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Redefining saving structures in banking and e-money: Moving beyond *qard* and *wadi'ah* towards *amanah tasharrufiyyah* (authorized trust)

Bryan Pandu Permana*

Department of Magister of Arts in Islamic Studies, International Open University, Banjul 2340, Gambia

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Abstract

The advancement contemporary financial innovations have generated novel juristic debates regarding contractual characterization. This is largely due to the rigid application of classical *Fiqh* terminologies that often fail to align with modern transactional realities. Specifically, the categorization of banking savings and e-money balances under the contracts of *Qard* (Loan) or *Wadi'ah Yad Dhamanah* (Guaranteed Custody) presents significant jurisprudential anomalies, particularly regarding risk allocation, ownership status, and the prohibition of usury (*Riba*). The objective of this study is to develop the fundamental theory of saving contracts by moving beyond these classical limitations. The present study employs a qualitative methodology based on *Ushul Fiqh*, legal maxims (*Qawaid Fiqhiyyah*), and the more adhere to primary texts (*Quran* and *Sunnah*), this research resurfaced the concept of *Amanah Tasharrufiyyah* (Authorized Trust). The concept is rooted in the Prophetic precedents of Urwah Al-Bariqi and the Hadith of the Cave and it promotes a redefinition of the saver-bank relationship as a trust-based delegation of authority rather than a creditor-debtor arrangement. The findings demonstrate that the adoption of *Amanah Tasharrufiyyah* provides a definitive legal resolution to contemporary dilemmas. It establishes clearer status of promotional benefits in Fintech as permissible gifts (*Hibah*) rather than usurious additions, e-commerce, online gold/money trading and interbank transfers by establishing *Qabdh Hukmi* (constructive possession), and undisputed Zakat mandate reliability on the saver. This reconstruction demonstrated that Sharia authenticity remains relevant and provides advanced solutions to the operational exigencies of modern financial technology.

Keywords: Amanah tasharrufiyyah, bank contract reconstruction, fintech shariah compliance, qardh, wadi'ah, e-money, Islamic banking

1. Introduction

1.1. Background

The advancement of Islamic economics encounters significant obstacles, particularly in the context of navigating the complexities of the rapidly evolving global economic system (Zaman & Movassaghi, 2002). A primary contributing factor is the rigid application of classical *Fiqh* terminology (Islahi, 2008); (El-Gamal, 2006). There is frequently a lack of critical perspective, with scholars failing to acknowledge that these terms and legal maxims were, in fact, historical innovations introduced by scholars of that era to address the specific transactional realities of their time (Saeed, 2004). Conversely, in this era of digitalization and rapid global economic shifts, various systems and transactions fall into the grey area of *shubhat* (doubtful status). The distinction between lawful (halal) and unlawful (*haram*) becomes increasingly blurred, resulting in a limited number of individuals who possess a comprehensive understanding of their precise legal standing. A distinct example is the application of *Qard* (loan), *Mudharabah* (profit-sharing), or *Wadi'ah* (safekeeping) for banking saving; each of these contracts harbors inherent weaknesses and problematic implications regarding the derivative transactions they entail (Dusuki, 2008).

In the contemporary era, the financial landscape is undergoing rapid transformation, driven by the emergence of novel form of transactions including electronic money, credit/debit cards, obligations, *sukuk*, fintech payment system (e.g. Gopay, Shopeepay), and digital payment methods such as EDC machines and even QRIS in Indonesia. It has been demonstrated that, whilst not generally applicable, a significant proportion of transaction are susceptible to usury, even in instances where a minimal administration fee is levied in conjunction with non-cash payment.

Consequently, a reclassification grounded in the evidence of the Qur'an and Sunnah is necessitated to dismantle the ambiguities (*shubhat*) surrounding modern transaction systems. While the fundamental objective of *Maqashid Sharia* is the preservation of faith and wealth (*hifz al-mal*) (Auda, 2008); (Ashour, 2004), current Islamic banking practices often exhibit legal anomalies. The contract of *Wadi'ah Yad Dhamanah* (guaranteed custody) has been the subject of considerable scholarly criticism. A genuine *Wadi'ah* contract does not permit the custodian to utilize the saving funds; once utilized, the contract substantively shifts to *Qard* (loan), rendering the *Wadi'ah* label void. This is based on the legal maxim 'substance

* Corresponding author.
Email: bryanpandu@gmail.com
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prevails over form' (*al-ibrah bi al-ma'ani la bi al-alfaz*) (Al-Husaini, 2022)

Furthermore, the application of *Qard* itself is problematic regarding intent, possession (*qabdh*), and ownership status. In essence, clients do not possess the intention to lend to the bank. Instead, they entrust their wealth solely for security and transactional convenience (Iqbal, 2011). A conceptual contradiction also arises in *qabdh*; while the bank holds physical possession as a borrower, the saver retains legal possession (*qabdh hukmi*), allowing them to transact freely as if they still own the funds. Moreover, risk allocation remains imbalanced. In the event of bank insolvency, savers rely on government insurance (such as the LPS in Indonesia), thereby shifting the risk away from the bank to the government. This contradicts the fundamental principle of *Qard*, where the borrower (the Bank) should bear the full liability without third-party intervention (Karim & Archer, 2013). Accordingly, a reconstruction and reclassification of terms is imperative, supported by clear consequences and rigorous scientific evidence. Absent distinct differentiation, new terminologies will only exacerbate the existing confusion.

Despite the extensive research that has been conducted on the Sharia compliance of modern banking and e-money structures, the prevailing discourse remains largely confined to the dichotomy of *Qard* (loan) and *Wadi'ah Yad Dhamanah* (guaranteed custody) (Hassan & Lewis, 2007; Iqbal, 2011). It has been highlighted in a number of previous studies that there are certain jurisprudential anomalies inherent in these specific contracts. These include the inherent Riba implications that are present when banks provide benefits on *Qard* deposits, and the logical contradiction of utilizing funds that were originally placed under a Wadi'ah (pure custody) agreement (Laldin, 2010; Rosly, 2005). Further existing literature also frequently concentrates on the retrofitting of classical constructs to legitimize contemporary financial operations through legal stratagems (*hiyal*). One of the most promising approaches involves the utilization *Dharuri* (emergency state) and *Hajah* (fundamental need) from *Maqashid Sharia* rather than questioning the ontological foundation of the saver-bank relationship itself.

The present study diverges from the current literature by stepping outside the *Qard-Wadi'ah* paradigm. The novelty and unique contribution of this research lie in its theoretical reconstruction of saving structures through the conceptualization of *Amanah Tasharrufiyyah* (Authorized Trust). Different from prior research that attempts to force modern digital and fiat ecosystems into ill-fitting classical terms, this paper grounds its framework directly in primary Prophetic precedents specifically the economic delegation of Urwah Al-Bariqi and the fiduciary principles in the Hadith of the Cave. By redefining the saving mechanism not as a debt (*Qard*) or a guaranteed deposit (*Wadi'ah*), but as a pure trust-based delegation of authority, this study is to provide more adequate resolution to bank-saver relationship and non-cash transaction problems that previous literature has failed to address.

1.2. Problems and research objectives

The objective of this study is to obtain the reality (*haqiqah*) of the interaction between bank-saver relationships, the status of e-money, and other non-cash payments. The absence of undisputed terms of current classification leads to several weaknesses when these specific terms are employed:

- *Wadi'ah*: This arrangement cannot be classified as *Wadi'ah* (pure custody) because the saver does not intend to merely store the funds without utilization. A true custodian is prohibited from utilizing the saved assets. Consequently, the act of granting permission to utilize and derive profit from saved funds under the guise of *Wadi'ah Yad Dhamanah* (guaranteed custody) is viewed by scholars as a legal contradiction. Once the custodian assumes full liability for the funds, the contract substantively transforms into a loan (*Qardh*), thereby invoking the rules of debt.

