Journal of Islamic Law Review, Vol. 11, No. 1, June 2015, pp. 77-92

TAWARRUQ IN ISLAMIC LAW: AN APPRAISAL OF ITS ADMISSIBILITY AND CRITERIA IN THE CONTEXT OF PRIVATE TRANSACTIONS

Muhammad Abdurrahman Sadique*

Tawarruq is the purchase of a commodity that is in the ownership and possession of the seller against a deferred price, and its subsequent sale by the purchaser to a party other than the seller on cash, for the purpose of obtaining cash. Even though there has been some scholarly objection to its practice, the majority appear to have considered tawarruq to be within the boundaries of shari'ah. Among those who have censured tawarruq, the absence of any school as a whole is noteworthy. Juristic criticism of tawarruq is seen to be principally based on the aspect of intention and motive, and the possibility that necessary requirements for validity may be left unfulfilled. It is incorrect to equate tawarruq with īnah, and the motive of obtaining cash itself would not render tawarruq impermissble. The paper examines the nature and criteria for tawarruq with regard to its use by individuals in a non-institutional setup. The study finds that with fulfilment of the vital conditions, there can be no strong objection to individuals resorting to tawarruq for fulfilling their liquidity needs, especially in the absence of other means.

INTRODUCTION

The simple mechanism of tawarruq, where a person in need of cash purchases an asset on credit and thereafter sells it on cash to a third party, is becoming increasingly adapted for financing purposes by modern Islamic financial institutions. Short term financing where various adaptations of murabahah were employed as the standard mode by many Islamic banks is also done today on tawarruq, which has provided Islamic banks with a much needed addition to the array of products aiming to provide financing in ways approved by the shari ah. Despite of its increasing popularity, there exists some

* Ahmad Ibrahim Kulliyyah of Laws, International Islamic University Malaysia, *E-mail: Sadique@iium.edu.my*

controversy on its admissibility as a genuine Islamic product that could be resorted to constantly by Islamic banks for financing purposes. The operational method developed by Islamic banks for implementing tawarruq financing in the arena of modern banking and commerce reflects several features that have been incorporated into the tawarruq contract as has been discussed by traditional jurists. While the original tawarruq is contemplated to have consisted of two contracts of sale, modern adaptations usually comprise three, or possibly more. The primary reason for this development is that the banking institution, acting as a mere intermediary, is not in possession of commodities that could be readily brought into the tawarruq financing process, and needs to liaise with a trader, usually an external party, for the purpose. Similarly, disposal of such commodities by the seeker of the facility sometimes needs to be further simplified by the mediation of an agent. Thus, the product in its final shape is to a large extent more complex, and also more streamlined as in the case of many banks, than the simple form of tawarruq debated by jurists. As a corollary to the smoothness of the whole operation, there is also the undeniable danger of the transactions merely becoming a formality observed on paper without proper regard to the material aspects that should be necessarily involved. These additional aspects along with some other variations that have been introduced have further fuelled the controversy on its admissibility as a mode of financing.

Despite of its recognition in its basic form by several contemporary bodies of Islamic scholars, different types of tawarruq offered by various Islamic banks remain a heavily discussed issue among scholars in the field. While some recognise it as a welcome addition to Islamic financing techniques, others do so only with caution and with stringent conditions imposed. Yet others refuse to uphold its admissibility. The basic objection to such modes is that the explicit aim being the obtaining of cash against undertaking a future debt for a higher amount, it falls under a ribā based relationship, the transaction only acting as an unessential formality. The treatment of tawarruq in this article comprises the nature of tawarruq as perceived by Islamic jurists and discusses the admissibility

of tawarruq in its simple or original form in sharī ah. The paper analyses the arguments for and against tawarruq, and attempts to identify the conditions and criteria under which its practice could be held admissible. Application of tawarruq in modern Islamic banking and an appraisal thereof do not form part of the current discussion, and these merit individual study and scrutiny.

