

Shari'a Controls for the Development of Islamic Banking Products

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Abstract

Islamic financial system constitutes part of the international economic structure, and the world became a banking village connected by banks that control its cash flows and orient its movement to achieve development. The opportunity for survival became related to development and creativity in working methods and developing Islamic banking products. The biggest challenge is in developing products that are able to manage the available cash assets and achieve profits while committing to the legislative control of Islamic investment tools and avoid nominal contracts and usury tricks. This research aims at indicating the concept of Sharia Controls Development of Banking Products and principles along with the main paths of developing Islamic products, indicating the Sharia controls of the most important Development of Banking Products, ensure legitimacy of the contracting system through creativity based on the Sharia basis and fulfilling contract objectives to avoid nominal contracting, indicating combination and merging controls, emphasize the basic concepts of two sales in one, conditioned sale, sale and loaning, controls of ownership and receipt in general and specific sales and debt sale, clarifying the concept of uncertain sale (Gharar); including categories of existing uncertain sale, descriptive uncertain sale and exempt uncertain sale as well as accentuating the importance of sharing risk and returns.

Keywords: key words, Islamic Financial, Islamic Banking Products.

1. Introduction

Praise be to Allah the Lord of the worlds and may the blessings and peace of Allah be upon the most honored of messengers our master Muhammad and upon all his family and companion

Development in the Islamic banking depends on the potentials of scientists in the jurisprudence of financial transactions as well as the potentials of bankers in developing Islamic banking products that provide creative and innovative solutions guaranteeing competitive potential of Islamic banking in the banking market based on the Sharia controls of Islamic Shari'a Control.

The Islamic banking activities and their operations focus on the contracts of sale and lease; which enhanced pressure on the Islamic banks for varying their products to include banking service such as the benefit sale whether education or medical benefits or even providing technological benefits such as electronic software, religious and recreational tourism benefits, in addition to providing allocation banking service such as marketing commodities in their cash price and providing interest-free loan services.

Pressures imposed to the Islamic banks include developing practical products that may keep pace with the challenges of working capital funding through absolute or restricted investment powers or changing partnership to include all requirements of clients whether in cash, wages, maintenance, transportation, advertisement and marketing away from the traditional simulation and under commitment to the Sharia rules and controls for developing banking products.

While ensuring that the basis in contracts and conditions is legalization except for the prevented stipulations; we are able to coexist with good things and leave the defected things; as the Halal (lawful) is always better than the Haram (forbidden); based on the rule that it is God's funds and have a role shared with the other production elements for achieving justice in distribution while preventing usury and uncertain sale to achieve economic development as well as avoiding suspicious concepts and stipulations related to contracts' structure.

Research dilemma

Creativity, innovation and development are factors helping in fulfilling the accelerating needs of clients and increasing competitiveness of banks while developing societies.

The process of developing, creation and innovation of Islamic banks for their products is considered an important strategic factor for maintaining the bank while developing modern technological innovations. The research dilemma is related to the method of using Islamic Shari'a Control tools for maintaining products' quality and development in Islamic banks while enhancing their competitive feature and increasing their role of financial inclusion.

Research importance

The research importance comes from shedding the light on the role of creativity and innovation in the banking product by achieving competitive feature in the banking sector as it has a huge role in developing national

economy.

The importance of creativity and innovation in the banking products comes from the importance of the product in the marketing combination whereas the bank progress mainly depends on the product provided to the market; thus having banks and their sustainability depends on the capability to fulfill clients' needs then achieving profits through focusing on creating new products. Research enhances the controls and standards to be followed in developing banking products.

The importance of research comes from the lack of studies concerned of the jurisprudence controls and concepts of Islamic Shari'a Control and developing products.

Research objectives

In this context; the research aims at:

- Recognizing the frame of Shari'a Control and its role in developing banking products.
- Indicating the controls, standards and rules necessary for developing Islamic banking investment.
- Indicating the most importance jurisprudence financial concepts for developing products in the Islamic banks.

Method used in research

The descriptive analytical approach will be used with the assistance of information resources from Islamic economy and banks along with Arab and foreign periodicals.

