VOLUME 7, NO. 2, NOVEMBER 2024

REVIEW OF ISLAMIC ECONOMICS AND FINANCE

Journal homepage: https://ejournal.upi.edu/index.php/rief/index

Tawarruq as the Solution of Shariah Non-Compliance in *Ar-Rahn* Practice: How Does It Work?

Ariza Qaita*, Meldona, Nanik Wahyuni

UIN Maulana Malik Ibrahim Malang, Indonesia

Article Info

Paper Type:
Conceptual Paper

Received: October 11, 2024
Revised: November 02, 2024
Accepted: November 25, 2024
First Available online: November 30, 2024
Publication Date: November 30, 2024

Qaita, A., Meldona, M., & Wahyuni, N. (2024). Tawarruq as the solution of shariah non-compliance in ar-rahn practice: How does it work?. *Review of Islamic Economics and Finance*, *7*(2), pp. 73-88.

Abstract

Purpose *– This research aims to elaborate the concept of tawaruq as an alternative solution to the problem of sharia non-compliance in rahn transactions in Indonesia. Many people are interested in rahn transactions as financing that can help them to get their liquidity needs. However, in practice, rahn transactions are considered to contain elements of sharia non-compliance, namely taking ujrah based on the loan amount so that it is equated with usury.*

Methodology *- This research used qualitative approach with literature review. The data used is secondary data in the form of journal articles, books and other documents published during the period 2015 to 2024.*

Findings *- The research results showed that the use of Tawarruq as a solution for sharia non-compliance in rahn transactions is still controversial. There are scholars who consider it permissible and there are those who prohibit it. Tawarruq can be used as a solution in rahn transactions, but its implementation must be in accordance with predetermined limitations. DSN MUI as a fatwa institution in Indonesia should review the implementation of Tawarruq in sharia financial institutions, both legally and technically.*

Keywords: *Islamic Pawnshop; Rahn; Sharia Non Compliance; Tawarruq*

* Corresponding author: qanitaariza99@gmail.com

1. INTRODUCTION

The development of Islamic financial institutions in Indonesia is not limited to the banking sector. Non-bank Islamic financial institutions such as pawnshops are also in great demand by the public as an alternative in obtaining financing. In 2022, the market share of Islamic pawnshops increased to 14.75% compared to 2021 which only reached 12.97% (OJK, 2022). This showed that Islamic pawnshops continue to make progress in controlling market share. The types of financing that dominate in Islamic pawnshops are *rahn* or sharia pawn itself. *Rahn* transactions have actually been widely implemented traditionally by the community because there are still many Indonesian people who do not have access to the formal financial sector (Puspitaningrum, 2021). *Rahn* transaction can be one of the capital solutions for small entrepreneurs, especially those who have difficulty accessing financing from formal financial institutions such as banks (Rizki et al., 2023).

Even so, institutionally, the number of Islamic pawnshops in Indonesia is still quite limited. In general, pawnshop companies are divided into government and private pawnshop companies. As of December 2022, there are only three Islamic private pawnshop companies that have official permits. Meanwhile, the government pawnshop company, PT. Pegadaian still positioning Islamic pawnshops as Sharia Business Units (UUS) (OJK, 2022). Islamic pawnshops as UUS make the institution still very tied to its parent company, namely conventional pawnshops. This triggers several problems in sharia pawn practice, such as the lack of a separate accounting recognition standard for the transaction so that it can trigger fraud (Jati & Adnan, 2018).

In addition, the aspect of sharia compliance on the *rahn* transaction or sharia pawn is also still controversial. This is related to the ijarah fee charged (*Mu'nah* maintenance). *Mu'nah* cost imposed on sharia pawns are often not in accordance with the provisions of the DSN MUI Fatwa (Yusuf & Muchran, 2018). DSN MUI Fatwa No: 25/DSN-MUI/III/2002 states that the amount of ijarah costs should not be determined based on the amount of the loan. But in practice, the cost of ijarah is calculated based on classification *Marhun Bih* (debt). This makes the transaction *rahn* contains the potential for usury because of taking advantage of debt (Saharan et al., 2021). In fact, Islamic financial institutions have the principle of avoiding usury in their operational activities (Subakti & Jannah, 2022; Juliana et al., 2023; Abdullaev et al., 2023). According to Tarmizi, transactions containing usury, even though they are based on the agreement of both parties, are still prohibited and their acquisition is considered illicit assets (Firmansyah et al., 2022; Kurniasih et al., 2021; Herawan et al., 2022). One of alternative solution to avoid that is to apply the concept of *tawarruq* based *rahn*.

Tawarruq has been popularly used as a basic contract in Islamic financial institutions in Malaysia such as for mortgage financing, credit cards, deposit accounts and others (Hasmad & Alosman, 2022). *Tawarruq* is a buying and selling transaction between two parties that is carried out non-cash and the buyer then resells the goods to a third party in cash with the aim of obtaining money or capital (Rahman, 2021). *Tawarruq* can be used as a solution in *rahn* transactions to avoid the elements *qard jarra naf'an* (benefiting from debt) which is considered a form of riba (Saharan et al., 2021). Implementation *tawarruq* as a solution to sharia non-compliance in *rahn* transactions has been widely applied in Malaysia. Application *tawarruq* at *rahn* allows financial institutions to continue to earn profits not on the basis of debt or the amount of loans provided (*Marhun Bih*). Indonesia has not implemented the concept of *tawarruq* in Islamic financial institutions, including in the implementation of *rahn* transactions (Abdillah et al., 2020), although it is seen as an alternative to overcome the problem of sharia non-compliance in the transaction.

Research from Bahari et al. (2022) Studying about the application *tawarruq* in *rahn* transactions by comparing between banking and cooperative financial institutions. However, the research is still focused on its application in Malaysia. Research from Abdillah et al. (2020) compare between the *tawarruq* in Indonesia and Malaysia but only saw its application in Islamic banking and did not specifically discuss its application in *rahn* transactions. This study is different from previous studies related to the discussion of *rahn* practices in Islamic pawnshop institutions in Indonesia and the proposed implementation model for that transaction. This research aims to elaborate the concept of *tawarruq* as an alternative solution to the problem of sharia non-compliance in *rahn* transactions in Indonesia. The results of the study can be a suggestion related to the implementation of *tawarruq* which is still controversial.

