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The Dilemma of Using the Tawarruq Contract as a Hilah Daruriyyah from the Perspective of Maqasid Al-Shari'ah

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Abstrak

Penelitian ini menganalisis praktik akad *tawarruq* dalam perspektif maqasid al-shariah, dengan menempatkannya sebagai bentuk *hilah daruri*yyah yang berada dalam wilayah ketegangan antara regulasi fiqh klasik dan problematika institusional modern. Melalui pendekatan normative-analitis dan konseptual, penelitian ini mengevaluasi parameter maqhasid, khususnya hifz al-mal dan pertimbangan *maslahah* serta *mafsadah* sebagai alat uji praktik *tawarruq*, baik dalam bentuk individual maupun *tawarruq munadzzom*. Hasil analisis menunjukkan bahwa meskipun *tawarruq* dibenarkan secara fiqh dalam kondisi darurat, praktik yang terorganisir cenderung melahirkan *mafsadah* structural berupa transaksi fiktif, akumulasi hutang, dan pelemahan inovasi produk keuangan syariah. penelitian ini menegaskan pentingnya pendekatan regulasi berbasis *maqasid al-shariah* guna menghindari jebakan formalisme hukum dan memastikan keselarasan antara kepatuhan syariah normatif dan tujuan etis-ekonomis syariah.

Kata-kata kunci : *Tawarruq, Maqhasid Al-Shariah, Hilah Daruriyyah,* Hukum Ekonomi Syariah, *Maslahah-Mafsadah*

Abstract

This study analyzes the practice of tawarruq contracts from the perspective of maqasid al-shari'ah, positioning it as a form of *hilah daruri*yyah (legal stratagem under necessity) situated within the tension between classical fiqh regulations and contemporary institutional complexities. Employing a normative-analytical and conceptual approach, the research evaluates maqasid parameters, particularly hives al-mal alongside consideration of *maslahah* and *mafsadah* as analytical tools to assess *tawarruq* practices, both in their individual form and in organized (*tawarruq munadzzom*) structures. The findings indicate that although *tawarruq* may be deemed legally permissible within classical fiqh under conditions of

necessity, its organized implementation tends to generate structural *mafsadah*, including fictitious transactions, debt accumulation, and stagnation of genuine innovation within Islamic financial products. This study underscores the urgency of adopting a maqasid based regulatory framework to prevent the pitfalls of legal formalism and to ensure coherence between normative shariah compliance and the broader ethical-economic objectives of Islamic law.

Keywords: Tawarruq, Maqhasid Al-Shariah, Hilah Daruriyyah, Islamic Economic Law, Maslahah-Mafsadah

Introduction

The need of liquidity constitutes a socio-economic reality that is inseparable from society whether to meet urgent consumptive demands or productive needs such as business capital, healtcare expenses, and educational costs (A et al., 2023; Mohiuddin & Siddiqu, 2023; Robbani, 2021). Within Muslim communities, acces to cash financing often encounters limitations in financial instruments that comply with Shariah principles, particularly the prohibition of riba (Amin et al., 2022; Maulida & Ali, 2023). The limited large-scale implementation of qard hasan has led individuals to seek alternative transactional mechanisms that are formally valid yet capable of addressing liquidity needs effectively (Asni et al., 2022). This condition has encouraged the emergence of adaptive mu'amalah structures, including the utilization of sale-based contracts as instruments to obtain cash liquidity, even though substantively such arrangements may deviate from the ideal objectives of Islamic economic transactions (Azman et al., 2020).

This dynamic gives rise to a dilemma in contemporary mu'amalah practices, particularly when demands for efficiency, legal certainty, and economic profitability intersect with Shari'ah principles that emphasize justice and public welfare (*maslahah*) (Nawaz et al., 2024). On the one hand, financial institutions are driven competitive and practical liquidity solutions. On the other hand, the increasing reliance on higly engineered financial instruments risks reducing Shari'ah transactions to mere legal formalism, thereby stripping them of their maqasid-oriented spirit (Fakhri & Ahmad, 2018). This dilemma is particularly evident in the debate surrounding *tawarruq*, which, although considered permissible under certain juristic conditions, remains contested at the institutional and maqasid level due to its association with legal stratagems (*hilah*) and potential for systemic *mafsadah* (Zahara & Harryanto, 2019). Accordingly, the central problem in modern mu'amalah does not merely concern the contractual form itself, but rather the extent to which such practices remain aligned with the objectives of Shari'ah in responding to society's liquidity needs (Aprianto & Nazilah, 2023; Mohamad et al., 2023).

Accordingly, it can be affirmed that in contemporary Islamic finance practice,

tawarruq is frequently positioned as a solution to society's liquidity needs that cannot be fulfilled through non-remunerative loan instruments. Indeed, *tawarruq* has been widely institutionalized as a banking product in Malaysia and several Middle Eastern countries, supported by regulatory frameworks and fatwas permitting its application (Shahrul et al., 2025). However, such acceptance is not universal. In Indonesia, *tawarruq* was rejected as an Islamic Bank product, although it continues to be accommodated within Shari'ah compliant commodity trading schemes. This divergence in regulatory stance indicates that the issue of *tawarruq* is not merely a technical contractual matter, but rather reflects a deeper normative tension in responding to liquidity needs through modern mu'amalah mechanisms (Nawaz et al., 2024).

