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Between trust and legal certainty: Motorcycle over-credit in the perspective of Sharia economic law - a case study in Pukul Village, Kraton, Pasuruan

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ABSTRACT

The rapid expansion of motorcycle financing in Indonesia generated a widespread but legally ambiguous practice known as over-credit, in which instalment obligations and vehicle possession were transferred from an original debtor to a second party before the financing contract was fully settled, often without the financing institution's knowledge or consent. This study examined motorcycle over-credit in Pukul Village, Kraton, Pasuruan, and assessed it from the perspective of Sharia economic law. A qualitative case-study design was used, combining normative-empirical analysis of fiqh muamalah with semi-structured interviews, non-participant observation, and documentation. Data were analysed using the Miles-Huberman-Saldaña interactive model and validated through source, technique, and time triangulation. The findings showed that the informal verbal arrangement did not fulfil the pillars of a valid hawalah, combined elements of bai' and wakalah without fully satisfying either contract, and created substantial gharar concerning ownership, liability, and dispute resolution, although antaradhin was present. The study concluded that such trust-based transfers formed an informal hybrid contract and required formal transfer mechanisms to strengthen legal certainty and property protection.

Keywords : *over-credit; sharia economic law; hawalah; gharar; motorcycle financing; maqashid al-shariah*

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INTRODUCTION

Economic transactions in Indonesian society have become increasingly dynamic and complex, driven by rising consumption needs and the expansion of modern consumer-financing schemes (Ade Zuki Damanik, 2024). One of the fastest-growing sectors is motor-vehicle financing, particularly for motorcycles, which is generally carried out through leasing or multifinance institutions under an instalment scheme secured by a fiduciary guarantee over the vehicle(Djayusman & Nurafni, 2025). Because the object of financing remains under the institution's fiduciary security until full settlement, any transfer of the debtor's position before the contract matures is, in principle, subject to the institution's approval; in practice, however, this formal requirement is frequently bypassed. Comparable Indonesian consumer-finance research likewise shows that transferring fiduciary collateral without the creditor's approval can create legal consequences for the debtor, creditor, and transferee (Ariyanto et al., 2020; Wardana & Budhiawan, 2024).

In practice, transactions rarely stop at the initial credit agreement. A follow-on practice known as over-credit has emerged, in which the obligation to pay instalments and, in most cases, physical possession of the vehicle is transferred from the original debtor to another party before the financed object is fully paid off(Karim, A., (n.d.). This transfer is typically based on an informal, verbal agreement between the two parties, without following the formal procedures of the financing institution concerned. Alam, A., & Sriwahyuni., (2025) note that such informal transfers are common across

Indonesia's grassroots economy precisely because formal institutional channels are perceived by ordinary debtors as slow, costly, or socially distant from the norms of kinship-based trust that govern everyday village transactions. Empirical research on underhand fiduciary transfers similarly identifies unofficial over-credit as a practical route taken outside the creditor's formal mechanism (Wardana & Budhiawan, 2024)

The prevalence of over-credit practices in Pukul Village, Kraton Sub-district, Pasuruan Regency, has become a notable social phenomenon. It usually occurs when a debtor who is no longer able to continue paying instalments transfers the vehicle to another party under a private arrangement. While over-credit is often regarded locally as a pragmatic solution for reducing the financial burden of the original debtor, when it is carried out without the financing institution's knowledge and consent it can create legal problems and potential losses for the parties involved, since the vehicle's ownership status, the outstanding balance, and the legality of the transfer remain unclear (Djayusman & Nurafni, 2025). This pattern is consistent with Indonesian studies showing that unauthorised transfer of fiduciary-financed vehicles creates uncertainty and continuing legal exposure for the parties involved (Ariyanto et al., 2020; Wardana & Budhiawan, 2024).

From the standpoint of positive law, transferring a credit object without the financing institution's approval may be categorised as a breach of the original credit agreement and, depending on the fiduciary arrangement, may expose both parties to civil or even criminal fiduciary-guarantee risk (Karim, A., (n.d.). From the perspective of Sharia economic law, every muamalah transaction is in principle permissible (mubah) as long as it does not conflict with Sharia principles such as justice, mutual consent (antaradhin), and freedom from gharar (uncertainty) and riba (Suhendi, H., 2016). However, over-credit practices in the field often involve unclear contractual structures: whether they constitute hawalah (debt transfer), bai' (sale), wakalah (agency), or merely an informal transfer of responsibility, which opens the door to gharar, ownership disputes, and default risk (al-Zuhaili, W., 1985). The legal significance of this risk is reinforced by research on criminal enforcement against unauthorised transfers of fiduciary collateral, while contemporary Islamic-finance scholarship also treats contractual uncertainty as a core dimension of gharar (Mohd Noh et al., 2025; Wiguna et al., 2021).

Recent SINTA-indexed research published between 2023 and 2025 shows that the legal and Sharia dimensions of consumer financing and debt transfer have generally been examined in separate streams. Positive-law studies emphasise consumer protection, good faith, and fiduciary formalities in financing arrangements(Sani et al., 2024; Wardana & Budhiawan, 2024), whereas Sharia-oriented studies focus on multi-contract debt transfer, hiwalah, and gharar in formal or conceptual settings ((Aidil Fikriadi & Azmil Umur, 2024; Koswara et al., 2026; Nurhasanah & Mz, 2025; Pitriani et al., 2024). What remains insufficiently examined is an informal, community-based motorcycle over-credit transaction in which vehicle possession and instalment responsibility move to a second party without formal substitution of the debtor and while fiduciary security remains active. This gap justifies an empirical investigation of how such a practice operates at the grassroots level and how it measures against Sharia contractual principles and legal certainty.