2. LITERATURE REVIEW

2.1 Sharia Pawnshop

The forerunner of pawnshop institutions in Indonesia has actually appeared since the Dutch colonial era with the establishment of Van Leening Bank on August 28, 1746 with an initial capital of 7,500,000 (Tarantang et al., 2019). Until now, the pawnshop institution still exists as one of the state-owned companies. Along with the development of sharia-based business and financial institutions, pawnshop institutions also launched a Islamic pawnshop business unit in 2003 in collaboration with Bank Muamalat Indonesia (Mulazid, 2016). Islamic pawnshops have several important goals, namely to provide financial services in accordance with Islamic principles, play a role in increasing financial inclusion in Indonesia, can play a role as a driver of the economy through disbursed financing and encourage increased public awareness and understanding related to Islamic finance (Afista et al., 2023).

In fact, Islamic pawnshops also emerged in the background of public awareness to avoid the practice of usury. Islamic pawnshops have a different concept from conventional pawnshops. In conventional pawnshops, only one agreement is applied, namely debts and receivables with collateral for movable objects that are only acessoir or additional agreements. Thus, conventional pawnshops can not practice fiduciary or detain collateral. In contrast to Islamic pawnshops which involve two contracts, namely qard and ijarah so that the detention of collateral is an absolute requirement to allow the collection of storage service fees (Rafsanjani, 2021).

Not only related to the treatment of collateral, Islamic pawnshops and conventional pawnshops also have differences in several aspects. First, the legal basis of Islamic pawnshops is the Qur'an, Hadith, Ijma' and Fatwa DSN MUI. Meanwhile, the legal basis for conventional pawnshops is the Civil Code. Second, the determination of the calculation of fees at Islamic pawnshops is calculated every 10 days. Meanwhile, in conventional pawnshops, it is calculated per 15 days. Third, in the case of goods auctioned due to default, the rest of the auction proceeds that are not taken by the customer within a period of one year will belong to a conventional pawnshop. Meanwhile, in Islamic pawnshops, the rest of the auction proceeds that are not taken will be distributed to zakat institutions (Suryati et al., 2021).

2.2 *Rahn*

Rahn linguistically it means to hold. Meanwhile, in terms of *rahn* is an object that has economic value that is used as collateral for debt and if the person who owes it cannot pay it at the time of maturity, then the collateral can be sold to pay it off (Sa'diyah, 2019). According to Hanafiah

scholars, *rahn* is to make an item as collateral for receivables that can be used as a means of payment for the receivables, either in whole or in part. According to Malikiyah, collateral in *rahn* is binding and not limited to goods but can also be in the form of certain benefits. Meanwhile, according to Shafi'iyah and Hanabilah, *rahn* is to make the owner's goods as collateral for debts and can be used as payers of debt if the owner is unable to pay off the debt (Menne et al., 2022). Legal basis of *rahn* found in the Qur'an and Hadith, namely:

"*And if you are on your way you do not get a writer, then there should be a security guard to be held. But if some of you believe in others, let the trustee fulfill his mandate and fear Allah his Lord. And do not hide your testimony, for whoever conceals it is indeed unclean in his heart. Allah knows what you are doing*." (Qs. Al-Baqarah: 283)

"*From Aisha, the Prophet PBUH actually bought food cashless from a Jew by pawning his armor*". (HR. Bukhari)

In addition, the legal basis of the *rahn* transaction in Indonesia, it is also regulated in several regulations, namely Fatwa No. 25/DSN-MUI/III/2002 concerning *Rahn*, Fatwa No. 26/DSN-MUI/III/2002 concerning Gold *Rahn*, Fatwa No. 68/DSN-MUI/III/2008 on *Rahn* Tasjily and OJK Regulation No. 31/POJK.05/2016 concerning Pawn Business (Kurniawan, 2021). As in other contracts, *rahn* also has harmony and conditions that must be met. Pillars of *rahn* are people who are contracted (*rahin* and *Murtahin*), collateral (*Marhun*), debt (*Marhun Bih*) dan sighat (Sauqi, 2020). Meanwhile, the conditions attached to the parties to the contract include puberty, reasoning and legal competence. The condition of collateral is that it has an economic value, is clear, the legal property of the person who owes it, is not related to the rights of others, can be handed over both physically and beneficially, and has a value commensurate with the amount of debt. Debt terms are rights that must be returned, clearly both quality, quantity and maturity time and can be repaid with guarantees. Meanwhile, the condition of sighat or ijab kabul cannot be associated with certain conditions (Rofi, 2021).

The law of *rahn* transaction is possible. However, in the transaction there are several special provisions. First *Murtahin* have the right to withhold *Marhun* until *rahin* can pay off all debts. Second, in essence, *Marhun* and the benefits remain *rahin* and *Murtahin* is not allowed to use it except with *rahin's* permission. Third, storage and maintenance costs remain an obligation *rahin* as the owner of the goods. Fourth, the amount of administrative costs and storage costs of *Marhun* must not be based on the loan amount or *Marhun Bih* (Lestari & Hanifuddin, 2021). In the case of default, collateral can be sold through a sharia auction to cover debts. If there is excess funds from the sale, then it belongs to the *rahin*. Likewise, if there is a shortage of funds, it is still an *rahin's* obligation (Usanti & Shomad, 2022).

2.3 *Tawarruq*

Terminology of *tawarruq* introduced by Imam Hanbali in his book, namely *Syarh Muntaha al-Iradat* or known as *Daqaiq Awla an-Nahyu lii Syarhi al-Muntaha* (Abdillah et al., 2020). *Tawarruq* is a derivation of the word *wariq* which means silver (Mufid, 2021). Basically, this transaction is indeed carried out with the aim of getting cash. According to AAOIFI, *tawarruq* is the process of purchasing an item at a predetermined price through a mark-up sales transaction and reselling it to a third party at a spot price to get cash (Siddiky et al., 2022). In other words, *tawarruq* is a transaction of purchasing an item on the basis of deferred payment and then selling it in cash to someone other than the original seller at a lower price. The difference between the first purchase price and the second sale price is a component of the cost that must be incurred by the person who wants to get the funds.

