Al-Ḥawālah Transactions in the Perspective of Islamic Economics Based on the Thoughts of *Wahbah Az-Zuhaili*

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Abstract: *This research endeavor seeks to elucidate the sharia economic perspective regarding al-Ḥawālah transactions. This investigation constitutes a librarianship inquiry that employs a descriptive methodological framework. The data source for this scholarly research is secondary in nature, specifically the Book of Islamic Fiqih Wa Adillatuhu authored by Wahbah az-Zuhaili. The findings of the research revealed that, firstly, al-Ḥawālah engenders three distinct legal ramifications. Secondly, there exist seven stipulations that may culminate in the termination of al-Ḥawālah. Thirdly, the al-Muhaal'alaihi Party is entitled to pursue redress from the al-Muhiil party contingent upon the fulfillment of the three specified criteria. Fourthly, the form of indemnification that al-Muhaal'alaihi may solicit from al-muhiil, in accordance with the prevailing al-Muhaal bihi, does not necessarily align with the amount he remitted to al-Muhaal. Fifthly, in the event of a dispute between al-Muhiil and al-Muhaal, the assertions and statements of al-Muhiil, accompanied by his sworn testimony, are deemed authoritative. Sixthly, the loans extended with the intention of generating profit for the debt lender are recognized as makruh tahriim by Hanafiyyah scholars.*

Introduction

In certain circumstances, an individual may find themselves unable to fulfill their financial obligations directly; consequently, they may opt to transfer their debt to another entity, a process referred to in Islamic jurisprudence as *al-Ḥawālah*, which denotes an arrangement concerning the delegation of debt from one debtor to a different party that assumes the obligation to settle it. In practical application, financial institutions, particularly banks, extensively utilize the transfer of receivables, as it serves as a mechanism for conveying collection rights to other entities and/or third parties, thereby facilitating the assurance of credit provisions or financial resources extended by the bank. The financial resources allocated by banks through credit facilities necessitate the provision of collateral, thus ensuring that the bank, acting as a creditor, feels secure in extending its credit offerings. The provision of a guarantee is designed to ensure that, if the debtor fails to meet their payment obligations or installments, the collateral may be liquidated by the bank, acting as a creditor, by the stipulations established in the agreement previously executed. The bank may then employ the proceeds from such liquidation to satisfy the debtor's obligations (Astuti, 2022).

In actuality, the transaction involving the transfer of receivables frequently gives rise to disputes. Several instances of contention concerning the transfer of receivables that have

arisen in Indonesia encompass: first, the ruling of the Supreme Court of the Republic of Indonesia No. 881 K/Ag/2020, dated November 23, 2021, establishes that the Plaintiff (Director of PT. Nusuno Karya) availed themselves of a credit facility from TerI (PT. Bank Permata) amounting to IDR 4,000,000,000.00 (four billion rupiah) by *Sharia* principles over 60 months. About this facility, the Plaintiff asserted their claim over the land plot and the structures erected thereon, as documented in Certificate of Property Rights No. 2969/Cipinang Melayu, located in East Jakarta. Throughout this agreement, the Claimant fulfilled their obligations by remitting IDR 1,578,955,582.00. However, following this payment, the Claimant experienced a delay in meeting their obligations to Defendant I due to challenging economic conditions.

Amidst these difficulties, the Claimant unexpectedly received a notification from Defendant I indicating that the entire remaining balance of the Plaintiff's debt to Defendant I, totaling Rp 3,150,805,021.89, had been assigned to Defendant II (Mohamad Alatas) by Deed of Debt Sale Agreement No. 44 dated April 11, 2018, and Debt Transfer Agreement (Cessie) No. 45 dated April 11, 2018, executed before the Defendant (Notary). Plaintiff expressed surprise at the absence of prior notification from Defendant I, given that the debt transfer occurred without Plaintiff's consent. Consequently, due to the debt transfer, the Claimant received a summons from Defendant II demanding payment of their debt to Defendant II, with the stipulation that failure to remit payment by June 20, 2019, would result in the auctioning of the collateral, specifically a land plot as per Certificate of Property Rights No. 2969/Cipinang Melayu, situated in East Jakarta. The Plaintiff subsequently initiated a Sharia economic lawsuit in the East Jakarta Religious Court, following which the panel of judges at the first instance, on February 25, 2020, rendered a decision that partially upheld the Plaintiff's claims (Hasanuddin, 2022).

