

IMPLEMENTATION OF THE HIWALAH ACADEMIC IN SOCIAL ENVIRONMENT AND SHARIA FINANCIAL INSTITUTIONS

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Abstract

Debt has become commonplace to meet the needs of human life. However, because it is a loan, it must be returned, and sometimes not everyone can return it at the agreed time. Therefore, Islam offers a solution in the form of the Hiwalah Contract. Hiwalah is the transfer of debt from the person who owes it to someone else who is able to pay it. Hiwalah is a unique system suitable for adaptation by humans, because Hiwalah is part of human life in muamalah. The legal basis for implementing Hiwalah is the Qur'an, Hadith, Ijma' and Qiyas. Hiwalah is not used to solve account payments problems but more than that it also serves as a transfer of funds from one person to another or from one group to another. In this case, the banking system has also practiced the Hiwalah contract. The debt transfer system is a transfer of debt burden from the person who is in debt to the person who is obliged to pay because there are similar debt levels. To transfer debt, you can use collateral which is joint property in the financing, so it can be transferred to those who are able to bear it with the guarantee that the assets are transferred to the guarantor. Even on the other hand it could also be for other people who want to continue the stalled financing with the assets being financed as collateral then there is a transfer of use to the insurer. The debt transfer system is a transfer of debt burden from the person who is in debt to the person who is obliged to pay because there are similar debt levels. To transfer debt, you can use collateral which is joint property in the financing, so it can be transferred to those who are able to bear it with the guarantee that the assets are transferred to the guarantor. Even on the other hand it could also be for other people who want to continue the stalled financing with the assets being financed as collateral then there is a transfer of use to the insurer.

Keywords :*Debt, Hiwalah, Sharia*

1. INTRODUCTION

Islam is a religion that has the value of perfection. With that Islam has regulated the way of human life with a complete system which includes worship, creed, morals and cannot be separated from the rules of human behavior that have been regulated by the teachings of Islam, namely what is called muamalah. Muamalah are the rules or laws of Allah to regulate human relations in worldly affairs in social interaction. Among the Islamic muamalah that have been taught and are already familiar in our surroundings is debt transfer (Hiwalah). In accounts payable, Islam teaches to pay it off immediately, because delaying for people who can afford it is an unjust act. However, there is a bounty for those who cannot afford it. In this case, the debtor can transfer his debt to another party.

The existence of individuals as social beings cannot be hindered from the scope of muamalah, therefore, as humans, to fulfill their needs, they will need other people. Where humans who live in an era like this are very demanding to meet the needs of a very diverse personal and family, but among them not all of them can meet their own needs so they need help from other parties, but there are also those who are already established and able to sufficient for his needs. Many of them are trying in various fields so that by achieving all that is done by way of debt to other parties first to cover the deficiencies experienced. So, by paying off the debt in accordance

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with the time agreement and having fulfilled all the predetermined rules is a basis of trust. Therefore, Islam provides a solution to overcome this problem in a fair way and in accordance with religious rules, which have now been implemented in Islamic Banking Financial Institutions. Islamic banking financial institutions are intermediary institutions that enforce Islamic economic rules. In it apply the operating principles of Islamic sharia. In the Islamic religion, muamalah transactions have been regulated which must pay attention to the conditions, pillars, and forms of transactions that are permissible in the Islamic religion. One of them is the contract. Based on the objective, the contract is divided into two, namely: the muawwadhat contract and the tabarru' contract. Financing is the main task of banking to channel customer funds to develop sharia banking products. This financing is a facility for providing funds to those who need funds based on a mutual agreement by requiring parties who are given funding facilities to return the funds in accordance with a predetermined period of time.

Its main activities are collecting public funds and channeling funds. Risky matters of financing cannot be avoided by Islamic financial institutions. So one way to deal with risky problems is the Hiwalah method. The higher the level of problem financing in an Islamic banking financial institution makes it a tool to lift the spirit for bank employees to solve these various problems. The causes of problem financing have two possibilities, namely from the institution or from the customer. This error on the part of the Islamic Financial Institution occurred when carrying out a financing analysis which was feared by the analyst or there was collusion between the borrower and the analyst so that there might be a data error. Not a few banks apply sharia principles in carrying out their business operations. Sharia principles are rules of agreement based on Islamic law between banks and other parties to save funds for financing business activities or other activities that are in accordance with sharia. Islamic banks continue to strive to continue to describe various new breakthroughs, one of which is to provide financial service products in the field of business financing receivables coverage.