- *Qardh*: This arrangement also does not constitute a pure loan (*Qardh*). Primarily, savers lack the intention to lend; rather, they seek security. Furthermore, a critical anomaly has been identified in relation to risk bearing. In a true *Qardh*, the borrower (i.e. the bank) should be the only entity liable in Bankruptcy. However, in modern banking, the risk of loss of saving in the event of bank bankruptcy is borne by the Saver. To prevent it, government issued policy to shift some of this risk to third-party insurers. Examples of such insurers include the Saving Insurance Corporation (*LPS*) in Indonesia or Central Banks globally. Crucially, this coverage is capped (e.g. IDR 2 billion by LPS). For savings exceeding this threshold, the risk of loss in the event of bankruptcy remains with the saver, compelling them to assess the bank's stability. This retention of risk by the capital provider is fundamentally inconsistent with the Shariah principles of *Qardh* since debt in Islamic Jurisprudence cannot be partially erased in the event of bank bankruptcy. It is also strengthened by the savers generally at the lowest priority of the bank assets liquidity and even cannot obtain fully fund they save on bank. If the savers are creditors, they should be prioritized as other companies that give credit to the bank. In reality, the government typically prioritizes directors, managers, and employee's salaries who according to sharia should be responsible to pay the debt collectively not the ones be prioritized in assets liquidity over the savers if the *Qardh* transactions are defined for the savers.

- *Mudharabah*: The arrangement does not meet *Mudharabah* criteria if the saver does not seek profit from the capital turnover. Even if a profit-sharing ratio exists, it is secondary to the motive for security. Moreover, *Mudharabah* calculations in Islamic banking are frequently constrained by regulatory authorities (e.g. OJK) that mandate a 100% guarantee of the principal capital. This guarantee violates the core principle of *Mudharabah*, where the capital provider (*Rabbul Mal*) must bear the financial loss.

Since the bank and e-money saving fails to fulfill the prerequisites of the mentioned contracts, the intent and reality of the saver's action should revert to its origin: a form of trust (*Amanah*). The present study will explore Jurisprudence in this context.

2. Methodology

2.1 Research framework

The present research constitutes an exploratory study that employs a qualitative methodology with a primary reliance on library research (desk research). This present research adopts a multidimensional approach integrating the Principles of Islamic Jurisprudence (*Ushul Fiqh*), Legal Maxims (*Qawa'id Fiqhiyyah*), and the Objectives of Shariah (*Maqashid Shariah*) (Kamali, 2008) (see Fig. 1). The integration of these methodologies is highly justified by the complex nature of the research objectives. Firstly, *Ushul Fiqh* is utilized as the primary epistemological framework to deconstruct the ontological basis of saving contracts, ensuring that the theoretical reconstruction relies purely on primary texts rather than merely retrofitting classical opinions. Secondly, *Qawa'id Fiqhiyyah* is employed to universally assess the risk-return profiles and the underlying intentions (*niyyah*) within modern saving structures, providing a robust metric to evaluate Shariah compliance.

2.2. Data collection

This present research consists study of primary Islamic sources, namely Al-Quran with its tafsir (explanation) prioritized from widely recognized tafsir books (e.g. Ibnu Katsir, As-Sa'di, Al-Qurthubi) and examined in terms of both language textual and contextual elements. The next primary resources are well-accepted hadith books that include valid hadith (*shahih* or *hasan*) cited.

Access to secondary resources is restricted on topic of *Muamalah Fiqh*, *Ushul Fiqh, Qowa'id Fiqhiyyah*, *Maqashid Sharia* and select contemporary journal publications that critically appraised for its Islamic Jurisprudence. If there are contradictions between resources, the primary source is prioritized and if it is between valid primary resources, we prioritize the integration method (*jam'u bainal adillah*). If the contradictions in the explanation, the nearest meaning (*ma'na qarib*) to root (*ashl*) of the language and context is prioritized.

The exclusion criteria consist of sources that merely translate from secular economic term into Sharia terms without providing a justification (such as saving → giving loan → indebt/*qardh*) as these terms frequently oversimplify the comprehensive and strict sharia terms definition. Another simplification is in the mean of compliance to pay that is often mistranslated as *dhamanah* (assuring), thereby contradicting the *qabdh hukmi*.

2.3 Data analysis

The present study employs the widely accepted *Ushul Fiqh* approach that combine the two classical *ushul fiqh* school of thought from *mutakallimun* method (Maliki, Syafii, Hanbali) and *fuqaha* method (Hanafi). This approach is also utilized by prominent contemporary Islamic Scholar including Ibn Utsaimin. In addition, reference is made to the work of Ibn Qudamah al-Maqdisi book *Raudhatun Nazhirin* which mentions all of opinions from various schools of thought while also revealing the chosen thought of Hanbali jurisprudence.

In contemporary Islamic commercial jurisprudence (*Muamalah*), legal determinations for emerging transactions are frequently derived through *Qiyas* (analogy) based on classifications and terminologies established by classical scholars. However, it is crucial to recognize that many of these classical terms and legal maxims are scholarly constructs (*ijtihadi*) and not directly explicitly stipulated in the Qur'an or Sunnah. Consequently, in matters of dispute and ambiguity, it is considered preferable to refer directly to the primary sources (the Qur'an and Sunnah) rather than to adhere to old terminologies (Nyazee, 2002).

The data analysis technique utilizes *Takyif Fiqhi* (jurisprudential characterization) to critically re-evaluate the true nature of modern banking and e-money transactions. This approach is crucial in that it eliminates the contemporary financial terminology, thereby unveiling the fundamental transactional mechanisms, facilitating precise delineation of the *Amanah Tasharrufiyyah* concept. Finally, *Qiyas* (analogical deduction) is applied to bridge the gap between classical Prophetic precedents (such as the delegation in the Hadith of the Cave) and contemporary financial realities (Laldin, 2010), while *Maqashid Shariah* serves as the compass ensuring that the proposed reconstruction ultimately fulfils the broader goal of eradicating *Riba* and promoting justice.

One example of this phenomenon is the classification of bank savings. It is evident that modern practice often fails to fulfill the complete set of conditions required by the classical definitions of these contracts such as *Qard* (loan), *Wadi'ah Yad Dhamanah* (guaranteed custody), or *Mudharabah* (profit-sharing) (Hassan & Lewis, 2007). Therefore, a more methodologically sound approach would be to return to the fundamental principles (al-asl) and formulating a distinct legal analysis (or introducing new terminology if necessary). This necessity is further compounded by the rapid evolution of digital finance, including e-Money, digital platforms, and wallet top-up mechanisms. Thus, a re-examination grounded in