Second, the dispute concerning the transfer of debt involves PT Pundi Pundi Lumbung Pertiwi (PT PPLP) as the claimant and debtor of Bank Victoria, which has initiated litigation against Bank Victoria and its sponsor PT Anugerah Lestari Utama, seeking a sum of IDR 100 billion for both tangible and intangible damages associated with the Cessie and Auction of assets perceived to be legally flawed. In case No. 809/pdt.g/2021/pn.jkt.pst, the legal counsel for PT PPLP, Ilham, petitioned the court to annul the receivables transfer (Cessie) as well as the auction of secured land and property assets situated in Kemang Timur, South Jakarta, because the auction procedure was not executed by established protocols, owing to the transfer of the debtor's rights from Bank Victoria to the Cessor and the subsequent sale of the object of the dependent rights to a third party without the debtor's awareness (Heriani, 2022).

Third, the judgment rendered by the Surabaya Religious Court, identified as Number 5178/pdt.g/2021/Pa.sby, dismisses the lawsuit filed by Sutadji as the Plaintiff concerning the conflict over the transfer of receivables against PT. Bank Tabungan Negara Syariah Surabaya branch, designated as Claimant I, had extended a *Sharia* credit facility to Tergaint I in the amount of Rp. 200,000,000. To secure the repayment of this credit, the Plaintiff encumbered his assets, which consisted of a parcel of land and buildings under Certificate of Rights to Use Building Number 2406, encompassing an area of 141 m^2, located in Babat Jeracne Village, Benowo District (currently Kec. Pakal), City of Surabaya, in the name of the Plaintiff. The Plaintiff had remitted a payment of IDR 125,000,000. The Plaintiff could not fulfill the scheduled installments due to adverse business conditions. Despite these challenges, the

Plaintiff maintained a sincere intention to continue making the credit installments as stipulated by Defendant I. Abruptly, the Plaintiff was informed via a Memorandum that all debts owed to Defendant I had been transferred to Defendant II under the Act of Agreement on the Transfer of Rights to Receivables (Cessie) No. 16, dated November 30, 2016. Upon receiving such notification, the Plaintiff expressed objections, citing that Defendant I had failed to engage the Plaintiff in any discussions (Surabaya Religious Court, 2021).

Indeed, the *Zakat* Institution can effectively address the issue of *al-Ḥawālah*, particularly in its mission to assist economically disadvantaged individuals encumbered by debt due to entrepreneurial endeavors. Nevertheless, empirical evidence suggests that the allocation of zakat continues to exhibit a paucity of focus on segments of society engaged in productive activities. This assertion is substantiated by research conducted by Bahri et al. (2023) regarding the National Board of *Zakat* (Baznas) of Bandung City, which has elucidated that the efficacy of *Zakat* distribution by these institutions requires substantial enhancement, particularly within the economic domain, to aid underprivileged individuals possessing productive initiatives in extricating themselves from the burdens of exorbitant interest debt. In light of the aforementioned cases, this research was undertaken to critically analyze the implementation of *al-Ḥawālah* as delineated in the Book of *Islamic Fiqih Wa Adillatuhu* authored by *Wahbah az-Zuhaili*.

Some prior investigations about *al-Ḥawālah* encompass Adnan's (2022) study, which deduces that the discourse surrounding the denomination is fundamentally anchored in the displacement of debt. Subsequently, most scholars elucidate that the accord results in the cessation of the debt burden on the original debtor (*Muhil*), with the entirety of the liability being transferred one hundred percent to the entity that receives the debt transfer (*Muhal Alaihi*). Next, Toyyibi's (2019) examination asserts that the implementation of *al-Ḥawālah* within KJKS UGT BMT Sidogiri KCP Omben is aligned with principles of *Sharia* economics and the fatwa issued by the DSN MUI concerning *al-Ḥawālah*. The execution of the agreement between the muhil and the *Muhal ‘alaik* is directed towards KJKS UGT BMT Sidogiri KCP Omben, which serves to inform that the installment obligations of the muhil party will be continued by the beneficiary party, provided established terms and conditions lawfully withhold it.