- **First: Shari'a Control, concept and purposes**

The Shari'a Control concept emerged since three decades as a result of competitive disputes among financial foundations along with the impact of globalization and accelerated technological development, which required to include in the research innovative tools for increasing work efficiency and enhance managing risks resulting from such disputes.

The traditional Shari'a Control was defined by a group of researches; whereas Finnerty 1988 was one of the first in discussing the idea as expressing the design, development and implementation of creative financial tools and mechanisms while phrasing creative solutions for the problems and obstacles facing funding ; thus they indicate a base of activities represented in the following:

1. Create new shari'a financial tools that are keeping pace with the market need and modern technological development
2. Create modern funding mechanisms that benefit in facing the competitive external impacts such as reducing procedural costs of the current operations
3. Create solutions and suggestions serving decision makers in funding management such as suggesting new funding formulas compatible with the modern directions of investment and inspect investment opportunities enhancing financial revenues

The definition of Shari'a Control of the International Association for Islamic Banking indicate that it represents the innovative application and development of financial theory through using the different tools for the purpose of exploiting financial opportunities and setting new strategies for investment in order to regulate revenues and find solutions for the complicated financial issues.

It is noticed that the concept of Shari'a Control focuses on manufacturing and developing financial creative tools and processes that enable overcoming obstacles and restrictions in the way of achieving economic objectives.

The most important factors helping in emergence of Shari'a Control include (Abdulsalam Zaydi 2008):

- 1- Emergence of various investment tools in the capital market assisting in increasing liquidity, expanding funding, attracting new investors and provide innovative opportunities for funding seekers
- 2- Emergence of modern risk-management tools that classified financial risks and distributed them pursuant to the investors' desires to encourage them for investing
- 3- Develop modern and innovative tools by balancing and arbitrage of capital markets; leading to reducing costs then increasing investment revenues in addition enabling dealing with international markets
- 4- Emergence of innovative group of investment tools that keep pace with the modern development especially the financial derivations; leading to vary investment strategies for several financial institutions; which led to having creative means for suggesting alternative products .

- **Islamic Shari'a Control**

Islam has set basic rules and controls for issuing contracts while leading to creativity in order to serve the Islamic community and helping in investing capitals and avoid risk and damage caused to users.

The role of Shari'a Control is not only based on finding alternatives for the traditional products not finding new products; rather that amending the old and modern tools and ideas for serving business entities.

Swailam, 2000 defined Shari'a Control as a group of activities that include designing, developing, and executing creative tools and mechanisms in addition to formulating innovative solutions for funding solutions;

all pursuant to the Sharia controls.

Accordingly; we accentuate on the idea that Shari'a Control is based on the principle of combining application of Islamic Sharia controls and economic efficiency related to obtaining profits and achieving justice. Accordingly, specialists had three pillars for designing Islamic financial products, which are:

1. Simulation: the reality of engineering industry depended on the provided ideas and traditional products then thinking in finding solutions and formulas that are compatible with the Islamic Sharia and achieving the results of both client and institution

Simulation does not mean here determining the required result from the Islamic product in advance; which is the same achieved by the usury product; such as the regulated banking securitization (Tawarok) ; through which commodities and minerals are mediated for obtaining cash without extending period and with institution cooperation and in the absence of returns.

2. Conversion: considered one of the important elements that contain creativity for designing Islamic Shari'a Control products. Conversion is mainly based on analyzing one or more products that are compatible with the Islamic Sharia then converting its basic elements and axes for achieving a new product that may be provided to the market; such as contracting agreements, lease-to-own contracts (gradual sale), profit sale, and rewards, and they are all compatible with the sharia controls and economic efficiency
3. Actual needs of the banking market: this element depends on designing products that are creative and distinguished that contain attracting factors for clients; such as absolute and restricted investment with varying partnership through inspection and recognizing nature of required services and commodities by all community categories as alternative for the usury loan

- **Sharia controls of products in the Islamic financial institutions**

1. **Ensure legitimate contractual systems of products in the Islamic financial institutions**

The nature of contracts in the Islamic jurisprudence focus on offer and acceptance, legality of contract subject matter, the result and achieving controls of each contract nature with ensuring non-usury, no un-certain sale and the rule of tax by guarantee in debt contracts and bearing profit and loss in deposit contracts; while focusing on clear vision when dealing with uncertain sale such as the existing uncertain sale; including selling animals fetal or selling unripe fruit; as this uncertain sale leads to lost sale for a potential existing.

