



A Critical Analysis of *al-Ḥiyal al-Syar'iyyah* Concept within the Ḥanafī School Paradigm: Implications and Implementation in Contemporary Financial Transactions

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Abstract

This study examines the concept of *al-ḥiyal al-syar'iyyah* (permissible legal stratagems) from the Ḥanafī school of thought perspective and its application in contemporary financial transactions. The research aims to analyze the Ḥanafī scholars' views on *al-ḥiyal al-syar'iyyah* and explore its implementation in financial contracts (*mu'amalah māliyyah*). Employing a qualitative approach with normative and sociological perspectives, this study focuses on textual analysis of classical and modern Islamic jurisprudence sources. The findings reveal that the Ḥanafī school considers *al-ḥiyal al-syar'iyyah* as a legitimate method to navigate religious matters without violating Islamic law, categorizing it into permissible and impermissible stratagems based on their objectives and alignment with *maqāṣid al-sharī'ah* (objectives of Islamic law). The study also demonstrates the application of this concept in various financial contracts, including sales, leases, loans, gifts, and contemporary Islamic financial products. This research contributes to the ongoing discourse on Islamic legal theory and its practical implications in modern Islamic finance, providing valuable insights for academics, policymakers, and practitioners in the field.

Keywords: *al-Ḥiyal al-Syar'iyyah, Ḥanafī School, Islamic finance, Legal stratagems*

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1. INTRODUCTION

Islam, as a comprehensive belief system, encompasses various aspects of human life, including *mu'amalah* in social and economic interactions.¹ Through the shari'ah brought by the Prophet Muhammad, Islam establishes an ethical and legal framework that governs human behavior, including the concepts of halal and haram in transactions and interpersonal relationships. The Qur'an, as the primary source of Islamic law, sets forth the fundamental principles of *mu'amalah*, which are then elaborated upon through the hadiths of the Prophet Muhammad. The Islamic legal paradigm acknowledges a spectrum of normativity, encompassing clear categories of halal or haram, as well as gray areas (*shubhat*) that require further *ijtihad* (legal reasoning).²

The fundamental objective of Islamic law *Maqāṣid al-Shari'ah* is to realize the well-being *maslahah* of humankind, both in this world and the hereafter. *Shari'ah* serves not only as a legal and ethical system but also as a comprehensive framework for addressing various societal challenges faced by both Muslims and non-Muslims.³

A comprehensive understanding of Islamic law necessitates a multidisciplinary approach that integrates textual analysis of authoritative Islamic sources with contextual considerations and a deep understanding of the *Maqāṣid* (objectives) of Islamic law.⁴ As articulated by al-Rumānī (1415 H), Islamic law is intrinsically designed to optimize benefits *jalbu al-maṣālih* and mitigate harms *dar'u al-mafāsid* for humanity.⁵

An interdisciplinary approach to Islamic law demands a critical examination of primary sources, a sophisticated understanding of legal methodology (*uṣūl al-fiqih*), and a comprehensive grasp of the socio-historical contexts and contemporary applications of Islamic legal principles.⁶

The Islamic studies paradigm posits that every precept and prohibition found in the Qur'an and the Sunnah of the Prophet Muhammad is designed to serve specific purposes (*maqāṣid*) that contribute to human flourishing.⁷ This understanding aligns with the Islamic teaching that the Prophet's mission is a manifestation of universal mercy, as evidenced by the Qur'anic verse, Surah al-Anbiyā' 107, which states:

وَمَا أَرْسَلْنَاكَ إِلَّا رَحْمَةً لِّلْعَالَمِينَ

¹ Muhammad Dharma et al., "Exploring Small and Medium Enterprises' Intention to Adopt AI - Powered Chatbots in Halal Marketing Communications," *IQTISHODUNA: Jurnal Ekonomi Islam* 13, no. 1 (April 1, 2024): 35–58, doi:10.54471/IQTISHODUNA.V13I1.2364.

² Eka Syahriani et al., "Implementation the Rules of Al-Ḍarar Al-Asyaddu Yuzālu Bi Al-Ḍarar Al-Akhaf at the Bathing Process Transgender Body," *NUKHBATUL 'ULUM: Jurnal Bidang Kajian Islam* 10, no. 1 (June 28, 2024): 138–55, doi:10.36701/nukhbah.v10i1.1354.

³ Tarmizi Tahir and Syeikh Hasan Abdel Hamid, "Maqasid Al-Syari'ah Transformation in Law Implementation for Humanity," *International Journal Ihya' 'Ulum Al-Din* 26, no. 1 (June 20, 2024): 119–31, doi:10.21580/ihya.26.1.20248.

⁴ Muhammad Shahrul Ifwat Ishak and Nur Syahirah Mohammad Nasir, "Maqasid Al-Shari'ah in Islamic Finance: Harmonizing Theory and Reality," *The Journal of Muamalat and Islamic Finance Research* 18, no. 1 (June 1, 2021): 1–12, doi:10.33102/JMIFR.V18I1.334.

⁵ Ulul Umami and Abdul Ghofur, "Human Rights in Maqāṣid Al-Shari'ah Al-Āmmah: A Perspective of Ibn 'Āshūr," *Al-Ahkam* 32, no. 1 (April 28, 2022): 87–108, doi:10.21580/ahkam.2022.32.1.9306.

⁶ Ahmad Kazemi-Moussavi, "Rethinking Islamic Legal Methodology with Reference to Maqasid Al-Shari'ah," *ICR Journal* 2, no. 2 (January 15, 2011): 1–13, doi:10.52282/icr.v2i2.648.

⁷ Iffatin Nur, Syahrul Adam, and M. Ngizzul Muttaqien, "Maqāṣid Al-Shari'at: The Main Reference and Ethical-Spiritual Foundation for the Dynamization Process of Islamic Law," *AHKAM: Jurnal Ilmu Syariah* 20, no. 2 (December 30, 2020), doi:10.15408/ajis.v20i2.18333.

"And We have not sent you, [O Muhammad], except as mercy to the worlds."

The verse emphasizes the Prophet Muhammad's pivotal role as a manifestation of universal divine mercy. According to 'Abd al-Raḥmān ibn Nāṣir al-Sa'dī's (2002) commentary "*Taisīr al-Karīm al-Raḥmān fī Tafsīr Kalām al-Mannān*," this verse underscores the Prophet's function as the bearer of the Qur'an and as a conduit of God's mercy to humanity. Al-Sa'di highlights the contrasting human responses to this divine gift: the believers who accept it with gratitude and the disbelievers who reject it (p. 621).⁸

This perspective offers a theoretical foundation for understanding the ethical and social dimensions of Islamic law, which aims to realize universal well-being. By delving deeper into this concept, scholars can gain valuable insights into contemporary Islamic legal studies and its relevance to addressing pressing global issues.⁹

The field of *usul al-fiqh* has witnessed considerable debate over various methodologies of legal derivation (*istinbat*).¹⁰ A particularly controversial concept in this field is *al-ḥiyal al-syar'iyyah*, which is associated with the Ḥanafī school and its founder, Imam Abu Hanifah.¹¹

Etymologically, *al-ḥiyal al-syar'iyyah* denotes strategies aimed at achieving specific goals through indirect means.¹² In Islamic jurisprudence, this concept entails the modification or circumvention of legal rulings, which may potentially contravene the overarching objectives of Islamic law *maqāṣid al-syar'ah*. While the Shafī'i, Maliki, and Hanbali schools generally prohibit such practices, the Ḥanafī school views *ḥiyal* as a legitimate tool for mitigating legal burdens and enhancing the effectiveness of Islamic law.¹³

The Ḥanafī school is well-known for its adaptive and rational approach to Islamic law,¹⁴ which allows the use of *al-ḥiyal al-syar'iyyah* to address new challenges in various aspects of life, including financial transactions. This concept reflects the efforts of Ḥanafī scholars to uphold the principles of *shar'ah* while adapting to the ever-changing needs and dynamics of the economy.¹⁵

However, the use of *al-ḥiyal al-syar'iyyah* by Imam Abu Hanifah in resolving *fiqh* issues raises questions about the legitimacy and limits of its application, especially in the context of contemporary financial transactions. The application of *al-ḥiyal al-syar'iyyah* in modern financial contexts faces various issues and challenges. With the globalization

⁸ 'Abd al-Raḥmān ibn Nāṣir Al-Sa'dī, *Taisīr Al-Karīm Al-Raḥmān Fī Tafsīr Kalām Al-Mannān*, II (Riyād: Dār al-Salām, 1422).

