



The Concept of Hiwalah And Dhomman In Islamic Teachings: a Comprehensive Study

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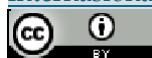
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ABSTRACT

The essence of Islam is not only focused on the purity of worship but it must also be focused on social morality. This is by the Al-Qur'an and Hadith as the basis of Islamic teachings where much attention is paid to the 2 important things above. And one of the things that are paid attention to, especially in matters of social justice, is regarding debts and receivables which contain the concepts of hiwalah and dhomman, where these concepts are still not widely known by the public. This research aims to describe this. The method used is qualitative with a literature study approach and then concluded descriptively. The results of the research show that the concept of Hiwalah in Islamic teachings is the transfer of debt carried out by someone to another person on condition of willingness, agreement, the existence of collateral, there is an agreement between the two parties and there is a time limit so that the transfer of debt is legal, and it is impossible to be free from responsibility. The concept of Dhaman in Islam is to combine dzimah with others in the collection, whether with souls, debts, or other material substances while still fulfilling the pillars and conditions such as the existence of dhamin, madmun lah, madmun 'anhu, madmun bih, and lafadz so that the law can allow.

INTRODUCTION

Nowadays, many people have wrong perceptions about the nature of a person's Islam. Often a Muslim focuses his shahihan and piety on matters of worship only. Meanwhile, on the other hand, he sometimes ignores problems related to muamalah. This is proven by the number of people who think that the worship they perform is the most correct, while other people are wrong. Even though worship is included in fiqh where there are many differences of opinion among scholars, mu'amalah is included in the social realm where it means how to interact, help each other, work together, and other things (Murjazin, Nurhuda, & Aziz, 2023).

And it is not surprising that the Prophet SAW himself reminded many of his friends through his hadiths regarding how they should socialize so as not to injure or indirectly hurt the hearts of other people, especially neighbors who are next to our own house. So socializing with other people is not only related to neighbors regarding how to share food, or having to remind each other of goodness, but more than that, it is also regulated regarding the laws of borrowing and borrowing debts (Nurhuda, 2023b).

Debts themselves are a problem that often occurs in everyday life, where people who need them borrow money from people who already have a lot of things. It's just that sometimes in the process undesirable things happen, such as there being no witnesses who saw the debt and receivable incident, no one writing down the agreement regarding when it should be returned, and sometimes problems also arise when the person who owes the debt disappears without leaving a trace, thus causing problems. Capital owners find it difficult to trace his footsteps (Nurhuda, 2021).

From the various problems mentioned above, the author is interested in studying debts and receivables, where this theme is an issue that is included in the realm of jurisprudence and is devoted to the mu'amalat chapter which is based on 2 main sources of Islamic law, namely the Al-Qur'an and hadith (Nurhuda, 2023a). In the development of debt and receivables in Islam, the focus was again on two important studies which are often referred to as hiwalah and dhomman. The research aims to discuss the concepts of Hiwalah and Dhomman in Islamic teachings.

LITERATURE REVIEW

Before taking the research title above, the author has studied several relevant studies, including the first research from Novanda Eka with the title Implementation of the Hiwalah Agreement in Islamic Economic Law in Sharia Banking with the result that Sharia banking practices related to hiwalah facilities are generally to assist suppliers in obtaining cash capital so that they can continue their business activities. This research is certainly different from what the author researched, where the study discusses the concept of hiwalah in Sharia banking specifically, while the research that the author made is related to hiwalah in general, so the object of study is different, even though they have similarities in the concept aspect (Nurazizah, 2020).

The second research from Asmuni Mth with the title Theory of Compensation (Dhaman) in the Perspective of Islamic Law, and results that in

general dhaman arises because darar physically, darar maliyah, and darar are very likely to occur outside of physical and property, such as defamation. However, there are darar whose qualifications are not easily nominalized by compensation in the form of money, for example. Therefore, the amount of compensation that must be paid is not determined based on the text, so this issue returns to the al-'urf that applies in society. The research above, with what the author has made, has similarities, namely regarding the concept of dhomman, It's just that the difference lies in the focus of the study where the research above discusses the background to the emergence of dhomman while what the author examines discusses dhomman in a comprehensive manner (Mth, 2007).