Then, Witro's (2021) analysis concludes that *al-Ḥawālah* is characterized as the transfer of debt executed by an individual to another individual who owes him or her, predicated upon the principles of reciprocity and mutual favorability. Next, Nurazizah's (2021) investigation concludes that the *al-Ḥawālah* mechanism within *Sharia* banking is fundamentally grounded in the principles of assistance and solidarity, aimed at alleviating the financial burdens of individuals struggling to meet their debt obligations, thereby preserving the fluidity of financial transactions and the economic dynamics within society. Transactions encapsulated in this transfer mechanism are devoid of any element of usury in any conceivable form. Then, Baiquni's (2018) research concludes that the Qur'an posits that the legal framework governing *al-Ḥawālah* may facilitate it as a form of relief (rukhṣah) for individuals encumbered by debt and experiencing difficulties in fulfilling their financial obligations, thereby encompassing the intrinsic value of assistance. Furthermore, the hadith explicates that it is incumbent upon the affluent to grant extensions in debt repayment to those who have incurred debts, as this enables the possibility of debt settlement.

Next, The research conducted by Nofrianto et al. (2022) concludes that the term *al-*

Ḥawālah encapsulates the concept of debt transfer in Islam. *Al-Ḥawālah* signifies the transference of debts or receivables from the creditor to a party that guarantees the debt repayment. This concept entails the debt transition from the Muhil as the initial borrower to the *Muhal'alayah* as the subsequent borrower. The practical application of *al-Ḥawālah* within *Sharia* Banking comprises *al-Ḥawālah Muqayaddah* and *al-Ḥawālah Mutlaqah*. Additionally, various regulations have emerged in the form of *fatwas*; however, the application of such fatwas necessitates further scholarly examination in relation to their implementation within the operational frameworks of *Sharia* financing entities.

Then, The study by Mardotillah et al. (2021) concludes that the grant mechanism within *Sharia* Financial Institutions, particularly in the context of *Sharia* Banking, is predicated upon the principles of assistance and solidarity that are designed to mitigate the burdens faced by individuals who are struggling to fulfill their debt obligations. Nonetheless, within the banking sector, an array of services are mutually agreed upon as risks associated with debt receivables, specifically between clientele and *Sharia* Financial Institutions. Transactions characterized by this transfer mechanism are devoid of any elements of usury in any format. Hiwalah itself may serve as an effective solution to the challenges associated with debt receivables. Credit activities encompass all facets of the economy, including production, consumption, trade, investment, and services. Consequently, credit may manifest in the form of either goods or services. Practically, *Sharia* Financial Institutions typically offer health facilities to assist suppliers in securing capital liquidity to sustain their ongoing business operations.

Then, Hardiati and Januri's (2021) study established that *al-Ḥawālah* constitutes a contractual arrangement aimed at providing assistance or tabarru; furthermore, Hiwalah is effectively implemented within the framework of *Sharia* banking due to the stipulations embedded therein that yield mutual advantages for both customers and financial institutions. This *al-Ḥawālah* process entails transferring debt obligations from the primary party to the secondary party, with the financial institution as an intermediary. Tabarru refers to the voluntary granting of consent from one individual to another without any expectation of compensation arising from the transfer of ownership of assets from the donor to the recipient. The concept of *Tabarru* is mainly directed towards extending support to individuals experiencing financial hardship or to social or religious organizations requiring financial resources to improve society and promote religious objectives.

Consequently, *Tabarru* is strongly advocated within *Islamic* jurisprudence. Nevertheless, services are mutually consented to within banking institutions as a risk associated with receivable debts, specifically between the client and the Banking Entity. The *al-Ḥawālah* activity is fundamentally defined as the process of assuming responsibility for the obligations of an individual who is financially incapacitated, commonly referred to in banking terminology as a debtor who is indebted to another party. The principles governing technical *Sharia* Banking are intrinsically rooted in Islamic jurisprudence, which aims to facilitate mutual assistance in alleviating the financial burdens experienced by individuals encountering challenges in settling their debts, thereby ensuring that such activities do not disrupt the financial dynamics crucial to economic operations within the community. In the process of fund transfer, it is imperative to eschew any involvement with *ribawi* elements.