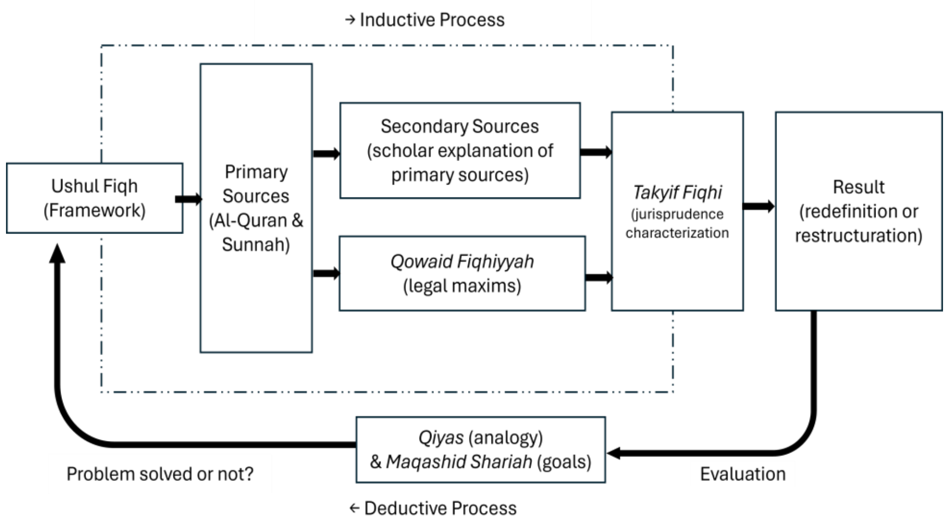

Fig. 1. Research method analytical framework

the Qur'an, Sunnah, and the most proximate *Qiyas* is both urgent and essential to uncover the true nature (*haqiqah*), legal status, and validity conditions of these modern contracts (Oseni, 2015).

To ascertain the true substantive reality (*haqiqah*) of a contract and assign a nomenclature that aligns with Scriptural evidence, recourse must be made to the fundamental maxim:

'Al-umur bi-maqasidiha'
"Matters are determined by their intentions".

Derived from this principle is the specific corollary maxim governing transactions:

'Al-ibrah bi al-maqasid wa al-ma'ani la bi al-alfaz wa al-mabani'

"In contracts, effect is given to intention and meaning, not to words and forms." (Al-Zuhayli, 2003)

Based on these legal maxims, it is imperative to investigate Shariah evidence that precisely aligns with the intent and objectives of the contracting parties to redefine the contract and its legal rulings. In the context of bank savings, the intent of most savers is specific: they aim to entrust their wealth while granting authorization to the Bank to manage and utilize the funds. While the Bank is permitted to derive utility from these funds, the saver retains full ownership rights and legal possession (*qabdh hukmi*). The primary benefit sought by the saver is the safeguarding of wealth and transactional convenience, rather than a return on a loan (Vogel & Hayes, 1998).

3. Results

3.1. Concept of Entrustment (Amanah) Back to Quran and Sunnah

To construct a valid framework for *Amanah Tasharrufiyyah*, it is imperative to ground the concept in the primary evidence of the Shariah.

Allah the Almighty declares in Surah Al-Baqarah (2:283):

فإن أمن بعضكم بعضا فليؤدي الذي أطمن أمانته وليتقي الله ربه

"And if one of you give 'amanah' (entrusts) another, then let him who is entrusted discharge his 'amanah' (trustness), and let him fear Allah, his Lord."

Some argued that Surah Al-Baqarah: 283 establishes a correlation between *Amanah* and *Qardh* (debt) in view of the verse before it talked about *Dayn*. However, the phrase "if" in *"fa in amina"* (if one trusts another) reveals that it refers to an alternative mechanism for the security of the fund. The act of giving "*amanah*" through absolute trust for the debt in the absence of collateral (*Rihan*) or a written record as mentioned in the preceding verse carries significant risk. The debtor is therefore advised to fear to Allah while the contract remains *Qardh*, and it is prohibited to receive excess returns. It has been suggested that the term may refer to giving "*amanah*" which involves the act of entrusting an individual with responsibility of managing or trading (*tasharruf*). In this context, the trustee retains the ownership of the asset, thereby offering an alternative to the risk of *Dayn* without collateral pawn (*Rihan*) or written record. The term *Amanah* in more specific meaning where the entrusted is permitted to utilize the funds and return it with the surplus exceeding the initial, which is classified as permissible profit or gift, not usury. It may be grounds of both *Wakalah* and *Mudharabah* but in more general meaning.

Furthermore, *Amanah* is not the same as *Qardh* as when mentioned in Surah An-Nisa (4:58) it does not mean for giving debt, but to entrust to who is capable or has the right of it,

إن الله يأمركم أن تؤدوا الأمانات إلى أهلها

"Indeed, Allah commands you to render amanah (trusts) to whom they are due..."

Ibn Kathir stated that the verse, as interpreted by many scholars, pertains to Uthman bin Thalhah when Prophet *-shallallaahu 'alahi wasallam* requested the key of Ka'bah on the day of *Fathul Makkah* and then returned it to him (Kathr, 1998). However, the meaning is very general on everything that can be entrusted according to As-Sa'di (As-Sa'di, 2015). Within the context of financial management, the phrase *"to whom they are due"* (*ahliha*) implies competence and eligibility. It is used to denote those who possess the capability to protect and manage the assets effectively.

To validate this reconstruction, reference is made to authentic *Hadith* recorded by Imam Al-Bukhari regarding the transaction of Urwah Al-Bariqi. The Prophet (peace be upon him) entrusted him with a single dinar with which to purchase a single sheep. Urwah, exercising his judgment, purchased two sheep and subsequently sold one of them for one dinar, returning to the Prophet with both a sheep and the original dinar (Al-Bukhari, 2020).

While classical jurisprudence often categorizes this incident under *Wakalah* (agency) or *Bai' al-Fuduli* (uncommission agency), this classification is analytically imprecise. In the context of a strict *Wakalah* contract, the agent is bound by the principal's specific instruction; however, Urwah executed a transaction involving the purchase of two and the sale of one that had not been explicitly ratified *ex-ante* by the principal (the Prophet) (Ibn Hajar Al-Asqalani, 2013).

Further validation was identified in the authentic *Hadith* of the three men who were trapped in a cave and sought divine deliverance (*tawassul*) through their most sincere deeds. The third individual provided a detailed account of his actions in fulfilling a trust. He invested the uncollected wages of a laborer, managing the funds until they appreciated significantly into a large herd of livestock. Upon the laborer's return, the employer surrendered the entire wealth (principal plus all accumulated growth to him) (Al-Bukhari, 2020).

A critical jurisprudential analysis (*takyif fiqhi*) of this narrative reveals that the transaction does not fit neatly into the classification of *Wadi'ah*, *Qard*, nor *Mudharabah*

- This is not *Wadi'ah* (pure custody), as the fund was actively managed and invested, not merely preserved.
- It is not *Qard* (loan). If categorized as a loan, the return of the principal with such substantial increase would legally constitute *Riba al-Fadl* (usury of excess), as any benefit derived from a loan is prohibited. The rationale behind this is that the surplus should accrue to the laborer, as the proprietor of principal fund, as opposed to the employer who manages it because in *Qard*, the excess should belong to who use it.
- It is not *Mudharabah* (profit-sharing partnership), because

there was both prior agreement and sharing ratio (*nisbah*) between the parties. In the context of Islamic contract law, the *Mudharabah* contract is considered invalid (*fasid*) under certain conditions. Firstly, if the profit is not distributed between the capital provider and the entrepreneur, or if the ratio is undefined.

- It is not like general *Wakalah*, since the laborer (owner) was not mentioned in hadith delegating specific action to the employer rather the employer did it by his initiative.

Consequently, the contract described in this divinely accepted deed is best characterized as an Authorized Trust (*Amanah Tasharrufiyyah*). In this structure, the manager is entitled to utilize the assets, yet the ultimate ownership remains entirely with the trustor (*Sahib al-Amanah*). This is evidenced by the employer returning the entire accumulated wealth to the worker without retaining a share.