This difference in position is rooted in divergent scholarly views regarding the legitimacy of *tawarruq*, particularly concerning its characterization as a form of *hilah* (Masruh, 2025). From a fiqh perspective, some jurists permit *tawarruq* under specific conditions, while others reject it on the grounds that it deviates from the substantive essence o sale contracts and potentially replicates riba in a concealed manner(Hasmad & Alosman, 2022). This tension has resulted in a form of normative dualism, whereby juristic permissibility does not necessarily correspond with institutional and regulatory acceptance. In this context, *tawarruq* is debated not only in terms of contractual validity, but also from an ethical perspective, given its potential to generate systemic *mafsadah*.

Previous studies on *tawarruq* have examined the issue from various perspectives. A number of works focus on the legal status of *tawarruq* and its relationship with bay al-inah. Ellida (2017) concludes that *tawarruq* is deemed reprehensible (makruh) due to its resemblance to *bay' al-inah* (E. F. Ahmad et al., 2017). Similarly, Shofa Rabbani (2021) distinguishes between *al-tawarruq al-fiqh* and *al-tawarruq al-masrafi*, demonstrating that the difference in their legal rulings lies in the degree of contractual engineering and the interconnectedness among the arties involved (Robbani, 2021).

Meanwhile, Parman Komarudin and Muhammad Syarif Hidayatullah (2021) employ *qiyas* (analogical reasoning) to equate *tawarruq* with *bay al-inah*, thereby inclining toward its prohibition (Komarudin & Hidayatullah, 2021). Although these studies provide important juristic foundations, they remain largerly confined to the legal-formal aspects of the contract and have not situated *tawarruq* within the framework of emergency stratagem (*hilah daruriyyah*) assessed through the lens of *maqasid al-shariah*. Other studies have examined the concept of *hilah* in the formulation of fatwas and the practice of Islamic economic Law. Ahmad Najib (2020) explains that *hilah* conctitues one of the methodological approaches employed by the National Shariah Council (DSN-MUI) in responding to the complexities of modern financial practices, ditinguishid between permissible and impermissible

forms od stratagem (N. Ahmad, 2020). Kamaluddin (2024) further emphasizes that *hilah* may amount to legal deviation if used to nullify shari'a obligations or to legitimize what is explicitly link the concept of *hilah* to the practice of *tawarruq*, particularly in the context of necessity (*darurah*) and its implications for *maslahah* and *mafsadah* at the institutional level (Kamaluddin & Elyanoor, 2025).

Furthermore, comparative research on *tawarruq* in Islamic banking practice often highlights cross-national differences. Amir Shahruddin (2019) critiques the implementation of *bay al-tawarruq* in Malaysian Islamic Banking, arguing that it remains problematic from a *maqasid al-shariah* perspective (Shaharuddin, 2019). Fatimah Zahara (2019) identifies a policy dualism in Indonesia, where *tawarruq* is not adopted as an Islamic banking product but is nevertheless accommodated within Shari'ah-compliant commodity trading machanisms (Zahara & Harryanto, 2019). However, most of these studies are predominantly descriptive and do not provide an analytical explanation of why *tawarruq* is accepted within one legal regime yet rejected in another, particularly through the systematic use of *maqasid al-shariah* as a normative evaluative framework. Sumayyah (2018) asserts that the concept of *darurah* (necessity) in *tawarruq* has not been comprehensively explored within the framework of *maqasid kulliyyah* (Aziz & Ahmad, 2018). Meanwhile, the intellectual contributions of Al-Ghazali, al-Shatibi, and Ahmed al-Raysuni provide a robust theoretical framework concerning *maslahah* and *mafsadah* as the primary objectives of the Shari'a (Sarif & Ahmad, 2018). Nevertheless, these studies remain largely conceptual and have not been operationalized in an applicative manner to assess the normative conflics surrounding the practice of *tawarruq munadzzam* within contemporary Islamic financial systems.

Based on a review of prior scholarship, it can be concluded that studies on *tawarruq* continue to be dominated by normative-fiqh and descriptive approaches. The interrelationship between *tawarruq*, *hilah daruriyyah* and *maqasid al-shari'ah* has not yet been systematically analyzed as an integrated evaluative framework. Accordingly, there is a need for research that positions *tawarruq* as a form of emergency stratagem (*hilah daruriyyah*) and examines it systematically through the *maqasid al-shariah* framework in order to elucidate the dilemma between juristic permissibility and institutional rejection within contemporary Islamic financial practice.

This study offers a theoretical contribution to the development of Islamic economic law by positioning *tawarruq* not merely as a question of contractual validity, but as a matter of *maqasid* governance within modern Islamic finance. In contrast to previous studies that tend to remain confined within the halal-haram dichotomy or intra-madzhab juristic debates, this research advances an analytical framework that conceptualizes *tawarruq* as *hilah daruri*yyah a mechanism that may be normatively valid yet institutionally problematic. It employs *maqasid al-shariah*

as a critical evaluate tool to assess the relationship between contractual form, transactional objectives and systemic economic consequences.