Next, Mariyam's (2018) study determined that utilizing the *al-Ḥawālah* agreement in addressing problematic financing by Bank Muamalat and BPRS Al-Saalam through

implementing *aqad al-Ḥawālah bil Ujroh* is suboptimal. The execution of this agreement has proven ineffective, primarily because most customers in *Sharia* Banking remain uninformed about the existence of this agreement. This situation arises from the insufficient efforts of Bank Muamalat and BPRS Al-Saalam to promote *aqad al-Ḥawālah* products. According to the findings of the research conducted at Bank Muamalat and BPRS Al-Saalam, the form of *aqad al-Ḥawālah* employed is *al-Ḥawālah Muthlaqah*, which entails the imposition of an *Ujrah* or fee.

Prospective customers wishing to engage in this credit agreement are subjected to a preliminary assessment of their capacity to fulfill their financing obligations to mitigate potential issues after their payment cycle. Bank Muamalat and BPRS Al-Saalam refrain from utilizing *al-Ḥawālah Muqayyadah* in routine banking transactions, instead opting for *al-Ḥawālah Muthlaqah* with the application of an umrah or fee. This preference is, among other reasons, attributable to its alignment with the Fatwa of the National *Sharia* Council No: 58/DSNMUI/V/2007 concerning the *al-Ḥawālah bil Ujrah*, which permits the existence of an Umrah bill, thereby necessitating a heightened focus on the principles underpinning Islamic agreements in both the formulation of banking financing products and their practical application. In the context of problem financing resolution for banks, the agreement encompasses a sequence of actions, including rescheduling, reconditioning, and restructuring.

Then, The research conducted by Nurhidayat et al. (2023) elucidates that the modalities of debt transfer within KPN Al-Ikhlas Batusangkar incorporate *al-Ḥawālah* in *Murabahah al inah*, as well as *al-Ḥawālah* in *Murabahah*, culminating in *Ijarah Muntahiyah bit Tamblik* (IMBT). The determinants prompting the transfer of debt to KPN Al-Ikhlas Batusangkar consist of the desire to evade usury, the pursuit of economic advantages in the form of the distribution of Residual Profit (SHU), and the attainment of economic benefits without the necessity of providing physical guarantees to KPN Al-Ikhlas Batusangkar. Following deliberation, a modification of the hiwalah form has been proposed, which involves the incorporation of multiple agreements, thereby permitting the pursuit of economic advantages in the execution of *al-Ḥawālah* or debt transfers. Next, Shiddiq's (2021) examination concludes that the payment of margin debt by Badan Amil Zakat Nasional (Baznas), from the perspective of *Fiqh Muamalah*, constitutes *al-Ḥawālah bil Ujrah*, wherein the recipient of *Sharia* venture financing assistance operates as muhil, BPRS Kota Mojokerto acts as *Muhal*, and Baznas serves as *Muhal 'alayah*. Then, Ronaydi's (2023) investigation concludes that etymologically, *al-Ḥawālah* signifies a transfer, while in a terminological context, it refers to the transference of a debtor's obligations to another entity to facilitate debt repayment, characterized by mutual trust and agreement. The legal standing of this practice is deemed permissible.

Next, Wicaksono and Santoso (2021) assert that *al-Ḥawālah* represents an agreement facilitating the transfer of receivables between involved parties. Despite divergent opinions regarding the inherent nature of *al-Ḥawālah*, such variances do not detract from the assertion that *al-Ḥawālah* constitutes an agreement prescribed by *Islam* to enhance the quality of human life. Then, Naufal's (2018) inquiry ascertains that implementing *aqad al-Ḥawālah* in the context of debt acquisition from conventional banking by BPD Bank DIY *Sharia*, utilizing *aqad al-Ḥawālah wal Murabahah*, has been executed effectively. Conversely, in delineating the terms of the agreement, the bank continues to employ a standardized agreement

methodology, which fails to embody the principle of *al-Musawah*, signifying equality and parity among the parties involved. The agreement's effectiveness is undermined by the fact that a substantial number of *Sharia* banking customers remain unaware of the availability of this agreement. This is primarily attributable to the inadequate promotional efforts undertaken by Bank BPD DIY *Sharia* to disseminate information regarding *aqad al-Ḥawālah* products. Next, The investigation conducted by Munawir et al. (2019) concluded that the Hiwa system for motorcycle financing is consistent with the MUI fatwa no: 12/DSN-MUI/IV/2000, categorizing this activity as falling under the framework of *al-Ḥawālah Muqayyadah bi Ad-dain*, wherein the agreement pertains to the receivables (dain) of parties that have defaulted and are under the custodianship of the muhal alayah.