Therefore, this interaction is more precisely characterized as an *Amanah* (Trust) contract. This reclassification is supported by the alignment with numerous textual evidence regarding trusts and the specific context of the event. Urwah and the man of the cave were granted implicit discretionary authority (*tasharruf*) to manage the capital. The subject demonstrated the flexibility to maximize value without seeking prior approval for every specific action, provided that his conduct was free from negligence (*tafrit*) and firmly rooted in the intention to benefit, rather than harm, the capital owner.

3.2. Takyif fiqhi (Characterization and Categorization)

The validity of the *Amanah* (Trust) contract in regard to monetary assets can be established through *Qiyas* (analogical deduction) with the established rulings on livestock entrustment. In classical jurisprudence, a shepherd entrusted with livestock is permitted to derive specific benefits such as milk or offspring or to receive a wage, while the core liability and risk of the asset remain with the owner, except in cases of negligence (*tafrit*) or misconduct (*ta'addi*) by the trustee (Al-Zuhayli, 2003).

A fundamental prerequisite for this *Amanah* structure is that no guaranteed surplus (fixed return) can be stipulated for the capital owner at the inception of the contract. Such a condition would result in the transformation of the transaction into a loan (*Qard*) containing prohibited usury (*Riba*).

The trustee (*Amin*) is permitted to manage and grow the entrusted assets. The legal characterization of the return of these assets falls into four distinct scenarios:

Scenario 1: Remunerated Trust (Resembling *Wakalah*)

The trustee returns the principal capital along with its generated growth to the owner but requests a fee (*ujrah*) for the management effort.

1. In the event that the fee amount is stipulated in advance, this may be considered a *Wakalah bi al-Ujrah* (Agency for a Fee) contract.

2. In the absence of a stipulated fee, the transaction is considered a pure *Amanah*, wherein the trustee may request remuneration upon completion based on the owner's discretion and customary practice (*urf*).

Scenario 2: Profit Sharing (*Mudharabah*)

The owner assigns a portion of the investment profit as compensation for the trustee. If this profit-sharing ratio (*nisbah*) is agreed upon at the onset, the contract is transformed into a *Mudharabah* partnership, wherein the capital owner continues to receive a share of the financial returns (Usmani, 2002).

Scenario 3: Benevolent Trust (*Ihsan*)

The trustee returns the full capital amount along with all generated growth without retaining any wage or profit. This constitutes an act of Ihsan (benevolence) by the trustee, thus constitutes a precedent that finds parallels in the *Hadith* of the three men in the cave and the case of Urwah Al-Bariqi.

Scenario 4: Authorized Trust (*Amanah Tasharrufiyyah*)

The capital owner voluntarily waives all rights to the financial profits generated from the asset management, assigning them entirely to the trustee (Bank) as compensation. Consequently, the proprietor reaps a number of alternative benefits: the safeguarding of wealth, guaranteed liquidity, and transactional convenience provided by the trustee's reputation and infrastructure. This specific configuration forms the core of the proposed reconstruction, hereinafter referred to as *Amanah Tasharrufiyyah*.

3.3. Jurisprudence results

Based on the preceding Scriptural evidence (*nash*) and analogical deductions (*qiyas*), the contract of *Amanah Tasharrufiyyah* (Authorized Trust) is considered as legally permissible (*ja'iz*) within the framework of Sharia. It is governed by four distinct parameters that clearly distinguish it from *Qard* (loan), *Wadi'ah* (custody), or *Wakalah* (agency) (see Table 1 and Fig. 2-3).

Delegation of Authority: The Trustor (Saver) voluntarily delegates full management authority to the Trustee (Bank). This feature distinguishes it from the concept of pure *Wadi'ah*, wherein the utilization of assets is prohibited, and from strict *Wakalah*, which typically requires specific authorization for each transactional decision.

Allocation of Risk: The fundamental risk of the capital remains with the Trustor, even withstanding any partial coverage provided by third-party guarantors (e.g., Saving Insurance/LPS). This is in direct contrast to *Qard*, where the liability and risk of loss fall entirely upon the borrower/debtor.

Nature of Ownership and Possession (*Qabdh*): The Trustor is the legal proprietor of the managed assets and retains the rights to possess them (*qabdh hukmi*). Consequently, the Trustor possesses the autonomy to transfer ownership rights (e.g., via digital transfers) instantaneously without seeking prior consent from the Trustee. This is in contrast to *Qard*, where the lender transfers ownership to the borrower, and any subsequent transfer of the claim would require the complex requisites of *Hiwalah* (transfer of debt) (Al-Zuhayli, 2003).

Distribution of Benefits: It is important to notye that any financial surplus or capital appreciation generated from the management of funds is yielded entirely to the Trustee (Bank). In exchange, the Trustor voluntarily waives the right to monetary profit in favor of non-monetary benefits, including asset security (backed by the Trustee's reputation and third-party guarantees), immediate liquidity, and transactional convenience.

Table 1. Comparative jurisprudential analysis of banking contracts and legal consequences

Criteria / Distinction	Qardh (Loan)	Wadi'ah Yad Dhamanah (Guaranteed Custody)	Mudharabah (Profit-Sharing Investment)	Wakalah (Agency)	Amanah Tasharrufiyyah (Authorized Trust)
Primary Intent (*Niat*)	Benevolence (*Irfaq*): To assist the borrower in need.	Custody (*Hifz*): Safekeeping, though the Bank intends to utilize funds.	Profit (*Ribh*): Investment growth.	Delegation: To execute specific tasks on behalf of another.	Security & Liquidity: Safe entrustment with transactional ease.
Ownership Status	Transfer fully to the Borrower.	Transfers to the Bank (Commingled with Bank's assets).	Remains with the Capital Provider (*Rabbul Mal*).	Remains with the Principal (*Muwakkil*).	Remains with the Truster/Saver (*Sahib al-Amanah*).
Management Rights	Absolute Discretion: Borrower has full freedom.	Unrestricted: Bank may utilize funds freely.	Restricted/Unrestricted: Bound by profit motive & agreement.	Restricted: Limited to specific instructions of the principal.	Discretionary Authority: General permission with specific boundaries (SOP).
Risk Liability (*Dhaman*)	Borrower (100%): Obligation to repay in full.	Bank (100%): Bank guarantees the principal.	Capital Provider: Unless negligence/misconduct by Manager.	Principal: Unless negligence/misconduct by Agent.	Truster/Saver: (In practice, mitigated by 3rd Party/Insurance).
Profit Distribution	Borrower (100%): Any excess to lender is *Riba*.	Bank (100%): Saver entitled to principal only.	Shared: Based on pre-agreed ratio (*Nisbah*).	Principal (100%): Agent receives fixed fee (*Ujrah*).	Trustee (Bank) (100%): Owner voluntarily waives rights in exchange for services.
Status of Perks/Gifts	Prohibited (*Riba*): Benefit derived from a loan.	Doubtful (*Syubhat*): Controversial status.	Valid: Part of profit distribution if not fixed nor pre-stipulate	Permissible	Permissible (*Hibah*): Valid as a gift if not pre-stipulated.
Gold/Online Trading Status	Prohibited (*Riba Nasi'ah*): Delay in exchange of Ribawi items or "Debt for Debt" (*Kali bil Kali*).	Doubtful (*Syubhat*): Disputed validity.	Doubtful	Permissible: Money belongs to Principal.	Permissible: Money belongs to Owner + *Qabdh Hukmi* applies.