Furthermore, this study contributes to shifting the discourse from legal formalism towars substantive maqasid-based reasoning in evaluating Islamic financial practices. Through an analysis of *maslahah* and *mafsadah* in the context of *tawarruq munadzzam*, it demonstrates that juristic validity (*shihah fiqhiyyah*) does not necessarily equate to economic justice or systemic financial sustainability. Consequently, this research enriches the literature on Islamic economic law by proposing a conceptual model that distinguishes between *tawarruq* as a casuistic solution and *tawarruq* as a structured financial product design a distinction that remains relatibely underdeveloped in existing scholarship.

Methodology

This study employs a normative-doctrinal legal research design combined with a *maqasid-based* analytical framework (Güney, 2024). Rather than limiting the analysis to textual legality (*shihhah fiqhiyyah*), the research adopts a multi-layered evaluative model integrating three analytical levels:

1. Normative Validitiy Analysis. Examining the conformity of *tawarruq* contracts with classical *fiqh* requirements (*arkan* and *shurut al-bay'*) based on authoritative juristic sources (Avdukic & Asutay, 2025).
2. *Hilah-Darurah.* Evaluating whether tawarruq qualifies as a legitimate *hilah daruriyyah* by testing: a. the existence of genuine necessity (*darurah* vs *hajah*), b. temporality (exceptional vs structural use), c. proportionality (extent of deviation from ideal contracts) (Rafique et al., 2023).
3. *Maqasid* Impact Analysis. Assessing tawarruq through operational indicators derived from *al-daruriyyat al-khams (hifz al-din, al-nafs, al-'aql, al-mal, al-nasl)*. Each indicator is evaluated across three dimensions: a. Individual impact**, b.** Institutional structure**, c. s**ystemic economic consequence (Mergaliyev et al., 2021)

This layered approach enables the study to move beyond formal contract analysis and toward a governance-oriented *maqasid* evaluation, distinguishing between casuistic permissibility and structural legitimacy within contemporary Islamic finance.

Results and Discussion

1. The Concept and Typology of *Tawarruq* in *Fiqh Al-Muamalat*

Etymologically, *tawarruq* derives from the word *wariq*, which refers to silver or coined money (Qudamah, 1985). In the terminology of *muʿamalat*, *tawarruq* denotes a transaction in which a person in need of funds purchases a commodity on deferred payment and subsequently sells it to a third party for immediate cash, without any genuine intention to retain ownership of the commodity. More broadly,

tawarruq may also signify the act of seeking liquidity through various means, whether in the form of silver, gold, or other monetary instruments (Rahmalan & Ramli, 2022).

In *fiqh al-muʿamalat*, *tawarruq* is categorized as a sale-based transaction involving multiple parties, primarily intended to obtain cash liquidity through a series of *Shariʿah*-compliant sales (Aprianto & Nazilah, 2023). It has been developed as an alternative mechanism for individuals requiring immediate funds without violating the prohibition of riba, and it has become a significant instrument in modern Islamic finance to address liquidity needs that cannot be fulfilled through conventional interest-based lending (Ajamos et al., 2018). Reference is often made to Qur'an 2:280 as an indicative textual basis supporting permissibility:

وَاِنْ كَانَ ذُوْ عُسْرَةٍ فَنَظِرَةٌ اِلٰى مَيْسَرَةٍ ۗوَاَنْ تَصَدَّقُوْا خَيْرٌ لَّكُمْ اِنْ كُنْتُمْ تَعْلَمُوْنَ (البقرة:280)

Although the verse does not explicitly address *tawarruq*, it does not contain any prohibition against such transactions and is cited by some scholars as a general evidentiary support for permissibility. Fundamentally, *tawarruq* consists of sale transactions, which are lawful in Islam, with payment structured partly on a deferred basis and partly in cash (Fujiana Maulani Azizah, Syukri, 2023).

Nevertheless, several jurists analogize *tawarruq* to *bayʿ al-'inah*, a transaction that is widely regarded as impermissible. While both mechanisms are utilized to obtain cash liquidity, they differ substantively in transactional structure and *Shariʿah* validity (Rehman & Rehman, 2020). In *bay al-'inah*, a seller sells a commodity on deferred payment and subsequently repurchases the same commodity for immediate cash from the same counterparty. The term *'inah* linguistically refers to a tangible asset that ultimately returns to its original owner. According to the majority of Islamic legal scholars, such a transaction employs the commodity merely as a device for *hilah* a legal stratagem designed to circumvent the prohibition of riba (Zahara & Harryanto, 2019).

Conversely, *tawarruq* involves a third party in the resale of the commodity, thereby structurally separating the sale transaction from the ultimate objective of liquidity acquisition (Haswa, 2019). This structural distinction has led many contemporary jurists to differentiate the legal status of *tawarruq* from that of *bayʿ al-inah*, granting *tawarruq* a greater degree of legitimacy (Asni et al., 2023). The presence of a third party constitutes a crucial element in this differentiation. Nevertheless, debates concerning the legitimacy of *tawarruq* persist, particularly when the contract is systematically arranged in the form of *tawarruq munadzzam*, which may function as a form of *hiyal* (legal stratagem) within Islamic financial practice (Komarudin & Hidayatullah, 2021).

This view is consistent with Masruh's findings, in which he concludes that a sale transaction conducted on deferred payment, followed by the buyer's resale of

the commodity to another party for immediate cash whether at a higher or lower price is categorized as *tawarruq*. Based on exegetical interpretations of Qur'an 2:282, he argues that debt-based transactions within *tawarruq* are permissible, provided that they fulfill the stipulated legal conditions and are undertaken voluntarily with the intention of seeking divine approval (Masruh, 2025).