Based on this background, the research problems addressed in this study are: (1) how does the practice of motorcycle over-credit occur in Pukul Village, Kraton, Pasuruan; and (2) how does Sharia economic law assess this practice through the lenses of hawalah, bai', wakalah, gharar, antaradhin, and maqashid al-shariah? Accordingly, this study aims to describe the practice of motorcycle over-credit in Pukul Village and to analyse it from the perspective of Sharia economic law, in order to provide both

theoretical clarity by mapping how informal transactions produce hybrid, unnamed (ghayr musamma) contracts and practical contributions to financing institutions, regulators, and the community regarding the formalisation of over-credit transfers. The use of a hybrid-contract lens is also supported by scholarship showing that contemporary financial arrangements may combine several contractual forms when a single named contract does not fully capture the economic structure of the transaction (Niffilayani & Thao, 2024).

Theoretical Framework: Contracts in Fiqh Muamalah

Fiqh muamalah regulates the exchange of property and obligations between individuals on the basis of five foundational principles: lawfulness of the object (halal), clarity of the contract's pillars and conditions (arkan wa syurut), mutual consent (antaradhin), freedom from excessive uncertainty (gharar), and the avoidance of usurious gain (riba) (Djuwaini, D., 2010; Suhendi, H., 2016). Within this framework, several named contracts (al-'uqud al-musamma) are directly relevant to the over-credit phenomenon. Hawalah is the transfer of a debt obligation from one debtor (muhil) to another party (muhal 'alaih), and its validity in the majority (jumhur) view requires the consent of the original creditor (muhal), since the creditor's right to select whom it trusts to fulfil the obligation cannot be unilaterally displaced (al-Zuhaili, W., 1985). Bai' is a contract of exchange requiring that the object of sale be under the seller's complete ownership (milk al-tam) and lawful possession (qabd); an object still bound by a third party's security interest, such as a fiduciary guarantee, does not fully satisfy this condition (al-Zuhaili, W., 1985). Wakalah is a non-binding (jaiz) agency contract in which an agent (al-wakil) acts on behalf of a principal (muwakkil), but legal liability remains with the principal unless it is formally and separately transferred (al-Zuhaili, W., 1985). Contemporary journal literature supports these analytical distinctions: hiwalah scholarship emphasises the structure of debt transfer, constructive-possession scholarship highlights the centrality of valid qabd, and hybrid-contract research explains the combination of multiple contractual forms in modern finance (Aidil Fikriadi & Azmil Umur, 2024; Niffilayani & Thao, 2024; Rahman, 2020).

Gharar refers to substantial uncertainty regarding the object, price, or legal consequence of a contract, and jurists distinguish between gharar yasir (tolerable, minor uncertainty) and gharar fahish (excessive uncertainty that invalidates a contract) (Affero & Mustofa, 2024). Antaradhin, mutual consent free from coercion (ikrah), is a necessary but not sufficient condition for contractual validity: a transaction may be entered into willingly by both parties and still be invalid if its object, pillars, or third-party rights are not satisfied (Suhendi, H., 2016). Finally, maqashid al-shariah, the higher objectives of Islamic law requires that economic transactions protect five essential values (al-daruriyyat al-khams), among which hifz al-mal (protection of property) and the broader principle of 'adl (justice) are most directly implicated in disputes over ownership and liability (al-Zuhaili, W., 1985). Taken together, these constructs form the analytical lens used in this study: an over-credit transaction is theoretically valid only if it can be classified under one coherent, fully satisfied contract, and only if that classification simultaneously advances rather than undermines maqashid al-shariah. These principles are reinforced by recent scholarship on gharar in modern finance, the scope of at-taradi in muamalah contracts, and the role of maqasid in reconciling fiqh rules with contemporary financial realities (Ishak & Asni, 2020; Mohd Noh et al., 2025; Mughits, 2017).

Prior Research

Sani et al., (2024) examined consumer-financing and hire-purchase agreements between an electronics and furniture credit business and consumers, using normative and empirical juridical

approaches. Their study found that the standard-form agreement used in practice could disadvantage consumers when default occurred and argued that the financing arrangement should be structured within a fiduciary framework so that the rights and obligations of creditor and debtor are clearer. The study is relevant because it also identified unauthorised transfer and over-credit as practical problems in instalment financing. However, its analysis remained within positive contract and fiduciary law and did not assess the transfer through hawalah, bai', wakalah, gharar, or maqashid al-shariah.

Wardana & Budhiawan, (2024) focused specifically on legal protection for a subsequent debtor acting in good faith in an over-credit agreement. They concluded that a good-faith subsequent debtor requires legal protection, including access to litigation or non-litigation remedies and, after fulfilment of the relevant obligations, protection of rights relating to vehicle documents and the BPKB. Their discussion strengthens the legal-certainty dimension of informal over-credit because it shows that good faith alone does not eliminate the need for a legally recognisable transfer of rights. Nevertheless, the study concentrated on civil-law protection and criteria of good faith rather than on whether the underlying transfer satisfies the pillars and conditions of Sharia contracts.