METHODOLOGY

The method used in this research is a literature study with a qualitative approach, which means uncovering all phenomena that exist naturally, especially primary data regarding hiwalah and dhomman. Meanwhile, secondary data comes from books, journals, websites, or other relevant research (Nurhuda, 2022). After being collected using documentation techniques, it is then analyzed descriptively and concluded with a full sense of responsibility (Nurhuda et al., 2023).

RESEARCH RESULT & DISCUSSION

Definition, Propositions, Pillars, Provisions, and Laws of Hiwalah

1. Understanding Hiwalah

Among the forms of muamalah regulated in Islamic teachings is a problem (debt transfer), or in Sharia terms it is called al-hiwalah. This debt transfer has been justified by the Shari'a and has been practiced since the time of the Prophet Muhammad SAW until now. Al-hiwalah linguistically means al-Intiqal (moving), pronounced, Hāla, anil, ahdi, (moving, turning away, turning away from a promise), while in terms of terms, the definition of al-Hiwalah according to Hanafiyyah scholars is moving (al-Naqlu) prosecution or collection from the dependents of the party who owes the debt (al-Madin) to the dependents of al-Multazim (who must pay the debt, in this case, is al-Muhil, alaihi). This is different from al-Kafalah, which means alDham-mu (combining dependents) in prosecution or collection, not al-Naqlu (moving). Therefore, with the existence of al-hiwalah, according to the agreement of the ulama, the party who owes it (in this case the meaning is al-Muhil) is no longer billed (Az-Zuhaili, 2010)

2. Hiwalah argument

وَتَعَاوَنُوا عَلَى الْبِرِّ وَالْتَّقْوَىٰ وَلَا تَعَاوَنُوا عَلَى الْإِثْمِ وَالْعُدُوْنَ وَاتَّقُوا اللَّهَ إِنَّ اللَّهَ شَدِيدُ الْعِقَابِ

It means: "And help you in (doing) righteousness and piety, and do not help in committing sins and transgressions. And fear Allah, verily Allah is very severe in punishment." (QS Al-Maidah: 2).

The hawalah contract is a form of mutual assistance which is a manifestation of the spirit of the verse. The foundation of Hawalah sharia: Abi Hurairah, that Rasulullah SAW said:

عَنْ أَبِي هُرَيْرَةَ رَضِيَ اللَّهُ عَنْهُ أَنَّ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ مَطْعُنُ الْغَنِيِّ ظُلْمٌ فَإِذَا أَتَبْعَ أَحَدُكُمْ عَلَى مَلِيٍّ فَلَيَبْتَغِ (رواه بخاري مسلم)

Meaning: "From Abu Khurairah Radhiyallah Anhu, that Rasulullah Shallahu Alaihi wa Sallam said, 'delaying debt payments by rich people is injustice. If one of you is asked to transfer a debt to a rich person, let him accept it. (HR Bukhari-Muslim).

3. **Terms and Conditions for Debt Assignment (hiwalah):** (Al-Bugha, 2017)
 - a. The willingness of a muhil, namely a person who delegates his debt to another party.

Muhil has the right to pay his debts in any direction he wishes. Meanwhile, the muhtal's rights are under the muhil's responsibility so they cannot be transferred except with the muhtal's blessing. Some argue that Muhtal's approval is not required because he is obliged to accept the transfer based on the words of the Prophet Muhammad (Nurhuda & Aini, 2021). "And if one of you transfers (the payment of his debts) to someone rich, then let him follow." The right is the payment of receivables, both from the debtor himself or from the person who replaces him. The muhal'alaih's approval is not required because Rasulullah SAW did not mention it in the hadith. The muhil has set the muhtal in his position in requesting payment of rights so that the consent of the person who is obliged to pay the rights is not required (Hasan & Nurhuda, 2023). Meanwhile, according to scholars from the Hanafi school of thought and al-Ashtakhiri from the Shafi'i school of thought, the blessing of the muhal 'alaih is also required.