NATURE OF TAWARRUQ IN ISLAMIC LITERATURE

The Arabic term *tawarruq*, originating from the root *wariq*[2] that denotes silver, minted or otherwise, has been held to mean 'seeking or acquiring silver', as in the case of *ta allum*, or seeking *ilm*, i.e. learning.[3] Thereafter, the meaning has expanded to include seeking for, and striving to obtain money in any form, be it silver, gold or any other currency. Thus the literal meaning of the term implies any means of obtaining finance, or liquidity. The use of this term to denote a specific method of obtaining finance involving several contracts appears to have been done by the Hanbali scholars. Al-Bahūti, a noted Hanbali scholar, has made reference to the structure in question involving two sales as tawarruq in his Kashshāf al-Qinā.[4] The term 'zarnaqah' too has been used in this context by some scholars, which bears the literal meaning of increase or growth. The modus operandi referred to as tawarruq by Hanbali scholars has also been known as zarnaqah. This term is noted to have been used also to refer to the sale of īnah.[5]

Tawarruq in Islamic legal literature denotes a particular structure that could be employed by a mutawarriq / mustawriq, i.e. a person in need of liquidity, without resorting to borrowing on interest. This comprises the credit purchase of an asset the value of which is roughly equal to the amount required by him, usually for a higher price that could compensate for the delay in settlement, and the subsequent sale of the asset on cash, so that the necessary amount of money is realised. It is necessary that the second sale is not concluded with the seller from whom the asset was initially purchased. The Encyclopaedia of Islamic Law published by the Ministry of Awqaf of Kuwait defines tawarruq as purchasing a commodity on credit and selling it to a person other than the initial seller for a lower price on cash. This

structure has been described in a similar fashion by jurists. Al-Bahūti, describing the position of the Hanabali school, says: If one is in need of cash, and purchases an asset, whose actual value is hundred, for one hundred and fifty, it is not objectionable, as has been borne out by legal texts. This transaction is named tawarruq. This structure has been discussed under the topic of īnah by jurists of the other schools. The Islamic Fiqh Academy of Jeddah has described tawarruq as the purchase of a commodity that is in the ownership and possession of the seller against a deferred price, and its subsequent sale by the purchaser to a party other than the seller on cash, for the purpose of obtaining cash, i.e. *wariq*.[6]

Some have identified three forms of tawarruq described by jurists.[7] In the first, the person in need of cash purchases a commodity on credit and sells it to another on cash, without any party being aware of his need or intention. In the second, the one in need requests for a loan from a trader, who excuses himself from lending to him, but conveys his willingness to sell a commodity to him on credit for its cash price. The mutawarriq then sells it at any possible price, be it more than the purchase price or less. These two forms appear universally accepted without any difference of opinion. The third form is similar to the second, except that the trader sells the commodity to the mutawarriq for a price higher than its market value, against the delay in payment. This is the form where jurists have differed, as discussed hereunder.

ÎNAH AND TAWARRUQ

Tawarruq has been also referred to as three party īnah, in order to differentiate it from īnah proper, which takes place between two parties only. In the latter, one who requires liquidity purchases an asset from a seller on credit, thereafter sells it on cash at a price lower than the purchase price to the seller himself. According to some, this transaction has been termed īnah because the particular asset purchased (*ayn* in Arabic) had found its way back to the original seller. This fact strongly indicates that the asset had been utilised merely as a hīlah or legal stratagem for earning ribā, on the basis of which many had ruled the transaction prohibited. Tawarruq, on the other hand, involves three parties. Here, a person who needs liquidity purchases an asset from another on credit, and thereafter sells it, usually for a lower price, to a person other than the original seller, i.e. to a third party, so that the structure does not give a ready indication of a hīlah adopted solely for circumventing ribā. Since the asset in this case does not return to the original vendor and is sold to a third party, many have regarded the structure valid and acceptable.