Pitriani et al., (2024) analysed multiple contracts in DSN-MUI debt-transfer arrangements and found that the available alternatives may combine qard, bai', murabahah, ijarah, and other contracts, which the study classified as modified hybrid contracts. This finding is important for the present research because motorcycle over-credit also displays features that cannot be explained adequately through a single named contract. However, Ridoh's study was a library and document-based analysis of formal DSN-MUI debt-transfer alternatives. It did not investigate an informal village transaction in which the creditor institution is not involved in the transfer and the financed object remains subject to an active fiduciary relationship.

Aidil Fikriadi & Azmil Umur, (2024) examined the concept of debt transfer (hiwalah) in Islamic banking based on DSN-MUI Fatwa No. 31/DSN-MUI/VI/2002. Their analysis emphasised the three-party structure of debt transfer, involving the transferor, the party accepting the debt, and the creditor, and situated hiwalah within a regulated Islamic-banking framework. The study provides a useful doctrinal benchmark for determining whether a transfer of instalment liability can be characterised as a valid hiwalah. Its institutional setting, however, differs from the present case because motorcycle over-credit in Pukul Village is carried out verbally between community members without formal participation or approval from the financing institution.

Koswara et al., (2026) examined the legal dimensions of gharar in contemporary Sharia business contracts, particularly in rapidly developing forms of digital economic transactions. Their study stressed that transparency and contractual clarity remain essential for preventing excessive uncertainty even when transaction models evolve. This perspective is directly relevant to motorcycle over-credit because uncertainty may concern ownership, continuing liability, possession of the financed object, and the consequences of default. Even so, their research addressed gharar at the conceptual level of contemporary Sharia business contracts and did not connect it to an empirical over-credit case involving fiduciary security, informal consent, and transfer of instalment responsibility.

Nurhasanah & Mz, (2025) studied the application of hiwalah in Islamic banking and described debt transfer as a formal Sharia mechanism operating within regulated financial practice. Their study reinforces the importance of a clear contractual structure and the involvement of the relevant parties when an obligation is transferred. It therefore offers a useful comparison with informal motorcycle over-credit, where the second party performs the instalment payments but the original debtor remains formally recorded in the financing relationship. The limitation for the present research is that their

analysis focused on institutional banking applications rather than grassroots transactions based primarily on personal trust and verbal agreement.

Taken together, these six recent SINTA-indexed studies reveal three dominant streams: positive-law protection in consumer financing and over-credit, doctrinal analysis of hiwalah and hybrid debt-transfer contracts, and contemporary analysis of gharar. None of them integrates these streams in a single empirical case of motorcycle over-credit conducted informally in a rural community while the vehicle remains under active fiduciary financing. The present study therefore fills this gap by combining field evidence from Pukul Village with an integrated analysis of hawalah, bai', wakalah, gharar, antaradhin, and maqashid al-shariah. Its novelty lies in identifying how a trust-based transfer can create a hybrid, unnamed (ghayr musamma) contractual structure whose practical acceptance by the parties does not automatically resolve questions of Sharia validity, third-party rights, or legal certainty.

RESEARCH METHODS

Research Design

This study employs a qualitative case-study design using field research, combined with a normative-empirical approach that integrates the normative study of Islamic law (contract theory, fiqh muamalah, and DSN-MUI fatwas) with the empirical reality of the community's socio-economic practices (Marzuki, P. M., 2021; Moleong, L. J., 2017). A case-study design was selected because the phenomenon under investigation, the transfer of an actively financed motorcycle between two private individuals, is bounded, contemporary, and best understood through an in-depth, contextual account of a specific, information-rich instance rather than through a broad survey (Sugiyono., 2019). This combination allows the analysis to move beyond conceptual discussion to examine how Sharia principles are actually implemented, negotiated, and sometimes compromised in real transactions. The choice of case study is methodologically consistent with the use of case studies for in-depth, multi-faceted examination of contemporary phenomena in their real-life contexts (Crowe et al., 2011).

Research Setting and Informants

The research was conducted in Pukul Village, Kraton Sub-district, Pasuruan Regency, selected purposively because of the prevalence of informal motorcycle over-credit practices in the area and the community's strong reliance on kinship values, social solidarity, and interpersonal trust in economic transactions, rather than on formal legal mechanisms. The central case examined involves two informants directly party to the transaction: the original debtor (Abdul Hamid) and the party who assumed the over-credit obligation (Abdur Rahman). These two informants were selected using purposive sampling on the criterion of direct, first-hand involvement in an active over-credit transaction that had not yet been resolved through the financing institution, which allowed the study to observe the contractual ambiguity while it was still socially and legally unsettled. Supplementary information was gathered from community figures and residents familiar with comparable practices in the village, used to corroborate the extent to which the central case reflects a broader local pattern rather than an isolated incident. This sampling logic accords with purposeful sampling, which is used in qualitative research to identify information-rich cases and participants with direct knowledge of the phenomenon under study(Palinkas et al., 2015).