⁹ Muhaimin Muhaimin, "The Interrelation between Islamic Law and Regional Regulations in Jember (Examining the Maqāṣid Al-Sharī'at-Based Reasoning in Istinbāt Al-Aḥkām)," *AHKAM: Jurnal Ilmu Syariah* 20, no. 2 (December 30, 2020), doi:10.15408/ajis.v20i2.18330.

¹⁰ Suud Sarim Karimullah and Arif Sugitanata, "The Ḥanafī School of Islamic Jurisprudence Literature: A Historical Account," *Journal of Islamic History and Manuscript* 2, no. 1 (May 9, 2023): 1–20, doi:10.24090/JIHM.V2I1.7788.

¹¹ Muhammad Abdurrahman Sadique, "Early Juristic Approaches to the Application of Ḥiyal (Legal Devices) in Islamic Law," *IJUM Law Journal* 16, no. 2 (July 15, 2008): 1–24, doi:10.31436/IJUMIJ.V16I2.49.

¹² Abd al-Rahman Al-Salāḥī, "Al-Ḥiyal Wa Al-Taḥayyul Fī Al-Aḥkām Al-Syar'iyyah," 1443, 52.

¹³ Muhammad Tahir Mansoo, "Is 'Islamic Banking' Islamic? Analysis of Current Debate on Sharī'ah Legitimacy of Islamic Banking and Finance," *Islamic Studies* 50, no. 3/4 (2011): 383–411, <https://www.jstor.org/stable/41932603>.

¹⁴ Basir Ahmad Nadi, "Causes of the Multiplicity of Jurisprudential Narratives in Ḥanafī Fiqh," *Baharestan Scientific Research Quarterly Journal*, July 7, 2024, 129–46, doi:10.61438/BSRQJ.V2I1.42.

¹⁵ Muḥammad ibn al-Ḥasan al-Ḥajwī al-Ša'ālabī Al-Fāsī, "Al-Fikr Al-Sāmī Fī Tārīkh Al-Fiqh Al-Islāmī," I (Beirut: Dār al-Kutub al-'Ilmiyyah, 1416), 433.

of the economy and rapid advancements in financial innovation, new practices in financial transactions often raise questions regarding legality and compliance with *sharī'ah* principles. In this regard, *al-ḥiyal al-syar'iyyah* plays a crucial role, but it also generates controversy. The application of *al-ḥiyal al-syar'iyyah* requires a deep understanding of Islamic legal principles, as well as the Ḥanafī school's perspective, accompanied by a critical assessment of its impact and implications in practice.¹⁶

This study aims to analyze the concept of *al-ḥiyal al-syar'iyyah* from the Ḥanafī school's perspective and explore its potential application in modern financial transactions (*muamalah māliyyah*). The research adopts an analytical-critical approach to the classical and contemporary literature on *al-ḥiyal al-syar'iyyah*, focusing on the interpretation and application of this concept within the Ḥanafī school. The analysis will include an evaluation of the arguments for and against the use of *ḥiyal* and its implications for the development of contemporary Islamic law.

Based on the background presented, this research aims to examine two main aspects related to *al-ḥiyal al-syar'iyyah*. First, it will explore the concept of *al-ḥiyal al-syar'iyyah* from the perspective of the Ḥanafī school by examining the understanding and interpretation provided by this school regarding the legal techniques known as *al-ḥiyal al-syar'iyyah*. Second, this study will analyze the application of *al-ḥiyal al-syar'iyyah* in financial contracts (*mu'amalah māliyyah*), i.e., financial transactions in the context of *sharī'ah*. The focus is on identifying how the principles of *al-ḥiyal al-syar'iyyah* are applied in various types of financial transactions and the extent to which their application aligns with the *sharī'ah* legal framework as regulated by the Ḥanafī school.

This research adopts a descriptive qualitative approach,¹⁷ using the library research method to investigate the concept of *al-ḥiyal al-syar'iyyah* within the Ḥanafī school's perspective and its application in financial transactions (*muamalah māliyyah*). This methodology aims to provide a deep understanding of the phenomenon being studied through the analysis of relevant literature.

The type of research applied is descriptive qualitative, focusing on an in-depth understanding of phenomena without involving statistical data. This study utilizes library research as the main method, involving the analysis of literature to build a theoretical foundation. The literature review is conducted by examining theories from relevant books and scholarly articles to understand the concept of *al-ḥiyal al-syar'iyyah* and its application in *muamalah māliyyah*.

This research employs two main approaches. The normative approach¹⁸ is used to understand *al-ḥiyal al-syar'iyyah* from an Islamic legal perspective by referring to the Qur'an, the hadiths of the Prophet Muhammad saw, and the opinions of scholars. This approach is important to assess the compliance of *al-ḥiyal al-syar'iyyah* principles within the framework of Islamic law. Additionally, the sociological approach¹⁹ is applied to analyze social phenomena related to the implementation of *al-ḥiyal al-syar'iyyah* in

¹⁶ Muhammad Omer Rafique et al., "Analysis of Ḥiyal (Legal Stratagems) Cases in Islamic Financial Law," *Russian Law Journal* 11, no. 2 (March 31, 2023), doi:10.52783/rlj.v11i2.666.

¹⁷ Brylialfi Wahyu Furidha, "Comprehension of the Descriptive Qualitative Research Method: A Critical Assessment of the Literature," *Journal Of Multidisciplinary Research*, January 12, 2024, 1–8, doi:10.56943/jmr.v2i4.443.

¹⁸ Vladislav Valentinov and Anna Hajdu, "Integrating Instrumental and Normative Stakeholder Theories: A Systems Theory Approach," *Journal of Organizational Change Management* 34, no. 4 (2019): 699–712, doi:10.1108/JOCM-07-2019-0219/FULL/XML.

¹⁹ Maria Madalena d'Avelar, "On Regret: A Sociological Intersectional Approach," *Social Sciences* 11, no. 2 (January 28, 2022): 50, doi:10.3390/socsci11020050.

muamalah practices in society. This approach includes the study of social structures, interactions, and changes in *muamalah* practices.

Data in this research is obtained from two main sources. Primary sources include books that directly discuss *al-ḥiyal al-syar'iyyah* from the Ḥanafī school's perspective, such as *al-Makhārij fī al-Ḥiyal*, *al-Ḥiyal wa al-Taḥayyul fī al-Aḥkām al-Syar'iyyah*, and others. Secondary sources consist of additional literature, including scholarly journals, theses, and dissertations that provide explanations and analyses of primary sources. Data collection is conducted through literature review with several steps: first, acquiring and reading relevant literature; second, examining and sorting books according to their relevance to the research; third, translating necessary texts into Indonesian or English; and fourth, analyzing the selected material.

After the data is collected, the processing is done through the following steps: first, data identification, which involves reviewing the obtained data to ensure its relevance to the research discussion; second, data selection, which involves examining the collected data to meet the required data suitability; third, data clarification, which involves organizing the data systematically for easy understanding; fourth, data systematization, which involves structuring the data based on the discussion framework and analyzing it to draw conclusions; and fifth, conclusion drawing, which involves formulating conclusions deductively based on the analysis conducted.

In this study, several previous studies relevant to the topic "A Critical Analysis of the Concept of Al-Ḥiyal Al-Syar'iyyah within the Ḥanafī School Paradigm: Implications and Implementation in Contemporary Financial Transactions" have been reviewed to identify the contribution of this research in the existing academic context. These studies include:

1. A study by Gusniarti titled "Ḥīlah in Shariah Charged Card According to MUI Fatwa Number: 42/DSN MUI/V/2004" examines the legal status of ḥīlah in the context of the Shariah Charge Card based on the MUI fatwa. Although this type of research is a library study focused on the *fiqh* review of ḥīlah in the Charge Card, this research differs as Gusniarti's focus is limited to the application of ḥīlah in a specific context, discussing the Charge Card, while this study addresses the application of ḥīlah in *muamalah māliyyah* in general, with a Ḥanafī school perspective.
2. The second study, a thesis by Misbahul Munir titled "Analysis of the Practice of Ḥīlah in DSN MUI Murabaha Fatwa: Case Study at PT BPRS Syariah Tanmiya Artha Kediri," discusses the application of ḥīlah in Murabaha financing at PT BPRS Syariah Tanmiya Artha, focusing on the concept level. This research is a qualitative field study. The contribution of this research lies in the application of ḥīlah in financing practice, while this research focuses on the literature review of ḥīlah in *muamalah māliyyah* more broadly, including theoretical and practical analysis from the Ḥanafī school perspective.
3. The third study, a journal article by Elimartati titled "Ḥīlah al-Syarī'ah as an Effort to Achieve Maqāṣid Syarī'ah," discusses ḥīlah in the context of achieving maqāṣid syarī'ah, namely the five main objectives of the *sharī'ah*: the preservation of religion, life, lineage, wealth, and intellect. This research provides a general perspective on ḥīlah as an effort to achieve welfare. Unlike this study, which focuses on wealth preservation and the application of ḥīlah in the context of *muamalah māliyyah*, this research adds a new dimension to the study of *maqāṣid syarī'ah*.
4. The fourth study, a journal article by Muhamad Takhim titled "The Method of Ḥīlah (Legal Stratagem) in Contemporary Muamalah Fiqh," discusses the modification and

application of the ḥilāh method in contemporary *muamalah fiqh*, highlighting the use of ḥilāh to derive legal rulings and develop contemporary practices. While this journal emphasizes the modification of the ḥilāh method, this study focuses on the analysis of the concept and application of ḥilāh in the context of classical and contemporary *fiqh* from the Ḥanafī school perspective.