Uncertain sale is related to weight, category, class, place and time of delivery and price in cash or in installments; which, according to the opinion of the Hanafi, does not void the contract and might be corrected by agreement or annulling contract.

We shall also accentuate on that contracts and conditions in the Islamic jurisprudence is basically allowed and scientists indicated that; as Al-Zarqa says: "people who need financial transactions facilitating their living and interests may create contracts needed for fulfilling such needs according to the Sharia principles and laws, as contracts are only created for fulfilling needs and achieving interests".

Ibn Taimiya says: "sale, lease and grant have not limits mentioned neither in the Holy Quran nor Sunnah and there are no sayings from companions and followers clarifying specific character or only being concluded in specific formulas; rather than saying: "this is contrary to the old unanimous opinion and language experts called it a sale and we must not change that term. Sale is a sale and grant is a grant".

Norms is what people used to do in living and the base is non-prevention. Contracts and conditions are considered of usual accts and shall not be forbidden unless there is evidence for doing so. Contracts is in transactions the usual norms done by Muslims and non-Muslims.

2. **Ensure contract objectives and requirements to avoid being formal**

The path towards Halal is the legal contracts without fraud nor forbidden indications. The contracts with indication to not having price and incorrect content rather than guaranteeing investment funding are intended for making the forbidden allowed of usury and may not be considered as legal contracts.

Hussein Hamed mentioned that all legal contracts are concluded for achieving contracting parties' benefits; when contracting parties intended legal purposes then contracts are correct, otherwise they are null. Al-Shatebi mentioned in his book "Approvals" the following: "everyone requires other than the Sharia laws objectives then the act is null" (Ayadi, Ahmad, Banking securitization (Tawarok)/35)

This ensures the rule of objectives; as the contracts are for their intentions and meanings rather than terms and structure, and this is confirmed by the intentions of acts. Accordingly correct works and acts do not depend on the intent. This clarifies that in case the person intended usury in sale then it is forbidden even in case sale is formal such as the banking securitization (Tawarok) and Mohatra contract as the contract intent is contrary to the form, and non-change of market status is the evidence; such as non-extension of timeframe nor agreement between client and bank or individuals in between.

The standard of differentiating between products that are compatible or not compatible with the Sharia is the extent of achieving contract derived terms and not being contrary to its content as well as the extent potential to achieve its impacts, Sharia intents, contracts' objectives without being formal.

Within types and formulas based on formality is the grant formula in the lease-to-own contract; noting that the content is actually a gradual sale of estate with leasing institution or bank share to the client. The grant conditioned of remuneration by price is not a grant rather than sale contract.

Jurisprudence specialists indicated that; such as Al-Zarkashi who says: “the control of the absolute property may not be conditioned”.

In Al-Rad Al-Mokhtar Ma’ Rad Al-Mohtar stipulates: “the donations contracts including grants may not be conditioned as this makes contract null”.

Grant in lease-to-own contracts is not particularly the intended rather than gradual sale and remuneration.

We should also recognize that conditioning contracts including grants’ contracts is not approved; as it is not reasonable to apply condition that leads in content to breaching contract intent or to a legally forbidden matter. While considering intentions does not lead to nullification of contracts and conditions; but Islam allowed all contracts and conditions unless being contrary to content. We should emphasize here on avoiding usury tricks and formal contract to simulate traditional usury contracts.

3. Shari'a Control controls include avoiding uncertain contracts (Gharar)

By reviewing stipulations of scientists related to the prophet forbidden of uncertain sale; Imam Al-Juwaini says: “not all uncertainty is forbidden; as all contracts have some kind of it even if implicit”.

Ibn Taimiya says: “some experts think that uncertainty is a description of sale; but the Prophet forbidden uncertain sale as well as selling the sold; such as selling unripe fruits”. He also said: “uncertain is thing with unknown result and the Prophet forbidden uncertain sale such as selling for next years and pregnant animals as well as unripe fruit; and he justified that as it includes risking money”.