2. LITERATURE REVIEW

2.1. Definition of Hiwalah

In language Hiwalah or Hiwalah (ح و لا) comes from the basic words in fi'il madhi: haala - yahuulu - haulan (ح لا و ل ي ح و ال ح). The word "Al Hiwalah" with the letter ha' is read as kasrah or sometimes read fathah, comes from the word "At-Tahawwul" which means "Al-Intiqal" (transfer/transfer). Arabs usually say "hala 'ani' ahdi" which means regardless of responsibility (Nurazizah, 2008).

The definition of Hiwalah is also put forward by several different scholars in explaining it, including:

- a. According to Idris Ahmad, Hiwalah is a kind of consent qabul which is used to transfer debts from people who have dependents to people who owe them, where the person has debts to the person who transferred them.
- b. According to Fuqaha, what is meant by Hiwalah is the agreement of both parties that is considered by a muamalah.
- c. According to Zainul Arifin quoted from Abdul Ghofur Anshori's book, namely the transfer of debt to another party. Namely the first party (muhil), second (muhal), and third (muhal 'alaih).
- d. According to Hanafiyah, namely, the debt burden from the responsibility of the first party will be transferred to the responsibility of a third party who has dependents to pay.
- e. According to Maliki, Syafi'i, and Hanbali, that is debt payment using the method of transferring rights to a party who has dependents.

In general, the meaning is 'move' or 'change'. The transfer in question is in the context of transferring debt from the dependents of the debtor or al-muhil to the dependents of the person who will make the payment of the debt or al-muhal 'alaih.

Whereas regarding the law of accepting Hiwalah, the scholars are divided into three opinions, namely:

- 1) Must. When a debtor transfers his debt to another person, it is obligatory for the person who has the receivable to accept the contract of transferring his debt (Hiwalah). This is based on the words of the prophet which reads: "receive" interpreted as an order that must be carried out.
- 2) Mustahab (not until obligatory). If the debt is transferred to someone who is able to give it, then it is advisable for the person who is able to accept it. Because this includes making things easier for people who are in trouble.
- 3) Can. It is permissible to accept Hiwalah from the person who owes it. It is permissible to accept, it is also permissible not to accept. Not up to sunnah law or even obligatory.

Hiwalah is one of the contracts used by Islamic banks and offered by Islamic financial institutions for services, in addition to kafalah and sharf. The two institutions use Hiwalah in two service activities for giving and transferring debt, namely Hiwalah muthlaqat and Hiwalah muqayyad. Hiwalah is one of the transactions in the Islamic economy. Hiwalah can be found when a Friend makes a financing or loan transaction. The existence of Hiwalah is quite helpful for some people because Hiwalah itself can be used as a debt settlement option. Hiwalah is an Arabic word that comes from hawala-yahwulu-haulan. The meaning of the word Hiwalah is to move. Meanwhile, according to the science of fiqh, Hiwalah is the transfer of debt collection from the person who owes it to the person who bears the debt. So, it can be concluded that Hiwalah is transferring debt from the borrower to another party who guarantees the repayment of the debt.

2.2. Legal Basis

In the legal basis of Hiwalah, Ulama also put forward three opinions, namely:

- a. The majority of scholars also expressed the opinion that the obligation of the muhil (first party) to pay debts to the muhal (second party) would be waived directly. There are also others according to Hanafi scholars, namely Kamal ibn al-Humam, this obligation still exists as long as the muhal 'alaih (third party) has not paid off his debt to the muhal (second party), because they view that the initial agreement is based on the principle of mutual trust. instead of using the principle of transfer of rights and obligations.
- b. The birth of rights for muhal was caused by the Hiwalah contract and to demand payment of debts to third parties.
- c. If a Hiwalah mutlaqah contract occurs due to the initiative of the muhil (first party), then the obligations and rights between the muhil (first party) and muhal (third party) that they determined themselves when carrying out the previous debt agreement process are still valid. Especially if the amount of accounts payable between parties is not the same. The opinion of the Hanafi School which has been justified regarding the occurrence of Hiwalah mutlaqah.

Hiwalah has a legal basis, namely:

1. The Koran
- QS: Al-Maidah Verse: 1

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“O you who believe, fulfill the contracts. Cattle are lawful for you, except for those that will be recited to you. (That is so) with no make it lawful to hunt while you are on pilgrimage. Verily, Allah sets laws according to what He wills.”