ACCEPTANCE OF TAWARRUQ IN ITS SIMPLE FORM AMONG ISLAMIC JURISTS

Even though there has been some objection to its practice from certain scholars, the overwhelming majority appear to have considered tawarruq legally permissible.[8] Many jurists from the schools of Hanafi, Shāfi ī and Hanbali have ruled this structure valid. As mentioned above, while Hanbali jurists have used the term tawarruq for this practice, jurists of other schools have described similar structures and have preferred their permissibility. The Hanafi jurist al-Kāsāni has upheld the validity of a similar configuration on the basis that the change of ownership that takes place in this instance, is tantamount to change of the asset according to him, thus ruling out the possibility of ribā.[9] In addition to former jurists, many contemporary sharī ah scholars have regarded this contract acceptable, among them the late Abdul Azīz ibn Bāz,[10] and Muhammad ibn Sālih al-Uthaymin, who has imposed some conditions for its permissibility. A number of sharī ah supervisory boards of Islamic banks too have upheld the validity of tawarruq, including the sharī ah boards of al-Rājihi bank and Kuwait finance house. Islamic Fiqh Academy, an arm of the Organisation of Islamic Conference, in its 15th session held in Makkah, had issued a resolution supporting the permissibility of tawarruq, on condition that the purchaser of the asset does not sell it to the original seller at a price lower than the initial purchase price, directly or indirectly, as in the latter case it would involve ribā.

Among those who have censured tawarruq and found it unacceptable, although some individual scholars figure prominently,

the absence of any school as a whole is noteworthy. Although Māliki jurists have not specifically condemned it, they have considered offensive the sale of an item to person seeking a loan on interest for a price higher than its market value. Some of them have considered it offensive only when the seller is known to practise īnah. This could possibly indicate that tawarruq is offensive in their view. The jurists Umar ibn Abdul Aziz and Muhammad ibn al-Hasan are reported to have censured it. Tawarruq is held offensive according to one of two contradicting reports from Imām Ahmad. The Hanbali scholar Ibn Taymiyyah and his student Ibn al-Qayyim have strongly censured it apparently including it in the same category as the īnah sale, and have ruled it prohibited.[11] Some early jurists of the Hanafi school have considered tawarruq offensive comparing it with īnah, while the later Hanafi jurist Ibn al-Humām and some other jurists of the school have considered it less than preferable (*khilāf al-awlā*).[12] Some contemporary writers too have upheld its prohibition. However, the prohibition favoured by the latter for the most part is seen to involve specific formats of tawarruq practised by Islamic financial institutions. Some of them appear to have restricted the ruling of prohibition specifically to tawarruq facilities offered of these institutions, which they have termed *tawarruq munazzam* or organised tawarruq, while not holding tawarruq that takes place between individuals in a simple manner prohibited.[13] The Jeddah based Islamic Fiqh Academy, an international body comprising Islamic scholars of repute from many parts of the world that researches and issues resolutions pertaining to issues of current interest, is seen to have taken a similar approach. After issuing a resolution that favours the permissibility of the classical form of tawarruq in its 15th session,[14] it had upheld in its 17th session[15] the unlawfulness of tawarruq as is currently practised by some banks.

Examining the soundness of the approach of each faction closely would require a lengthy discussion, because the topic is intrinsically related to subjects such as the admissibility of hiyal or legal stratagems, the significance of motive and intention in contracts, *sadd al-dharā'i* or closing of avenues, and original permissibility of transactions (*ibāhah asliyyah*), that are extensively discussed in Islamic law individually. However, we may briefly state the major arguments that

have been put forward in support of the legality of the traditionally discussed form of tawarruq and those against it, and attempt to analyse them concisely.

THE CASE FOR TAWARRUQ

Legality of the tawarruq transaction has been fundamentally upheld based on the general connotation of the Qur'anic verse that permits sale while prohibiting usury[16]. The terminology of this verse according to the scholars of Islamic jurisprudence or usūl al-fiqh clearly indicates the overall permissibility of all types of sale and trade, except where a particular type is specifically prohibited. The prefix 'al' used in the term referring to sale, al-bay , indicates universality, thus ruling all methods of sale lawful, except in instances where a particular type is excluded from this generality through evidence that rules it prohibited or censured. Tawarruq, as a type of sale, is included in this universal permissibility and remains lawful due to the absence of any Qur'anic verse or a hadith that rules it unlawful, or the practice of the prophetic companions indicating its impermissibility.