We may divide uncertain sale into three categories:

- A. Existing uncertain sale: anything that may not exist or may not be delivered; and this type of contracts is null since the Prophet forbidden cheating people
- B. Descriptive uncertain sale: which is for selling an existing item but there is uncertainty in price, description or place of delivery. This type of uncertain sale is related to authenticity conditions that shall be fulfilled for correct contracting
- C. Exempt uncertain sale: which is not regulated in contract and left to norms for estimation while requiring either exemption or remuneration

When developing products; we shall ensure not having existing or descriptive uncertainty by setting practical procedures for implementing and approving contracts by Sharia committees and Sharia advisors.

4. Islamic Shari'a Control controls include legality of contracts

Sharia features of transactions is that they are basically lawful; i.e. Islam did not form contracts rather than regularizing them. Ejara, Mudaraba, Istisna’ and Salm are all contracts existing before Islam and it only approved their contents through Sharia controls in stipulations.

Experts emphasized that saying: “contracts and conditions are regular acts that are basically allowable; and in order to be forbidden they shall include evidence for that”. the Verse: “He has already made plain to you what He has forbidden to you” Al-An’am 119, is a general rule in sayings and acts. In case of not being forbidden then it is not defected and in case of not being defected then it is lawful.

Al-Shatebi says: “the rule is distinguishing between worships and transactions; as the basis of worshipping is praising Allah without detailing the content; and the basis is to be approved without creation. While with respect to transactions; they shall only be not forbidden; as the basis is to pay attention to the content and they are allowable unless otherwise is proved by evidence”.

Ibn Al-Qayem said: “the basis for contracts and conditions is being lawful unless denied by the legislator or forbidden”. Quran stipulated allowing sale and fulfilling contracts and covenants; and the prophet said: “Muslims are known for fulfilling conditions”. Another Hadith says: “unless allowing something forbidden or forbidding something lawful”.

5. Shari'a Control controls include combining contracts

Combining several contracts in one is allowed; whether in similar or different terms; as long as fulfilling Sharia conditions, and whether they are allowed or obligatory or both, provided that:

- 1- Sharia does not prevent such combination
- 2- Combination does not include something forbidden

Al-Hawi Al-Kabeer includes a section for forbidding sale with advance and advance with interest. Al-Shafe’ said: “the Prophet forbidden sale with advance”. In Sunnah, prices shall be known and sale shall be clear; when I buy a house from you against one hundred Dinar provided that I give you advance of one hundred Dinars then I am not buying it in one hundred nor two as the advance is a loan with unknown interest and the price is becoming implicit. This confirms that transactions are justified and when reviewing scientists stipulations we find that the reason is unknown price and loan with interest as usury.

Al-Mawardi said: “this is not for the superficial content; as sale is allowed and loan is allowed, and being combined without conditions is also allowed; but the forbidden is a sale conditioned by loan; such as saying I

sell you this servant against one Hundred provided that you lend me one Hundred, this is a null contract and null loan; since the Prophet forbidden a conditioned sale and a loan with interest.

Combining shall be restricted by specific conditions in one contract that may not be divided into parts or section – such as documentary letters of credit that include guarantee and power in some forms – aiming at achieving a specific goal required by contractors, which is:

- A- Combining shall not be a usury trick as agreeing upon sale by sample or banking securitization (Tawaroq)
- B- Combining shall not be reason for usury interest; as in combining sale and loan and transforming banking products from exchanging actual assets into cash payments
- C- Combining shall not be forbidden in a Sharia stipulation; such as various sales over one item or sale by exploitation or cheating or combining sale and lending
- D- Contract shall not be uncertain sale; such as selling the non-existing item or unripe fruit or even uncertain place of delivery, specifications and goods

Al-Shafe' says: "denied meaning and unknown price; as in case the seller conditioned a loan then he is selling his commodity with the price and with the interest of the conditioned loan. Since the condition is not allowed then its interest shall be excluded from price, and since the interest is unknown then in case it is excluded from price; then the result is unknown; and unknown price leads to null contract."

Accordingly it is not allowed to purchase a loan; such as saying: "I buy this servant against one hundred provided that you lend me one hundred, this is a void condition and null loan. It is also not allowed to lease with the loan condition, as mentioned in Hadith: "It is not permissible to lend on the condition of a sale, or to have two conditions in one transaction, or to sell what you do not have".