In light of prior investigations, there is a scarcity of scholarly works that critically analyze *Wahbah az-Zuhaili's* perspectives on *al-Ḥawālah* within the context of *Islamic Fiqih Wa Adillatuhu*.

Method

This scientific research uses qualitative research methodology. The research approach was carried out descriptively and bibliographically. The primary data source for this research consists of secondary data, especially the *Islamic Fiqh Wa Adillatuhu* written by *Wahbah az-Zuhaili* (2007). A descriptive and literature approach explains the *Sharia* economic perspective regarding *al-Ḥawālah* transactions. The descriptive approach is used to explain the Law of *al-Ḥawālah* transactions, Settlement and Expiration of *al-Ḥawālah*, Forms of Changes that can be requested by *al-Muhaal'alaihi* to *Ffom al-Muhiil*, and Disputes between *Al-Muhiil* and *Al-Muhaal*.

Result and Discussion

The Laws of *Al-Ḥawālah* Transactions

Al-Ḥawālah entails several legal ramifications, including the following: First, The al-Muhiil's side is absolved of its existing debt obligations (al-Muhaal bihi). If the *aqad al-Ḥawālah* has been consummated through the establishment of qabul (acceptance), then according to the predominant view among scholars, the al-Muhiil's side is automatically released from its debt responsibilities, while the existing forms of debt collateral, such as ar-Rahnu (pledge) and al-Kafaalah (guarantee), remain unchanged, yet their status is effectively terminated.

Al-Hasan al-Bashri contended that the party of al-Muhiil could not be absolved from its financial obligations except in the context of al-Ibraa' (liberation). In contrast, *Wahbah az-Zuhaili* explains the opinion of Zufa, a prominent scholar within the Hanafi school, posits that the presence of *al-Ḥawālah* does not equate to the liberation of the party of al-Muhiil from its debt obligations. Nonetheless, the debt continues to maintain a subordinate status analogous to its condition prior to the existence of *al-Ḥawālah*. In this context, Zufar compares the contract of *al-Ḥawālah* and *al-Kafaalah*, as both represent modalities of *aqad at-Tawatssuq* (the affirmation or guarantee of rights).

However, Zufar's assertion is flawed, as the term *al-Ḥawālah* derives from *at-Tahwiil*, which signifies *an-Naqlu* (transfer, diversion), indicating the relocation and reassignment of rights. Consequently, it embodies the connotation of al-Intiqaal (the act of moving). When an entity is transferred from one location to another, it ceases to exist in the original location.

Conversely, the term *at-Tawatssuq* implies that the party possessing the right has the facilitative ability to secure its entitlements by selecting a party deemed more competent, suitable, and capable of fulfilling those rights.

The definition of *al-Kafaalah* is derived from the term *Adh-dhammu* (combining), which connotes the amalgamation of one's dependents with another. Therefore, both the contracts of *al-Ḥawālah* and *al-Kafaalah* must be aligned with the semantic implications inherent in the nomenclature of each contract. The jurisprudential principles governing all forms of contracts permitted by *Sharia* are profoundly intertwined with the linguistic meanings associated with the names of these contracts.

Scholars of the Hanafiyyah school exhibit divergence concerning the nature of an-*Naqlu* (transfer) as it pertains to the contract of *al-Ḥawālah*. Imam Abu Hanifah and Abu Yusuf asserted that *al-Ḥawālah* entails the simultaneous transfer of both the collection and the debt from the dependents of *al-Madiin* (*al-Muhiil*) to those of the *al-Muhaal'alaihi*. However, the outstanding debt becomes the liability of al-Muhiil when al-Tawaa occurs to the *al-Muhaal'alaihi* (wherein *al-Tawaa* refers to the situation where the party of *al-Muhaal'alaihi* becomes insolvent or leaves no assets to satisfy the debt, or where the al-Muhaal'alaihi denies the existence of *al-Ḥawālah* without any evidence or witness corroborating its occurrence). Meanwhile, Abu Yusuf and Muhammad supplemented this view by indicating that the insolvency of the *al-Muhaal'alaihi* occurs while the party is still alive. Consequently, if the debtor (i.e., *al-Muhaal*) can relieve the *al-Muhaal'alaihi* from the debt, then al-*Ibraa'* is deemed effective. Conversely, if the individual who hears or is liberated from the debt is the debtor (*al-Muhiil*), such liberation is invalid.