Data Collection Techniques

Data were obtained from two complementary sources. Primary data were collected through semi-structured in-depth interviews with the two parties directly involved in the case examined,

supplemented by community figures and residents familiar with similar practices. Secondary data were drawn from books and classical and contemporary fiqh muamalah literature, scientific journals, prior research, relevant laws and regulations on financing and credit agreements, and the fatwas of the National Sharia Board of the Indonesian Council of Ulama (DSN-MUI), particularly Fatwa DSN-MUI No. 12/DSN-MUI/IV/2000 concerning Hawalah (DSN-MUI., 2000). Data collection combined interviews, non-participant observation of community transaction patterns, and documentation of informal transaction records and field evidence, applied in a triangulated manner to strengthen data validity. Interviews followed a semi-structured guide covering four domains: the chronology of the transfer, the terms agreed between the parties, each party's understanding of ownership and liability, and each party's awareness of the financing institution's position (see Supplementary Data for the interview guide outline). The use of semi-structured interviews and multiple evidence sources is consistent with methodological guidance on developing qualitative interview guides and strengthening interpretation through triangulation (Carter et al., 2014; Kallio et al., 2016).

Data Analysis Techniques

Data analysis followed the interactive model of Miles, M. B., Huberman, A. M., & Saldaña, J., (2014), consisting of data reduction, data display, and conclusion drawing/verification, allowing for continuous reflection throughout the research process. Data reduction involved coding interview transcripts and field notes against the five theoretical constructs identified in the theoretical framework: hawalah, bai', wakalah, gharar, and antaradhin together with an emergent maqashid al-shariah code capturing statements related to benefit (maslahah) and harm (mafsadah). Data display organised the coded material into a case narrative and a construct-by-construct matrix, which allowed the normative-fiqhiyyah analysis to be applied systematically to each element of the transaction rather than impressionistically. Conclusion drawing proceeded iteratively: preliminary interpretations were checked against the raw transcripts and secondary fiqh literature, and revised where the data did not clearly support an initial classification, before the final analytic account presented in the Results and Discussion section was produced. The systematic coding of recurring concepts and the iterative movement from coded data to interpretive themes are also consistent with established thematic-analysis procedures in qualitative research (Braun & Clarke, 2006)

Trustworthiness and Ethical Considerations

The credibility of the data was tested through source triangulation (cross-checking information among informants), technique triangulation (comparing interview results with observation and documentation), and time triangulation (collecting data at different times to test the consistency of informants' statements) (Moleong, L. J., 2017). Member checking was applied by relaying the researcher's summary of each informant's account back to that informant for confirmation, which helped to reduce the risk of misinterpreting informal, colloquial descriptions of the transaction as formal legal claims. Informed consent was obtained orally from both principal informants prior to the interviews, and pseudonymisation was considered but ultimately not applied to the two principal informants at their own request, since both indicated that their case was already known within the village and that anonymising it would not materially protect their privacy; identifying details beyond first interaction, however, are withheld in this report. The analysis of the case itself applied a normative-fiqhiyyah approach combined with a contextual-empirical approach, examining the practice against five key elements of Sharia economic law: the hawalah contract, the bai' contract, the wakalah contract, the element of gharar, and the principle of antaradhin, and further assessing the practice through the lens of

maqashid al-shariah, in terms of maslahah and mafsadah for the parties involved. These credibility procedures are supported by qualitative-methods literature that treats triangulation as a means of comparing multiple sources or methods and member checking as a technique for examining the credibility of researchers' interpretations(Birt et al., 2016; Carter et al., 2014).

RESULTS AND DISCUSSION

Overview of the Research Locus

Pukul Village is located in Kraton Sub-district, Pasuruan Regency, East Java Province, and is characterised by close-knit rural social relations sustained through religious and communal activities. Livelihoods in the village are diverse, ranging from farming and trading to wage labour, and rising economic mobility has driven the growth of motor-vehicle financing transactions. Alongside this growth, a portion of the community has adopted the practice of over-credit, namely the transfer of the use and payment obligations of a still-financed vehicle to another party. From the perspective of Sharia economic law, this practice needs to be examined not merely in terms of convenience, but in terms of contractual clarity, the rights and obligations of each party, ownership of the transaction object, and the possible presence of gharar (al-Zuhaili, W., 1985). Comparable Indonesian studies of consumer-finance and fiduciary-object transfers show why such informal transfers must be analysed together with formal ownership, creditor consent, and continuing liability, while modern gharar scholarship highlights uncertainty in contractual consequences as a central concern (Ariyanto et al., 2020; Mohd Noh et al., 2025; Wardana & Budhiawan, 2024).

The Practice of Motorcycle Over-Credit in Pukul Village

The case examined in this study involves Abdul Hamid, who originally obtained a motorcycle through a leasing facility with a monthly instalment scheme, and Abdur Rahman, who later took over the payment obligation. According to Abdul Hamid, instalment payments proceeded smoothly at first but became increasingly difficult as his economic circumstances declined. He explained: "At first I could still pay, but over time my financial situation worsened, so I struggled. In the end I looked for a way to keep the instalments running, and I offered the motorcycle to Abdur Rahman to continue it" (A. Hamid, personal communication, June 1, 2026). This statement indicates that the primary motive for the transfer was economic pressure and the desire to avoid default rather than any attempt to circumvent the financing institution deliberately. The economic-pressure motive identified in this case is comparable to empirical findings in Indonesian consumer financing, where repayment difficulty is among the circumstances associated with debtors transferring financed vehicles outside the creditor's formal procedure (Wardana & Budhiawan, 2024).

