. If so, where we do not tackle the issue of adultery with adultery and theft with theft once and for all on exception?
8. The banking *tawarruq* is an inferior product, in terms of positive law or Islamic law. Explaining this needs to address two situations: A classic bank does not care about Islamic law and a bank acting in accordance with the rules of Islamic law and guided by its purposes, and aims to expand in the long-term on these grounds. In the first one, the experts of classical *tawarruq* must tell us that organized *tawarruq* is a complicated way to obtain liquidity for clients or

profit for the bank, and that there is a simpler and more efficient *tawarruq* than that system, and that there are loans and other various facilities that are used for trading on the basis of *riba*-based system and guarantees. But, if the bank wishes to abide by the rules of Islamic transactions, it needs to know that dealing with a product of "bad reputation" as it is called would lead to loss of confidence in the Islamic identity of the bank. If this happens, the bank will lose the most of what it possesses! And it will also lose most of investment account holders, who have confidence in the legitimacy of its activities. Can this risk extend to the loss of Islamic banks in general? (And fear tumult, it will not only afflict those who do wrong, and know that Allah is severe in punishment: the Anfal (25). Really, banking *tawarruq* will not just create a bad reputation, but it is also an inferior product, because its direct cost is high for the targeted liquidity behind it, and because its other cost is high, based on the Islamic point of view, as there are Islamic alternatives which are better than the available banking investment of financial resources. Has not the Islamic banking experiment confirms that relying on incomplete participation contract, leasing, producing and *salam* are possible for employing financial resources which is interest-free in many productive sectors? (Especially in the Arabic Gulf Islamic banking experiment), are the researches not confirm the possibility of increased reliance on these contracts, as well as the revival of speculation in the areas of productive employment of the activity of financial resources and service of economic development in the Islamic world? (Abdul-Rahman Yusry "Islamic Banking Modes of Finance: Proposals for Further Evolution", in Munawar Iqbal and Rodney Wilson (editors) Islamic Perspectives on Wealth Creation, Edinburgh University Press, 2005.) Why a new banking product plays an opposite role to these contracts? Why does the issue of Islamic banking change, instead of using money to serve the production, the banks become lending money for the purpose getting more money and the debt becomes the basis! Ma'bad Jaarihi says (banking *tawarruq*: p. 27) that, "at the time of the interim insolvency, and with the prevalence of institutional *tawarruq*, the debtor may find himself forced to be involved in *tawarruq* for paying his debt, and the bank will force him to do that, because that is an opportunity for it (bank) to increase its profits. Similarly, the value of debt will increase when the time to pay in advance

increases. *Tawarruq* will repeat several times, and the debt will increase several times. There is no doubt that the promotion of a product such as *tawarruq* with banks has taken an issue in the Islam beyond the scope of banking efficiency of these banks completely. This inferior product and its promotion turn the Islamic banking system upside down, if this issue is seriously considered. Instead of developing banking activity in contracts which is directly related to the development of productive activity for the society, such as speculation, participation, production, *salam* and leasing, an interest is found in a product such as *tawarruq* which satisfies the demand for money, and we are unaware of anything or any purpose requests the money just like the conventional banks? (it had been explained in the previous lines that most of the demand for cash liquidity by *tawarruq* is not rational according to Islam). The responsibility of Islamic banks, as defended by jurists and economists is not merely to achieve the highest employment rates for the available financial resources and maximize profits, but to achieve the highest rates of employment of financial resources by means of its legitimacy for serving the real economic goals of the Islamic *ummah*. In fact, the reliance is not balanced for the banks that claim to be Islamic on production, like sale of *murabahah* that entices some of these banks to innovate products, such as *tawarruq* that can be considered an unhealthy extension for this sale. And *murabahah* to buy something is to sell based on credit and indebtedness of the customers. This is still criticized by many as the objectives of Islamic banking. While the sale of *murabahah* is supposed to be reduced, in order to develop processes to employ resources with other contracts, based on the principles of participation in the profit and loss, emerged from this, the worst second sale by which the debt on deferred payment shifts to money, instead of commodity in the hand of the debtor! Is this not a setback or disappointment in the banking business which is invited to adhere to Islamic law? Or instead of correcting, what is the critique that be made which is contrary to the aims of Islamic banking? Do the banks that deal with *murabahah* that entice people to buy reach 80% or 90% of its businesses that is 100% with the *tawarruq* transactions? Or the rate of *murabahah* and debts based on sale on deferred payment will gradually increase the procedures of *tawarruq* and therefore “cash debts” eventually resulted a copy (falsified) from the conventional banks

that basically deal with this. After this, would the procedures be extended to Islamic trade financing? Is this reasonable?

Praise be to Allah, the Lord of the universe.

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