Evidence in support of tawarruq from the sunnah is primarily sought from a hadith recorded by al-Bukhāri and Muslim, which apparently advocates resorting to trading as a means of avoiding possible elements of ribā. The hadith reported by the companion Abū Sa īd al-Khudri narrates that a man from the region of Khaybar who had been contracted the upkeep of a plantation came to the Holy Prophet (Sal.) with some dates of good quality. When the Holy Prophet (Sal.) asked him whether all dates of Khaybar were of similar quality, the man replied in the negative, and added that they used to obtain a measure of better dates against two measures of ordinary dates, and two measures against three measures. The Holy Prophet (Sal.) forbade him from doing that, and directed him to sell the low quality dates against silver coins, and then purchase better dates against silver. This hadith indicates the permissibility of employing the described method for avoiding involvement in ribā overtly or covertly; the medium of a sale is employed, which fulfils all conditions and prerequisites of sales, free of factors that result in its invalidity. The intention of procuring dates of better quality as the end result

of the transaction has not been considered to invalidate the structure in question. Therefore, this shows the lawfulness of sale transactions where different purposes are intended when the medium utilised is acceptable and is free of riba in any explicit or implicit manner. So, attaining liquidity through a medium such as this should be permissible where needed.

Ibāhah asliyyah, or the juristic position favouring permissibility and lawfulness as the primary status too has been invoked by some in support of tawarruq. The overwhelming majority of jurists from the accepted schools of Islamic law have upheld permissibility as the primary status concerning all transactions. This is a legal principle that is applicable to all matters regarding which a specific direction is absent. Where a specific ruling is available, this principle would not be resorted to. This means that in essence, all transactions are declared permissible, except when a there is evidence regarding a particular transaction to the contrary. On this basis, a large number of contracts where no explicit directions pertaining to their permissibility or otherwise are found would be deemed permissible. Accordingly, tawarruq, too, would be ruled lawful, due to the absence of any explicit evidence to the contrary. The result of this supposition is that the permissibility of tawarruq needs no proof. Demand for proof would be made from one who denies its permissibility, as his assertion goes against the primary status regarding all contracts.[17]

As a rational justification, the need or *hājah* for such avenues that facilitate liquidity has also been taken into consideration by the proponents of tawarruq. Credit without interest may not be accessible on many occasions, and one could be averse to borrowing, even without interest, and may not like the prospect of availing of donations, even when such free funds are available. The purpose of employing this mode being obtaining cash has not been regarded by them as serious enough to dictate its prohibition or disapproval. This purpose could be considered common to all types of trade, as all traders intend acquiring more money on the basis of less, goods and merchandise acting as a medium in realising this goal. According to them, employing such means would be reprehensible only when both

the purchase and sale are transacted with the same individual, as in the case of īnah, as here the intention of ribā stands prominent.

GROUNDS FOR CENSURING TAWARRUQ

Juristic criticism of tawarruq is seen to be principally based on the aspect of intention and motive that could have induced the parties to carry out the transaction in this specific format. They argue that the intention here is to procure money, which makes the outcome of the transaction tantamount to the sale or exchange of money against a different amount of money. Observed from this perspective, the asset is utilised only as a medium the acquisition of which is not primarily intended. Therefore the structure strongly connotes the possibility of a stratagem adopted for this purpose. Thus a major reason for the disapproval of tawarruq obviously is that it appears to be a hīlah adopted for attainment of what could otherwise be ribā. This is the foremost reason for the condemnation of īnah as well. As has been observed by Ibn Abbas (Rad.) in the context of īnah, it is money against money, with a piece of silk cloth pushed in between.[18] They argue that taking the end result of the procedure into consideration is important in determining the permissibility of a structure. The principle of closing of avenues is an important claim cited in support of disallowing tawarruq. It is feared that this would be taken as a ruse to circumvent the prohibition of ribā. Opponents of tawarruq cite some hadiths that are understood to condemn the sale of īnah in their support, arguing that tawarruq too falls under the same category, because the purpose in both happen to be attaining liquidity against the obligation to pay a higher amount in the future. Hadiths that condemn the sale to a person who is compelled to enter into the contract too are cited in support.