- QS: Al-Isra', Verse: 34

"And do not approach the orphan's property, except in a better way (useful) until he grows up and fulfills his promise; verily the promise must be held accountable."

- QS: Al-Maidah, Verse: 2

"O you who believe, do not violate the symbols of Allah, and do not violate the honor of the sacred months, do not (disturb) the animals had had, and animals qalaa-id, and do not (also) bother people who are visiting the House of Allah while they are seeking grace and pleasure from their Lord and when you have completed the pilgrimage, then it is permissible hunt. And do not ever hate (your) against a people because they prevent you from the Masjidil Haram, encourage you to do wrong (to them). And help you in (doing) virtue and piety, and do not help each other in sin and transgression. And fear Allah, verily Allah is severe in punishment."

2. Al-Hadith

The hadith narrated by Imam Al-Tirmidhi and 'Amr bin 'Auf Al-Muzni, the Prophet SAW, reads:

"Agreements may be made between Muslims except agreements that forbid what is lawful or allow what is unlawful and the Muslims are bound with their conditions except conditions that prohibit what is lawful or allow what is unlawful."

3. Sunnah

There is a history from Imam Bukhari and Muslim conveying from Abu Hurairah that there are words of the Prophet who said,

"Delaying debt payments by the rich is tyranny. If one of you gets an order to transfer a debt to a rich person, then let him accept it."

"Whoever is transferred to a rich person, let him obey."

(Narrated by Ahmad ibn Hanbai)

The hadith above mentions that the Prophet conveyed to people who are willing to lend, if a person who has a debt transfers his debt to someone who is rich/capable, then he must accept the Hiwalah and he should collect it from the person who is being given Hiwalah (muhal 'alaih). In this way, their rights will be fulfilled.

The opinion of some scholars says that the command to receive Hiwalah in the hadith above shows that it is obligatory. Therefore, the person who owes is obliged to accept Hiwalah. There are also jumhur Ulama say that the order is sunnah. So, the law is sunnah for muhal to accept Hiwalah.

4. Ijma

Hiwalah is agreed upon by the scholars and is permissible. Hiwalah which is not in the form of goods/objects is allowed to be used in debt. Therefore, money or obligations must be financial.

5. Fiqh Rules

In every muamalah and transactions such as buying and selling, leasing, Hiwalah and so on are permissible. However, there are also things that are forbidden, such as things that cause harm, gambling, and usury. The rule is like:

"Basically, all forms of muamalah are permissible unless there is an argument that forbids them."

3. RESULTS AND DISCUSSION

3.1. Terms and Pillars of Hiwalah

In the DSN-MUI Fatwa No. 12/DSN-MUI/IV/2000 concerning Hiwalah, the following provisions are stated:

- a. The pillars of Hiwalah are: First, the person who is in debt (muhiil) Second, the person who owes the debtor (muhal or muhtal) Third, the person who owes the debtor and is obliged to pay the debtor (muhal 'alaih) Fourth, the debt people who owe debtors (muhal bih) Fifth, Ijab qabul.
- b. The sighat statement must be stated to the parties in order to show the contract that has been contracted.
- c. The agreed contract will be stated explicitly through modern communication.
- d. Hiwalah must be done with the approval of the parties concerned.
- e. The level and necessity of the parties will be stated in the agreement explicitly and logically.
- f. If the Hiwalah transaction has been carried out, then the parties involved are only the person who owes the debtor and also the muhal 'alaih
At the same time, the muhal billing rights will change position to the muhal 'alaih.

There are things that must be fulfilled before doing Hiwalah. Namely there are 4 Hiwalah pillars as follows:

a. Muhiil or Debtor

The conditions that must be met by Muhiil are:

- Baligh
- Have common sense
- Able to perform Akad or Hiwalah agreement Perform without coercion from any party.

b. Muhal or People Who Lend

The conditions that must be met by Muhal are:

- Baligh
- Reasonable
- Not based on coercion of any party
- Can do Ijab and qabul Akad Hiwalah

c. Muhal 'alaih or Person who Guarantees Repayment of Debt

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The conditions that must be met by Muhal 'alaih are as follows:

- Baligh
- Reasonable
- financial condition is classified as capable
- Able to carry out Ijab and qabul Akad Hiwalah d. Debt Object

The conditions that must be met by the debt object are:

- Debt can be in the form of money, assets, and valuables
- The object of debt cannot be something that is prohibited by Islamic law
- The object of the debt may not be in the form of semi-finished goods or goods that have no value yet (for example, plant seeds that have not produced fruit, promises of grant assistance have not been received, and so on).