Accordingly, Islamic banking products shall commit to the controls of combining contracts and covenants in one transactions while avoiding usury tricks such as sale by sample or banking securitization (Tawaroq).

- A. Contract shall not combine two or more contracts with contradiction in terms and conditions; such as combining power and guarantee in restricted or absolute investment; since investment representative does not guarantee it; thus contract becomes usury.
- B. Each part of the banking product – i.e. contracts, conditions and covenants- must be lawful solely, the Sharia basis is to allow combining contracts and covenants in one transaction and in case each one is allowed solely unless otherwise is proved by evidence; then the base is to examine total by each element. Since the transaction includes several contracts and covenants that is each lawful solely then the total is lawful.

For completing allowed combination of contract; we must indicate the meaning of Hadith: "a person who sells to sales in one; then he shall bear the losing one or will be acquiring usury interest".

We must clarify that the legislator did not prevent sale; rather than preventing injustice; which is the base for forbidding usury, monopoly and cheating, or what may be leading to dispute and hatred between people, which is the base for forbidding gambling and uncertain sale (Gharar). Forbidding is not for worship; rather than being justified or understood; and when you understand the reason then you may issue the judgment.

Some experts allowed pricing according to the stipulated in Hadith with paying attention to intention. What applies to pricing shall apply to the two sales in one after understanding justification.

For indicating the meaning of Hadith, we shall mention the stipulated in the book of Ibn Abi Shaiba after Ibn Abbas, saying: "you may price a commodity with mentioning the deferred debt; but they shall never be separated".

In Hasheyat Al-Dasouqi, it is mentioned: "as two sales in one; i.e. selling commodity against ten in cash or more deferred, while buyer takes commodity without determining method of payment and choosing it later is forbidden; since the price is unknown at time of sale, as sale takes place by determined price not chosen later on."

In Mokhtasar Al-Muzni, it says: "the meaning of two sales in one is clarified in what Al-Shafe' said in two opinions: the first by saying I sell you this servant against one thousand in cash or against two thousand as deferred debt whatever you choose; then this is with unknown price. The second is when I say I sell you this servant against one thousand provided that you sell me your house against one thousand".

In E'lam Al-Moqe'ain, it says: "this is way too far from the meaning of Hadith – i.e. forbidding two sales in one – from selling in deferred one hundred or fifty in cash as this does not include usury, uncertainty or gambling and choosing either price is allowed".

By reviewing such sayings; we find out that the main idea of Hadith is unknown price and it is not intended for preventing selling two sales in one not combining contracts or preventing installments.

6. Islamic Shari'a Control controls include the concept of debt sale

- A- Selling debt by debt

Ibn Omar said: "the Prophet forbidden selling debt against debt" and I do not recognize any other Hadith but people agreed upon such prevention. Selling the unknown differ from selling the recognized – such as Salm,

Istisna' and Tawreed – which is of implicit result such as selling pregnant animal or unripe fruits or even the land lot crop.

Ibn Taimiya said in defining selling debt by debt: “it is the deferred sale, i.e. selling a debt by another due debt”. Such as saying: I buy from you a unit of wheat against one Dinar provided that you give me double remuneration after one month; and when the date of maturity comes the buyer does not have money for settling debt and says to the seller: sell me this for another deferred date by increasing amount. In this case no price was earned and this is a forbidden usury interest that is similar to the rule: “deferring maturity date increases price”. Which ensures one concept of various forms leading to deferring debt.

a- Selling debt to debtor:

Experts allowed selling debt for the debtor; as the reason for incorrect selling debt by debt is not being able to deliver it, and there is no for delivery here; as what is due from debtor is delivered to him in the first place. For example: creditor selling debtor a debt upon him against another debt of other kind requires annulling sold debt and required remuneration.

B- Selling debt for other than debtor:

Al-Hanafiya and Al-Thahiriya says: since it is not allowed what may not be delivered; then debt sale is not concluded from other than who shall settle dent; since the debt may not be delivered unless for debtor against seller. Debt is a conditioned fund and it is owning funds and delivering them without being done by seller.

If delivery is conditioned from debtor; then sale is not correct; since seller conditioned delivery upon the other; and the condition is null thus sale is void.