Among those who have strongly disapproved of tawarruq is the Hanbali scholar Ibn Taymiyyah. He has taken the position that tawarruq is similar to īnah on the whole, as the purpose is attainment of money. He considers īnah to take place usually between a capital provider and a person in need of cash for expenses. The capital provider sells him an asset instead of the cash needed, so that he may acquire some gain through the transaction. When the seeker of funds

sells the asset back to the first, it is īnah, and if it is sold to another, it is tawarruq. If it is transferred to a third party who is brought in between them as an intermediary, i.e. who would return the asset to the first, the third party would be the *muhallil*, i.e. who acts as a legitimizer of riba for the first. His follower Ibn al-Qayyim has reported that Ibn Taymiyyah refused to allow tawarruq whenever he was consulted on the subject, saying that the reason that had dictated the prohibition of riba is present in tawarruq, in addition to which the trouble of purchasing the asset, selling it and accepting a loss are also undertaken by the person requiring funds. Ibn Taymiyyah regarded it improbable that the sharī ah would allow greater harm while prohibiting a lesser one, i.e. ribā. He has quoted the statement ascribed to Umar ibn Abdul Aziz that tawarruq is the brother of ribā. Ibn al-Qayyim, adopting a similar stand, equates tawrruq to īnah, as both are adopted as mediums towards realising ribā.[19] In some instances Ibn al-Qayyim is reported to have also referred to another objectionable factor found in tawarruq, namely, it being a sale to a person under duress, called *bay al-mudtarr*.

IN DEFENCE OF TAWARRUQ IN ITS SIMPLE FORM

Scholars who uphold the validity of tawarruq have responded to the above criticism arguing that there is no harm in adopting means that are lawful in themselves, even when the means is not originally intended, i.e. when they are simply resorted to for attaining other purposes. Regarding such hiyal, an important principle that is necessarily drawn in is that of intentions. According to the prophetic tradition, actions are decided on the basis of intentions, and every person reaps according to his or her intention in giving rise to the action. If one had intended what is permitted, it would be acceptable and blameless. On the other hand, if what he had intended is wrong, the action would be judged blameworthy. On this basis, blanket condemnation of hiyal may not be justified. Adopting devices and stratagems becomes blameworthy and objectionable only when they result in the violation of a fundamental principle of sharī ah or damage an advantage that is recognised by it. When the hīlah adopted does not violate any such principle or causes harm to a benefit, it would

not be included in the stratagems that have been condemned. Tawarruq structure has not been prohibited expressly in any hadith, and could not be held to result in causing damage to any advantage. In fact, it is advantageous, because the need for liquidity is effectively fulfilled through adopting this structure. Another principle relevant in this regard is that cited by Shāfi i jurists. They state that when the wording of a contract is explicit, it is not in need of any further explanations, and the intention of the party would not be pried into. Verification of intention is only necessary where the wording happens to be imprecise or ambiguous. Otherwise, the intention is taken to be correct and legal.

It is not correct to equate tawarruq to the disputed transaction of īnah. It was shown earlier that tawarruq and īnah are not similar contracts. While īnah involves only two parties who act in interchanged capacities in the two contracts, tawarruq takes place between three parties. The participant in tawarruq intends to avoid the possibility of ribā by adopting a legal sale as the means of earning liquidity. Similarly, to argue that tawarruq is a sale done under duress does not seem to be a correct assessment of the state of affairs. The sale to a person under duress has been understood by jurists in two ways. One is the case of a person who is made to carry out the contract forcibly, i.e. under a threat. The contract in this situation is not valid in most instances, when the threat is genuine. The other form is where a person is compelled to sell what he owns for the purpose of settling a debt or for obtaining money for imminent needs, both of which happen to be of a pressing nature. In the case of tawarruq, one is not selling away his belongings for fulfilment of such needs. It is a matter of obtaining cash through employing the mode of purchase and sale. Although there should be some need that he wishes to fulfil through the cash, it would not turn the transaction into one done under duress. In fact, all transactions are undertaken for fulfilment of needs. It should be noted that even when one sells his belongings for fulfilling needs, the sale is valid. If there happens to be any sin, it would be on those close to him who failed to lend him money or donate in spite of knowing his predicament.