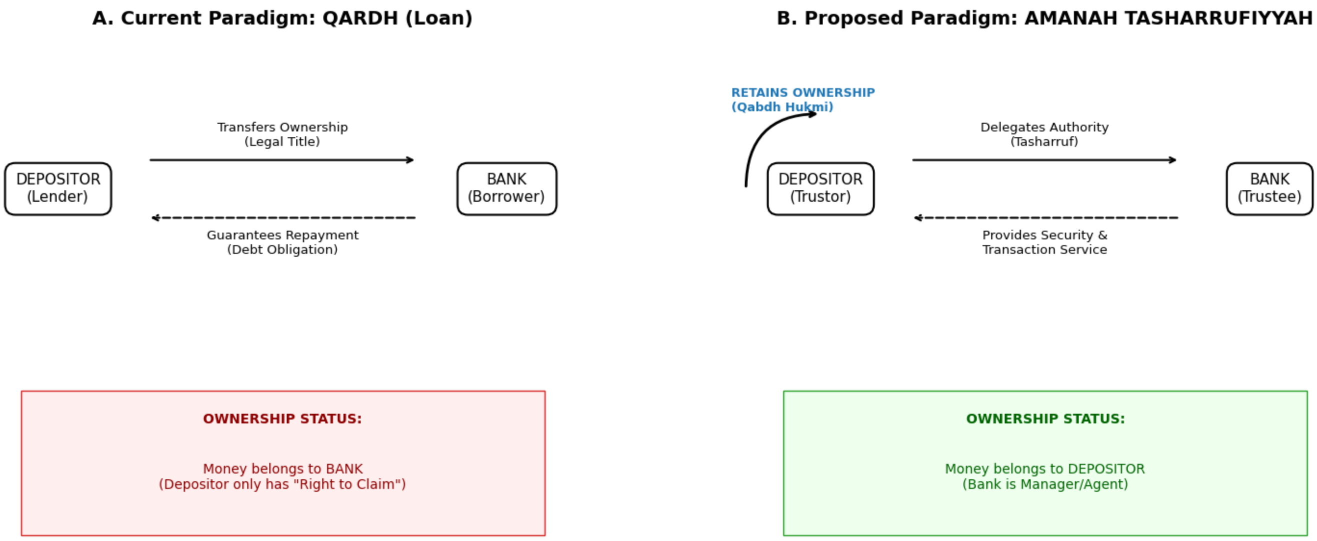

Fig. 2. Structural transformation comparison

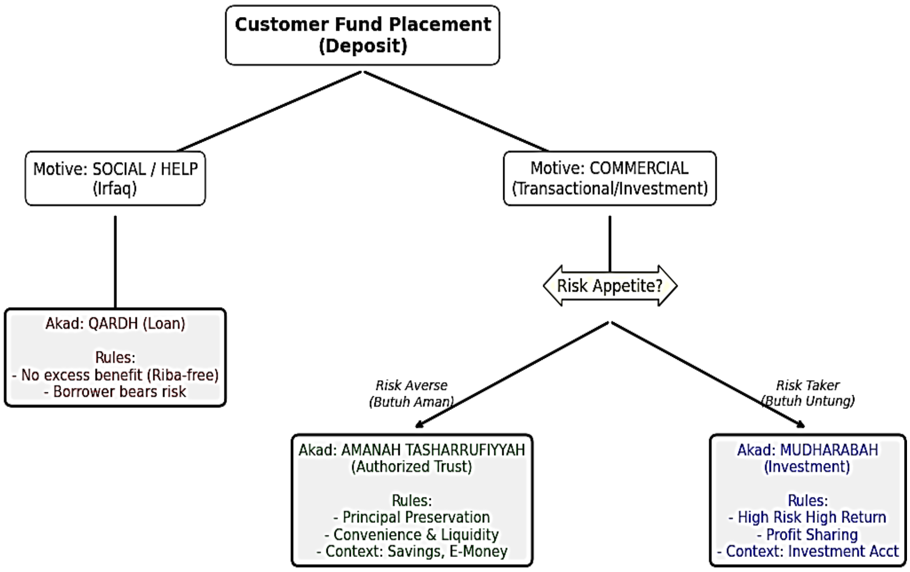

Fig. 3. Shariah contract decision tree

3.4. Scopes of modern transactions within true analogy (qiyas)

In reforming modern financial systems and E-Money: The contract is proposed as a reconstructive solution to rectify the ambiguities inherent in current modern financial instruments. The following sectors are of particular importance in terms of the application of this technology:

A. Reconstruction of shariah banking

The utilization of Amanah Tasharrufiyyah in Islamic banking transaction signifies a fundamental step in the purification of such financial activities. It offers a definitive exit from the dilemma of the *Qard* contract (which is vulnerable to *Riba*) and the *Wadi'ah Yad Dhamanah* contract (which suffers from internal logical contradictions), steering the industry towards a system that is more Shariah-compliant, logically sound, and relevant to the contemporary era.

B. Financial technology (fintech) & e-money (digital wallets)

Urgency: Funds saved in digital wallets (e.g., GoPay, OVO, ShopeePay) are intended to facilitate transactional convenience (*Tasharruf*), not to provide a loan (*Qard*) to the application provider. The provider is granted authorization to manage the float funds (e.g. by placing them in liquid Bank Indonesia instruments). The investment yield is retained by the provider as a service fee (*ujrah*), while the user receives the guarantee of capital security. The implementation of this contract automatically eliminates the issue of *Riba* associated with promotional discounts or cashbacks. Since the funds retain the status of user ownership (property) rather than debt (*dayn*), any additional benefit received by the user is legally classified as a gift (*hibah*) or a marketing incentive, as opposed to a prohibited benefit derived from a loan (*Riba Qard*).

C. Conservative wealth management

This is a financial instrument designed for high-net-worth individuals who entrust significant capital to Investment Managers. The primary mandate of such managers is principal preservation and liquidity, rather than speculative high returns. The client voluntarily waives rights to potential investment profits (*Tanazul*) in favor of the manager as a compensation for custodial services, provided the capital remains secure and accessible on demand. This alternative is legally superior to the imposition of a *Mudharabah* structure, which necessitates profit-sharing and risk-bearing conditions that frequently prove incompatible with the risk appetite of conservative savers.

D. Community and non-profit funds (mosques / foundations / waqf)

This concerns public funds held by custodians (Trustees/*Takmir*). From a Shariah perspective, trustees lack the authority (*wilayah*) to "lend" (*Qard*) community or *Waqf* assets to banks without collateral, as this exposes the Ummah's assets to unsecured counterparty risk. In the context of *Amanah Tasharrufiyyah*, the status of the funds is defined as that of entrusted assets, necessitating their safeguarding (*Amanah*), not loaned capital. This structure legally protects trustees from potential liability for negligence (*tafrit*) associated with the unsecured lending of public funds.

4. Discussion

4.1. Practical implications within maqashid sharia (goals)

A theoretical framework remains a mere subject of intellectual dispute if it fails to offer tangible solutions to contemporary problems. The proposed concept of *Amanah Tasharrufiyyah* (Authorized Trust) yields profound consequences in establishing legal certainty (*yaqin*) for transactions previously shrouded in prohibition (*haram*) or ambiguity (*shubhat*) under the *Qard* paradigm. The adoption of this contract serves to resolve any resistance to various modern transactions. The following elucidates the legal clarity provided by *Amanah Tasharrufiyyah* in contrast to *Qard*:

1. The legal status of e-wallet bonuses, discounts, and promos

In the context of the *Qard* (Loan) Paradigm, if the balance held in digital platforms (e.g., GoPay, ShopeePay, OVO) is legally characterized as a Debt (*Dayn*) owed by the platform to the user, then any discount, cashback, or reward points provided by the issuer are considered Usury (*Riba*). This assertion is founded upon the established legal maxim: *"Any loan that yields a benefit to the lender is considered usury"* (*Kullu qardin jarra naf'an fahuwa riba*) (Al-Zuhayli, 2003).