On the other hand, Muhammad articulated that *al-Ḥawālah* constitutes solely a transfer of the billing, asserting that the transfer and reassignment occurring in the context of *al-Ḥawālah* pertains exclusively to the billing aspect and does not extend to the settlement of existing debts. Therefore, the entirety of what is transferred pertains merely to the collection, while the incumbent debt remains the responsibility of the dependents of *al-Muhiil*.

Each of the two aforementioned groups formulates its perspective grounded in specific evidentiary support, which, when duly considered, substantiates the assertion that the arguments articulated by the former group of opinions (namely, those of Imam Abu Hanifah and Abu Yusuf) possess greater strength than those posited by the latter group (specifically, the opinion of Muhammad). This conclusion is predicated upon the evidence indicating that should *al-Muhiil's* party be absolved of its current debt obligations or should the existing debt be reassigned to him, such a transaction would be deemed invalid, as the debt has been transferred to the dependents of *al-Muhaal'alaihi* or has become an obligation of *al-Muhaal'alaihi's* dependents. In contrast, the dependents of *al-Muhiil* are devoid of debt or, in other terms, carry no financial liabilities. Additionally, this is supported by the evidence that *al-Ḥawālah* necessitates the stipulation of *an-Naqlu* (transfer), as the term *al-Ḥawālah* is derived from *at-Tahwiil*, which connotes an-Naqlu. Consequently, *al-Ḥawālah* seeks the transference of that upon which it relies, specifically the debt, rather than merely the passage of the debt itself.

According to Zufar, as elucidated previously, it is asserted that neither the collection nor the debt obligations transfer from the dependents of *al-Muhiil* to those of al-Muhaal'alaihi or, in other words, do not migrate into the dependents of *al-Muhaal'alaihi*.

However, the dependents of *al-Muhaal'alaihi* are integrated with those of al-Muhiil in the context of debt recovery. Based on this interpretation, al-Muhaal'alaihi's role is likened to that of a *kafiil* (guarantor) on behalf of the obligations held by *al-Muhiil*.

Second, Establishing the authority for debt collection on the part of al-Muhaal against the al-Muhaal'alaihi is predicated upon debts that reside within his dependents. This is because *al-Ḥawālah* aspires to transfer responsibility to *al-Muhaal'alaihi*, which entails the simultaneous transfer of debt and collection, as supported by the perspective deemed more robust by *Wahbah az-Zuhaili*. Third, Should *al-Ḥawālah* be executed at the request and intention of *al-Muhiil*, with *al-Muhaal'alaihi* possessing no debt to *al-Muhiil* that equates to the debt owed by *al-Muhiil* to *al-Muhaal*, then the existing *al-Ḥawālah* is absolute. Consequently, if *al-Muhaal* persists in pressing charges against al-Muhaal'alaihi, then *al-Muhaal'alaihi* is equally entitled to reciprocate the action against *al-Muhiil*, thereby liberating himself from the pressures exerted by *al-Muhaal*. Furthermore, in the scenario where *al-Muhaal's* party detains that of *al-Muhaal'alaihi*, the latter party retains the right to similarly detain *al-Muhiil*.

Conversely, if *al-Ḥawālah* is not initiated at the behest of *al-Muhiil*, or if it is not at his request, yet *al-Muhaal'alaihi* possesses a debt to *al-Muhiil* equivalent to the debt owed by *al-Muhiil* to *al-Muhaal*, in other terms, if *al-Ḥawālah* is structured as a muqayyad, then should *al-Muhaal's* side continue to pursue *al-Muhaal 'alaihi* to the point of detention, then *al-Muhaal 'alaihi's* side would be precluded from reciprocating such actions against *al-Muhiil's* party.

Completion and Expiry of *Al-Ḥawālah*

Al-Ḥawālah concludes and is deemed complete concerning several factors, specifically: First, The annulment and repudiation of the *aqad al-Ḥawālah* is referred to as *al-Faskh*. When *al-Ḥawālah* is rendered void through *al-Faskh*, the right to collect the debt reverts to the original debtor, identified as *al-Muhiil*; thus, the party accountable for the obligation is *al-Muhiil*. In scholarly jurisprudence, the term *al-Faskh* denotes the termination of an *aqad* before it attains the intended objective. Second, In instances where at-Tawaa encroaches upon *al-Muhaal's* entitlements due to the demise of *al-Muhaal' alaihi*, insolvency, or similar circumstances, this viewpoint is supported by the *Hanafiyyah* scholars, drawing on the narration by Uthman Ibn Affan r.a., who stated regarding *al-Muhaal'alaihi*: "*When he (al-Muhaal'alaihf) dies without assets, the liability (al-Muhaal bihi) devolves upon al-Muhiil.*" Furthermore, it is predicated on the principle that *al-Ḥawālah* necessitates the safeguarding of existing rights against "damage," as these rights are the very essence intended within the framework of *al-Ḥawālah*, thereby mandating that their status as goods for sale be protected from conditions of "defectiveness."