Tawarruq consists of two types, namely *classical tawarruq* or *Tawarruq Fiqhi* (non organized tawarruq) and *contemporary tawarruq* or *tawarruq munadzdzam* (organized tawarruq) (Siddiky et al., 2022). *Classical tawarruq* in practice is done individually and there is no prior planning with the parties involved. Differences in the two types *tawarruq* is based on the delivery of merchandise, sales proceeds and the existence of prior arrangements. In *tawarruq munadzdzam*, the customer usually does not take ownership of the goods and is not involved in their sale (Z. Ahmad et al., 2020). While in *classical tawarruq*, the customer will receive the item directly and have the option to own it and take it for himself or to sell it to another party (Samsuri, 2015).

Things that are also worried about *tawarruq munadzdzam* is the possibility of a pre-arranged agreement between the parties to the transaction. *Tawarruq munadzdzam* involving four parties, namely sellers, Islamic financial institutions, customers and buyers (Amin et al., 2022). Islamic financial institutions buy commodities from sellers, then sell them to customers with a mark up price. Then, customers ask Islamic financial institutions to resell the commodity in cash to get funds. Islamic financial institutions act as representatives of customers to sell their commodities to the final buyer. In this structure, Islamic financial institutions have two positions, namely as sellers in the first transaction and as customer agents to resell in the second transaction. The mark-up price on the first transaction will be an advantage for Islamic financial institutions.

In its implementation, *tawarruq munadzdzam* still reaping criticism. There are three aspects that are criticized in *tawarruq munadzdzam*. First, the buying and selling transactions carried out by the parties who make the contract are not oriented to the ownership of goods but want money. Second, the presence of a third party or buyer in the transaction *tawarruq* is only a mere deception to legalize buying and selling transactions. Third, the element of deception occurs when an Islamic financial institution is also appointed as a sales agent representing customers (Asni & Forward, 2018). Despite these criticisms, currently *tawarruq munadzdzam* is being popularly applied as a scheme in the products of Islamic financial institutions in the world such as in the Middle East and Europe (Samsuri, 2015).

3. METHODOLOGY

This research is a qualitative research with a literature review method. The data used is secondary data that comes from various sources such as journal articles, books and other documents related to the research theme. The sources of literature used in the research are limited to literature published during the period 2015-2024 in the form of national and international publications.

4. RESULTS AND DISCUSSION

4.1. Tawarruq Discourse in Sharia Financial Institutions

Tawarruq is one of the most popular transactions used in Islamic financial institutions in the world. However, the legal aspect of the transaction is still controversial because it is considered *hiyal* or *hilah ribawi* (riba strategy). Ibn Taymiyah and Ibn Al Qayyim forbade it because of the real purpose of the *tawarruq* transaction is not to obtain goods, but to get cash by exchanging these goods. Ibn Qayyim even held the view that *tawarruq* is a fraudulent practice against Allah's sharia (E. F. Ahmad et al., 2017). Basically, the concept of *tawarruq* has similarities with the *bai' 'inah* which is prohibited. *Bai' 'inah* is a sale and purchase agreement carried out between two people where the seller promises to buy back the asset that he has sold to the buyer (Mardani, 2021). In essence, both *bai' 'inah* and *tawarruq* both are oriented towards cash and not the ownership of

goods. However, the difference is the commodity that is the object of the transaction in *'inah* will return to the original seller. While in *tawarruq*, the commodity is sold to a third party. This is one of the reasons why some scholars allow *tawarruq* transactions.

Tawarruq introduced as an alternative to *'inah*. *'Inah* is prohibited because the commodity is resold to the first seller. On the other hand, *tawarruq* consists of three parties. If the second transaction is made to a third party, Ibn Qudama, a classical Hanbali scholar approves this transaction. Furthermore, the jurists of madzhab Hanbali declared their abilities because they were not included in the *hilah ribawi*. Ibn al-Abidin, a prominent scholar of Hanafi also reiterated the permissibility of the *tawarruq* contract as a solution to the *'inah* contract (Roslan et al., 2020). Even so, there are still scholars who still disagree because they see *tawarruq* remains as a form of *'inah* and both contain elements of riba (E. F. Ahmad et al., 2017).

Basically, *tawarruq* includes three forms. First, individuals who need cash buy a commodity on credit and then secretly sell it and hand it over to a third party. Second, when a person who needs cash asks for a loan from a seller and the seller offers to sell him a commodity on credit, then the buyer sells the commodity to get cash at a certain time. Third, the *tawarruq* similar to the second one, only in this case the seller resells the goods. The first two forms mentioned above are agreed upon by legal experts and are not the subject of debate. While the third form raises the opposite view from legal experts (Roslan et al., 2020).

Legal confusion in *tawarruq* occurred in line with the development of these transactions which began to involve financial institutions as an intermediary medium. This became popular as the *tawarruq munadzdzam*. Basically *tawarruq* is an independent contract that allows customers to sell the commodities they have purchased without any intervention. This happens in the *classical tawarruq* scheme. However, in the *tawarruq munadzdzam* contract which is widely implemented by Islamic financial institutions, there is a wakalah contract where the bank is appointed as a representative to resell commodities that have been purchased previously. The existence of wakalah in the contract is considered a trick. People who make *tawarruq* transactions does not require the existence of a wakalah contract, but the contract is added to achieve effectiveness cost and smooth liquidity (Asni & Forward, 2018).

According to the view of modern law, the form of *tawarruq* which is acceptable and permissible is *Tawarruq Fiqhi* (*classical tawarruq*). The International Council of the Islamic Fiqh Academy in its 15th conference stated that *classical tawarruq* are allowed in principle. In 2006, AAOIFI decided that the application of *tawarruq* in contemporary Islamic banking can be done with strict control and restrictions (Roslan et al., 2020). The majority of scholars argue that its abilities depend on the provision that the first seller is not involved in the resale of the commodity being the object, there is no prior arrangement between the seller and the final buyer, and the customer receives cash directly from the final buyer. Meanwhile, the practice of *tawarruq* transaction which is popular today tends to be included in the category of *tawarruq munadzdzam*, so the International Council of the Islamic Fiqh Academy must revise its decision and prohibit the use of *tawarruq* in its 17th conference. The ban is mainly due to the fact of the possibility of pre-arrangement between the seller (financier) and the final buyer (E. F. Ahmad et al., 2017).