5. The fifth study, a journal article by Syaugi Mubarak, Seff H. Badrian, and Zulpa Makiah titled "The Practice of Ḥiyal in the Field of Worship Fiqh, Muamalah, and Family Law in Banjar and Hulu Sungai Utara Districts," explores the practice of ḥiyal in the fields of worship *fiqh*, *muamalah*, and family law. This research provides an overview of the motivation, forms, and procedures of ḥiyal in the local context. This study limits its focus to ḥiyal in *muamalah fiqh* from the Ḥanafī school perspective, offering a more targeted analysis compared to the broader scope.
6. The sixth study, a journal article by Moh. Imron Rosyadi titled "Ḥilāh al-Ḥukmī: A Study of the Development of Islamic Legal Theory," discusses ḥilāh as an alternative method in legal resolution, focusing on scholars' views on ḥilāh. This research explains Islamic legal theory related to ḥilāh. This study, however, specializes in the discussion of the method and application of ḥilāh according to the Ḥanafī school, providing deeper insights into the application of ḥilāh within a specific school of thought.
7. The seventh study, a journal article by Lutfi Nur Fadhilah titled "al-Ḥilāh al-Syar'iyyah and the Possibility of Its Application," elaborates on ḥilāh in detail, including its legal meaning and application in worship and *muamalah*. This research covers a comprehensive discussion of ḥilāh. This study focuses on the ḥilāh method from the Ḥanafī school perspective and its application in *muamalah māliyyah*, offering a more specific analysis within a more focused scope.

This research provides a significant contribution by emphasizing an in-depth analysis of the concept of *al-ḥiyal al-syar'iyyah* within the Ḥanafī school framework, its implications, and its application in contemporary financial transactions. Although previous studies have presented various perspectives on ḥilāh, this study expands the understanding of ḥilāh's application in the context of *muamalah māliyyah* with a specific approach from the Ḥanafī school perspective. This research aims to fill the gap in the existing literature by providing more structured and in-depth insights into the application of ḥiyal and exploring its relevance and application in contemporary financial practices, thereby offering valuable contributions both theoretically and practically.

2. DISCUSSION

2.1. Definition of *al-Ḥiyal al-Syar'iyyah*

Fiqh scholars have differing views on *al-ḥiyal* (tricks or stratagems), with some allowing it and others forbidding it, depending on how they interpret *ḥilāh*. *Al-ḥiyal* in Arabic is the plural form of *al-ḥilāh*, which means cleverness, analytical ability, and sharpness in response.²⁰ *Ḥiyal* refers to the intelligence in managing a matter and sharpness in analysis. *Ḥiyal* can be interpreted as a tactic or strategy used to avoid a law and switch to another law that does not contradict the *sharī'ah*.²¹

²⁰ Muḥammad ibn Mukarramah ibn Manzūr al-Ifrīqī Al-Miṣrī, "Lisān Al-'Arab," III (Beirūt: Dār Sadir, 1414), 185, <https://shamela.ws/book/1687>.

²¹ Wahbah Al-Zuhailī, "Uṣūl Al-Fiqh Al-Islāmī," I (Damaskus: Dār al-Fikr, 1406), 912.

2.1.1 Definition of *al-Hiyal* According to Scholars

The definition of *al-hīlah* has been expressed by several scholars, including:

1. Al-Syātibī: *Al-hiyal* is the performance of an action that is outwardly permissible or prohibited with the intention of changing the law or avoiding a religious obligation.²²
2. Ibn Taimiyyah: *Al-hiyal* is an act that causes a change from one state to another or a hidden way that leads to its goal. A person will not achieve his goal except with cleverness and intelligence. If the goal is good, then it is a good *hīlah*, and if the goal is bad, then it is a bad *hīlah*.²³
3. Al-Ḥamawī: *Al-hiyal* is one way to release oneself from a religious burden that one is afflicted with.²⁴
4. Ibn Ḥajar al-‘Asqalānī: *Al-hiyal* is something that leads to the intended goal through a hidden path.²⁵

2.1.2 Classification of *al-Hiyal*

The classification of *hīlah* based on its permissibility is as follows:

1. *Al-Hiyal al-Muḥarramah*²⁶
Al-Hiyal al-Muḥarramah or forbidden *hiyal* is an action that outwardly appears permissible but is intended to nullify *sharī'ah* law or change it into another law that contradicts the *maqāsid syarī'ah*. The types of forbidden *hiyal* include: Using hidden means that lead to prohibited actions, tricks to avoid obligations that have been imposed, tricks to avoid what causes an obligation, and tricks to take someone else's right or harm someone through deceit.
2. *Al-Hiyal al-Jāizah (al-Makhārij al-Masyrū'ah)*²⁷
Al-Hiyal al-Jāizah, also known as *al-Makhārij al-Masyrū'ah*, is a lawful method pursued when there is a valid reason that aligns with the *maqāsid syarī'ah*. The types of permissible *hiyal* include:
 - a. *Hiyal* to achieve a legally sanctioned goal through a method established by the *sharī'ah*.
 - b. *Hiyal* to achieve a legally sanctioned goal through a permissible but not yet established method, which can lead to the goal secretly.

The classification of *hīlah* based on speech and actions is as follows:

1. *Hīlah* in Speech
Hīlah that involves speech requires intellect for its establishment, and therefore, the presence of intention is a prerequisite. Sometimes, a *hīlah* in speech is valid (*ṣaḥīḥ*) if it produces certain effects, which in turn allows the associated ruling to be applied. However, it can also be invalid (*fāsid*) if it produces no effect, and thus, the ruling does not apply. An example of *hīlah* in speech is the statement, "I sell this item to you for 1 million on credit (deferred payment), and then I will buy it back from you for 800 thousand in cash." This represents a strategy to disguise usury as a legitimate

²² Abū Iṣḥāq al-Syātibī Ibrāhīm ibn Mūsa al-Lakhmī al-Garnaṭī Al-Mālikī, "Al-Muwāfaqāt Fī Uṣūl Al-Fiqh," I (Beirut: Dār al-Ma'rifah, 1417), 204, <https://shamela.ws/book/11435>.

²³ Taqiy al-Dīn ibn Taimiyyah, "Al-Fatāwā Al-Kubrā," I (Beirut: Dār al-Kutub al-'Ilmiyyah, 1408), 106.

²⁴ Syihāb al-Dīn Al-Hamawī, "Gamz 'uyūn Al-Baṣāir Syarḥ Kitāb Al-Asyabāh Wa Al-Naẓāir," I (Beirut: Dār al-Kutub al-'Ilmiyyah, 1405), 38.

²⁵ Aḥmad ibn 'Alī ibn Ḥajar Al-'Asqalānī, "Fath Al-Bārī Syarḥ Ṣaḥīḥ Al-Bukhārī," I (al-Qāhirah: al-Maṭba'ah al-Salafiyyah, n.d.), 326.

²⁶ Al-Ṣalāhī, "Al-Hiyal Wa Al-Taḥayyul Fī Al-Aḥkām Al-Syar'iyah."