3.2. Terms of Hiwalah

Another thing that must be considered before making a Hiwalah transaction is the terms of the Hiwalah. Hiwalah requirements are things that side by side with the pillars of Hiwalah as an aspect that must be fulfilled.

Therefore, here are the 5 conditions of Hiwalah:

- Muhil did the Hiwalah Agreement willingly
- Muhal or lender agrees to Hiwalah agreement
- Muhal 'alaih is obliged to be responsible for paying off the object of the debt that has been agreed beforehand
- The debt object must be in the guarantee of repayment
- Debt objects must be repaid with equivalent value

3.3. Types of Hiwalah Contracts

a) Hiwalah Muthlaqoh

Hiwalah Muthlaqoh occurs if the person who owes (first person) to another person (second person) transfers his collection rights to a third party without being based on this third party owes to the first person. If A is indebted to B and A transfers B's billing rights to C, while C has no debt relationship to B, then this Hiwalah is called Muthlaqoh. This is only in the Hanafi and Shi'a schools of thought while the majority of scholars classify this type of Hiwalah as kafalah.

b) Hiwalah Muqoyyadah

Hiwalah Muqoyyadah occurs when Muhil transfers Muhal's billing rights to Muhal Alaih because the latter has debts to Muhal. This is Hiwalah which is permissible (jaiz) based on the consensus of the scholars.

The three schools of thought other than the Hanafi school of thought are of the opinion that only permissible Hiwalah muqayyadah and require Hiwalah muqayyadah that muhal debts to muhil and muhal alaih debts to muhil must be the same, both in nature and amount. If it is the same type and number, then the Hiwalah is valid. But if one of them is different, then the Hiwalah is invalid.

In terms of the object, Hiwalah is divided into 2, namely:

a) Hiwalah Haq

Hiwalah is the transfer of receivables from one receivable to another in the form of money, not in kind. In this case, the one who acts as Muhil is the creditor and he transfers his rights to another creditor while the person who owes does not change or changes, what changes is the receivables.

This happens if receivables A have a debt to receivables B.

b) Hiwalah Dayn

This hiwalah is the transfer of debt to other people who have debts to him. It is different from Hiwalah Haq. In essence, Hiwalah dayn has the same meaning as Hiwalah which has been explained earlier.

3.4. Benefits of the Hiwalah Contract

The Hiwalah contract provides many benefits and advantages, including the following:

- a. Enables settlement of debts and receivables quickly and simultaneously
- b. Availability of bailout funds for grants for those in need
- c. Can be one of the fee-based income / sources of non-financing income for Islamic Banks

3.5. The Forbidden Hiwalah Contract

Some forms of Hiwalah contracts that violate the rules of Islamic law are as follows:

a. Selling Uncollectible Debt

This incident often occurs and is often carried out by a person or financial institution by selling debt that is difficult to collect, for example buying and selling debt is carried out at a value lower than the total value of uncollectible debt.

For example: person A has receivables from person B of 5 million rupiah. Because person A's receivables from person B are difficult to collect, person A sells his receivables to person C for 4 million rupiah. Thus person C gets a profit of 1 million rupiah even though the receivables are not certain to be collected. Incidents like this are clearly punishable by usury because in a sale and purchase contract there must be goods or services being traded, whereas what happens in this case is receivables being traded. Even though according to religious regulations, receivables may not be used as objects that can generate benefits. Rasulullah saw. Saying: It is prohibited (not allowed) to carry out salaf transactions together with buying and selling transactions. (Reported by Abu Daud, At-Tirmidhi, An-Nasa'i, and Ibn Majah).

What is meant by salaf is "receivables", narrated by friends of Ubay bin Ka'ab, Ibnu Mas'ud, and Ibn Abbas Ra that they prohibit any receivables that bring benefits because receivables are a contract that aims to provide assistance to people in need. Therefore, if the creditor requires a benefit, it means that the receivable contract has departed from its main purpose.

b. Selling Current Accounts (Podden Checks)

This practice is also often done by someone when they need money that can be obtained quickly before the current account disbursement date. Among them selling demand deposits at prices below the value stated in the demand deposits, this is clearly punishable by usury because it is exactly the same as buying and selling receivables or receivables being objects that can generate benefits.