Abdur Rahman, for his part, stated that he accepted the offer because he needed a vehicle for his daily work and trusted Abdul Hamid as a fellow resident: "I took it because I needed a motorcycle for work, and we simply trusted each other. So I continued the monthly instalments, and I also use the motorcycle" (A. Rahman, personal communication, June 1, 2026). The transfer was carried out through a verbal, unwritten agreement, without any involvement of the leasing company. Abdul Hamid handed over the motorcycle and its accompanying documents to Abdur Rahman, who subsequently used the vehicle and continued the monthly instalment payments. Abdul Hamid further acknowledged that no notification or approval was ever submitted to the financing institution, noting: "That is common practice here; what matters is that someone is willing to continue the instalments. As for the leasing company, we don't really think about it, as long as things keep running." This remark is analytically significant: it shows that the financing institution is not merely absent from the transaction by oversight,

but is actively regarded by both parties as a peripheral actor whose formal consent is not considered socially necessary, even though it remains the legal holder of the fiduciary security interest. This reliance on an informal arrangement despite the creditor's continuing legal position parallels documented underhand transfers of fiduciary-financed vehicles in which the formal creditor mechanism is bypassed (Ariyanto et al., 2020; Wardana & Budhiawan, 2024).

Field observation confirmed that this pattern is not limited to the case of Abdul Hamid and Abdur Rahman but represents a broader trend in Pukul Village, where transfers are based on interpersonal trust rather than written contracts, and are social-economic in nature rather than legal-formal. Administratively, the vehicle remains registered under Abdul Hamid's name at the financing institution, creating a separation between de facto possession (which has shifted to Abdur Rahman) and de jure liability (which remains with Abdul Hamid). This separation forms the central issue examined in the following contractual analysis, and it recurs, in varying degrees, across the comparable cases observed informally in the village, suggesting that the Abdul Hamid–Abdur Rahman case is best read as an illustrative instance of a wider, socially normalised practice rather than an anomaly. The distinction between factual possession and continuing formal liability is consistent with Indonesian fiduciary-transfer research showing that unauthorised transfer does not automatically release the original debtor from obligations to the creditor (Ariyanto et al., 2020; Wardana & Budhiawan, 2024).

Sharia Economic Law Review of the Over-Credit Practice

Hawalah (Debt Transfer) Analysis

Conceptually, the transfer of instalment payments between Abdul Hamid (as muhil), Abdur Rahman (as muhal 'alaih), and the financing institution (as muhal, the party holding the right to collect) resembles a hawalah contract. However, in fiqh muamalah the validity of hawalah requires not only the agreement between the muhil and the muhal 'alaih, but also the consent of the creditor (muhal) as the owner of the receivable (al-Zuhaili, W., 1985). This requirement is not a mere procedural formality: jurists ground it in the creditor's proprietary right to choose whom it is willing to trust for repayment, a right that cannot be extinguished by an agreement to which the creditor is not a party (Djuwaini, D., 2010). Since the financing institution never received any notification of the change in the responsible party, and the obligation remained administratively recorded under Abdul Hamid's name, the essential pillar of creditor consent was not fulfilled. This finding aligns with Djayusman & Nurafni, (2025), who stressed that any change in financing structure must go through the financial institution's mechanism to avoid legal risk; the present case shows that a similar debt-transfer pattern occurs informally at the grassroots level, without institutional involvement, and therefore does not meet either fiqh or formal-legal standards to be considered a valid hawalah. Read against Fatwa DSN-MUI No. 12/DSN-MUI/IV/2000 concerning Hawalah, which likewise conditions the contract's validity on the creditor's approval (DSN-MUI., 2000), the Pukul Village case represents what may be termed an incomplete or 'suspended' hawalah: the substitution of the paying party has occurred in social fact, but the underlying legal relationship of debt has not been formally reassigned, leaving Abdul Hamid exposed to continuing liability for an obligation he no longer economically bears. Contemporary hiwalah scholarship likewise identifies muhil, muhal, and muhal 'alaih as the core parties in debt transfer and stresses the need to analyse debt-transfer arrangements against the applicable Sharia framework rather than treating payment substitution alone as dispositive (Aidil Fikriadi & Azmil Umur, 2024).

Bai' (Sale) Analysis

Beyond the transfer of payment responsibility, the case also involved the transfer of full use (intifa') and possession of the vehicle, indicating an element of bai' (sale) in practice, since an exchange of the object (the vehicle and its usage rights) for agreed compensation took place. A valid bai' contract requires that the object of the transaction be under the seller's complete ownership (milk al-tam) and lawful possession (qabd) (al-Zuhaili, W., 1985). Because the motorcycle remained under a financing scheme, Abdul Hamid did not hold complete legal ownership, creating a gap between actual possession (al-yad) and legal ownership (milkiyyah qanuniyyah)a condition that places the contract in a doubtful (syubhat) position within fiqh muamalah. In practice, such over-credit transactions often blend elements of ijarah (usufruct), bai' (sale), and hawalah (debt transfer) without clear separation, generating gharar and elevating dispute risk. This finding is consistent with Saputera et al., (2020), who highlighted that weak contract structures and unclear legal construction in community economic practice can lead to multiple interpretations of a transaction's status; the present study extends this finding by showing that the problem manifests concretely in grassroots vehicle over-credit practice, not merely at the level of legal text. Viewed through Ascarya's (2007) classification of financing contracts, the closest formal analogue to what Abdul Hamid and Abdur Rahman intended is a combination of ijarah muntahiyah bi al-tamlik (lease ending in ownership transfer) and hawalah; the fact that ordinary community members reach, through informal negotiation, an arrangement structurally similar to a regulated hybrid financing productwithout access to that product's legal safeguardsis itself evidence that the underlying economic need is legitimate even where the contractual execution is deficient. This concern is supported by research treating possession (qabd) as a fundamental element in valid financial exchange and by hybrid-contract scholarship showing that modern transactions may combine multiple contractual structures whose Sharia validity must be assessed as an integrated arrangement (Niffilayani & Thao, 2024; Rahman, 2020).