²⁷ Ibid.

sale. Another example is the practice of renaming something forbidden with a different term to make it appear permissible, such as calling intoxicating liquor (*khamar*) by another name to justify its consumption.²⁸

2. *Ḥīlah* in Action

Ḥīlah that involves actions occurs when a person intentionally engages in behavior with a purpose that contradicts the principles of Shariah. Examples include traveling with the intention of shortening prayers (*qasr*) or breaking the fast, or traveling in the summer to delay fasting, intending to make up or complete the fast in winter. Actions that are originally permissible can become forbidden if the intention behind them is to achieve something prohibited.²⁹

2.2. *Al-Hiyal al-Syar'iyah* According to the Ḥanafī School

Imam Abu Hanifah is one of the scholars who permits *ḥīlah*. The Ḥanafī school is the school of fiqh that most extensively uses *ḥiyal*. However, not all *ḥiyal* are permitted according to them.³⁰

2.2.1 Definition of *al-Hiyal al-Syar'iyah* According to the Ḥanafī School

Al-Hiyal al-Syar'iyah is a lawful tactic, strategy, or plan with a lawful means and an intention or goal that aligns with the *sharī'ah*.³¹ *Al-Hiyal* is one of the principles of the Ḥanafī school, which defines *ḥiyal* as a way out of difficulties or the diversion of a law or the annulment of that law with another law.³²

Al-Hiyal developed among the figures of the Ḥanafī school. *Al-ḥiyal* in the Ḥanafī school is not used to oppose *sharī'ah* law but as a way out or solution in a matter as long as it does not contradict *sharī'ah* law. *Al-Hiyal* from the Ḥanafī school's perspective is something that can achieve the truth and align with the *maqāṣid al-syar'iyah*. Thus, *ḥiyal* is not intended to achieve something forbidden but as a facilitation and leniency. Therefore, *ḥiyal* according to them is interpreted as a way out. *Ḥiyal* is a strategy to avoid *sharī'ah* provisions; this strategy is not seen as a violation of the law. This strategy is used to overcome difficulties in a problem but is not intended as a means to avoid Islamic legal provisions.³³

One of the Ḥanafī school scholars, *al-Ḥamawī*, argues that *ḥiyal* is something that can release a person from the shackles of *sharī'ah* law for those who are tested with religious matters. Or a way to free oneself from religious matters without violating *sharī'ah*, so it is called a strategy or trick. The Ḥanafī school scholars consider this a *makhārij* or way out of a problem and religious matter.³⁴

Al-Sarkhasī, one of the Ḥanafī school scholars, explains the law of *ḥīlah* that *ḥīlah* in laws that can release from sin is allowed according to the majority of scholars. However, it is disliked by some who deviate from the truth because of their ignorance and lack of analysis of the Qur'an and the Sunnah. *Al-ḥīlah* that can release a person from

²⁸ Ibid.

²⁹ Ibid.

³⁰ 'Abdu al-majāḍ maḥmū 'abdu Al-majāḍ, *Al-Itjāhāt Al-Fiqhiyyah 'inda Aṣḥāba Al-Ḥadīṣ Fī Al-Qurni Al-Ṣāliṣ Al-Hijrī* (Mesir: Maktabah Al-Khānajī, 1979).

³¹ Muṣṭafā ibn Karāmatullāh Makhdūm, *Qawā'idu Al-Wasāil Fī Al-Syarī'ah Al-Islāmiyyah*, I (Riyād: Dār Isybīliya, 1420).

³² Al-Fāsī, "Al-Fikr Al-Sāmī Fī Tārīkh Al-Fiqh Al-Islāmī."

³³ Al-majāḍ, *Al-Itjāhāt Al-Fiqhiyyah 'inda Aṣḥāba Al-Ḥadīṣ Fī Al-Qurni Al-Ṣāliṣ Al-Hijrī*.

³⁴ Ibid.

the forbidden or lead them to the lawful is good, and it is only disliked if *ḥīlah* is applied to someone's right to nullify it or to falsify falsehood or to a right that involves suspicion.³⁵

Abū Bakr al-Jaṣṣāṣ from the Ḥanafī school argues that *ḥīlah* that leads to the permissible and obtains a right is allowed.³⁶

Ḥīlah in the view of most scholars is something that has a negative connotation; the term is often understood as an attempt to take a hidden path to achieve a goal that is reprehensible according to religion, reason, or folkways.³⁷ They view *ḥīlah* as a diversion of the law, which is akin to changing a law that has been established by *sharī'ah*. The Ḥanafī school scholars view *ḥīlah* as a way out or solution to a problem that does not violate *sharī'ah*.³⁸

2.2.2 Classification of *al-Hiyal* According to the Ḥanafī School

Most fiqh scholars from the Ḥanafī school divide *ḥīlah* into two parts; the first is *ḥīlah* that is allowed by the *sharī'ah*, and the second is *ḥīlah* that is not allowed by the *sharī'ah*, depending on the method used to achieve the *ḥīlah*. Every *ḥīlah* used by someone to nullify another's right or create suspicion or to conceal a lie is a disliked *ḥīlah*. However, *ḥīlah* used by someone to free themselves from something forbidden or to achieve something lawful is a good and permitted *ḥīlah*.³⁹

Wahbah al-Zuhailī classifies *ḥīlah* based on the purpose of performing *ḥīlah*. According to Wahbah al-Zuhailī, *ḥīlah* is divided into two:⁴⁰

a. Permissible *ḥīlah syar'iyah*

Hiyal that occurs in the substance of *sharī'ah* law established for a particular issue and used in other conditions to establish the truth or reject injustice or to obtain ease due to necessity. This type of *hiyal* does not damage or destroy the interests of *sharī'ah*.

b. Forbidden *ḥīlah syar'iyah*

Hiyal that aims to change the substance of *sharī'ah* law into another law that is valid outwardly but is in vain inwardly.

Hiyal can be allowed or forbidden depending on the purpose for which *hiyal* is performed. If the purpose is to establish the truth or obtain ease, then this *hiyal* is allowed as long as it does not contradict the *maqāṣid syarī'ah*. However, if the purpose is to nullify *sharī'ah* law or *hiyal* performed does not align with *maqāṣid syarī'ah* and leads to something forbidden, then this *hiyal* is forbidden. *Hiyal* can become obligatory if it is done to prevent harm or loss.⁴¹

In general, scholars, both from the Ḥanafī school and others, allow *hiyal* if the method used and the goal to be achieved does not violate *sharī'ah*. *Hiyal* is allowed if used to avoid the forbidden and avoid sin or allowed as long as it does not contradict

³⁵ Syams al-Dīn Al-Sarkhasī, "Al-Mabsūṭ," I (Beirut: Dār al-Ma'rifah, 1409), 210.

³⁶ Abū Bakr Aḥmad ibn 'Alī al-Rāzī al-Jaṣṣāṣ Al-Ḥanafī, "Aḥkām Al-Qur'ān" (Beirut: Dār Ihyā al-Kutub al-'Arabiyyah, 1412), 392.

³⁷ Budi Rahmat Hakim and Zaki Mubarak, "Hilah Dalam Tinjauan Hukum Islam (Telaah Pandangan Fiqh Empat Mazhab)," *Jurnal Ilmu Kependidikan Dan Kedakwahan* 6, no. 1 (2014): 1–12, <https://idr.uin-antasari.ac.id/15871/>.

³⁸ Al-majīd, *Al-Itjāhāt Al-Fiqhiyyah 'inda Aṣḥāba Al-Ḥadīṣ Fī Al-Qurni Al-Ṣāliṣ Al-Hijrī*.

³⁹ Nizam S., et al., "Al-Fatāwā Al-Hindiyyah Fī Mazhab Abī Ḥanīfah Al-Nu'mān" (Beirut: Dār Ṣādir, 1411), 390.

⁴⁰ Al-Zuhailī, "Uṣūl Al-Fiqh Al-Islāmī."

⁴¹ Muḥammad Zakariyā bin Yaḥyā Al-Kāndahlawī, "Al-Abwābu Wa Al-Tarājim Liṣaḥīhi Al-Bukharī" (Beirut: Dār al-Basyāir al-Islāmī Liṭabā'ah, 2012), 526.

maqāṣid al-syar'iyah. *Hiyal* is disliked and can even be forbidden if its purpose is to nullify someone's right or *hiyal* on falsehood.