When the *At-Tawaa* event transpired, *al-Muhaal* once again imposed charges upon *al-Muhiil*. At this juncture, scholars from the *Hanabilah*, *Shafi'iyyah*, and *Malikiyya* schools of thought contend that once the *aqad al-Ḥawālah* has been duly established, the rights that are in existence have been effectively transferred, and the party representing *al-Muhaal* has consented to and accepted the *aqad al-Ḥawālah*; consequently, the aforementioned rights cannot revert to the jurisdiction of *al-Muhiil* indefinitely, irrespective of whether these rights can be fulfilled and compensated or not, due to the actions of *al-Mumaathalah* (i.e., delaying the payment of the debt) or due to instances of bankruptcy, death, or other circumstances. Thus, if the party of *al-Muhaal'alaihi* experienced bankruptcy at the time the *Aqad al-*

Ḥawālah was executed, and *al-Muhaal* was unaware of this fact, the side representing *al-Muhaal* would still lack the entitlement to impose further charges upon the side of *al-Muhiil*. This situation implies that a lapse in due diligence has occurred by failing to conduct prior investigations, akin to a buyer misled by his negligence, resulting in purchasing an item at a substantially inflated price. Therefore, should the party of al-Muhaal stipulate that the individual representing *al-Muhaal'alaihi* must possess sound economic standing, and it subsequently emerges that the latter is an individual facing financial constraints, then, according to the interpretations of the *Hanabilah* and *Malikiyya* scholars, *al-Muhaal* may once again impose charges upon *al-Muhiil*. This assertion is supported by the teachings of the Prophet (peace be upon him):

اَلْمُسْلِمُونَ عَلَى شُرُوطِهِمْ

"*Muslims are required to adhere to the agreements they enter into and must refrain from breaching them*."

Nevertheless, the *Maliki* scholars assert that in this particular scenario, *al-Muhaal* may seek recourse against *al-Muhiil if al-Muhiil* engaged in deception by presenting himself as analogous to the insolvent *al-Muhaal'alaihi*.

In a broader context, the rationale underpinning this perspective is rooted in historical precedent involving Ali Ibn Abi Thalib r.a., who had a financial obligation to the grandfather of *Sa'id Ibn al-Musayyab*, after which the *Aqad al-Ḥawālah* was executed. However, following the demise of *al-Muhaal'alaihi*, Sa'id's grandfather informed Ali, who responded, "*You have consented to and ratified the Aqad al-Ḥawālah, and Allah has rejected you*." In this narrative, Ali Ibn Abi Thalib r.a. maintained a position of detachment, refraining from informing Sa'id's grandfather of his entitlement to reclaim the charge. Moreover, the principle of *al-Ḥawālah* necessitated a release (*al-Baraa'ah*) from debt obligations on the part of *al-Muhiil*. Given that the *Aqad al-Ḥawālah* exists in an unequivocal form, it implies that no supplementary provisions or pre-existing rights require assurance; thus, *al-Ḥawālah* categorically conferred the legal principle of al-Baraa'ah to the party of *al-Muhiil*. As for the *Hadith* attributed to Uthman r.a., which serves as a foundational element for the opinions held by the *Hanafiyyah* scholars, it lacks authenticity; even if it were authentic, it would contradict the assertions made by Ali r.a.