- b. Consent from the debtor whose rights are transferred (muhtal). Muhtal is a debt provider who is willing to transfer the rights to his receivables to someone else to be repaid. The hiwalah contract must be approved by the debtor or muhtal. Because he is the owner of the rights/receivables which will be transferred using a hiwalah agreement from the person who owes the debt (muhtil) to the person who bears the debt (muhal 'alaih). The obligation to pay off the debt remains with the debtor who requested the transfer of the debt to another person, not with the debt guarantor (muhal 'alaih). Therefore,

the transfer of debt (hiwalah contract) is not valid unless with the approval of the muhal 'alaih (who bears the debt). This is because debts borne by other people can vary in the speed and slowness of repayment. If the debt guarantor (muhal 'alaih) does not agree (to pay off the muhil debt). The debt owner is at risk of paying off his receivables because the debt guarantor (the recipient of the debt transfer) may behave badly in paying off the debt. The willingness (heart) of the person to bear the debt repayment (muhal 'alaih) is not required by the hiwalah contract. Because, this willingness only belongs to the person who is overflowing with debt (muhil), not the person who is carrying the debt (muhal 'alaih). Apart from that, the party who delegates the debt (muhil) is the person who has the right to pay off the debt himself or delegate it to someone else. In this case, the party who owes the debt (muhtal) does not need to ask for the consent of the party to whom the debt is owed because he is obliged to pay the debt to him. The party to whom the debt is owed must also not delay payment of the debt which is their obligation. If he delays it, he may be subject to punishment and censure.

- c. The existence of the debt (assigned) remains under collateral (guaranteed repayment)

This means that the debt transferred still has a guarantee to be repaid by the party who bears it. This collateral provision is like the value of the debt on the goods lent and is like the price of the merchandise after the khiyar (warranty) period. Just as the value of the goods remains after the guarantee period, the price of the goods during the warranty period must also remain the same, whether the transaction is carried out or the warranty period has expired. So the value of the debt must be guaranteed until repayment.

- d. There is an agreement to cover the debt of the party transferring the debt (muhil) by the party who bears the repayment of the debt (muhal 'alaih) in terms of its type, type, and time limit.

If the conditions for transferring the debt are met, the person transferring the debt (muhil) is free from responsibility for paying the debt. Because hiwalah is a contract to transfer debt repayment obligations carried out based on need and mutual assistance. Therefore, there must be an agreement between the two people who owe the debt, namely the debt transferor and the debt guarantor, as is the case in loan contracts.(Murjazin, Nurhuda, Susanti, et al., 2023). If there is a change in rights, such as an increase in the value of rights, this is not permitted. This means that the party who delegates the debt (muhil) is free from the obligation to pay the debt to the debtor if the four hiwalah conditions are met. The debt of the muhil (the party who owes the debt) then becomes the responsibility of the muhal 'alaih (insurer of the outstanding debt) because the muhil is deemed to have exchanged something for which he is responsible to the muhal 'alaih (insurer of the outstanding debt). Furthermore, the party

who bears the debt (muhal 'alaih) is obliged to pay off the debt that has been delegated to him.

4. Law in Hiwalah

If the transfer of debt is legal, then it is impossible to be free from responsibility. If the muhil 'alaih becomes bankrupt, denies the transfer, or dies, then the muhtal may not sue the muhil in the slightest. This is the opinion held by the majority of the ulama. However, the Maliki madzhab cleric said, "except when muhil deceives muhtal by transferring him to someone who has no wealth."(Khiyaroh et al., 2023).