Within the corpus of *fiqh al-muʿamalat*, *tawarruq* is generally classified into two principal forms: *tawarruq al-fiqhi* (classical *tawarruq*) and *tawarruq al-munadzzam* (also referred to as *al-masrafi*) . Classical *tawarruq* refers to an individual practice in which a person purchases a commodity on deferred payment and subsequently sells it to a third party for cash without prior arrangement among the parties (Abozaid, 2022). Each contract stands independently and is not pre-structured or contractually linked. In contrast, *tawarruq munadzzam* involves systematic planning typically by a financial institution where the actors, transaction flow, and contractual objects are predetermined from the outset (Hashim et al., 2025)..

In this context, the potential for *hilah* arises not merely from the type of contract employed, but from the interconnection between intention and transactional design, which may substantively resemble a concealed interest-based financing mechanism. Consequently, the typological distinction of *tawarruq* directly affects its legal assessment, particularly when the contracts no longer operate independently but instead form part of a coordinated and integrated scheme. From a practical perspective, the mechanism of *tawarruq* may be differentiated into varying degrees of problematic nature, depending on the role and awareness of the seller, as well as the extent to which the buyer's need is exploited. The following table outlines the levels of problematic aspects within *tawarruq* practices:

Table 1 : Differentiating Characteristics of *Tawarruq* Mechanisms

No	Mechanism Type	Distinguishing Characteristics
1	*Tawarruq* Pattern Type 1	The seller has no knowledge of the buyer's condition or the underlying objective of the transaction
2	*Tawarruq* Pattern Type 2	The seller understands the buyer's condition and purpose but remains passive and shows no concern regarding the implications of the transaction.
3	*Tawarruq* Pattern Type 3	The seller fully understands the buyer's condition and objective and actively encourages or pressures the transaction in order to maximize personal profit.

Source: Compiled from various sources

The table above outlines the distinguishing characteristics of three forms of *tawarruq* mechanisms. First, in Type 1, the seller is unaware of the buyer's liquidity objective; thus, the transaction occurs naturally without prior coordination or

engineered intent. Second, in Type 2, the seller is aware of the buyer's purpose but adopts a passive stance, thereby creating space for potential moral hazard. Third, and most problematic, is Type 3, in which the seller or financial institution actively promotes *tawarruq* by exploiting the buyer's state of necessity (*darurah*) or urgent need. In this context, the primary issue of *tawarruq* does not lie in the formal validity of the sale contract itself, but rather in the engineering and structuring of the transaction that transforms emergency needs into an economic commodity. Accordingly, critiques of *tawarruq* are more appropriately directed at the contractual design and the collective intentionality of the parties involved, rather than at the contractual form in isolation.

2. Differences of Scholarly Opinions on *Tawarruq* within the Framework of Legal Gradation

Classically, *tawarruq* has been debate across the major schools of Islamic jurisprudence with a spectrum of legal assessment ranging from conditional permissibility to contextual reprehensibility (Aprianto & Nazilah, 2023). The Shafi'i school tends to uphold its formal validity so long as the pillars and conditions of sale are fulfilled, whereas segments of the Maliki and Hanafi traditions express caution due to the potential deviation from the substantive purpose of the contract (Anas, 1994; Qudamah, 1985). Within the Hanbali school, *tawarruq* may be deemed permissible in cases of genuine need, yet considered blameworthy when employed as a manipulative device to obtain liquidity contract (*Al-Muzani & Yahya*, 1998). This diversity of opinions indicates that *tawarruq* has never been ethically neutral; rather, it occupies a contested space between legitimate necessity and the risk of legal stratagem *(hillah)* (Ibrahim, 2003).

The significance of these juristic differences becomes even more pronounced in the modern context, where *tawarruq* is institutionally engineered within structured banking mechanisms (organized *tawarruq*) (I. Taymiyyah & Al-*Hal*im, 1995). While classical debates centered on individual intention and contractual independence, contemporary practice raises question concerning institutional design and systemic impact (Al-Ifta', 1996). The critical issues is no longer merely formal validity, but whether such structures genuinely realize the objectives of *Shari'ah (maqasid al-shari'ah*) or instead replicate conventional debt-based financing in an alternative legal form. Accordingly, the discourse on *tawarruq* must move beyond binary legal classifications toward a substantive *maqasid*-based of its structural and economic implication.