2.2.3 Legal Basis of the Hanafi School in Permitting *al-Hiyal al-Syar'iyah*

The Hanafi school allows the application of *hiyal* in *shar'ah* law. They use the following texts as evidence to justify *hiyal*:

a. Evidence from the Qur'an⁴²

1. The incident of Prophet Ayyūb as. narrated by Allah SWT in His words in Q.S. Ṣād/38: 44:

وَحُذِّبِيكَ ضِعْفًا فَاضْرِبْ بِهِ وَلَا تَحْنَثْ إِنَّا وَجَدْنَاهُ صَابِرًا نِعَمَ الْعَبْدِ إِنَّهُ أَوَّابٌ

“And take in your hand a bunch [of grass] and strike with it and do not break your oath. Indeed, We found him patient, an excellent servant. Indeed, he was one repeatedly turning back [to Allah]”.⁴³

The commentators say that Ayyūb, in his suffering and illness, once became angry with his wife for some reason and swore that if Allah healed him, he would lash her 100 times. After he was healed by Allah and his wife had become righteous and good to him, Allah commanded him to strike her with a bunch of 100 blades of grass in one blow, thus fulfilling his oath.⁴⁴ This verse explains that every oath that has been uttered must still be fulfilled. However, due to a change in circumstances that made the oath difficult to fulfill, Allah provided a solution to fulfill the oath in another way.⁴⁵

The change in the form of fulfilling the oath indicates that *hiyal* exists in religious teachings. The diversion of the law (striking 100 times) to another law that is lighter (striking with a bunch of grass) is an act of *hiyal*.⁴⁶

Based on this evidence, the Hanafi school uses it as a precedent for all similar cases with the same reasoning through the method of *qiyās*. This evidence also names their theory *al-makhārij min al-maḍā'iq* (the way out of difficulties).⁴⁷

2. The story of Prophet Yūsuf as. narrated by Allah SWT in His words in Q.S. Yūsuf/12: 70:

فَلَمَّا جَهَّزَهُمْ بِجَهَّازِهِمْ جَعَلَ السِّقَايَةَ فِي رَحْلِ أَخِيهِ ثُمَّ أَذَّنَ مُؤَذِّنٌ أَيُّهَا الْعَبْرِيُّ إِنَّكُمْ لَسْرِقُونَ

“So when he had furnished them with their supplies, he put the drinking cup into the bag of his brother. Then an announcer called out, 'O caravan, indeed you are thieves’”.⁴⁸

“So when he had furnished them with their supplies, he put the drinking cup into the bag of his brother. Then an announcer called out, 'O caravan, indeed you are thieves.’” “So when he had furnished them with their supplies,” meaning he gave them their rations, including Bunyamin. “Yusuf placed the drinking cup” — the vessel used for drinking and measuring — “into the bag of his brother,” they placed it among their belongings. When

⁴² Al-Ṣalāḥī, “Al-Hiyal Wa Al-Taḥayyul Fī Al-Aḥkām Al-Syar'iyah.”

⁴³ Kementerian Agama Republik Indonesia, *Al-Qur'an Dan Terjemahannya* (Bandung: Cordoba, 2020).

⁴⁴ Al-Sa'dī, *Taisīr Al-Karīm Al-Raḥmān Fī Tafsīr Kalām Al-Mannān*.

⁴⁵ Hamzah Muḥammad Qāsim, “Manār Al-Qārī Syarḥ Mukhtṣar Ṣaḥīḥi Al-Bukharī” (Damaskus: Maktabah Dār al-Bayān, 1990), 205.

⁴⁶ Ibid.

⁴⁷ Moh Imron Rosyadi, “Ḥilāh Al-Ḥukmī: Studi Perkembangan Teori Hukum Islam,” *Al-Maslahah: Jurnal Ilmu Syariah* 12, no. 1 (April 10, 2016): 1–17, doi:10.24260/ALMASLAHAH.V12I1.335.

⁴⁸ Indonesia, *Al-Qur'an Dan Terjemahannya*.

they were about to leave, “someone called out, 'O caravan, indeed you are thieves,” as if the caller did not know the truth.⁴⁹

What Prophet Yusuf did to keep his brother with him by placing the drinking vessel made of gold into Bunyamin's bag was to protect Bunyamin from the harm that his brothers, who had once harmed him, might do.⁵⁰ The strategy used by Prophet Yusuf in this story is evidence of the permissibility of *hiyal*. Prophet Yusuf performed *hiyal* to keep his brother Bunyamin with him to protect him from the intentions (evil) of his brothers.⁵¹

This strategy is a form of *hiyal syar'iyah* that led Prophet Yusuf to a good goal. This strategy is a form of *hiyal syar'iyah* that led to welfare and provided religious benefits. What Prophet Yusuf did in this story was a legitimate way that did not contradict the *maqāṣid syarī'ah*, and it was divine inspiration given by Allah SWT to some of His servants in matters that are encouraged, permitted, or required to achieve a good goal.⁵²

3. Allah's words regarding those who are oppressed and helpless and do not know the way (to migrate) in Q.S. al-Nisā'/4: 98:

إِلَّا الْمُسْتَضْعَفِينَ مِنَ الرِّجَالِ وَالنِّسَاءِ وَالْوِلْدَانَ لَا يَسْتَطِيعُونَ حِيلَةً وَلَا يَهْتَدُونَ سَبِيلًا

“Except for the oppressed among men, women, and children who cannot devise a plan nor are they directed to a way”.⁵³

This noble verse provides evidence that if someone cannot perform a command or otherwise, then they are excused, as Allah says for those unable to perform jihad.⁵⁴

The word *hīlah* in this verse is interpreted as a way out, a method, or a loophole. Allah SWT forgives them (the oppressed) because of their backwardness and helplessness. They cannot find a way to free themselves from the hands of the disbelievers, and that strategy is prohibited. Therefore, it is known that *hiyal* that saves someone from something forbidden is commendable (*mustahab*) and permissible.⁵⁵

Hiyal in this verse is meant as a strategy to free oneself from the hands of the disbelievers. For example, using a strategy by uttering words of disbelief under compulsion is permissible to protect oneself. *Hiyal* in this verse is if their path is blocked and hindered by the polytheists, then they are ordered to migrate to the Prophet Muhammad to uphold the symbols of religion. This is a commendable *hiyal* that earns a reward from Allah SWT.⁵⁶

b. Evidence from the Sunnah of the Prophet Muhammad

1. The hadith from Abū Hurairah and Abū Sa'īd al-Khudrī ra.:

عَنْ أَبِي سَعِيدٍ الْخُدْرِيِّ وَعَنْ أَبِي هُرَيْرَةَ رَضِيَ اللَّهُ عَنْهُمَا أَنَّ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ اسْتَعْمَلَ رَجُلًا عَلَى حَيْبَرٍ، فَجَاءَهُ بِتَمْرٍ جَنِيْبٍ، فَقَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ: أَكُلْ

⁴⁹ Al-Sa'dī, *Taisīr Al-Karīm Al-Rahmān Fī Tafsīr Kalām Al-Mannān*.

⁵⁰ Lutfi Nur Fadhilah, “Al-Hīlah Al-Syar'iyah Dan Kemungkinan Penerapannya,” *ELFALAKY* 3, no. 1 (June 11, 2019): 1–14, doi:10.24252/ifk.v3i1.9778.

⁵¹ Syams al-Dīn Al-Sarkhasī, “Al-Mabsūt,” I (Beirut: Dār al-Ma'rifah, 1409), 209.

⁵² Qāsim, “Manār Al-Qārī Syarḥ Mukhtṣar Ṣaḥīḥi Al-Bukharī.”

⁵³ Indonesia, *Al-Qur'an Dan Terjemahannya*.

⁵⁴ Al-Ṣalāḥī, “Al-Hiyal Wa Al-Taḥayyul Fī Al-Aḥkām Al-Syar'iyah.”

⁵⁵ Ibid.

⁵⁶ Marḍī bin Musyawwij Al-'Anazī, *Fiḥri Al-Handasah Al-Māliyyah Al-Islāmiyyah*, I (Riyāḍ: Dār Kunūz Isybiyalya Linasyri wa al-Tauzī, 2015).

تَمْرٍ خَيْرٌ هَكَذَا؟ قَالَ: لَا وَاللَّهِ يَا رَسُولَ اللَّهِ، إِنَّا لَنَأْخُذُ الصَّاعَ مِنْ هَذَا بِالصَّاعَيْنِ وَالصَّاعَيْنِ
بِالثَّلَاثَةِ، فَقَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ: لَا تَفْعَلْ، بَعْ الْجُمُعَ بِالذَّرَاهِمِ، ثُمَّ ابْتَغِ بِالذَّرَاهِمِ
جَنِيبًا. (رواه البخاري).⁵⁷

“Narrated by Abū Sa’īd al-Khudrī and Abū Hurairah ra. The Messenger of Allah Muhammad saw, appointed a man over Khaybar, who brought him fine dates. The Messenger of Allah (PBUH) asked, “Are all the dates of Khaybar like this?” He replied, “No, by Allah, O Messenger of Allah, we take one sa’ of this (fine quality) for two sa’ of ordinary dates, and two sa’ of it for three.” The Messenger of Allah Muhammad saw then said, “Do not do that. Sell all of the dates for dirhams, then buy fine dates with the dirhams” (Narrated by al-Bukhārī).”