In the context of the *Amanah Tasharrufiyyah* (Authorized Trust) Paradigm, since the underlying contract is redefined as a Trust (*Amanah*) with management authorization, thereby affecting a fundamental shift in the legal relationship. The user is not a Lender, but the Owner (*Malik*), and the platform is not a Borrower, but the Trustee (*Amin*). Consequently, if the Trustee offers a discount or promo that is not contractually stipulated as a binding condition *ex-ante*, it does not constitute a benefit derived from a loan. Instead, it is classified as a Gift (*Hibah*) or a promotional incentive from the manager to the owner to foster loyalty. This is legally permissible (*Halal*). The user is fully entitled to utilize these benefits be it shipping discounts, cashback, or vouchers because the funds remain the user's property under Constructive Possession (*Qabdh Hukmi*), allowing for immediate transactional use equivalent to cash (Oseni & Ali, 2019).

2. Gold and foreign currency trading via transfer (resolution of qabdh yadan bi yadin)

In the context of the *Qard* (Loan) Paradigm, as outlined in Islamic commercial law, the exchange of *Ribawi* items (including gold, silver, or currencies) is subject to the principle of immediate delivery or "hand-to-hand" exchange (*Yadan bi Yadin*). If a bank balance is legally categorized as a Debt (*Dayn*) owed by the bank to the saver, purchasing gold via bank transfer is problematic. It can be construed as exchanging a debt claim for gold without physical possession, resulting in Usury of Delay (*Riba Nasi'ah*) or the prohibition of exchanging debt for debt (*Bay' al-Kali bi al-Kali*), as a receivable is not equivalent to physical cash (Al-Zuhayli, 2003).

Under the *Amanah Tasharrufiyyah* (Authorized Trust) Paradigm: Within this proposed framework, the account balance is defined as a specific asset (*'Ayn*) that is entrusted to the bank and legally owned by the saver. The saver is in constructive possession (*Qabdh Hukmi*) over these funds, as opposed to merely holding a debt claim. It can thus be concluded that the process of executing a transfer is analogous to physical act of retrieving cash from one's own wallet and handing it over to the seller. When a transfer occurs, the saver is effectively moving the physical asset (*'Ayn*) via constructive possession from their custody (in the bank's vault) to the seller's custody. Legal Ruling: it is established that such transactions are rendered Valid (*Sahih*) and permissible. The critical condition of spot exchange is satisfied because the subject matter transferred is a corpus/asset (*'Ayn*), not a debt (*Dayn*), thereby fulfilling the requirement of immediate payment (AAOIFI, 2016).

3. Interbank fund transfers (resolution of hawalah complexities)

Under the *Qard* (Loan) Paradigm: An interbank transfer or a transfer to an e-money wallet is legally constructed as Debt Transfer (*Hawalah*). The saver is effectively transferring their right to claim a debt from Bank A to a beneficiary in Bank B. The Shariah prerequisites for *Hawalah* are stringent, typically requiring the mutual consent (*rida*) of all three parties (the transferor, the transferee, and the payer/bank). In the context of modern automated banking, the necessity to obtain such specific consent for each transaction is procedurally complex and legally tenuous (Oseni, 2015)

In the context of the *Amanah Tasharrufiyyah* (Authorized Trust) Paradigm: the transfers is reclassified as a Directive for Asset Relocation. It is simply a command from the owner to the Trustee: *"Move my entrusted assets from the vault of Bank A to the vault of Bank B."* In this system, the transaction is stripped of the complex debt-transfer requirements. The instruction thus becomes purely a matter of logistics. Consequently, any interbank transfer fee charged is legally permissible as a service fee (*ujrah*) for the work of moving funds, without triggering any usury concerns.

4. Online e-commerce transactions (resolution of kali bi al-kali)

Under the *Qard* (Loan) Paradigm: The utilization of a *Qard*-based account for the purpose of online shopping poses a significant jurisprudential hurdle regarding the Prohibition of Debt-for-Debt Exchange (*Bay' al-Kali bi al-Kali*). In online transactions, the goods are typically delivered in the future (non-spot). If the payment source (bank balance) is also categorized as a "debt" owed by the bank, the transaction becomes the exchange of a debt (the money) for a debt (the goods). Most scholars prohibit exchanging one debt for another (Kamali, 2008).

Under the *Amanah Tasharrufiyyah* (Authorized Trust) Paradigm: In this framework, the fund transfer represents the movement of the saver's Owned Assets (*'Ayn*). Consequently, purchasing goods online (even if delivery is delayed) is classified as purchasing deferred goods using cash equivalent (*Qabdh Hukmi*), rather than debt. The transfer is constituted by a direct payment using an existing asset. This validates the transaction as a permissible sale (e.g. *Bay' al-Salam* or standard trading), completely avoiding the prohibition of exchanging debt for debt.

5. Resolution of disputes regarding zakat liability

In the context of the *Qard* (Loan) Paradigm: Scholarly opinion diverges regarding the *Zakat* obligation on bank savings: Does it fall upon the Borrower (Bank) who currently possesses the funds, or the Lender (Saver)? The prevailing view links the obligation to the recoverability of the debt (*Dayn*). If the debt is deemed recoverable (*marjuw al-ada'*), the Zakat obligation falls upon the Saver. However, this creates ambiguity in cases of systemic financial distress.

In the context of the *Amanah Tasharrufiyyah* (Authorized Trust) Paradigm: In this contract, the ownership structure is unequivocal. The funds remain the property of the Trustor (Saver), while the Bank serves strictly as a manager with no claim to ownership. It is evident that the Saver retains *constructive possession* (*Qabdh Hukmi*) and is at liberty to withdraw assets at will. Consequently, the fiscal obligation of Zakat falls strictly and absolutely upon the Saver. This eliminates any jurisprudential doubt regarding the subject of liability.

6. Psychological alignment and ethical consistency (adab)

The Issue with *Qard*: The *Qard* construct creates a sociological and ethical anomaly. In principle, *Qard* is a benevolent act (*Irfaq*) that is intended to assist the needy. For an ethical perspective, it is considered to be ethically incongruous for a retail saver (often of modest means) to be positioned as "assisting" a multibillion-dollar financial institution. This misaligns the legal form with the moral intent: the saver intends to invest or safeguard wealth, rather than to perform charity for a wealthy corporation.

The solution of *Amanah Tasharrufiyyah*: the present contract is one which aligns legal structure with psychological reality. The saver, in turn, positions themselves as entrusting their wealth to a stronger and more capable entity (the Bank) for safekeeping within a mutually beneficial arrangement. In this context, the Bank profits from asset management, while the Saver gains security.

- Ethical Integrity: This contract is morally honest and factually accurate, restoring the proper *Adab* (etiquette) between the capital owner and the custodian.

7. Legitimacy of administrative fees

The issue with *Qard*: In the context of a strict loan contract, it is considered impermissible (*Haram*) for the Borrower (Bank) to charge the Lender (Saver) any fee for the acceptance of the loan. Logic dictates: *"Why should the lender pay the borrower for the privilege of lending money?"* Consequently, monthly administrative fees in *Qard*-based accounts face significant scrutiny and are often jurisprudentially difficult to justify (Lewis and Algaoud, 2001).