Thus, the divergence among scholars does not merely concern a binary classification of permissibility and prohibition; rather, it reflects differing levels of tolerance toward contractual engineering within the boundaries set by *maqasid al-Shariʿah.*

Table.2 : Scholarly Perspectives on *Tawarruq* within the Framework of Legal Gradatio (Daurah al-Hukm)

No	Scholar/ Authority	Legal Status	Basis of Argumentation
1	Majority of Jurists (Jumhur Ulama)	Permissible	*Tawarruq* is classified as a valid sale (*bay')* provided that its pillars and conditions are fulfilled and no explicit textual prohibition exists. Legal evaluation emphasizes formal contractual validity
2	Abd al-Aziz Ibn Baz	Permissible	Clearly distinguishes *tawarruq* from *bay al-'inah*. Considered a lawful means to facilitate liquidity needs, provided no engineered or binding arrangement is involved
3	Muhammad Ibn al 'Uthaymeen	Conditionally Permissible	Permitted as a credit-sale mechanism, on the condition that the commodity is genuinely sold to an independent third party and not structured as a disguised debt scheme.
4	Ibn Taymiyyah	Reprehensible (*Makruh*) may become permissible	Considered substantively similar to *bay al-'inah*, thus generally *makruh*. Permissibility may apply in cases of necessity, provided no element of riba exists, ownership is complete, and resale occurs after physical possession, in accordance with the Prophetic prohibition of selling what one does not possess.
5	Abu Hanifah	Prohibited (unless involving a third party)	Transactions resembling sale-and-buy-back are rejected as potential *hilah* for riba. However, involvement of an independent third party may render it permissible by severing reciprocal contractual linkage
6	Imam Al-Syafi'i	Permissible	Based on the principle *al-asl fi al-mu'amalat al-ibahah* (the default rule in transactions is permissibility), provided no explicit Qur'anic or authentic Prophetic prohibition applies

Source: Compiled from various sources

The table demonstrates that scholarly disagreement on *tawarruq* does not revolve solely around the formal validity of the sale contract, but reflects deeper methodological differences in assessing the relationship between contractual form and substantive objectives. The majority of jurists and Imam al-Shafi'i situate *tawarruq* within the principle of *al-asl fi al-mu'amalat al-ibahah*, thereby grounding legal evaluation in the fulfillment of contractual pillars and the absence of explicit textual prohibition. This approach prioritizes legal certainty and formal validity, operating on the assumption that the economic motives of the parties remain beyond legal scrutiny so long as no textual violation occurs.

In contrast, the positions of Ibn Baz and Ibn ʿUthaymin represent a moderate

approach that begins to integrate substantive considerations without entirely dismissing formal contractual validity. Both scholars permit *tawarruq* while firmly distinguishing it from *bay al-'inah*. Their permissibility is directed toward preserving public benefit particularly the fulfillment of liquidity needs while simultaneously preventing the misuse of contractual structures as instruments of concealed riba-based indebtedness.

Meanwhile, the perspectives of Ibn Taymiyyah and Abu Hanifah reflect a more critical orientation toward the potential distortion of Shari'ah objectives. Ibn Taymiyyah regards *tawarruq* as substantively proximate to *bay al-'inah*, thus generally *makruh* and only tolerated under strict conditions of necessity. His approach places maqasid al-Shari'ah especially the protection against riba and legal manipulation at the center of legal assessment, rather than relying solely on formal contractual compliance. Similarly, Abu Hanifah rejects *tawarruq* structured as sale-and-buy-back due to its resemblance to *hilah*, yet allows room for permissibility when an independent third party is involved, thereby structurally preventing the transaction from reverting to a bilateral debt relationship. From an analytical standpoint, the table illustrates that the legal assessment of *tawarruq* operates along a spectrum ranging from formalistic to substantive *maqasid*-oriented reasoning. The stronger the emphasis on Shari'ah objectives and the prevention of *hilah*, the stricter the conditions imposed on permissibility. This underscores that contemporary evaluation of *tawarruq* cannot be confined to the outward form of the contract; rather, it must incorporate analysis of transactional design and its broader economic implications.

3. *Hillah* in *Usul al-Fiqh* and Its Relevance of *Tawarruq*

The concept of *hilah* in *usul al-fiqh* constitutes a central key to understanding the controversy surrounding *tawarruq*. Ibn Taymiyyah defines *hilah* as a formal-legal device employed to attain an objective that is substantively prohibited (T. I. Taymiyyah, n.d.), whereas Al-Shatibi emphasizes the dimension of intention and its implications for the objectives of Shari'ah (*maqasid al-Shari'ah*) (Abu Ishaq, n.d.). Within this framework, *hilah* is generally classified into permissible and impermissible forms, with the principal criterion being the alignment between the intended objective and its legal consequences (Robbani, 2021). The notion of *hilah daruriyyah* (emergency stratagem) emerges when legal structuring is undertaken in response to necessity (*darurah*). In this sense, it may be understood as a solution devised to address exigent circumstances through legal arrangement (Robbani, 2021). However, *hilah daruriyyah* occupies an ambivalent position: it may be normatively acceptable when genuinely driven by necessity, yet becomes problematic when systematically engineered and repeatedly institutionalized.

The invocation of *hilah daruriyyah* as a normative justification requires strict limitations on the concept of *darurah* itself. In Islamic law, *darurah* is not

synonymous with ordinary need (*hajah*), but refers to a condition that poses a serious threat to life, essential wealth, or fundamental well-being (Mohamad et al., 2023). Absent *maqasid*-based control, claims of necessity risk being manipulated to legitimize practices that substantively contradict the values of justice and the protection of property (Smolo & Musa, 2020a). Accordingly, not every *hilah* is inherently manipulative, yet neither can every claim of necessity be engineered into a valid legal justification. The relevance of *hilah* to *tawarruq* lies in the capacity of Islamic legal theory to distinguish between a legitimate emergency solution and a systematic contractual design that reduces Shari'ah to a mere instrument of formal legitimation.