This hadith explains that the Messenger of Allah Muhammad saw. instructed to sell the dates for dirhams or for trade goods. Then the dirhams were used to buy fine dates. This is an example of *hiyal*.⁵⁸ *Hiyal* in this hadith aims to avoid *riba*.⁵⁹

The practice of *hilah* also occurred during the time of the Messenger of Allah Muhammad saw, as narrated by Abū Sa’īd al-Khudrī and Abū Hurairah ra., in which the Messenger of Allah Muhammad saw, forbade bartering one sa’ of Khaybar dates for two sa’ of ordinary dates or two sa’ of Khaybar dates for three sa’ of ordinary dates to avoid *riba*. He then created a *hilah* by selling the Khaybar dates for dirhams, which were then used to buy fine dates.⁶⁰

2. The hadith from ‘Abdullāh ibn Buraidah:

عَنْ عَبْدِ اللَّهِ ابْنِ بُرَيْدَةَ قَالَ: قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ: لَا أَخْرُجُ مِنَ الْمَسْجِدِ حَتَّى
أُخْبِرَكَ بِآيَةٍ أَوْ قَالَ: بِسُورَةٍ لَمْ تَنْزِلْ عَلَى نَبِيِّ بَعْدَ سُلَيْمَانَ غَيْرِي، قَالَ: فَمَشَى وَتَبِعْتُهُ حَتَّى
انْتَهَى إِلَى بَابِ الْمَسْجِدِ فَأَخْرَجَ رِجْلَهُ مِنْ أَسْكَفَةِ الْمَسْجِدِ وَبَقِيَتْ الْأُخْرَى فِي الْمَسْجِدِ
فَقُلْتُ: بَيْنِي وَبَيْنَ نَفْسِي: أَنْسِي؟ قَالَ: فَأَقْبَلَ عَلَيَّ بِوَجْهِهِ وَقَالَ: بِأَيِّ شَيْءٍ تُفْتَحُ الْقِرَاءَةُ إِذَا
افْتَتَحْتَ الصَّلَاةَ؟ قَالَ: قُلْتُ: بِ (بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ) قَالَ: هِيَ هِيَ، ثُمَّ خَرَجَ. (رواه
دارقطني).⁶¹

“Narrated by ‘Abdullāh ibn Buraidah: The Messenger of Allah Muhammad saw, said, 'I will not leave the mosque until I tell you a verse or, he said, a surah that has not been revealed to a prophet after Solomon except to me.' Then he walked, and I followed him until he reached the door of the mosque, where he stepped one foot out while the other remained inside the mosque. I said to myself, 'Did he forget?' Then he turned to me and said, 'What do you start the recitation with when you begin the prayer?' I said, 'With

⁵⁷ Abū ‘Abdillāh Muḥammad ibn Ismā’īl Al-Bukhārī, “Ṣaḥīḥ Al-Bukhārī,” I (Beitūt: Dār ibn Kaṣūr, 1423), 525.

⁵⁸ Al-Ṣalāḥī, “Al-Ḥiyal Wa Al-Taḥayyul Fī Al-Aḥkām Al-Syar’iyyah.”

⁵⁹ Riyāḍ bin Rāsyid ‘Abdullāh Alī Rusyūd, *Al-Tawarruq Al-Maṣrafi* (Qatar: Wizārah Wa Asy-Syuūn Al-Islāmiyah, 2013).

⁶⁰ Ibid.

⁶¹ ‘Alī ibn ‘Umar Al-Dāruqutnī, “Sunan Al-Dāruqutnī,” I (Beirut: Dār al-Ma’rifah, 1422), 645.

(Bismillāhirrahmānirrahīm).' He said, 'That is it,' and then he exited. (Narrated by Dāruqūṭnī)."

In this hadith, it is narrated that the Messenger of Allah Muhammad saw was asked about the greatest verse in the Qur'an. He said that he would not leave the mosque until he informed the questioner of that verse. The Messenger of Allah Muhammad saw, informed him about the verse after stepping one foot out of the mosque, even though he had promised to convey the information before leaving the mosque. This can serve as evidence that a person is not considered to have entered by merely stepping one foot inside, and is not considered to have exited by merely stepping one foot outside. This hadith indicates the permissibility of *ḥilah* in taking an oath.⁶² Based on this hadith, it can be understood that if someone takes an oath not to do something and then wants to free himself from that oath or does not want to break it, he can do part of it, and it will not be considered breaking his oath.⁶³

2.3. The Application of *al-Ḥiyal al-Syar'iyah* in Financial Contracts (*Muamalah Māliyyah*)

Ḥilah is considered a special method or strategy for creating welfare. This method involves using the law intelligently to achieve a justified goal. *Ḥilah* is a way out or solution to a problem as long as it does not contradict *sharī'ah* law. The method of *ḥilah* is widely applied in the field of *muamalah*, especially in financial transactions (*muamalah māliyyah*), due to the emergence of new issues resulting from the advancement of civilization and technology. Thus, the method of *ḥilah* is needed to solve these problems in the form of legal modifications that do not violate *sharī'ah*. *Ḥilah* in the field of *muamalah māliyyah* is applied to meet the needs of society in achieving welfare. This method is used to solve social problems or avoid prohibited acts.⁶⁴ The following are examples of the application of *ḥilah syar'iyah* in financial contracts (*muamalah māliyyah*):

1. *Ḥilah* in Sales Contracts

Is allowed in sales contracts to avoid problems. *Ḥilah* in sales contracts is a solution to avoid harm or detriment. For example, Person A instructs Person B to buy a house for 1,000 dirhams from Person C, and he will buy the house from Person B for 1,100 dirhams. Person B is concerned that Person A might change his mind and not buy the house, leaving him unable to cancel the sale with the first seller. Therefore, the *ḥilah* is that Person B buys the house with an option of three days or more. Then, he informs Person A that he has bought the house as instructed. If Person A does not want to buy it, he can return it to the seller using the option. To avoid problems, he buys the house with an option and if Person A does not want to buy it, he can return the house to the seller. If Person A does not want to buy it unless he also has an option, the *ḥilah* is to give Person A an option that is shorter than the option provided by the seller, so that he can cancel the purchase if Person A does not want to buy the house.⁶⁵

a. *Ḥilah* in Sales Contracts (Salam Contract)

⁶² Al-Ṣalāḥī, "Al-Ḥiyal Wa Al-Taḥayyul Fī Al-Aḥkām Al-Syar'iyah."

⁶³ Al-Ṣalāḥī, "Al-Ḥiyal Wa Al-Taḥayyul Fī Al-Aḥkām Al-Syar'iyah."

⁶⁴ Al-'Anazī, *Fiqhi Al-Handasah Al-Māliyyah Al-Islāmiyyah*.

⁶⁵ Muḥammad ibn al-Ḥasan Al-Syaibānī, *Al-Makhārij Fī Al-Ḥiyal* (al-Qāhirah: Maktabah al-Ṣaqāfah al-Dīniyyah, 1999).

A salam contract is a sales contract in which the delivery of the goods is deferred, and the payment is made in advance, with the goods delivered at a later date. Alternatively, it is a sales contract that advances payment and defers the goods.⁶⁶

The *hilah* in a salam contract is to compel the buyer to avoid harm. For example, if the ordered goods have arrived at the agreed time and the owner refuses to accept them, he can be compelled to accept them. Or if they arrive before the agreed time, but the owner seems inclined to reject the goods, and the rejection could harm the goods, such as perishables like fruit or meat that need to be consumed, or livestock that need food, then the owner can be compelled to accept them.⁶⁷

b. *Hilah* in the Exchange of New Currency

Before the Eid al-Fitr celebration, many Indonesians rush to exchange their money for new currency. During the Eid celebration in Indonesia, it is customary to give envelopes containing new currency to relatives, especially children. However, this currency exchange becomes a complex problem as some consider it a form of *riba*. The *hilah* in the exchange of new currency can be done through an *ijarah* contract (lease agreement), i.e., a contract between the lessor and lessee for money exchange services from the bank. The fee paid to the lessor is compensation for the service provided to the lessee, not compensation for the value of the money.⁶⁸ For example, someone exchanges Rp. 120,000 for new currency totaling Rp. 100,000, which falls under the category of *riba*. To avoid the practice of *riba*, the *hilah* is done by using an *ijarah* contract, where the exchange of money with a certain amount includes an *ijarah* and is not considered *riba*. The way to do this is by buying Rp. 100,000 of new currency with Rp. 100,000 of old currency. Then, paying Rp. 20,000 as a service fee for the exchange. The service fee for exchanging money is considered an *ijarah* and not *riba*.

c. Shopping on the GO-JEK Application with COD Payment System (Cash on Delivery)

GO-JEK is a technology company that provides transportation services through motorcycle taxis. GO-JEK is a booking service through the GO-JEK application on Android. By shopping with this service, customers can buy all their needs without leaving home. GO-JEK will purchase all the needed items and deliver them to the customer's location. GO-JEK will initially lend money to the customer, and the customer is required to repay the money with an additional transportation fee after receiving the ordered goods.⁶⁹ The COD payment system involves the buyer paying for the order in cash to the courier upon delivery⁷⁰

In this case, the motorcycle taxi driver initially lends money to the customer to purchase the items, then charges the customer for the items plus the transportation fee from the

⁶⁶ As'ad Muḥammad Sa'ūd Al-Ṣāgarjī, *Al-Fiqh Al-Hanafī Wa Adillatuhu: Fiqh Al-Mu'āmalāt*, I (Beirut: Maktabah al-Gazālī, 1999).