In al-Muwaththa, Malik said: "Our opinion is about a person who transfers the payment of his debt which is due to another person to a third person. If the person to whom the payment of the debt is transferred goes bankrupt or dies and does not leave anything to pay the debt, then the person to whom the payment of the debt is transferred does not have the slightest right over the person who transferred it and may not sue his first partner. He said, "This is an opinion that is not in dispute between us. "Meanwhile, according to Abu Hanifah, Syuraih, Uthman al-Batti, and others, the muhtal may sue the muhil if the muhal 'alaih is bankrupt or denies the transfer (Sabiq, 2018)

Definition, Propositions, Pillars, Provisions, and Laws of Dhaman

1. Understanding Dhaman

Al-Dhaman (guarantee) according to the language means Al-Kafalah, hamalah (burden), and zama'ah (dependent). Meanwhile, according to the term, what is meant by al-kafalah or al-dhomman as explained by the ulama is as follows:

a. According to the Hanafi Madhab

It has 2 meanings, namely:

"Combining dzimah with others in the collection, with souls, debts, or material substances."

"Combining dzimah with other dzimah in the principal (origin) of the debt."

b. According to the Maliki Madzhab

"A person who has the right to carry out the responsibility of the burden giver and his burden combined, whether carrying the same (same) work or different work."

c. According to the Hambali Madhab

"Iltizam for something that is obligated to another person and the immutability of the object that is imposed or iltizam for the person who has the right to present two assets (their owner) to the person who has the right."

d. According to the Shafi'i Madhab

"A contract that determines the iltizam of rights that remain at the expense of another or presents the object whose presence is charged."

2. **There are 2 basic laws of al-dhomman, namely the Qur'an and as-sunnah, that is:**

e. QS Yusuf verses 66 and 72

قَالَ لَنْ أَرْسِلَهُ مَعَكُمْ حَتَّىٰ تُؤْتُونَ مَوْتِيقًا مِنَ اللَّهِ لَنَأْتَنَّنِي بِهِ إِلَّا أَنْ يُحَاطَ بِكُمْ فَلَمَّا
آتَوْهُ مَوْتِيقَهُمْ قَالَ اللَّهُ عَلَىٰ مَا نَقُولُ وَكِيلٌ

Meaning: "Ja'kub said: "I will not let him go with you before I give a firm promise in the name of Allah, that you will bring him back to me" (QS Yusuf: 66)

قَالُوا نَفْقُدُ صُوَاعَ الْمَلِكِ وَلِمَنْ جَاءَ بِهِ حِمْلٌ بَعِيرٌ وَأَنَا بِهِ زَعِيمٌ

Meaning: "And whoever can return the king's trophy, he will get food as heavy as a camel's load and I will guarantee it" (QS Yusuf: 72)

f. In as-sunnah

Rasulullah SAW said:

"Loans should be returned and those who guarantee them should pay" (Narrated by Abu Dawud)

"That the Prophet SAW once guaranteed ten dinars from a man who was determined by the collector to collect up to a month, then the debt of that amount was paid to the collector" (History of Ibnu Majah)

3. **The pillars and conditions of al-dhomman, among others:**

According to the Hanafi Madzhab, there are one pillars of al-kafa, namely consent and acceptance. Meanwhile, according to other ulama experts, the harmony and conditions of al-kafalah are as follows:

Dhamin, kafil, or za'im, namely a person who guarantees that he is required to be mature, sensible, and not prevented from spending his wealth (mahjur) and doing so with his own will.