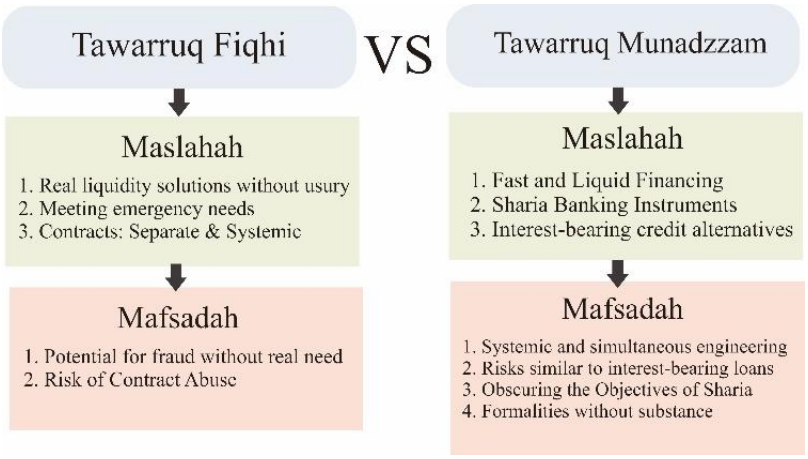
4. Evaluation of *Tawarruq* Contracts Based on *Maqasid al-Shariah*

Assessing *tawarruq* contracts from the perspective of *maqasid al-shari'ah* requires a shift from merely testing the formal validity of contractual elements toward examining their substantive impact on the realization of the fundamental objectives of Islamic law (Rizal, 2020). Within this framework, *maqasid* functions as a normative evaluative tool to determine the extent to which *tawarruq* contributes to the preservation of religion (*hifz al-din*), life (*hifz al-nafs*), and particularly wealth (*hifz al-mal*), as well as to the balance between the *maslahah* (benefit) and *mafsadah* (harm) it generates. *Tawarruq* may be considered aligned with the objectives of *Shari'ah* when it serves as an instrument for safeguarding wealth and sustaining individual livelihood without violating the prohibition of riba or producing structural injustice (Mohamad et al., 2023). However, when its implementation leads to debt dependency and obscures real economic activity, the orientation of *maqasid* becomes distorted

In this regard, *tawarruq* is often positioned as a form of *hilah daruriyyah* a temporary legal stratagem employed to avoid riba under conditions of urgent necessity. The benefit it produces is therefore limited and conditional (Amin & Hassan, 2022), as its purpose is not to generate new economic value but to function as an interim alternative when other Shari'ah-compliant financial instruments are unable to address liquidity needs. At the individual level, *tawarruq* may contribute to financial stability and prevent direct engagement in riba-based transactions. Nevertheless, such justification cannot be generalized, since *darurah* (necessity) in Islamic law is casuistic, temporal, and must be strictly assessed to prevent its transformation into a permanent legal legitimation of substantively problematic practices

The principal concern arises when *tawarruq* is implemented in the form of *tawarruq munadzzam* (organized *tawarruq*). In this structured model, the potential *mafsadah* tends to produce longer-term and more systemic consequences compared to the limited *maslahah* achieved

Picture.1 *Mafsadah* and *maslahah* of *Tawarruq* Contract



Source: Compiled from various sources

From a *maqasid* perspective, the distinction between classical fiqh-based *tawarruq* and organized *tawarruq* does not lie merely in their technical contractual structures. The *maslahah* derived from classical *tawarruq* remains contextual and restricted, functioning as a liquidity solution in situations of *hajah* (need) or *darurah* (necessity) without fundamentally altering market dynamics. Any resulting harm is generally individual rather than systemic.

In contrast, organized *tawarruq* as practiced within Islamic banking demonstrates a higher degree of contractual engineering. When measured against *maqasid al-shariʿah* particularly the preservation of wealth (*hifz al-mal*) and the principle of justice this model risks generating systemic harm in the form of legal formalism devoid of substantive Shai'rah objectives. Accordingly, the legitimacy of *tawarruq* cannot be determined solely by the fulfillment of its contractual pillars and conditions; rather, it must be evaluated through a careful assessment of the equilibrium between *maslahah* and *mafsadah* it produces. In this light, the following analysis further examines both classical *tawarruq* and organized *tawarruq* through the framework of *al-maqasid al-khamsah* (the five essential objectives of Islamic law).

Table.3 : Maqasid al-Shariʿah Analysis: Classical *Tawarruq* vs. Organized *Tawarruq*

Maqasid Indicator	Classical *(Fiqh*-Based*) Tawarruq*	*Organized Tawarruq* (*Tawarruq Munadzzom*)
Hifz Al-Din	Provides a non-riba alternative in urgent circumstances, thereby safeguarding individual religious commitment	Formally avoids riba; however, if reduced to contractual formalism, it risks diminishing the ethical substance of Shariʿah into mere legalism
Hifz Al-Nafs	Assists individuals in meeting urgent needs	Expands access to financing, but if it promotes debt-based consumerism,

	(e.g., medical expenses, emergency consumption)	it may create structured economic pressure
Hifz Al-'Aql	Relatively simple and transparent transaction, generally easy to understand	Complex and simultaneous structures are often not fully understood by customers, thereby reducing rational transparency
Hifz Al-Mal	Protects wealth from direct riba practices; risks remain individual and limited	May generate debt-based financing patterns resembling interest-based credit, leading to systemic financial harm
Hifz Al-Nasl	Limited social impact due to its individual and situational character	If dominant within financial institutions, may foster a long-term debt-financing culture that is economically unproductive