⁶⁷ Muhammad Syahrullah, "Hilah Dalam Jual-Beli Salam," *Jurnal ISLAMIKA* 3, no. 1 (May 13, 2020): 154–60, doi:10.37859/JSI.V3I1.1920.

⁶⁸ Muzayyin Lutfie, "Al-Hiyal Al-Syar'iyah Wa Taṭbīqātuhā Fī Al-Mu'āmalāh Al-Māliyyah Al-Mu'āṣirah" (Muhammadiyah University of Surakarta, 2020), <https://eprints.ums.ac.id/88695/9/Naskah publikasi FIX 1.pdf>.

⁶⁹ Erwandi Tarmizi, *Contemporary Prohibited Wealth in Islamic Transactions*, XVII (Bogor: P.T. Berkah Mulia Insani, 2017).

⁷⁰ Zakiyyah Ilma Ahmad, "Cash on Delivery (COD) Payment Method Through PT. Pos Indonesia Jember Expedition Service in Analysis of DSN MUI Fatwa Number 113/DSN-MUI/IX/2017 Concerning the Wakālah Bi Al-Ujrah Contract" (State Islamic Institute of Jember, 2021), <http://digilib.uinkhas.ac.id/5637/>.

place where the items were purchased to the customer's location. There are two transactions combined in this case: a loan transaction (*qard*) in which the driver lends money to the customer, and a lease agreement (*ijarah*) in which the driver rents out his services to deliver the items to the customer, who will later pay the driver according to the normal rate without any additional fee.⁷¹ This transaction is prohibited by the Prophet Muhammad saw:

عَنْ عَبْدِ اللَّهِ بْنِ عَمْرٍو قَالَ: قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ: لَا يَجُزُّ سَلْفٌ وَبَيْعٌ⁷²

"Narrated by 'Abdullāh ibn 'Amr: The Messenger of Allah (PBUH) said: 'It is not lawful to combine a loan and a sale.' (Narrated by Abū Dāwud)."

The Messenger of Allah (PBUH) prohibited combining a loan and a sale. The sale in this case refers to a service sale. Some scholars allow the GO-JEK transaction because it is needed, especially in big cities where traffic congestion is common, and it helps customers meet their needs without sacrificing time and effort.⁷³ However, some scholars forbid this transaction because it combines a loan and a sale, which is prohibited according to the hadith of the Prophet Muhammad (PBUH). To make this transaction lawful, a strategy or *hilah* is required. The *hilah* is to change the transaction into a sale. The driver (courier) buys the ordered items directly from the store and then sells them to the customer with an additional transportation fee. The driver and the customer agree in advance that the customer must buy the ordered items so that the driver is not disadvantaged.⁷⁴

d. *Hilah* in Lease Agreements

Leasing is a transaction involving the rental of goods or services in exchange for compensation. For example, in a rental transaction involving a house, the contract is made between the homeowner and the tenant, where the tenant provides compensation to the homeowner.⁷⁵

The *hilah* in lease agreements, for example, occurs when someone rents a house for several years. The tenant fears that the landlord may excuse himself, so the tenant makes the initial year's payment small and sets a larger payment for the last year to avoid a loss if the lease is canceled before the end of the term and he cannot recover his money. The tenant fears that the agreement will be canceled due to the landlord's death, involvement in debt, or bankruptcy, and he cannot recover his money. The *hilah* is to make the previous year's payments small so that if the contract is canceled before the agreed time, he is not bound by a payment that disadvantages him, and the landlord is discouraged from canceling the agreement for fear of losing the large payment in the final year.⁷⁶

e. *Hilah* in the *Ijarah Muntahiyah bi al-Tamlīk* (IMBT) Contract

⁷¹ Tarmizi, *Contemporary Prohibited Wealth in Islamic Transactions*.

⁷² Abū Dāwud Sulaimān ibn Al-Asy'aṣ ibn Ishāq al-Azdī Al-Sijistānī, "Sunan Abī Dāwud," I (Riyād: Dār al-Salām, 1420), 505.

⁷³ Tarmizi, *Contemporary Prohibited Wealth in Islamic Transactions*.

⁷⁴ 'Abdullah bin Rāḍī Al-Ma'īdī, *Aḥkām 'Uqūd Al-Tamwīl Fī Al-Fiqh Al-Islāmī*, I (Riyād: Dār Kunūz Isybiyalya Linasyri wa al-Tauzī, 2017).

⁷⁵ John Burns and Michael A. Katz, "Positioning Corporate Real Estate to Drive Competitive Advantage and Facilitate Corporate Goals," *Corporate Real Estate Journal* 13, no. 4 (June 1, 2024): 368, doi:10.69554/YKHA7003.

⁷⁶ Al-Syaibānī, *Al-Makhārij Fī Al-Hiyal*.

The IMBT contract is a lease agreement that ends with the transfer of ownership,⁷⁷ *Ijarah* is a transaction involving the use of something beneficial or a contract to obtain the benefits of an object. It means renting something to derive benefits from it without transferring ownership rights. Most people want to purchase something expensive but do not have enough money, so they choose to buy it on credit. A credit purchase is a sales transaction in which the payment is made in installments over a certain period agreed upon by the parties. Credit purchases may involve *riba*. The extension of the payment period results in the item's price being higher than the price at the time of the transaction. Therefore, contract engineering is needed.⁷⁸

The contract engineered in IMBT is an *ijarah* contract (lease) with an additional sales or gift contract. The *hilah* in the IMBT contract involves an *ijarah* contract with an initial promise at the beginning of the contract about the transfer of ownership after the lease period ends. Therefore, IMBT begins with an *ijarah* contract and ends with a sales or gift contract. Because the sales or gift contract becomes the basis for full ownership of the leased object.⁷⁹ For example, someone wants to buy a house worth Rp. 200,000,000 but does not have enough money to pay for it, and this can be done on credit. To avoid the practice of *riba*, the purchase is made by renting the house and making an agreement to own the house fully after the *ijarah* period ends through a sales or gift contract, and the principal price is fulfilled during the *ijarah* period. He pays rent every month of about Rp. 17,000,000, so that when the lease period ends, he can own the house through a sales or gift contract. This contract engineering is done to achieve welfare and avoid the practice of *riba*.

f. *Hilah* in the Ownership of Used Taxi Vehicles for Taxi Drivers

Some transportation companies offer a program for installment ownership of used taxi vehicles for their taxi drivers. The purpose of this program is to provide drivers with the option to own a car at a low price. Most people want to own a car at an affordable price but do not have enough money to buy the car. By participating in this program, the taxi car can become fully owned by the driver according to the agreed contract. This program involves installments deducted from the driver's monthly bonus. With this monthly bonus deduction, the driver can save to buy the car. This case is similar to the IMBT contract, where the lease ends with the transfer of ownership, in this case, a lease of services. For example, someone wants to own a taxi car worth Rp. 80,000,000; he participates in this program by becoming a driver for five years (according to the contract). The driver buys the car through monthly installment payments deducted from the driver's monthly bonus. The ownership of the taxi car can be transferred to the driver after the installment period ends. The *hilah* in this transaction involves a contract that

⁷⁷ Mujhid Budi Luhur, "Legal Analysis of Wa'ad in IMBT (Ijarah Muntahiyah Bittamlik) in DSN MUI (National Sharia Board - Indonesian Ulema Council) Fatwa Based on the Fiqh Principle of Irtikaabu Akhaffi Al-Dhararain" (Syarif Hidayatullah State Islamic University, 2020), [https://repository.uinjkt.ac.id/dspace/bitstream/123456789/53308/1/MUJHID BUDI LUHUR-FSH.pdf](https://repository.uinjkt.ac.id/dspace/bitstream/123456789/53308/1/MUJHID%20BUDI%20LUHUR-FSH.pdf).