For example, person A has a demand deposit of 3 million, and it can be disbursed on February 12, 2020. Then, ten days before the disbursement, namely February 2, 2020, the demand deposit is sold to person B for 2 million. Thus Person B has a profit of 1 million which can be disbursed on February 12 2020.

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In a contract like this, the demand deposits are overlapping. In this case, the giro already contains usury because of Gharar (uncertainty), whether it can still be disbursed or not. It could be that when disbursing it turns out that the current account is empty.

3.6. End of the Hiwalah Contract

The Hiwalah contract will end with the following:

- a. Because canceled or fasakh.

This happens if the Hiwalah contract has not been implemented until the final stage and then it is difasakh. In this condition, Muhal's collection rights will return to Muhil.

- b. Muhal Alaih lost his rights because he died or went bankrupt or he denied the existence of the Hiwalah contract while Muhal could not present evidence or witnesses.

- c. If Muhal alaih has carried out his obligations to Muhal. It means the Hiwalah agreement has been fulfilled by all parties.

- d. The death of Muhal while Muhal alaih inherited the Hiwalah property because inheritance is one of the reasons for ownership. If this contract is Hiwalah muqoyyadah, then the Hiwalah contract is over according to the Hanafi school of thought.

- e. If Muhal donates or donates Hiwalah property to Muhal Alaih and he receives the gift.

- f. If Muhal writes off the obligation to pay debts to Muhal Alaih.

3.7. Application of the Hiwalah Contract for Sharia Banking

In the practice of Islamic banking, Hiwalah facilities are generally to assist suppliers in obtaining cash capital so that they can continue their business activities. In this case, the bank gets compensation fees for debt transfer services. To anticipate and overcome losses that will occur, the bank needs to conduct research on the ability of the indebted party and the validity of the transaction between the indebted and the transferor of the debt. Because the supplier's needs will be in liquidity, he asked the bank to transfer the receivables and the tires will receive payment from the project owner. Hiwalah contracts are usually implemented in cases such as the following:

- Factoring (Factoring), where customers who have receivables from third parties transfer them to the bank, the bank then pays the receivables and the bank collects them from third parties.
- Post dated check, where the bank acts as a collector without paying the receivable first.
- Bill discounting, in principle, is similar to Hiwalah, except that in bill counting the customer only pays a fee, whereas the discussion of fees is not agreed upon in the Hiwalah contract.

The difference between the Hiwalah contract and the factoring agreement.

Today the development of the Islamic banking business has increased sharply when compared to a few years ago. Many new Islamic banks have emerged which are ready to compete with Islamic banks that have previously been established as well as with conventional banks, in order to meet the increasing demands of society for the existence of Islamic banks. The Islamic banking business can experience rapid development due to the increasing public trust in Islamic banking, this is indicated by the increasing number of people who become customers of Islamic banks. Therefore, the topic of Islamic banking is interesting to discuss as well as further introduction to the public about Islamic banking products, especially the Hiwalah contract. Hiwalah contracts and factoring agreements are compared to find differences between Hiwalah contracts and factoring agreements which have the same basic concept, namely the concept of transfer. The Hiwalah contract is a debt transfer contract from a person who owes another person who has receivables from him. In terms of the scholars, this is a transfer of the burden of debt from the muhil (a person who owes money at the same time as being indebted) to the responsibility of the muhal'alaih (a person who has receivables from the muhil). Meanwhile, the definition of factoring

in Presidential Regulation Number 9 of 2009 is a financing activity in the form of purchasing a company's short-term trade receivables and managing these receivables.

If we carefully read the definition of a *Hiwalah Akad* with a factoring agreement, it will be clear the difference between the *Hiwalah Akad* and a factoring agreement. The *Hiwalah* contract is a debt transfer agreement, while factoring is an agreement to transfer receivables by buying and selling. Actually, in *fiqh muamalah* *Hiwalah* can also be in the form of transferring receivables, which is done with *Hiwalah* rights. However, the basic concept of *Hiwalah* is debt transfer. Even though the object of transferring *Hiwalah* rights is receivables, the receivables that can be transferred are not specifically in the form of trade receivables and *Hiwalah* rights are not schemes for transferring receivables in the form of buying and selling as contained in factoring.