Ibn al-Musayyib said that the *tawarruq* transaction is prohibited if the first seller is involved in the second sale. This indicates that the *tawarruq* transaction may be allowed if the first seller is not involved in the second transaction (Asni, 2022). But in the application of *contemporary tawarruq*, its implementation is carried out in an organized manner so that the Islamic financial institution as the first seller will be directly involved in the second sale to avoid risks for customers. Even, sometimes there is a provision in *tawarruq* transactions that customers as buyers are

prohibited from taking commodities during the financing period because they will still be resold. This is not justified by Hanafiyah scholars. Customers must be given full access to ownership of the goods they have purchased (Mohd Nor et al., 2020). Ownership of the purchased assets is considered an important element in the sale and purchase contract so that this provision must be eliminated so that the contract carried out remains in accordance with sharia provisions.

In essence, the main problem is not about sharia compliance in *tawarruq* transactions. It is about the limitations of sharia imposed by scholars in their use (Z. Ahmad et al., 2020). In a sharia perspective, failure to fulfill the proper order of contracts can void the contract, such as the sale of an asset by an Islamic financial institution before the Islamic financial institution actually buys it from the trader (Ali & Hassan, 2020). *Tawarruq* transaction can be allowed as long as it refers to the applicable provisions and limitations as *classical tawarruq* which is allowed by the ulama. Here are some of the provisions that must be applied in *tawarruq* transactions:

a. Commodities may not be resold to the original seller.
b. Customers are given access to own commodities that have been purchased.
c. There is no prior arrangement between the Islamic financial institution as the seller and the final buyer.
d. The second sale is carried out after the commodity is handed over first with the customer.
e. The second sale by the Islamic financial institution as the customer's representative is carried out after the Islamic financial institution as the seller actually buys it from the merchant.

4.2. Application of *Tawarruq* in *Rahn* Transactions in Malaysia

Tawarruq transaction is one of the dominating transaction models in the products of Islamic financial institutions in Malaysia, including in sharia pawn transactions or *rahn*. Application *tawarruq* in *rahn* transactions has been implemented in Malaysia since 2020 as a solution to minimize the risk of sharia non compliance which is feared to lead to riba (See & Link, 2022). Sharia compliance risks in *rahn* transactions occurs due to the provision of taking fees for the maintenance of collateral based on the amount of the financier or *Marhun Bih*. Use *tawarruq* allowing Islamic financial institutions to still be able to get profits but not based on that. In this transaction, *marhun* is only positioned as collateral.

Related to controversy *tawarruq* which is considered *hiyal* or *hilah ribawi*, sharia experts in Malaysia have their own perspective. They look at the concept of *tawarruq* not as *hiyal* (strategy) but as *makharij* (way out of the obstacle). This is seen as more in accordance with the terminology of *hiyal* or *hiyal mashru'ah*. Because basically, *hiyal* divided into two namely *hiyal* which has a positive connotation (*hiyal mashru'ah*) and *hiyal* which has a negative connotation (*hiyal ghairu mashru'ah*) (Syahmi et al., 2022). The Shariah Advisory Board of the Central Bank of Malaysia considers *tawarruq* as a permitted transaction because *tawarruq* is a trade contract and its abilities are based on the views of the Hanafi, Hanbali and Shafi'i madhhabs.

Profit earned from *tawarruq* transactions considered in line with sharia. They also consider that the combination of contracts *rahn* and *tawarruq* not Included *qard jarra naf'an* or *Bai' and Salaf* (sales and debt) so that can be used as an alternative to sharia non-compliance in *rahn* transactions (Saharan et al., 2021). The scheme of *tawarruq* in *rahn* transactions in Malaysia covers the following stages:

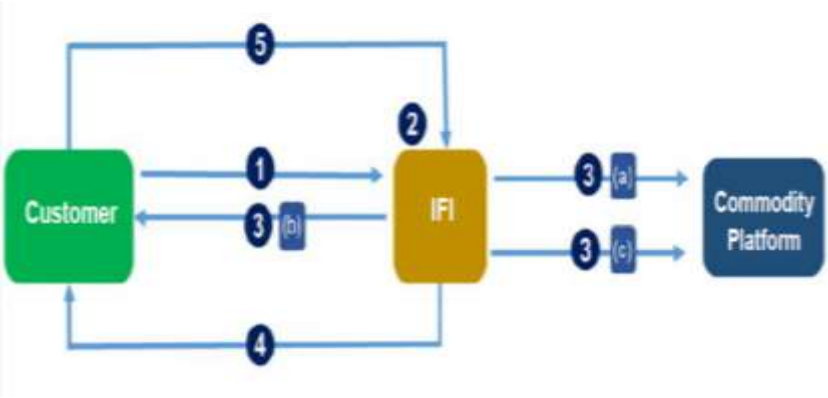

Figure 1. *Tawaruq* scheme in *rahn* transactions in Malaysia
Source: (Saharan et al., 2021)

1. Customers go to Islamic financial institutions to apply for *rahn* financing with collateral.
2. Islamic financial institutions will assess or conduct an assessment of collateral to determine the amount of financing that can be submitted by customers.
3. Implementation of the bargain transaction
   a. Islamic financial institutions buy commodities from suppliers through a commodity trading platform, namely the Bursa Suq al-Sila.
   b. Islamic financial institutions sell these commodities to customers according to the approved amount of financing plus the amount of profit determined by the Islamic financial institution for a certain period of time with deferred payments.
   c. The customer resells the commodity to the commodity trading platform in cash by involving an Islamic financial institution as an agent.
4. The proceeds of the sale are disbursed to customers after the bargain transaction is completed.
5. The Customer will make payments for the principal amount and profits to the Islamic financial institution in installments. If the customer defaults at the time the financing is due, then the Islamic financial institution can auction the collateral submitted by the customer.

Implementation *tawarruq* in *rahn* transactions in Malaysia has received support from the Sharia Council. New scheme of *rahn* has been applied to several Islamic financial institutions, both banks and cooperatives that provide *rahn* financing. There are several reasons that are the basis for the Shariah Council for the implementation of the *tawarruq* contract in *rahn* transactions in Malaysia. First, they consider that the contract is included in darurah. They assume the existence of *tawarruq* can help Islamic banking in the world to develop its limited business. The role of *tawarruq* to help increasing liquidity in Islamic banking is considered an urgent matter. Second, they allow *tawarruq* based on one of the rules of jurisprudence that the original law of everything in muamalah is permissible unless there is a postulate that prohibits it (Samsuri, 2015).