Third, The side of *al-Muhaal 'alaihi* has fulfilled the debt payment to the side of *al-Muhaal*. This is a matter that is unequivocal and evident. If the party of *al-Muhaal'alaihi* has discharged the debt owed to *al-Muhaal*, then the *Aqad al-Ḥawālah* is inherently concluded, as the legal obligations have likewise been fulfilled. Fourth, Upon the demise of *al-Muhaal's* side, the side of *al-Muhaal 'alaihi* assumes the role of heir, inheriting the existing *al-Muhaal bihi*. Inheritance serves as a legitimate basis for ownership. Consequently, in this context, the outstanding debt becomes the property of *al-Muhaal 'alaihi*. According to Imam Abu Hanifah and his two associates (Abu Yusuf and Muhammad), the *al-Ḥawālah*, executed in the form of muqaltyad, also ceases to exist upon the death of the party of al-Muhiil. This is because the property subject to the condition of *al-Ḥawālah* (namely, the debt owed by *al-Muhaal 'alaihi* to the party of *al-Muhiil*) falls under the classification of the inheritance of al-Muhiil. This interpretation diverges from the views held by other *Fuqahas*. Fifth, The side of *al-Muhaal* settled the outstanding debt to *al-Muhaal 'alaihi*, and he received the endowment. Sixth, *Al-Muhaal* bequeathed it to *al-Muhaal 'alaihi*, and he accepted the charitable offering. In this

instance, bequests and charitable contributions are regarded as equivalent to inheritance or *al-Adaa'* (settlement of debts). Seventh, The side of al-Muhaal emancipated the side of *al-Muhaal'alaihi* from obligations.

The Form f Change That *Al-Muhaal'alaihi* May Request F Form *Al-Muhiil*

If the party of *al-Muhaal'alaihi* has the prerogative to solicit compensation from *al-Muhiil* after the satisfaction of all three aforementioned conditions, then the entitlement he possesses to request in return is aligned with *al-Muhaal bihi*, rather than with what was remitted to *al-Muhaal*; in other words, he petitions *al-Muhiil* for compensation corresponding to the al-Muhaal bihi that exists instead of what he disbursed to the side of *al-Muhaal*. In this instance, his standing is analogous to the kafiil in the *Aqad al-Kafaalah*. Therefore, if *al-Muhaal'alaihi's* side settles the outstanding obligation with an asset constituted in the form of goods, while *al-Muhaal* bihi exists as currency, then *al-Muhaal'alaihi's* side seeks compensation from *al-Muhiil* in the form of currency adapted to the existent form of al-Muhaal bihi, distinct from the asset he provided. The rationale for *al-Muhaal'alaihi's* right to seek restitution is predicated on what is rightfully his by discharging the outstanding obligation, and what belongs to him pertains to the debt that *al-Ḥawālah* (*al-Muhaal bihi*) pertains to not to what he has settled.

There was a Dispute between *Al-Muhiil* and *Al-Muhaal*

If the side of *al-Muhaal* had received satisfaction of the outstanding obligation, any ensuing dispute with *al-Muhiil* would necessitate a response from *al-Muhiil* asserting, “I did not previously owe you any obligation; rather, you merely acted as my agent to receive the payment of the outstanding debt, and thus what has been disbursed is rightfully mine.” In contrast, *al-Muhaal* would respond, “On the contrary, the agreement of *al-Ḥawālah* with *al-Muhaal bihi* pertains to the one thousand lira for which you are indebted to me.” In instances of such disputes, the assertions made by *al-Muhiil*, supported by his oath, are deemed authoritative. In this context, *al-Muhaal* has contended that *al-Muhiil* has a debt obligation to him, while *al-Muhiil* has refuted and denied this assertion. Given that the statements received are those of *al-Munkir* (the party accused who denies the allegations), it applies only in the absence of *bayyinah* (evidence) and where the al-Munkir is willing to swear an oath.

Conclusion

In light of the preceding discourse, it can be concluded that, firstly, *al-Ḥawālah* encompasses three legal ramifications. Secondly, seven conditions may culminate in the termination of *al-Ḥawālah*. Thirdly, the *al-Muhaal'alaihi* Party retains the right to seek restitution from the *al-Muhiil* Party upon fulfilling the three requisite conditions. Fourthly, the form of compensation that the al-muhaal'alaihl may demand from *al-Muhiil*, according to the established *al-Muhaal bihi*, may not align with the amount remitted to *al-Muhaal*. Fifthly, in a dispute between *al-Muhiil* and *al-Muhaal*, the accepted assertions will be those articulated by *al-Muhiil*, substantiated by his oath. Sixthly, debt loans structured to yield profit for the lender are regarded as *makruh tahriim*, according to *Hanafiyyah* scholars.

Acknowledgements

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