Source: Compiled from various sources

From the table above, it can be concluded through the framework of *al-daruriyyat al-khams* (the five essential objectives of Shari'ah) that the legitimacy of *tawarruq* cannot be determined solely by the formal validity of its contractual pillars and conditions. Rather, it must be assessed in light of its impact on the fundamental objectives of Shari'ah. Classical *tawarruq* tends to produce contextual and limited *maslahah*, particularly in safeguarding religion (*hifz al-din*) through the avoidance of riba, as well as preserving life and wealth (*hifz al-nafs* and *hifz al-mal*) in situations of urgent need. Because it is conducted individually and not systematically engineered, its potential *mafsadah* remains relatively contained and does not significantly affect the broader economic structure.

Conversely, organized *tawarruq* in contemporary banking practice demonstrates a higher degree of structural complexity. Although it formally complies with juristic requirements, its organized and simultaneous structure risks shifting the orientation of *maqasid* from substantive realization to procedural formalism. In terms of *hifz al-mal*, for example, organized *tawarruq* financing may lead to debt accumulation resembling conventional credit systems, thereby rendering the protection of wealth ambiguous. Similarly, regarding *hifz al-din*, if the contract functions merely as a legal device to avoid the label of riba without internalizing values of justice and transparency, then *maqasid* is reduced to a normative justification rather than a substantive objective. Accordingly, the debate on *tawarruq* should not be confined to the binary question of permissibility, but should advance toward evaluating whether the practice genuinely realizes the objectives of Shari'ah or instead generates systemic harm within the Islamic financial industry.

5. The Position of The National Sharia Council in The Tawarruq Dilemma

The stance of the National Sharia Council of the Indonesian Council of Ulama (DSN-MUI) reflects a serious attempt to balance the idealism of *maqasid* with the realities of modern financial practice (Maulida & Ali, 2023). In this regard, the DSN does not merely assess contractual validity in formal terms, but also considers the systemic impact and substantive objectives of *tawarruq* practices (Pitluck, 2024). Its rejection of organized *tawarruq* is therefore grounded in the principle of *sadd al-dhara'i'* (blocking the means), namely, preventing pathways that may lead to prohibited practices, particularly disguised riba (Shaham, 2020).

This rationale aligns with the 2009 resolution of the *Majma' al-Fiqh al-Islami*, which explicitly rejected organized *tawarruq* on the grounds that it produces greater *mafsadah* than *maslahah*. Organized *tawarruq* was viewed as potentially generating fictitious transactions, debt accumulation without real economic basis, and a deviation of Islamic financial institutions from the principles of justice and productivity that constitute the primary objectives of Shari'ah (Mergaliyev et al., 2021). Thus, the DSN-MUI's rejection is not an absolute repudiation of *tawarruq* per se, but rather a rejection of its systemic institutionalization in a manner that resembles conventional debt-based financing mechanisms.

Nonetheless, the DSN-MUI does not entirely foreclose legal flexibility. Limited space remains for classical *tawarruq* (*tawarruq al-fiqhi*), particularly within the context of Shari'ah-compliant commodity trading, as reflected in DSN-MUI Fatwa No. 82/DSN-MUI/VI/2011 (DSN-MUI, 2011). Within this framework, the permissibility of *tawarruq* is contingent upon strict conditions, including genuine ownership of the traded asset, independence of third parties, and rigorous supervision of transactional flows and objectives. This approach demonstrates the DSN's effort to preserve legal flexibility without compromising *maqasid*, by clearly distinguishing between *tawarruq* as a casuistic liquidity solution and *tawarruq* as a potentially distortive financial business model. The normative foundation of the DSN's cautious stance can also be traced to the views of classical scholars, including Izz al-Din ibn Abd al-Salam, who emphasized the fundamental maxim that legal rulings must be oriented toward the realization of benefit and the prevention of harm (Al-Salam, 1999):

ما أدى إلى الحرام فهو حرام

"whatever serves as a means to the commission of a prohibited act is itself prohibited"

This legal maxim reinforces the principle that a mu'amalah mechanism cannot be detached from its ultimate consequences and implications. In situations where the potential *mafsadah* (harm) is predominant, the National Sharia Council of the Indonesian Council of Ulama (DSN-MUI) also adheres to the maxim articulated

by Al-Suyuti (As-Suyuthi, n.d.):

درء المفاسد أولى من جلب المصالح

"Preventing harm takes precedence over attaining benefit".

Nevertheless, the DSN recognizes the existence of *mashaqqah* (genuine hardship) faced by Islamic banking institutions, particularly in relation to liquidity constraints. In this context, the Council refers to the opinion of Ibn al-Humam, who permitted deferred sale arrangements as an alternative when interest-free loans are unavailable, with the objective of avoiding riba. This opinion indicates that *tawarruq* is understood as an emergency mechanism to avoid riba, rather than as an ideal financing instrument.