4.3 *Tawarruq* and Sharia Non-Compliance in *Rahn Transactions* in Indonesia

Indonesia and Malaysia use different measures in dealing with sharia non-compliance in *rahn* transactions. Malaysia creates a new policy system by adopting the concept of *tawarruq*. This changes the scheme of *rahn* transaction which initially involved a combination of several contracts, namely *qard*, *wadiah yad dhamanah*, *rahn* and *ijarah* (Baharudin et al., 2023). Meanwhile, the practice of *rahn* in Indonesia still associates these transactions with *ijarah*

contracts (Muhammadi et al., 2023). Islamic financial institutions are still profit-oriented institutions and want profits in the transactions carried out. On the *rahn* transaction, Islamic financial institutions are allowed to take fees or *ujrah* for his services in the custody and maintenance of collateral. *Ujrah* is an amount of money exchanged for products or services (Dwihapsari et al., 2019). Fatwa No. 25/DSN-MUI/III/2002 also stated that the *ujrah* should not be based on the amount of the loan. This is the aspect of sharia non-compliance in *rahn* transactions because the *ujrah* is determined based on debt classification (*marhun bih*). Then, Malaysia applied *tawarruq* as a solution to these problems. The Malaysian Shariah Council considers *tawarruq* as *makharij* or a way out so they allows the practice of *tawarruq* in Islamic financial institutions.

The National Sharia Council (DSN) of MUI in Indonesia has a different view on the application of *tawarruq*. *Tawarruq* has not been allowed to be used as a product of Islamic financial institutions and can only be practiced in commodity trading transactions on the stock exchange in accordance with the Fatwa of DSN-MUI No. 82/DSN-MUI/VIII/2011 about Commodity Trading Based on Sharia Principles on the Commodity Exchange (Aprianto & Nazilah, 2023). Even though *tawarruq* has been widely applied in Islamic financial institutions globally, but Indonesia still limits the ability of these transactions. There are at least several reasons underlying the decision of the Sharia Council. First, follow the results of the 17th conference of the International Council of the Islamic Fiqh Academy which prohibits the practice of *tawarruq munadzdzam* which is widely applied in Islamic financial institutions. This is because *tawarruq munadzdzam* is considered only limited to transactions on paper to get cash. Second, one of the transaction conditions in muamalah maliyah must be transparent and there are no elements of fraud or syubhat (Samsuri, 2015).

Tawarruq transaction is considered not to meet these provisions. Moreover, impermissibility *tawarruq* in Indonesia based on *Sadz dzara'i*. That is an effort to hinder something that can be a way to *dzari'ah* (damage). Thus, the practice of *tawarruq* can be allowed in muamalah activities if *dzari'ah* can be eliminated (Suganda, 2015). Even more, *tawarruq* transactions actually also has several positive sides such as helping someone who needs liquidity in urgent conditions, increasing the competitiveness with conventional Islamic banking and helping to develop Islamic financial instruments in meeting the transaction needs of the community. Even, the risk level of *tawarruq* transactions is considered to be minimal compared to other transactions such as *mudharabah* and *musharakah* (Dasar et al., 2020). *Tawarruq* transaction have benefit for helping liquidity needs without making transactions at conventional banks (Rizwan, 2018). This is in line with the reason that some countries allow *tawarruq* transactions by using the argument of dharurah (Aziz & Ahmad, 2018).

Basically, *tawarruq* transactions can be allowed if it refers to *classical tawarruq* or *Tawarruq Fiqhi*. In fact, this transaction can be a must if it is done with the aim of staying away from prohibited transactions to get necessities of life and is applied in line with applicable restrictions (Rizal, 2020). But today, *tawarruq* transactions introduced as an alternative is often not in line with the concept of *tawarruq* which should be as mentioned in the discussion of fiqh (Rosele et al., 2016). Thus, what needs to be done in the implementation *tawarruq* as a solution to sharia non-compliance in *rahn* transactions is to establish a provision or procedure and determine limits that do not violate sharia provisions. In this case, DSN MUI as a fatwa institution in Indonesia needs to conduct a review related to *tawarruq* transactions and looking at it from the side of benefits, one of which is in increasing the competitiveness of Islamic financial institutions (Samsuri, 2015).

Assessment of use *tawarruq* as a solution to sharia non-compliance in *rahn* transactions is carried out in two aspects, namely from the legal side and from the technical side. From the legal side, there are several arguments that can be taken into consideration, that are (Rizal, 2020):

1. The Qur'an
   "*And Allah has legalized buying and selling and forbids usury*." (Qs. Al-Baqarah: 275)
   The term buying and selling in the verse has a general meaning. This includes all types and forms of buying and selling. Meanwhile, *tawarruq* is also included in the type of sale and purchase contract.
2. Hadith
   "*From Abi Hurairah and Abi Sa'id, they said that the Prophet PBUH had appointed a man (as his deputy) in Khaibar. Then he came to the Prophet with a janib date (a date of good quality). The Prophet asked him, 'Are all the dates in Khaibar like this?' The man replied, 'We took a bushel of these dates (janib) with two bushels of al-jam dates' (dates of low quality) and two bushels of janib dates with three bushels of al-jam dates', and the Messenger of Allah said, 'Do not do this, but sell al-jam dates' with dirhams, and then you buy janib dates with the dirham*." (HR. Bukhari no. 2201 & 2202, Muslim no. 4082)
   The hadith indicates that the Prophet showed *makharij* (the way out) of riba by making valid buying and selling transactions. This postulate can be a reference for the permissibility of buying and selling transactions to avoid riba even though the purpose is to get cash and is carried out based on the provisions of the sharia outlined.
3. Fiqh Rules
   "*The original law of everything in muamalah is permissible unless there is evidence that shows its haram*."
   Tawarruq *transactions* as part of muamalah maliyah can be allowed on the basis of this rule. Those who support his abilities are not required to show evidence because it is in harmony with the law of origin. On the other hand, those who reject his abilities must show the evidence of his haram because he refutes the original law.