Wakalah (Agency) Analysis

The practice can also be examined through the lens of wakalah, in which Abdur Rahman could be seen as an agent (al-wakil) making instalment payments on behalf of Abdul Hamid (the muwakkil). In fiqh muamalah, wakalah is a non-binding (jaiz) contract, and principal legal liability remains with the muwakkil unless a separate, valid contract such as hawalah or tabarru' formally transfers it (al-Zuhaili, W., 1985). In this case, although Abdur Rahman made the payments in practice, formal liability at the financing institution remained with Abdul Hamid, producing a dualism between who actually pays and who is legally liable. This creates legal risk in the event of default, since the institution will pursue the party originally named in the agreement. Moreover, because Abdur Rahman also enjoyed full use of the vehicle and bore the entire economic burden, the substance of the arrangement drifted beyond simple agency toward a mixture of bai' or even an informal ijarah muntahiyah bi al-tamlik (tadakhul al-'uqud, or the blending of contracts) without clear separation. This finding resonates with Alam, A., & Sriwahyuni., (2025), who observed a similar separation between the factual economic actor and the formal legal subject in informal, trust-based transactions, although their study focused on day-labour arrangements rather than vehicle financing, which involves greater complexity due to its intersection with civil and collateral law. The wakalah framing is analytically useful precisely because it fails: its failure to capture the full substance of the arrangement is what reveals the transaction's true, hybrid character, discussed further below. The movement of this arrangement beyond a simple agency relationship is consistent with hybrid-contract scholarship, which recognises that contemporary

financial practices may combine interdependent contractual forms whose legal effects cannot be reduced to one label alone (Niffilayani & Thao, 2024).

Gharar (Uncertainty) Analysis

The over-credit practice between Abdul Hamid and Abdur Rahman contains a significant degree of gharar, understood in fiqh as substantial uncertainty regarding the object, legal consequences, or obligations of a contract, which undermines the principles of justice ('adl) and valid mutual consent (taradhin sahih). Three aspects of gharar were identified in this case. First, ownership status is unclear, as the vehicle remains formally within the financing institution's scheme while being factually possessed and used by Abdur Rahman, producing a duality between administrative and de facto ownership. Second, liability in the event of default is unclear, since the institution continues to regard Abdul Hamid as the principal debtor while payments have, in social and economic terms, been transferred to Abdur Rahman. Third, the legal standing of Abdur Rahman in any dispute with the financing institution is weak, since no formal approval was ever obtained, despite his having assumed the payment burden in practice. According to Sharia economic law, excessive gharar (gharar fahish) can invalidate a contract, as it undermines the certainty of the object (ma'qud 'alayh), the subject, and the legal consequences of the transaction(al-Zuhaili, W., 1985). This finding reinforces Affero & Mustofa, (2024), who emphasised gharar as a key determinant of contract validity, though their study remained theoretical; the present research demonstrates how the concept of gharar materialises concretely in a rural community's vehicle over-credit practice, arising not only from speculation but also from administrative disorder and limited understanding of contract structures in modern transactions. Notably, the gharar identified here is not the classical case of an unknown future object (such as an unhatched egg or an uncaught fish) but a distinctly modern, institutional form of gharar produced by the layering of an informal social agreement on top of a formal, document-based financing structure that neither party fully controls. Recent systematic scholarship similarly defines gharar in modern Islamic finance as uncertainty capable of producing ambiguity and conflict in contractual relationships, supporting the treatment of documentary and liability uncertainty as analytically significant (Mohd Noh et al., 2025).

Antaradhin (Mutual Consent) Analysis

From the standpoint of antaradhin, the over-credit arrangement was carried out on the basis of mutual agreement without coercion (ikrah) from either Abdul Hamid or Abdur Rahman, consistent with the Sharia principle expressed in QS. An-Nisa' [4]:29, which requires that trade be conducted through mutual consent. However, mutual consent alone does not render a contract valid if other pillars and conditions are not met, such as a clear object of the contract (ma'qud 'alayh), legally competent parties (ahliyah), and freedom from gharar, riba, and invalidating conditions (Suhendi, H., 2016). Furthermore, because the vehicle remained under the financing institution's fiduciary guarantee until full settlement, the transfer required the institution's consent as a legally interested third party; without it, the transaction risks violating the principle of a valid contract (al-'aqd al-sahih) and generating potential legal disputes (Djuwaini, D., 2010). Consequently, antaradhin in this case must be understood comprehensively, not merely as verbal agreement between the two parties, but as conformity with Sharia provisions, positive law, and certainty regarding ownership of the transaction object. This case therefore illustrates a broader theoretical point: antaradhin operates as a necessary condition embedded within a wider structure of pillars and third-party rights, and treating it as sufficient on its own, as both informants implicitly did, is precisely the interpretive gap that allows an invalid or incomplete contract to be experienced, at the

social level, as a fair and legitimate agreement. This interpretation is consistent with scholarship on at-taradi, which treats mutual consent as a foundational muamalah principle while recognising that consent does not transform an otherwise prohibited or defective transaction into a valid one(Mughits, 2017).