Based on this framework, the DSN concludes that although *tawarruq* arises from a pressing need (*hajah*) approaching necessity, Islamic financial institutions may charge a service fee (*ujrah*) provided that it does not originate from an interest-based lending practice. However, this permissibility remains restricted by the objectives and substantive nature of the contract. This position aligns with the legal maxim articulated by Muhammad Mustafa Al-Zuhayli (Asy-Syubaili, 1426):

العبرة في العقود بالمعاني والمقاصد لا بالألفظ و المعاني

"In contracts, consideration is given to meanings and objectives, not merely to words and formal structures"

Through this approach, the DSN maintains that contemporary *tawarruq* practices in Islamic banking do not fully realize the genuine objectives of sale contracts, as they are primarily oriented toward debt creation rather than real economic exchange. Consequently, *tawarruq* cannot yet be categorized as a purely genuine sale contract, even if it formally satisfies contractual requirements.

Thus, the position of the DSN-MUI may be understood as a form of policy-based *ijtihad* that places *maqasid al-shariʿah* as its primary evaluative parameter. Faced with the dilemma between liquidity needs and the prevention of disguised riba, the DSN adopts a normatively cautious approach by restricting *tawarruq* within controllable limits. This stance affirms that the sustainability of the Islamic financial system cannot rely solely on contractual validity, but must be grounded in the alignment of objectives, consequences, and the broader ethical framework of Islamic economics

6. Analytical Synthesis: Tawarruq as *Hilah Daruriyyah* within the Framework of *Maqasid Al-Shariah*

A synthesis of the fiqh discourse, *maqasid* analysis, and institutional practice demonstrates that *tawarruq* cannot be simplistically classified within a binary of lawful versus unlawful. From a normative fiqh perspective, *tawarruq* is valid when

the pillars and conditions of sale are fulfilled. However, such formal validity does not automatically legitimize its use as a permanent instrument within the modern Islamic financial system (Smolo & Musa, 2020b). Accordingly, *tawarruq* is more appropriately positioned as a *hilah daruriyyah* a temporary solution that may be tolerated under measurable and urgent necessity, rather than as a foundational architecture of Islamic financing (A et al., 2023).

The principal problem of *tawarruq* lies not in its contractual structure process, but in its institutionalization. When systematically engineered, repeatedly implemented, and standardized as a banking product, *tawarruq* loses its emergency character and transforms into a debt-based financing mechanism that substantively approximates interest-based practices. From the perspective of *maqasid al-shariʿah*, this condition reflects a failure to distinguish between *wasilah* (means) and *ghayah* (ends). A means originally intended to preserve wealth (*hifz al-mal*) may instead undermine it through excessive debt accumulation and minimal linkage to the real economic sector. Therefore, the permissibility of *tawarruq* must be understood as casuistic, temporal, and conditional. It may only be justified where there exists a genuine and pressing need (*hajah sahihah*), where no more authentic Shari'ah-compliant alternatives are available, and where it is not implemented systematically. Absent these conditions, *tawarruq* risks becoming a form of legal formalism that obscures the objectives of Shari'ah. The implications of this synthesis for Islamic economic law are significant. First, it necessitates a shift from a purely legal-formal approach toward *maqasid*-based regulation. The assessment of contractual validity must extend beyond textual compliance to include evaluation of objectives, economic impact, and systemic risk. Overreliance on formal validity alone risks generating legal formalism that weakens normative integrity and public trust in the Islamic financial system.

Second, *tawarruq* should be treated as a last-resort mechanism rather than a permanent substitute for product innovation. Excessive dependence on *tawarruq* reflects stagnation in the development of profit-and-loss sharing instruments and real-sector-based financing. By positioning *maqasid* as the regulatory compass, the success of Islamic financial products should be measured not merely by contractual validity, but by their contribution to distributive justice, economic stability, and social welfare. Accordingly, *tawarruq* retains a place within the Islamic economic legal system, but as a controlled exceptional instrument. Positioning it as a *hilah daruriyyah* does not amount to total rejection; rather, it represents an effort to maintain coherence between legal texts, Shari'ah objectives, and economic realities. The future of Islamic finance does not lie in increasingly sophisticated contractual engineering, but in the commitment to subordinate all financial innovation to the principles of justice and public welfare that constitute the spirit of *maqasid al-shari'ah*.

Conclusion

Based on the foregoing analysis, it may be concluded that the *tawarruq* contract possesses relatively strong juristic legitimacy within the classical tradition, particularly when practiced individually and under conditions of pressing need. However, when institutionalized systematically through organized *tawarruq* schemes (*tawarruq munadzzam*), the practice demonstrates a tendency to deviate from the substantive objectives of Shai'rah. The predominance of *mafsadah* including the disconnection between the financial and real sectors, excessive debt accumulation, and potential customer exploitation renders the practice problematic from a *maqasid al-shari'ah* perspective.

The position of the National Sharia Council in rejecting organized *tawarruq* may thus be understood as an application of the principle of *sadd al-dhara'i* (blocking the means) and institutional prudence, rather than an absolute rejection of the *tawarruq* concept itself. Accordingly, this article affirms that *tawarruq* can only be sustained as a limited, contextual, and non-structural *hilah daruriyyah*. The normative implication of this finding is the necessity of strengthening *maqasid*-based regulation to guide the development of more authentic, sustainable, and justice-oriented Islamic financial products in alignment with the objectives of Islamic economic law

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