In addition to the study of the legal aspect, regulations also need to be formed in the technical implementation of *tawarruq* transactions to ensure the conformity of the process with sharia provisions. Technically, the *tawarruq* transactions scheme in *rahn* can follow the following stages:

a. The customer goes to an Islamic financial institution to apply for *rahn* financing by submitting collateral.
b. Islamic financial institutions will assess or conduct an assessment of collateral to determine the amount of financing that can be submitted by customers.
c. Islamic financial institutions buy commodities from the commodity trading market, namely Bursa Berjangka Jakarta (BBJ) or Bursa Komoditi Derivatif Indonesia (BKDI).
d. Islamic financial institutions must wait until the delivery of commodities is carried out so that the ownership is in the hands of Islamic financial institutions.
e. Islamic financial institutions sell these commodities to customers according to the approved amount of financing plus the amount of profit determined by the Islamic financial institution for a certain period of time with deferred payments.
f. Islamic financial institutions deliver commodities to customers and give them access to full ownership of the commodities that have been purchased.
g. The customer resells the commodity to another party. In this case, customers are given the freedom of choice in selling their commodities in cash.

h. Islamic financial institutions can be involved as agents to sell customer commodities without excessive intervention and only function like an investment manager to provide advice to customers.
i. Islamic financial institutions must ensure that the commodity is not resold to the original seller.
j. After the *tawarruq transaction* is carried out, the proceeds of the sale can be disbursed to the customer.
k. The Customer will make payments for the principal amount and profits to the Islamic financial institution in installments according to the agreed period.
l. If the customer defaults at the time the financing is due, then the Islamic financial institution can auction the collateral submitted by the customer.

The implementation of tawarruq in *rahn* transactions in Indonesia still requires further study regarding the permissibility of such transactions according to Islamic muamalah law and its effectiveness in facilitating community transactions to avoid usury. In addition, cooperation is needed between Islamic pawnshops and commodity exchanges as facilitators of goods procurement in *tawarruq*-based *rahn* transactions. The Sharia Council as a fatwa institution and financial practitioner can consider the concept of *tawarruq* as a solution to avoid the potential for usury from *rahn* transactions that have been taking place in Islamic financial institutions in Indonesia.

5. CONCLUSION

Rahn transactions are in great demand as one of the financing for customers who need cash. However, in its implementation, *rahn* transactions are considered to contain elements of sharia non-compliance. This is because the determination of the cost of *mu'nah* or *ujrah* for collateral maintenance services is determined based on the classification of *marhun bih* (loan amount). The imposition of fees that are profits for Islamic financial institutions is considered riba because it is based on debt. To overcome these problems, the Malaysian state applies the integration of the concept of *tawarruq* in *rahn* transactions. However, Indonesia has not implemented this alternative because the concept of *tawarruq* is still controversial.

Some scholars prohibit *tawarruq* because they consider it as *hilah ribawi* (strategy of usury) because the buying and selling transactions carried out are not for the purpose of owning goods but to get cash. Meanwhile, there are also scholars who do not prohibit the practice of *tawarruq*, but its implementation must be adjusted to the provisions of the permissible *tawarruq*, namely *classical tawarruq* or *tawarruq fiqhi*. In addition, the *tawarruq* concept also has a positive side, namely helping customers who need funds in urgent conditions and helping to increase the competitiveness of Islamic financial institutions with the development of financial instruments. The implementation of *tawarruq* can be used as a solution to non-compliance with sharia in *rahn* transactions with the imposition of certain restrictions, namely commodities cannot be resold to the original seller, customers are given access to own the commodities that have been purchased, there is no prior arrangement between Islamic financial institutions as sellers and final buyers, the second sale is carried out after the commodity is handed over first to the customer, the second sale by the Islamic financial institution as the customer's representative is carried out after the Islamic financial institution as the seller actually buys it from the trader.

DSN MUI as a fatwa institution in Indonesia should conduct a review of the ability of *tawarruq* transactions in Islamic financial institutions. This research can be an advice for stakeholders, both sharia councils and practitioners of Islamic financial institutions to consider the implementation of *tawarruq* in the *rahn* transactions that are distributed. The formation of adaptive

regulations is needed to overcome the problem of sharia non-compliance in *rahn* transactions such as the application of *tawarruq* while maintaining the limits permitted by sharia.This research is still a conceptual study. Further research can explore the application of *tawarruq* as a solution to sharia non-compliance in *rahn* transactions by involving the opinions of sharia experts or other stakeholders who are experts in the field.

REFERENCES

Abdillah, M. Y., Rabi, M. E., & Firli, N. (2020). Tawarruq Application In Islamic Banking: A Comparative Study Between Malaysia And Indonesia. *Al-Arbah: Journal of Islamic Finance and Banking*, *2*(1), 17–32. https://doi.org/10.21580/al-arbah.2020.2.1.5540

Abdullaev, A., Juliana, J., & Bekimbetova, G. (2023). Investigating the Feasibility of Islamic Finance in Uzbekistan: Survey Results. *Review of Islamic Economics and Finance*, *6*(1), 63-74.

Afista, F., Kholisha, N., Salsabila, T., & Gunawan, A. (2023). Sejarah Berdirinya, Fungsi dan Tujuan Pegadaian Syariah Sebagai Penggerak Perekonomian di Indonesia. *Jurnal Ilmiah Ekonomi Dan Manajemen*, *1*(4), 324–332.

Ahmad, E. F., Shihama, M., Mohamad Tarmizi, N. A., Saidu Mudi, S. M., Djama, S. I., & Muneeza, A. (2017). Tawarruq as a Product for Financing within the Islamic Banking System: A Case Study of Malaysian Islamic Banking System. *International Journal Of Management and Applied Research*, *4*(1), 31–43. https://doi.org/10.18646/2056.41.17-004

Ahmad, Z., Zahir, F., Usman, A. M., Muneeza, A., & Mustapha, Z. (2020). An Exploratory Study On The Possibility Of Replacing Tawarruq Based Islamic Banking Products Using Other Alternatives. *International Journal of Management and Applied Research*, *7*(2), 147–164. https://doi.org/10.18646/2056.72.20-011

Ali, M. M., & Hassan, R. (2020). Survey on Shari'ah non-compliant events in Islamic banks in the practice of tawarruq financing in Malaysia. *ISRA International Journal of Islamic Finance*, *12*(2), 151–169. https://doi.org/10.1108/IJIF-07-2018-0075