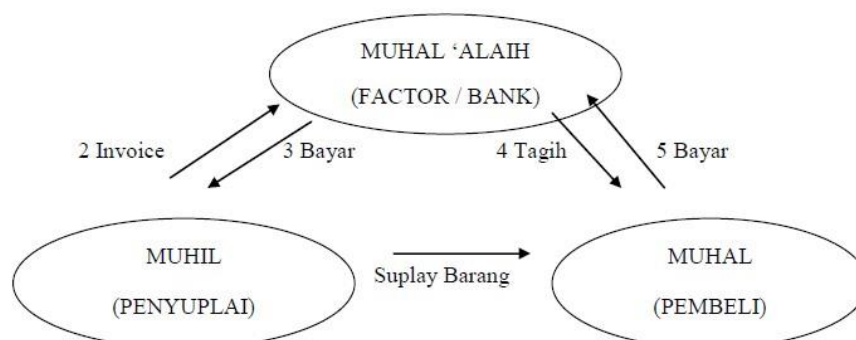
3.8. Solutions in Overcoming Problematic Credit Applications in Banking

Bad credit is not a strange thing in the world of banking. Even though the implementation of banking has been carried out perfectly, bottlenecks in financing still occur. The occurrence of bad credit should not be made a frightening problem, but what solutions must be offered by *Shari'ah* to overcome them. One of the offers given by *shari'ah* is the *Hiwalah* contract. *Hiwalah* in banking credit can be done by transferring the collateral assets to those who bear the debt. These assets are collateral to pay off debts that occur in credit jams, this is usually shared collateral assets. Therefore the bank does not directly sell the collateral to pay off the debt, but it can be done by transferring the collateral to another person.

Hiwalah contracts in banking are usually applied to the following:

- a) *Factoring* or factoring, where customers who have receivables from third parties transfer the receivables to the bank, the bank then pays the receivables and the bank collects them from the third party. At this level, the bank as the party executing the guarantee can take several actions to prevent injustice to the customer.
- b) *Post Dated Check*, where the bank acts as a collector, without first paying the receivables.
- c) *Discounting Bills*. In principle, bill discounting is similar to *Hiwalah*. It's just that, in bill discounting, the customer has to pay a fee, whereas the discussion of fees is not found in the *Hiwalah* contract.

3.9. Al-*Hiwalah* Scheme



Example of a *Hiwalah* Contract Transaction Case

Islamic banks experience losses from PT. Mandala to PT. Subur due to uncollectible receivables from PT. Mandala to PT. Fertile. Therefore, PT. Subur has the right to refuse to be responsible for the non-collection of these receivables in a predetermined amount of Rp. 95,000,000,- the journal in this case is as follows:

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- d. PT. Subur committed a default/the debt was not repaid and PT. Mandala will be responsible for the settlement, with this being transferred by Hiwalah's receivables, the outstanding becomes receivables belonging to the Sharia Bank to PT. Hand-drawn mandala. Accounts receivable transfer journal as follows:

Account	debit	Credit
Receivables (PT. Mandala)	Rp. 95,000,000	
accounts receivable		Rp. 95,000,000

- e. For the uncollectible receivables of PT. Mandala to PT. Fertile then PT. Mandala has the right not to have the authority to be responsible for the uncollectible receivables from PT. Fertile. Therefore Islamic Banks result in losses from PT. Mandala to PT. Subur, with the journal as follows:

Account	debit	Credit
Hiwalah's loss	Rp. 95,000,000	
Hiwalah Receivables PT. Mandalas		Rp. 95,000,000

4. CONCLUSION

From the explanation that has been put forward that Hiwalah is the transfer of the right to demand debt to another party on the basis of the agreement of the party giving the debt. In terms of scholars, 'Hiwalah' is the transfer of the debt burden from the person who is in debt (muhil) to the person who is obliged to pay the debt (muhal 'alaih). Hiwalah that has been studied there are two kinds, namely Hiwalah muthlaqah and muqayyad. Muthlaqah occurs if the person who owes (the first person) to another party transfers his collection rights to a third party without realizing that this third party owes the first party. Meanwhile, Muqayyad transfer is in exchange for paying the first party's debt to the second party. In Islamic banking practice, Hiwalah is generally to assist suppliers in obtaining cash capital so that they can continue their business activities. And in this case, the bank gets compensation fees for debt transfer services. To anticipate and overcome losses that will occur, the bank needs to conduct research on the ability of the indebted party and the validity of the transaction between the indebted and the transferor of the debt. Because the supplier's needs will be in liquidity, he asked the bank to transfer the receivables and the tires will receive payment from the project owner.

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