- a. Madmun is the receivable person, the condition is that the receivable person is known to the person who guarantees it. Madmun lah is also called makful lah, madmun lah is required to be known by the guarantor because humans are not the same in terms of demands, this is done for convenience and discipline.
- b. Madmun 'anhu or makful anhu is a person who owes money.
- c. Madmun bih or makful bih is a debt, item, or person, it is required that the makful bih be known and its condition is fixed.
- d. Lafadz, the condition required is that lafadz means a guarantee, not dependent on something, and does not mean temporary (Suhendi, 2016)

4. **Laws in Dhaman**

The law of dhoman or kafalah is permissible, based on the word of Allah SWT in Surah Yusuf: 66

"Ja'kub said: "I will never let him go with you until you give me a firm promise in the name of Allah, that you will bring him back to me unless you are surrounded by enemies." When they gave their promise, Ya'kub said: "Allah is a witness to what we say (this)"

In a hadith narrated by Bukhari from Jabir ra, it is said: A man had died and we had washed him cleanly, then we shrouded him, then we took him to Rasulullah SAW, we asked him: will Rasulullah SWT pray for him? Rasulullah asked: does he have any debts? we answered: Yes, two dinars. Rasulullah then left there. Abu Qatadah said: The two dinars are my responsibility. Therefore, the Messenger of Allah said: Indeed, Allah has fulfilled the rights of the person who gave the debt and the deceased will be released from his responsibility. The Prophet then prayed. The next day he asked Abu Qatadah about the two dinars and explained that he had paid them. Rasulullah SAW said: that now, his skin is cool (M. Harun, 2017)

The permissibility of kafalah or dhaman, is also based on ijma' from various schools of Islamic law. They assess that early generations of Muslims practiced this, even today, without any objection from a single ulama (Sabiq, 1987)

Examples and Cases About Hiwalah and Dhaman

1. Examples and cases regarding Hiwalah

Ahmad gave Hasan a loan of one million rupiah, while Hasan also had a receivable from Ridho of one million rupiah. Hasan transferred or assigned his right to claim his receivables from Ridho to Ahmad in exchange for paying Hasan's debt to Ahmad (H. in Harun, 2017)

Some people use the Hiwalah concept in everyday life, such as in the practice of over-crediting cars. Car credit overpayment is a transaction that is commonly carried out by the public. For reasons of not being able to pay the entire car loan, over-credit is an alternative way to solve problems when credit is bad.

The existence of a broker has an important role in carrying out over-credit car transactions, where people with an interest in selling credit cars that they can no longer afford, create a business opportunity for brokers. The car will be offered to people who need it, with the condition that the seller continues to pay the credit card debt and pays the down payment to the seller in the same amount as when the seller paid the down payment to the dealer. In practice, car loan over-transactions are carried out verbally and not in writing under stamp duty (Farhan, 2018)

2. Examples and cases of Dhaman

Ayu guarantees that she will return the goods or money borrowed by Bunga to Citra. Then, if Bunga does not return the goods or money to Citra, Ayu is obliged to return the goods or money to Citra.

Not only that, in everyday life some use the concept of Dhaman or Kafalah. Like when Dina wanted to start a grilled chicken business, but didn't have the capital, while Dona wanted to order grilled chicken. In

order not to lose the first customer, Dina is looking for funds to lend money for her business capital. To run its business, a contractor often requires guarantees from other parties through guarantees given by the Bank (kafiil) to third parties (makful lahu) to fulfill the obligations of the second party (contractor) or those who are borne (makfuul 'anhu) (Syamhudi, 2019)

CONCLUSIONS

From the detailed explanation above, along with the provision of quite significant and real examples from everyday life, it can be said that Hiwalah is a transfer of debt by a person to another person with conditions of willingness (Muhil), approval from (Muhtal), the existence of the debt. in the guarantee (guaranteed repayment), there is an agreement to cover the debt by Muhal 'Alaih and there is a time limit so that the transfer of the debt is valid, and muhil is free from responsibility. Dhaman is combining dzimah with others in the collection, with souls, debts, or material substances with the pillars of consent and Kabul. Then it must fulfill the requirements of dhamin, madmun lah, madmun 'anhu or makful anhu, madmun bih or makful bih, and lafadz so that the law can be permitted.

ADVANCED RESEARCH

This research still has limitations so it is necessary to carry out further research related to the topic "The Concept of Hiwalah And Dhomman In Islamic Teachings: a Comprehensive Study" to perfect this research, as well as increase insight for readers.

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