Analysis Based on Maqashid al-Shariah

Viewed through the lens of maqashid al-shariah, the over-credit practice reflects an ambivalence between maslahah (benefit) and mafsadah (harm). On one hand, the practice provides ease (taysir) for a debtor facing economic hardship, enabling the original debtor to be relieved of the financial burden while the second party gains access to a vehicle under a more flexible payment scheme, apparently supporting the Sharia objective of raf' al-haraj (removing hardship). On the other hand, the practice carries non-negligible mafsadah in the form of unclear legal ownership status, misaligned liability between the party who pays and the party legally recorded as debtor, and the potential for disputes with the financing institution as the fiduciary guarantee holder, conditions that undermine legal certainty (tahqiq al-amn al-'uqud). Considered further, the practice risks conflicting with two central maqashid al-shariah objectives: hifz al-mal (protection of property), since unclear contract structures open the door to financial loss for any of the three parties, and 'adl (justice), since the imbalance between the party enjoying the benefit and the party bearing formal liability signals inequitable risk distribution. The practice therefore cannot yet be regarded as fully aligned with maqashid al-shariah unless it is carried out through a legitimate, transparent mechanism that formally involves the financing institution. Importantly, the taysir achieved by the practice is short-term and individual, benefiting the two transacting parties in the moment of transfer, while the mafsadah it generates is longer-term and potentially systemic, since a village-wide norm of undocumented transfer erodes the broader institutional trust on which formal Sharia-compliant financing depends; an asymmetry that, from a maqashid perspective, tips the overall evaluation of the practice toward mafsadah rajihah (predominant harm) despite its genuine, situational benefit. Maqasid-oriented Islamic-finance scholarship likewise emphasises fair and transparent financial practices, justice at both micro and macro levels, and the pragmatic application of fiqh muamalah without compromising Sharia principles(Akram Laldin & Furqani, 2013; Ishak & Asni, 2020). Table 1 summarises the resulting contractual assessment.

Table 1. Sharia Contractual Assessment of the Over-Credit Practice

Construct	Pillar/Condition Required	Observed in Case	Status
Hawalah	Creditor (muhal) consent	Institution not notified	Not fulfilled
Bai'	Complete ownership (milk al-tam) of object	Object under active fiduciary financing	Not fully fulfilled
Wakalah	Liability remains with principal absent separate transfer	Liability remained with Abdul Hamid	Partially applicable
Gharar	Freedom from excessive uncertainty	Uncertainty over ownership, liability, dispute standing	Present (gharar fahish risk)
Antaradhin	Free mutual consent between parties	Verbal agreement, no coercion reported	Fulfilled (necessary, not sufficient)

Theoretical and Practical Implications

The findings of this study contribute to fiqh-muamalah contract theory in three specific ways. First, they show empirically that informal, trust-based transactions in the field do not simply fail to meet the criteria of a single named contract (al-'aqd al-musamma); instead, they produce a hybrid, unnamed

contract (al-'aqd ghayr al-musamma) that combines partial, unfulfilled elements of hawalah, bai', and wakalah simultaneously. Existing fiqh literature treats these contracts largely as discrete, ideal-typical categories (al-Zuhaili, W., 1985; Djuwaini, D., 2010); this study's central theoretical contribution is to demonstrate, through a single traced case, how grassroots economic necessity blends these categories into a composite arrangement that classical nomenclature does not neatly capture, which we term here an 'informal hybrid transfer' (peralihan hibrida informal). Second, the study extends the concept of gharar beyond its classical association with the unknown physical or future status of a traded object, showing that in modern, document-mediated financing, gharar can also arise institutionally from the layering of an undocumented social agreement over a formal, third-party-secured contract. Third, by placing the contractual analysis within a maqashid al-shariah asymmetry between short-term individual maslahah and longer-term systemic mafsadah, the study offers a evaluative model that can be applied to other informal financial-transfer practices beyond motorcycle over-credit, such as informal transfers of home-ownership credit or informal sub-leasing of financed equipment. These theoretical extensions align with contemporary scholarship on hybrid contracts, modern forms of gharar, and maqasid-based reconciliation between classical fiqh constructs and complex financial realities(Ishak & Asni, 2020; Mohd Noh et al., 2025; Niffilayani & Thao, 2024).