It is incorrect to criticise tawarruq as a trasaction where the motive happens to be attainment of money, as this is not an unlawful purpose

in itself. Assets are purchased sometimes for their utility and benefit, and for obtaining their return sometimes. Both of these motives are valid and justifiable. Assets are brought into use also through their being traded to a third party. Therefore, even where the purchaser intends the resale of the asset at the inception of the transaction itself, this would not be unacceptable. Traders intend resale in most of their purchases, for obtaining a cash return. If sales were to be prevented where the intention happens to be acquiring cash through resale, it would result in violating a fundamental right of the purchaser to property.

The validity of applying of the juristic principle of closing of avenues for rejecting tawarruq is questioned by those who validate it. Avenues could be closed only when there is a well perceived danger of leading to a prohibited action. In the case of tawarruq, this could not be imagined to be the case. Tawarruq could not be counted with certainty even among matters of a doubtful nature where avoidance could be regarded praiseworthy and more in keeping with piety. This is because in the case of tawarruq there is no contradiction between evidences, some of which dictate its permissibility while others dictate unlawfulness. Therefore, it would remain permissible under the concept of primary permissibility. The Sharī ah has resorted to prohibition of transactions only where there is a comprehensible reason such as the possibility of their leading to oppression and violation of rights or to creating enmity and friction among people. The prohibition of ribā in loan transactions, monopoly, deception, gambling etc. becomes meaningful when the disadvantages in them are perceived. As far as tawarruq is concerned, there could be no perceptible harm in its permission, thus would remain permissible. This would be more conducive to ensuring transactional freedom and convenience upheld by the sharī ah under its preference of *yusr* or ease.

CONDITIONS NECESSARY FOR THE VALIDITY OF SIMPLE TAWARRUQ

Although considered valid and acceptable by the majority of jurists, permissibility of tawarruq necessarily involves fulfilment of certain

vital conditions. These in reality are its basic components that differentiate it from other types of structures. Some of these are purported to ensure that the structure remains a valid trading mechanism by ensuring the presence of the vital ingredients common to all sales and purchases. Through these conditions, its misuse is avoided, which could result in its becoming a ribawi transaction due to adoption of an erroneous format. Of these, an important condition is that the seller who sells the item to the seeker of liquidity should have the item in his possession at the time of the sale contract, in addition to owning it. This condition is not particular to tawarruq and is common to all sales. This is due to the clear prohibition appearing in the hadith of the Holy Prophet (Sal.) of selling an item while is not is in the possession of the seller. A hadith reported by the companion Hakīm ibn Hizām states that he questioned the Holy Prophet (Sal.) regarding an instance where someone asks him to sell what is not in his possession, whether he could obtain the required commodity from the market (i.e. after concluding a sale to the person). The Holy Prophet (Sal.) said, "Do not sell what is not with you."[20] In another hadith pertaining to prohibited varieties of sales, the Holy Prophet (Sal.) has categorically stated: "It is not permissible … to sell what is not with you."[21] This condition is a salient feature of trading and commerce approved by Islamic sharī' ah, that aims, among other things, at eliminating fictitious contracts and deception and also maintaining within limits the final price of the item that the ultimate consumer is obliged to pay. Schools of Islamic law have extensively discussed the nature of possession that should be ensured for the validity of the sale with regard to different types of merchandise. Tawarruq, primarily being a contract of sale, should fulfil this vital aspect so that the sale stands valid and acceptable, and the buyer becomes the lawful owner of the purchased item fully entitled to utilise it in any way he pleases. Thus, the first sale should necessarily be unconditional, transferring complete rights over the commodity to the purchaser. Thereafter, the purchaser could sell it to another party at any price mutually agreed, entirely at his own volition. Another vital condition is that the second sale, i.e. the sale by the seeker of liquidity after his initial purchase of the item, should

necessarily be to a party other than the original seller. Through this requirement, tawarruq is differentiated from a twin sale taking place between two parties called bay al- īnah. As mentioned above, due to the involvement of three parties in tawarruq, it is called the three party īnah by some. This condition that calls for two transactions that do not result in forming a cycle, i.e. that starts with the seller and ends with him, which could minimise the role played by the commodity by removing it from the scenario by the end of the second transaction, is vital for the overall permissibility of tawarruq. It serves the purpose of emphasising the trading activity forming the core of tawarruq transaction further, where a commodity is legally purchased and disposed of to a needy party, while acquiring the funds needed by the second seller through a lawful sale. In addition to these, some writers have necessitated that the person who resorts to tawarruq should be in genuine need of liquidity himself, while others opine that tawarruq would be permissible only where other means of acquiring funds such as an interest free loan are unavailable. However, the latter two requirements appear untenable, in that they could be regarded as unnecessary restrictions placed on an essentially permissible trading activity, which is the essence of the tawarruq structure in its basic form.