The solution of *Amanah Tasharrufiyyah*: The fundamental nature of this relationship is that of trust and agency, or Amanah and wakalah, respectively. Consequently, the relationship is characterized by the provision of services. Since the underlying nature is Trust/Agency (*Amanah/Wakalah*), the relationship is one of service provision. Therefore, it is entirely rational and Permissible (*Halal*) for the Trustee (Bank) to charge a fee (*Ujrah*) or administrative cost to the Owner (Saver) for the services of safeguarding, record-keeping, and facility maintenance. Conclusion: Within the confines of this legal framework, monthly deductions for administrative fees become legally valid and economically justifiable.

4.2. Limitations and shariah restrictions

While the concept of *Amanah Tasharrufiyyah* provides a robust reconstructive framework, its application is not unrestricted. The governance of the trust is determined by two key factors: the moral integrity (*'Adalah*) of the trustee and the specific context of the institution. The following parameters delineate their scope:

A. Exclusion on conventional banks (ineligibility of trustee)

The core pillar of this contract is Trust (*Amanah*). In Islamic jurisprudence, a Trustee (*Al-Amin*) is understood to imply the possession of moral probity (*'Adalah*) and commitment to Shariah. Conventional banks, which are systemically operated on interest-based principles (*Riba*), are fundamentally ineligible for shariah compliance. It is impermissible (*Ghairu Ja'iz*) to voluntarily enter an *Amanah Tasharrufiyyah* contract with a conventional bank, as granting them authorization to manage funds (*Tasharruf*) is tantamount to authorizing them to invest in usurious (*Riba*) instruments. This constitutes the violation of the prohibition of aiding in sin (*Ta'awun 'ala al-ithm*). This prohibition is lifted only in cases of Extreme Necessity (*Darurah*) or where no viable Islamic alternative exists, strictly limited to the extent of the need.

B. Mandate for islamic financial institutions (presumption of validity)

Despite the potential for operational imperfections or occasional ambiguities (*shubhat*) in execution, Islamic Banks operate within a defined Sharia Governance Framework. The *Amanah Tasharrufiyyah* contract must be directed towards Islamic Financial Institutions. Even if the institution may not yet be entirely perfect in its practice, its institutional commitment to Shariah satisfies the baseline requirement of an *Amin*. The apparent commitment (*Zahir*) is taken into consideration in the judgement process while minor operational gaps are regarded as matters for gradual improvement (*Tadrij*).

C. Tolerance for e-money and fintech

In the context of E-Money and Fintech platforms, the utilization of float funds can be opaque to the user, and funds may be commingled with non-Shariah-compliant accounts. The use of such platforms is tolerated (*Ma'fu Anhu*) under the following jurisprudential considerations:

- Obscurity of Usage (*Jahalah*): The user does not have any explicit knowledge of or intention to utilize the funds for Riba; the primary intent is purely transactional (payment efficiency).
- Widespread Affliction (*Umum al-Balwa*): The pervasive integration of digital payments means that total avoidance would create severe hardship (*Mashaqqah*).
- Insignificance: In contrast to bank savings which are substantial and maintained over extended periods, e-money balances are typically nominal and transient, thereby minimizing the magnitude of any potential *shubhat*.

4.3. Theoretical significant and studies comparison

This study introduces a significant theoretical paradigm shift within the established body of knowledge in Islamic jurisprudence and finance system. By examining the ontological foundation of modern saving and e-money ecosystems through the lens of *Amanah Tasharrufiyyah*, this research challenges and expands upon the classical *Qard-Wadi'ah* dichotomy that has predominantly governed prior literature (see Hassan & Lewis, 2007; Kamali, 2008).

Firstly, previous studies have focused on addressing the jurisprudential of *Qard* and *Wadi'ah* through legal stratagems (*hiyal*) or by attempting to justify contemporary adaptations of these contracts (Putri & Prasetyo, 2021; Wasiaturrahma et al., 2019). In contrast, this study contributes to the literature by demonstrating that the root of these anomalies lies not in the execution, yet in the mischaracterization of the underlying contract itself. By shifting the theoretical framework from a debt-based (*Qard*) or custody-based (*Wadi'ah*) relationship to an agency and trust-based (*Amanah*) relationship, this paper resolves the long-standing theoretical tension regarding the permissibility of utilizing deposited funds and the distribution of corresponding benefits without falling into *Riba*.

Secondly, this research contributes to the theoretical discourse on *Takyif Fiqhi* (jurisprudential characterization). As previously proven by Oseni (2015) scholars have acknowledged the existence of a saving status similar to *Amanah Tasarrifiyyah*. However, the theoretical scope was limited to specific applications such as *Hawalah* (debt transfer). This study serves to expand the scope of applicability of *Amanah Tasharrufiyyah*, thereby establishing it as a versatile and detail primary contract capable of accommodating the complexities of fiat and digital currency ecosystems.

Finally, by grounding the theoretical reconstruction directly in primary Prophetic precedents specifically the economic delegation of Urwah Al-Bariqi and the fiduciary principles in the

Hadith of the Cave, this study reinforces the epistemological rigor of Islamic economics. It proves theoretically that classical Fiqh possesses inherent structural flexibility, eliminating the need to force modern financial realities into incompatible classical terms. This provides future researchers with a new foundational theory to analyse other emerging digital financial instruments, thereby ensuring that academic discourse in Islamic finance remains both historically authentic and contemporarily relevant.

4.4. Theoretical challenges

4.4.1. Tasharruf fudhuli in Hadith and its use

Tasharruf fudhuli is a scholar whose writings have been cited in the explanation of both hadith. However, the precise nature of this scholar's contribution remains unclear, as he has not yet been defined as the basis/root of the transaction. Since scholar add it as additional case of Wakalah or Mudharabah, its actually violate from the definition and prequirements of both wakalah and mudharabah, as articulated by other scholars.

The legal practice of *tasharruf fudhuli* from the Urwah and Cave Hadith is consequent on that *amanah tasharrufiyyah* and thus has greater legal significance. The presence of written mutual consent from the saver to authorize the Bank to use the fund under SOP in intention of safety and liquidity. Both hadith are employed to ascertain the legal aspect of thing that undisputed better than it as it is widely acknowledged that the presence of general or specific consent is significantly (*amanah tasharrufiyyah*) better than without any consent (*tasharruf fudhuli*).

4.4.2. Guarantee paradox: Risk taker vs. risk minimizer

One of the primary contentions is the presence of a mandatory guarantee from authority. Traditional interpretation suggests that a guaranteed deposit implies a loan (*Qardh*), wherein the borrower assumes full liability in exchange for full ownership rights. However, this interpretation oversimplifies the complex regulatory environment of modern banking. It is argued that the guarantee mandated to Islamic banks should not be viewed as a consequence of the bank owning the money. Rather, it should be regarded as a compliance requirement to minimize systemic risk. The bank operates under strict Standard Operating Procedures (SOPs) mandated by financial authorities. Thus, the guarantee is a Zero-Tolerance Protocol against negligence (*Ta'addi*).

This distinguishes the bank from a typical borrower. In the context of a *Qardh* contract, the individual who borrows the fund is considered as a "Risk Taker," utilizing the loan for personal volatility. Conversely, the bank acts as a "Risk Minimizer," managing the entrusted funds with professional prudence. Therefore, the guarantee protects through integrity of the *Amanah* (trust) rather than transforming it into a debt. By reframing the guarantee as a rigid professional commitment (*Iltizam*) rather than a transfer of proprietary risk, the *Amanah Tasharrufiyyah* model preserves the sanctity of the depositor's ownership while accommodating the safety requirements of the modern financial system.