Amin, H., & Hassan, M. K. (2022). Millennials' acceptability of tawarruq-based ar-*rahn*u in Malaysia. *International Journal of Ethics and Systems*, *38*(3), 510–529. https://doi.org/10.1108/IJOES-09-2021-0170

Amin, H., Suhartanto, D., Ali, M., Ghazali, M. F., Rizal, H., & Razak, D. A. (2022). Maqasid-based Consumer Preference Index for Tawarruq Personal Financing (TPF). *International Journal of Islamic Economics and Finance (IJIEF)*, *5*(1), 1–30. https://journal.umy.ac.id/index.php/ijief/article/view/11823%0Ahttps://journal.umy.ac.id/index.php/ijief/article/download/11823/6779

Aprianto, N. E. K., & Nazilah, I. R. (2023). Analysis of the Concept of Tawarruq in the Perspective of Sharia Economic Law. *El-Uqud: Jurnal Kajian Hukum Ekonomi Syariah*, *1*(1), 47–59. https://doi.org/10.24090/eluqud.v1i1.7718

Asni, F. (2022). The difference of Shariah risk potential and Shariah risk in personal financing products based on tawarruq munazzam contracts practised in Malaysia. *Qualitative Research in Financial Markets*, *14*(1), 95–118. https://doi.org/10.1108/QRFM-01-2021-0013

Asni, F., & Sulong, J. (2018). Non-Ethical Elements in Tawarruq Munazzam Product for Islamic Housing Financing In Malaysia. *International Journal of Academic Research in Business and Social Sciences*, *8*(12), 1013–1019. https://doi.org/10.6007/ijarbss/v8-i12/5149

Aziz, S. A., & Ahmad, R. (2018). Konsep Al-Darurah Dalam Akad Tawarruq Menurut Maqasid Al-Kulliyah: Satu Kajian Awal. *UMRAN - International Journal of Islamic and Civilizational Studies*, *5*(2), 1–13. https://doi.org/10.11113/umran2018.5n2.171

Bahari, N. F., Shafii, Z., & Hanefah, M. M. (2022). Legitimizing Ar-*Rahn*u Through Tawarruq: What Practitioners Have to Say. *Global Journal Al-Thaqafah*, *12*(2), 67–81. https://doi.org/10.7187/gjat122022-5

Baharudin, Z. N., Mohd Zailani, N. N., Abd Latif, N. A., Yahaya, M. H., & Md Ismail, M. A. (2023). Analysis of Ar-*Rahn*u Financing Implementation in Cooperative Banking. *International Journal of Academic Research in Business and Social Sciences*, *13*(7), 47–57. https://doi.org/10.6007/ijarbss/v13-i7/17674

Dasar, M. H. M., Ahmad, A. A., & Ghani, N. A. R. N. A. (2020). Garis Panduan Kontrak Derivatif Berasaskan Syariah. *Journal of Contemporary Islamic Law*, *1*(2), 65–76. https://doi.org/10.26475/jcil.2020.5.2.06

Dwihapsari, R., Suryana, & Juliana. (2019). Customer Preferences in Selecting the Pawn Transaction in Pegadaian Syariah Padasuka. *KnE Social Sciences*, *3*(13), 231–241. https://doi.org/10.18502/kss.v3i13.4207

Firmansyah, F., Nurasyiah, A., Utami, S. A., Hermawan, R., Muzakki, M. K., & Hardiansyah, R. (2022). Views on the Utilization of Non-Halal Assets. *Review of Islamic Economics and Finance*, *5*(1), 1–12. https://doi.org/10.17509/rief.v5i1.44837

Hasmad, N., & Alosman, A. R. (2022). An Overview Ofthewide Extent of Tawarruq Implementationin Malaysia Islamic Banking Products. *Al- Qanatir International Journal of Islamic Studies*, *26*(1), 37–55. https://al-qanatir.com/

Herawan, M. I. C., Juliana, J., Nasim, A., & Firmansyah, F. (2022). Sharia Compliance: Consumer Perspective In E-Commerce Practices. *TSARWATICA (Islamic Economic, Accounting, and Management Journal)*, *3*(2), 58-75.

Jati, F. K., & Adnan, M. A. (2018). Evaluasi Kebutuhan Pernyataan Standar Akuntansi Keuangan (PSAK) Untuk Industri Gadai Syariah. *Reviu Akuntansi Dan Bisnis Indonesia*, *2*(1), 75–91. https://doi.org/10.18196/rab.020122

Juliana, J., Nurhaliza, F., Hermawan, R., & Marlina, R. (2023). Bank Syariah Indonesia Customer Loyalty after Merger: Analysis of Trust, Service Quality, Religiosity, and Corporate Image. *Jurnal Ekonomi Syariah Teori dan Terapan*, *10*(1).

Kurniasih, I., Juliana, J., Manoarfa, H., & Marlina, R. (2021). Analisys Of Sharia Principle Adherence With Balance Scorecard Method In Wanoja Hijab Sharia Business. *TSARWATICA (Islamic Economic, Accounting, and Management Journal)*, *3*(1), 13-19.

Kurniawan, M. (2021). *Bank & Lembaga Keuangan Syariah (Teori dan Aplikasi)*. Penerbit Adab.

Lestari, Y. J., & Hanifuddin, I. (2021). Dasar Hukum Pegadaian Syariah Dalam Fatwa DSN-MUI. *Jurnal Hukum Ekonomi Islam (JHEI)*, *5*(2), 144–163.

Mardani. (2021). *Hukum Kontrak Keuangan Syariah Dari Teori ke Aplikasi*. Penerbit Kencana.

Menne, F., Antong, A., Amri, N. F., & Febrianti, A. (2022). Peran Pembiayaan *Rahn* Terhadap Pendapatan Pegadaian Syariah. *Jurnal Manajemen STIE Muhammadiyah Palopo*, *8*(2), 235–243. https://doi.org/10.35906/jurman.v8i2.1208

Mohd Nor, A. H., Shaharuddin, A., Zakaria, M. Z., Salleh, A. Z., Mohammad Sahid, M., Abdullah Thaidi, H. 'Azeemi, Ab Rahman, M. F., Ab. Aziz, M. R., & Ab. Jalil, M. A. (2020). Rectification of Uqud Al-Fasidah (Void Contracts) in Islamic Financial Institutions. *Journal of Fatwa Management and Research*, *20*(1), 53–63. https://doi.org/10.33102/jfatwa.vol20no1.4

Mufid. (2021). *Kaidah Fikih Ekonomi dan Keuangan Kontemporer Pendekatan Tematis dan Praktis*. Penerbit Kencana.