CONCLUSION

Permissibility of tawarruq as has been upheld by the majority of jurists appears to be the more welcome position on the issue with regard to the needs of private indivduals, while being consistent with the objectives of Islamic sharī ah. There appears no credible reason to consider that tawrruq could involve or lead to ribā in a direct manner, that its prevention through imposing restrictions on the scope of permissibility of tawarruq becomes necessary. Thus, the precondition that tawarruq could only be resorted to in the absence of qard hasan or interest free loan appears uncalled for. Tawarruq, in its simple or fiqhi form, falls under trading contracts, and even where the motive in initiating the contract happens to be earning liquidity, this need not be considered an unlawful motive, as shown above. Similar to involvement in trading for obtaining goods for consumption,

intending to obtain cash for immediate or future needs is justifiable, and the structure need not be censured solely on that basis. As long as the necessary conditions, as outlined above, are fulfilled, the structure could be considered not to exceed the boundaries of shari'ah in the context of private transactions.

Notes

1.
2. A Qur'anic word; Surah al-Kahf, verse 19.
3. Abdullah ibn Sulaymān al-Manī , "al-Ta'sīl al-Fiqhī li'l-Tawarruq" in *Majallah al-Buhūth al-Islāmiyyah*, Riyādh, 1425H. p. 353.
4. Al-Bahūti, *Kashshāf al-Qinā* , vol. 3, p. 186.
5. *Al-Nihāyah fī Gharīb al-Hadīth*, vol. 2, p. 301.
6. Resolution No. 5, 15th Session held in Makkah on 11th Rajab 1419H (31.10.1998).
7. Al-Siddīq al-Darīr, "al-Tawarruq al-Masrafī – al-Ra'y al-Fiqhī", in *Hawlīyyah al-Barakah*, Ramadan 1425H.
8. Ministry of Awqāf, Kuwait, *Al-Mawsū ah al-Fiqhiyyah al-Kuwaytiyyah*, vol. 14, p. 63.
9. Al-Nawawi, *Rawdah al-Tālibīn*, vol. 3, p. 416, al-Kāsāni, *al-Badā'i* , vol. 7, p. 96, al-Mardāwi, *al-Insāf*, vol. 4, p. 337.
10. *Majmū Maqālāt wa Fatwā*, vol. 19, pp. 19 – 99. This is important due to the negative ruling on the issue by Ibn Taymiyyah and Ibn al-Qayyim.
11. Ibn Taymiyyah, *al-Qawā id al-Nūrāniyyah*, p. 167.
12. Ibn al-Humām, *Fath al-Qadīr*, vol.5, p. 425.
13. Rafiq al-Misri, *al-Jāmi fī Usūl al-Riba*, p. 17, Sāmi al-Suwailim, "al-Tawarruq wa al-Tawarruq al-Munazzam", Hāmid Husayn, "Ta līq alā Buhūth al-Tawarruq".
14. Resolution No. 5, 15th Session held in Makkah on 11th Rajab 1419H (31.10.1998)
15. Islamic Fiqh Academy resolution, 17th Session held in Makkah, 3 – 19 Shawwal 1424H (13 – 17.12.2003)
16. Al-Qur'an, 2: 275.

17. Al-Manī , op cit. p. 357.
18. Ibn Qayyim al-Jawziyyah, *Hāshiyah Ibn al-Qayyim*, vol. 9, p. 242.
19. Ibn al-Qayyim, *I lām al-Muwaqqi īn*, vol. 3, pp. 22, 170.
20. Recorded by Tirmidhi, (Hadith No. 1234), and others.
21. *Abu Dāwūd*, Hadith No. 3504.