Furthermore, the nature of the bank's authority over the funds is fundamentally different from that of a borrower in a *Qardh* contract. A borrower typically possesses unrestricted freedom to commingle funds (*Imtizaj*) and deploy them into high-risk ventures or illiquid assets, provided repayment is made. In contrast, Islamic banks operating under the *Amanah Tasharrufiyyah* model are subject to a strict prudential regulations that align with the characteristics of a custodian rather than a debtor. These regulations are outlined below:

- Principle of Fund Segregation is enforced. The funds deposited are not absorbed into the bank's proprietary equity for unrestricted trading; they are managed as a distinct pool of assets.
- The bank is legally mandated to maintain Liquidity Preservation Protocols (such as Statutory Reserve Requirements), thereby ensuring that depositor funds remain accessible on demand. In the context of a pure loan (*Qardh*), the borrower is not obliged to maintain the specific funds in a liquid state.
- The bank is prohibited from engaging in excessive speculation. The guarantee is a regulatory instrument that functions as a boundary marker, thereby restricting the bank to Low-Risk Investment Vehicles. If the contract were pure *Qardh*, the bank would have no restrictions on investing in high-volatility assets.

The existence of these regulatory constraints including segregation, liquidity maintenance, and risk aversion serves to confirm the bank's role as a disciplined agent (*Wakil*) protecting an entrusted asset (*Amanah*), rather than a borrower consuming a loan.

4.4.3. The persistence of dhaman as mandatory

To address this, it is not proposed that *Amanah Tasharrufiyyah* should be regarded as a contract that is in violation of the established principles of *Amanah* (where an *Amin* is traditionally not a guarantor unless negligent). Rather, we justify the emergence of a binding obligation of guarantee (*Dhaman*) within this framework through the synthesis of two specific *Usul al-Fiqh* principles:

- The application of *Al-Kharaj bi al-Dhaman* (Entitlement to Yield is Accompanied by Liability for Loss): When a bank (acting as the *Amin* in *Amanah Tasharrufiyyah*) is explicitly authorized (*Idhn Sarih*) to utilize the deposited funds and generate commercial profit for its own balance sheet, the nature of its possession shifts. According to the *Al-Kharaj bi al-Dhaman*, the moment the bank appropriates the utility of the funds for itself, it automatically absorbs the corresponding risk (*Dhaman*). Consequently, the guarantee does not arise from the *Amanah* contract itself, but rather emerges as a mandatory legal consequence (*tariq al-iltizam*) of the bank exercising its authorized right to profit.

- The application of *Al-'Urf al-Tijari* (Commercial Custom) and *Maqashid al-Shari'ah* (Objectives of Shariah): In the modern fiat and digital ecosystem, the absolute security of principal funds constitutes the customary bedrock (*'Urf*) of the banking system, a principle that is strictly enforced by regulatory bodies (e.g., Deposit Insurance Corporations). In *Usul al-Fiqh*, an established custom (*'Urf*) that does not violate the core text (*Nass*) holds legal weight (*Al-'Aadah Muhakkamah*). By integrating *Maqashid al-Shari'ah* particularly *Hifz al-Mal* (Protection of Wealth) the imposition of a guarantee on the bank under *Amanah Tasharrufiyyah* prevents systemic moral hazard and protects public funds, thereby fulfilling the ultimate teleological objective of Islamic law.

- The limited liability of Bank company. The guarantee of Bank or e-money, fintech come not merely as full liability obligation (even mentioned in law or written in *akad* as mandatory liability) but rather as extremely strict SOP and regulation for safety, liquidity and marketing pursue. This limitation differs Bank as pool saving economic engine from the individual owned responsibility. In Sharia liability of *Qardh* cannot be separated from person even if the person has death since the debt inherited to family. Since bank owner/company do not have full liability, the risk of loss refers to savers making the guarantee given by bank on healthy finance situation.

In the context of sharia law, the emphasis is placed on the intention and meaning of an act rather than on its forms. This principle is illustrated by the concept of the guarantee, which is subject to the condition of bankruptcy. In this scenario, the savers are the least prioritized for liquidity while the owner and manager of Bank are not given responsibility to pay the debt to the loss fund of saver. The salary of managing directors and employers is more prioritized in bank's assets liquidity than the savers. It fundamentally makes the savers in the same low liquidity position as other investors (*Mudharib*). They have significantly various positions from creditor companies (debt owners) that have higher prioritized liquidity, questioning the savers position also as true debt owners since they have highest risk for loss in the case of bankruptcy which is frequently seen in economic crisis. To prevent that, government issued policy to shift some of this risk to third-party insurers, such as the Saving Insurance Corporation (*LPS*) in Indonesia or Central Banks globally. Crucially, this coverage is capped (e.g., IDR 2 billion by LPS). For savings exceeding this threshold, the risk of loss in the event of bankruptcy remains with the saver, compelling them to assess the Bank's stability. This retention of risk by the capital provider is fundamentally inconsistent with the Shariah principles of *Qardh* since debt in Islamic Jurisprudence cannot be partially erased because bankruptcy of the bank.

4.5. The nullification trigger: When amanah reverts to qardh

While *Amanah Tasharrufiyyah* allows the bank to utilize funds under specific constraints, this authority is not absolute. The validity of the contract as *Amanah* (Trust) is dependent upon the bank's adherence to the stipulations of the mandate. The *Amanah Tasharrufiyyah* contract is nullified and constructively reverts to *Qardh* under four specific conditions:

- Total Commingling (*Khalt*): If the bank fails to segregate depositor fund pools and merges them indiscriminately with its own initial principal, it is analogized with Trustee (*Amin*) of orphan (*Yatim*) who prohibited to mix the orphan wealth into his wealth in surah An-Nisa (4):2.

- Speculative Breach: If the bank engages in high-risk or prohibited investments specifically barred by the regulatory mandate (SOP). Such action constitutes a violation of the Trust since the saver intention to safety of his fund.

- Operational Negligence: If the bank fails to maintain the required liquidity ratios, using the funds to disposable uses like a personal loan. It also constitutes a violation of the Trust which the saver intentions for the liquidity of his fund.

- The Promise of Fixed Yields and Conditional Perks (*Ziyadah Mashrutah*): The integrity of *Amanah Tasharrufiyyah* relies on the principle that returns must reflect actual economic performance (*Ex-Post*), not a predetermined obligation (*Ex-Ante*). The contract reduces the long-term sustainability of the fund and violations of the trust and mimics the usury of the *Qardh*. If the bank promises fixed regular gifts or prizes contingent upon the deposit amount or tenure, this constitutes a *Manfa'ah* (benefit) derived from a loan. In Islamic jurisprudence, "Every loan that draws a benefit is Riba." Therefore, if a trustee (*Amin*) contractually binds himself to provide a fixed excess to the depositor, he ceases to be a trustee and becomes a borrower paying interest. To remain valid as *Amanah*, any return must be variable based on realized profits, and any gift must be discretionary (*Tabarru'*) without prior contractual binding.

5. Conclusion

This study concludes that the rigid application of classical *Qard* (loan) and *Wadi'ah Yad Dhamanah* (guaranteed custody) contracts in modern banking and fintech creates significant jurisprudential inconsistencies (*tanaqud*) and practical dilemmas. The reconstruction of saving contracts into *Amanah Tasharrufiyyah* (Authorized Trust) offers considerable as sharia based solution. The reclassification of the saver as the owner (holding *Qabdh Hukmi*) and the bank as the authorized manager (*Amin*) is pivotal in achieving the objectives of this research framework. These objectives include jurisprudential consistency, resolution of usury triggered on non-cash transactions, establishing the status saving funds as assets (*'Ayn*) rather than debt (*Dayn*), justifiable basis for charging administrative fees as compensation for custodial services (*Ujrah*), resolving the ethical ambiguity of charging lenders in a loan contract.

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