Muhammadi, F., Razif, N. F. M., & Rahim, R. A. A. (2023). Architecting Hybrid Contract in al-*Rahn*: A Comparative Study between Malaysia and Indonesia. *Indonesian Comparative Law Review*, *6*(1), 62–76. https://dx.doi.org/10.18196/iclr.v6i1.20699

Mulazid, A. S. (2016). *Kedudukan Sistem Pegadaian Syariah*. PrenadaMedia Group.

OJK. (2022). *Statistik Industri Keuangan Non Bank Syariah 2022*.

Puspitaningrum, R. (2021). Empirical Evidence of the Impact of Islamic Financial Inclusion on Human Welfare of Maqashid Sharia Perspective in Indonesia. *Review of Islamic Economics and Finance*, *4*(1), 39–50. https://doi.org/10.17509/rief.v4i1.35601

Rafsanjani, H. (2021). Perbedaan Praktek Gadai Konvensional dengan Syariah : Studi Kasus Pada Perum Pegadaian Cabang Kebomas Gresik. *Jurnal Studi Hukum Islam*, *10*(1), 1–13. http://journal.um-surabaya.ac.id/index.php/Maqasid/article/view/14488

Rahman, T. (2021). *Fiqih Muamalah Kontemporer*. Academia Publication.

Rizal, M. (2020). Hukum Akad Al-Tawarruq Al-Munazzam Menurut Sarjana Kontemporari: Satu Sorotan Literatur. *Al-Takamul Al-Ma'Rifi*, *3*(1), 86–96.

Rizki, D., Wijanarko, F. N., & Murti, T. W. (2023). *Rahn* Contract Construction as Micro, Small and Medium Enterprises (MSME) Capitalization Solutions in the Halal Industry Sector. *Indonesian Journal of Interdisciplinary Islamic Studies*, *5*(3), 165–182.

https://doi.org/10.20885/ijiis.vol.5.iss3.art3

Rizwan, M. (2018). Instrumen Komoditas Murabahah dalam Manajemen Risiko Kecairan. *Jurnal Khazanah Ulum Perbankan Syariah (JKUPS)*, *2*(2), 87–101. http://ojs.sties-imamsyafii.ac.id/index.php/jkupsjournal/article/view/101%0Ahttp://ojs.sties-imamsyafii.ac.id/index.php/jkupsjournal/article/download/101/89

Rofi, M. S. (2021). Al-Tamwil Al- Mautsuq Bil-*Rahn* Menurut Fatwa DSN Nomor: 92/DSN-MUI/IV/2014. *Fastabiq : Jurnal Studi Islam*, *2*(2), 107–118.

Rosele, M. I., Ariffin, M. F. M., Ramli, M. A., & Isamail, M. Z. (2016). Pendekatan Ijtihad Kontemporari Dalam Isu Semasa di Malaysia. *Jurnal Islam Dan Masyarakat Kontemporari*, *13*, 53–66.

Roslan, M. F., Bamahriz, O., Muneeza, A., Chu, J., Mustapha, Z., & Ahmad, M. Z. (2020). Application of Tawarruq in Islamic Banking in Malaysia: Towards Smart Tawarruq. *International Journal of Management and Applied Research*, *7*(2), 104–119. https://doi.org/10.18646/2056.72.20-008

Sa'diyah, M. (2019). *Fikih Muamalah II Teori dan Praktik*. Unisnu Press.

Saharan, M. S., Jamaludin, M. F., Adzahar, K. A., & Wagiran, N. (2021). Tawarruq As An Alternative to Ar-*Rahn*u Structure. *FBM Insights*, *4*, 40–44.

Samsuri, A. (2015). Membincang Konsep Tawarruq Dalam Dunia Perbankan Dewasa Ini. *Universum: Jurnal Keislaman Dan Kebudayaan*, *9*(1), 29–36.

Sauqi, M. (2020). *Fiqih Muamalah*. CV. Pena Persada.

Siddiky, S., Swandaru, R., & Muneeza, A. (2022). Can micro-enterprises use Tawarruq Fardi Financing (TFF) for fund raising? *PSU Research Review*. https://doi.org/10.1108/PRR-08-2021-0047

Subakti, H., & Jannah, N. (2022). Implementation of Sharia Principles in Murabahah Contracts at KCP Bank Muamalat. *Review of Islamic Economics and Finance*, *5*(1), 69–78. https://doi.org/10.17509/rief.v5i1.44450

Suganda, A. D. (2015). Aanlisis Teori Bai' Tawarruq dalam Muamalah Maliyah. *Jurnal Islamiconomic*, *6*(1), 1–14.

Suryati, S., Nasution, N. S. A., & Wiyono, W. M. (2021). Komparasi Pegadaian Syariah Dengan Pegadaian Konvensional Berdasarkan Hukum Indonesia. *Cakrawala Hukum: Majalah Ilmiah Fakultas Hukum Universitas Wijayakusuma*, *23*(2), 9–15. https://doi.org/10.51921/chk.v23i2.168

Syahmi, M. I., Mohamad, M. T., & Ramli, M. A. (2022). Experts' views on ḥiyal in Malaysian Islamic banks: the case of tawarruq-based deposit products. *ISRA International Journal of Islamic Finance*, *14*(3), 289–302. https://doi.org/10.1108/IJIF-02-2021-0042

Tarantang, J., Astuti, M., Awwaliyah, A., & Munawaroh, M. (2019). *Regulasi dan Implementasi Pegadaian Syariah di Indonesia*. Penerbit K-Media.

Usanti, T. P., & Shomad, A. (2022). *Transaksi Bank Syariah*. PT. Bumi Aksara.

Yusuf, M., & Muchran. (2018). Perlakuan Akuntansi Pembiayaan Ijarah Dalam *Rahn* Berdasarkan PSAK 107 di PT. Pegadaian Syariah Cabang Hasanuddin. *Jurnal Ar-Ribh*, *1*(2), 87–93.