⁷⁸ Ika Oktavia, "The Concept of Credit-Based Sales According to Muhammadiyah Figures (A Case Study in Mengandung Sari Village, Sekampung Udik District, East Lampung)" (State Islamic Institute of Metro, 2018), [https://repository.metrouniv.ac.id/id/eprint/1837/1/IKA OCTAVIA.pdf](https://repository.metrouniv.ac.id/id/eprint/1837/1/IKA%20OCTAVIA.pdf).

⁷⁹ Luhur, "Legal Analysis of Wa'ad in IMBT (Ijarah Muntahiyah Bittamlik) in DSN MUI (National Sharia Board - Indonesian Ulema Council) Fatwa Based on the Fiqh Principle of Irtikaabu Akhaffi Al-Dhararain."

begins with an *ijarah* contract (lease of services) and ends with a sales contract, resulting in the full transfer of ownership of the taxi car to the driver.⁸⁰

g. *Hilah* Syar'iyah for Someone Who Does Not Have Heirs

Some scholars allow bequeathing more than a third of the inheritance with the consent of the heirs, as narrated in the hadith of the Prophet Muhammad saw, from Amrū ibn Khārijah:

عَنْ عَمْرُو بْنِ خَارِجَةَ قَالَ: قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ: لَا وَصِيَّةَ لِوَارِثٍ إِلَّا أَنْ يُجِيزَ الْوَرِثَةَ. (رواه دارقطني).⁸¹

"Narrated by Amrū ibn Khārijah: The Messenger of Allah Muhammad saw, said: There is no will for an heir except that other heirs allow it. (Narrated by Dāruqutnī)."

If the heirs agree, the will recipient receives the portion as agreed by the other heirs. The consent of the heirs in this matter is equivalent to giving up their right to the will. If there are no heirs, then consent is not needed. If there are heirs, the person may not bequeath all his property. He may bequeath more than a third of his property if the heirs agree. However, for someone who does not have heirs, a *hilah* can be done by bequeathing all his property for good causes. The *hilah* in this matter does not destroy the original law and does not contradict *maṣlahah syar'iyah*, so it is not prohibited. The prohibition referred to is the squandering of wealth, and to avoid this, it is recommended for those without heirs to donate all their property for good causes.⁸²

h. *Hilah* in *Ṣulḥ* (Peace Agreement)

Ṣulḥ is a contract to settle disputes and eliminate enmity⁸³ *Ṣulḥ* dapat diartikan sebagai peace agreement on a matter. For example, someone agrees with a debtor on the condition that he can postpone the payment of the debt as long as the debtor pledges his property until a certain time. If the debtor refuses to do so, there is no peace (*ṣulḥ*) between them, and the debtor must pay the debt immediately. The *hilah* is that the guarantor must be present to guarantee the debt so that it can be postponed. If the guarantor is not present, the *hilah* is to make peace based on the debtor pledging his property until a specific time.⁸⁴

If the debtor does not pay his debt, then another person who guarantees the property, and the property becomes a replacement that will be taken by the creditor. The strategy is permissible as long as the guarantor is present at the time of the agreement because he guarantees and bears the risk in the future. However, if the guarantor cannot be present, the strategy or *hilah* is to make peace on the grounds that the debtor will pledge his property but only until a specific time.⁸⁵

⁸⁰ Ubaidillah Ubaidillah, "Hilah Dalam Jual Beli Pada Sistem Al-Ijarah Al-Muntahiya Bit Tamlik Perspektif Hukum Ekonomi Syariah (Studi Kasus BMT UGT Nusantara Capem Puger)," *MOMENTUM: Jurnal Sosial Dan Keagamaan* 12, no. 1 (May 30, 2023): 17–42, <https://ejournal.stiblambangan.ac.id/index.php/momentum/article/view/65>.

⁸¹ 'Alī ibn 'Umar Al-Dāruqutnī, "Sunan Al-Dāruqutnī," I (Beirūt: Dār al-Ma'rifah, 1422), 384.

⁸² Lutfie, "Al-Hiyal Al-Syar'iyah Wa Taṭbiqātuhā Fī Al-Mu'āmalāh Al-Māliyyah Al-Mu'āshirah."

⁸³ Muḥammad Amīn ibn 'Umar Ābidīn, "Radd Al-Muḥtār 'ala Al-Durr Al-Mukhtār Syarḥ Tanwīr Al-Absār" (Beirūt: Dār Al-Kutub Al-'Ilmiyyah, 1423), 405.

⁸⁴ Al-Syaibānī, *Al-Makhārij Fī Al-Hiyal*.

⁸⁵ Syukron Syukron and Darania Anisa, "Kedudukan Rekayasa (Hila) Fikih Pada Akad Murakab," *Jurnal EL-QANUNY: Jurnal Ilmu-Ilmu Kesyariahan Dan Pranata Sosial* 9, no. 2 (December 5, 2023): 227–42, doi:10.24952/el-qanuniy.v9i2.8775.

i. *Hilah* to Avoid *Harām* Caused by the Creditor

Basically, the debt must be paid immediately, and delaying or extending the payment period is something new, not a fixed matter. Therefore, the deferment of payment can only be determined by setting prior conditions as in the case of the *khiyār*. If someone has a deferred debt, and the creditor demands that he acknowledges the debt, while he fears that by acknowledging the debt, he will be asked to pay it immediately and deny the deferment, then the *hilah* is to ask the creditor whether the debt he is acknowledging is a debt that must be paid immediately or a deferred debt? If the creditor says that the debt is a deferred debt, then there is no demand for immediate payment. If the creditor says that the debt must be paid immediately, he can deny it by saying that he does not have a debt (that must be paid immediately), and he is not sinful for denying it.⁸⁶

j. *Hilah* in the *Hawālah* Contract

According to the Hanafi scholars, *hawālah* is the transfer of debt responsibility from the first party to a third party who has the obligation to pay it.⁸⁷ It is the transfer of the debt collection from the debtor to the party who bears the debt. The *hilah* for the person whose debt is transferred to another person is, for example, if the debtor transfers his debt to another person, and he fears that the property will disappear in the hands of the person who receives the transfer. Therefore, he cannot claim the original debtor (*muḥīl*) because the transfer of debt results in the transfer of the right.

In this case, there are several *hilah* or strategies that can be applied, including:

1. First *hilah*: The debtor says that he does not transfer the debt but becomes the creditor's representative to collect or receive the payment; if he receives it, he must settle the matter with the creditor.
2. Second *hilah*: The creditor sets a condition that if his money is lost, he will return to claim the original debtor.
3. Third *hilah*: The creditor says to the third party (who bears the debt): "Guarantee the debt that my debtor owes me," and he is satisfied with it as a substitute for the transfer of debt. If the third party provides a guarantee, then he can claim one of them. This is the best and most wise *hilah*.⁸⁸

3. CONCLUSION

1. *Al-Hiyal al-syar'iyah* is a controversial source of Islamic law among scholars. The Hanafi school is particularly known for employing *al-hiyal al-syar'iyah* as a method of legal determination, often referred to as strategies or tricks. Hanafi scholars view this as a *makhārij* or a way out of legal dilemmas. *Hilah* is divided into two categories: prohibited and permissible (*hūlah syar'iyah*). The permissibility of *hūlah* depends on its intended purpose. If the aim is to establish truth or facilitate matters, then *hilah* is permissible as long as it does not contradict the objectives of Islamic law. However, if the purpose is to nullify Islamic law or if the *hilah* is contrary to the objectives of Islamic law and leads to something prohibited, then it is forbidden.
2. The method of *hilah* is applied in the field of *muamalah* as a solution to overcome difficulties and achieve benefits. It can be applied to various contracts such as sale, rent, debt, gift, and Islamic mortgage. *Hilah* can be applied to both classical and contemporary *muamalah* transactions.

⁸⁶ Al-Ṣalāhī, "Al-Hiyal Wa Al-Taḥayyul Fī Al-Aḥkām Al-Syar'iyah."

⁸⁷ Al-Ṣāgarjī, *Al-Fiḥ Al-Hanafī Wa Adillatuhu: Fiḥ Al-Mu'āmalāt*.

⁸⁸ Al-Ṣalāhī, "Al-Hiyal Wa Al-Taḥayyul Fī Al-Aḥkām Al-Syar'iyah."

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