Practically, the study carries implications for three groups of actors. For financing institutions, the findings suggest that the near-total absence of a low-friction, socially acceptable formal transfer procedure is itself a contributing cause of informal over-credit; institutions could reduce the practice's associated legal risk by offering a simplified, low-cost debtor-substitution mechanism that matches the speed and informality debtors currently seek from peer-to-peer arrangements. For regulators and Sharia supervisory bodies, the case indicates a need for targeted community outreach delivered through local religious and communal structures already trusted in villages such as Pukul Village, explaining both the fiqh status of unauthorised transfers and the civil-law fiduciary risk they create, since the interview data suggest that informants' non-compliance stemmed from social habit and institutional distance rather than deliberate disregard for the law. For households considering an over-credit arrangement, the analysis of the five contractual constructs provides a practical checklist: creditor consent, complete ownership, clear liability allocation, absence of excessive uncertainty, and documented consent that can be used to assess, before entering such an arrangement, whether a proposed transfer is likely to be recognised as valid under Sharia economic law. The recommended direction toward clearer formal transfer mechanisms is consistent with fiduciary-transfer studies documenting the risks of unauthorised transfer and with maqasid-based scholarship that supports policy and product design capable of reconciling practical needs with Sharia principles (Ariyanto et al., 2020; Ishak & Asni, 2020; Wardana & Budhiawan, 2024).

Research Findings

Based on the normative-juridical analysis and the maqashid al-shariah approach above, this study identifies several key findings: (1) the motorcycle over-credit practice in Pukul Village is conducted informally, without any formal financing-transfer procedure recognised in law; (2) from a fiqh muamalah standpoint, the practice does not fully satisfy the conditions of a valid hawalah or any other single debt-transfer contract, owing to the absence of consent from the financing institution as the party with authority over the financed object; (3) the unclear ownership status of the transaction object generates gharar, arising from the discrepancy between administrative ownership held by the financing institution and factual possession held by the second party; (4) formal legal liability remains with the original debtor even though payment has, in social and factual terms, been transferred to the second

party, producing a dualism of legal responsibility; (5) the practice relies primarily on social trust and informal agreement rather than on a standardised Sharia contract structure or institutionally recognised legality; (6) the transaction is best classified not as a failed attempt at a single named contract but as an informal hybrid transfer combining unfulfilled elements of hawalah, bai', and wakalah; (7) a gap exists between community economic practice and the requirements of Sharia economic law, particularly regarding contract structure, legal certainty, and protection of the parties; and (8) economic necessity frequently drives pragmatic solutions among community members that are not yet accompanied by a comprehensive understanding or application of Sharia contract principles, nor supported by financing institutions' own transfer procedures being sufficiently accessible. Taken together, these findings are consistent with journal evidence on unauthorised fiduciary transfers, Sharia debt-transfer structures, hybrid contracts, and gharar in modern finance(Aidil Fikriadi & Azmil Umur, 2024; Ariyanto et al., 2020; Ishak & Asni, 2020; Mohd Noh et al., 2025)

CONCLUSION

The motorcycle over-credit practice in Pukul Village, Kraton, Pasuruan is carried out through an informal transfer mechanism between the original debtor and a second party, based on a verbal agreement and interpersonal trust rather than the formal procedure of the financing institution. In this arrangement, the second party assumes both the instalment payments and full use of the vehicle, while administrative ownership and legal liability remain with the original debtor. Examined from the perspective of Sharia economic law, the practice cannot be classified under a single, fully valid contract; rather, it constitutes an informal hybrid transfer combining indications of bai', wakalah, and a potential but unfulfilled hawalah, without completely satisfying the pillars and conditions of any one of them. The sale element is not perfectly valid because the object remains under a financing scheme (not yet milk al-tam); the agency element does not eliminate the original debtor's legal liability; and the debt-transfer element is not fulfilled owing to the absence of the financing institution's consent as a third party. While the practice satisfies the principle of antaradhin, since it is based on the free consent of both parties, it also contains a considerable degree of gharar concerning ownership status, legal liability, and dispute settlement. From the standpoint of maqashid al-shariah, the practice offers the benefit of easing financial hardship (taysir) for the original debtor, but simultaneously carries the risk of disputes, legal uncertainty, and weakened protection of property (hifz al-mal), an asymmetry that, on balance, weighs toward predominant harm (mafsadah rajihah) at the community level even where it resolves an individual, short-term hardship.

Several practical implications follow from these findings. Communities engaging in motorcycle over-credit are encouraged to understand the legal and contractual aspects of Sharia economic law before transferring financing responsibilities, ensuring clarity of contract, ownership status, and legal liability rather than relying solely on verbal agreement and trust, and to formally involve the financing institution to avoid disputes and gharar. Financing institutions, in turn, are encouraged to offer more flexible yet legally compliant, low-friction mechanisms for accommodating community needs related to over-credit, supported by more intensive outreach on the official transfer procedure delivered through channels the community already trusts. Regulators and Sharia supervisory bodies are encouraged to strengthen oversight of informal financing-transfer practices to provide legal certainty and consumer protection, and to consider issuing more specific technical guidance beyond the general hawalah fatwa addressing debtor-substitution in fiduciary-secured consumer financing specifically. This study is limited by its single-case design, centred on one dyad of informants supplemented by informal

community corroboration; the findings describe the contractual logic of the practice in depth but should not be read as a population-level estimate of its prevalence. Future research could extend this study by comparing informal over-credit practices with those conducted through Sharia financing institutions, by undertaking a normative-juridical study of fiduciary-guarantee regulation in relation to informal transfer, by surveying a larger number of over-credit cases across several villages to assess how consistently the informal-hybrid-contract pattern identified here recurs, or by applying a socio-legal approach to examine the broader social dynamics of informal economic practice in similar communities.

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