Al-Shafe'i said: it is allowed to sell debt of fixed maturity for debtor and non—debtor before receipt; since the base is being able to deliver without prevention; such as fixed debt: value of damages or non-borrowed existing fund. While in case it is not of fixed maturity: in case approved in Al-Salm contract then it is not allowed to be dealt with before receipt; since the general rule is preventing selling without earned price and as propriety in the approved is not fixed because maybe it is not possible to be delivered for being lost; thus sale is void.

In case debt is a price in sale; Al-Shafe'I says in Al-Jadeed: “it is allowed to deal with it before earning; as Ibn Omar said that the Prophet said: “it is allowed unless you left with remaining maturities”, and since the idea is not related to voiding contract by loss; thus it is like sale after receipt.

Ibn Al-Qayem allowed selling debt for debtor and non-debtor. Al-Malikiyah says that it is allowed to sell debt for the non-debtor provided that it is not uncertain sale nor includes usury interest or any other forbidden thing as selling the item before earning its price.

The researcher, after reviewing experts sayings, may see that selling debt for other than the debtor is probable for the following reasons:

- A-** Fixed debt as existing funds, which is explicit in Ibn Omar saying
- B-** Monetary transactions and actual situation with the people's need for commercial exchange are basic pillars for allowing
- C-** Sharia intentions and lack of Sharia preventions of such sale
- D-** Not being of debt sale, which is considered as rescheduling debt
- E-** Fixed debt especially in the modern transactions that document it by mortgaging immovable

7. Sharia controls include fulfilling ownership and earning

The evidence for this rule is the saying of Hakeem Bin Hezam: I came to the prophet and said: a man comes asking me to sell him what I do not have, thus I buy from the market then sell to him, the prophet said: “Do not sell what you not have”. Scientists said: this means what you don't own. Forbidding selling non-owned assets is selling unguaranteed items; such as buying commodity then selling it before receiving it, which also indicates selling others funds.

Fath Al-Bari explained that this means two thins:

The first is when you say: I sell you a servant or a house that is not available at time of sale, and this sale is subject to damage or non-approval from buyer.

The second thing is when you say: I sell you this house on such amount provided that I buy it for you from its owner or to hand it over to you by owner. And this is null in either cases; as he might not be able to buy it or may not hand it over to him.

The entire propriety is achieved by receipt upon agreement in addition to guarantee and bearing responsibility. The one who buys goods without receiving them may not resell it until they are under his own hands, control and liability to be guaranteed in case damaged.

What is guaranteed by buyer may be dealt with even if not handed over to him; and what is guaranteed by seller then buyer does not have the right to deal with it until guarantee is transformed to him.

Method of receipt is by including the sold under buyer's guarantee with confirming ownership.

Receipt differs by sale; according to being of movables and immovable; in case sale of for movable then receipt is done by seller handing sold over to buyer in a way that allowed buyer of dealing with it.

Experts see that this refers to norms in the method of receipt in case of movables.

While in case of real estate (immovable) then receipt is done buyer occupying the sold, which is considered as referring to norms.

Sharia experts see that real estate ownership is only transferred by registration, which is also the opinion of Hanabilah.

Researchers considers receipt as referring to norms without allowing sale before receipt; for strong evidences in that:

Ibn Abbas says that the Prophet forbidden selling food until receiving its price, and Ibn Abbas said: and I consider everything similar to it.

Presumptive receipt is similar to actual receipt; even if not proved in reality; for justifications require considering it as estimated and due and applying actual receipt terms upon it; which is clear in cheques and bank transfers, as well as delivering transfer or disbursement notice and taking fees for it; which is considered as absolute receipt.

8. Islamic financial controls include sharing risk and return

Return achievement in Islamic economy is proved by a general rule in production factors and type of return to be due, which is: each production factor acquires each type of return therein except for consumption and similar funds as they do not acquire lease.

Consumption funds and similar funds do not acquire lease as they emerge from the same fact; the consumption funds are similar funds and vice-versa. Consumption funds lease is done by spending period, after which they may not return as is because of being consumed rather than returning the double or value with increase as lease. This is the actual definition of lending money of selling it in similar amount as deferred with increase, which is usury interest. Cash capital does not earn a return, which is the money not contributing directly in production rather than acquiring revenue by transforming it into a productive capital, work or land lot upon being used for purchasing or leasing one of production factors; thus money is not considered as productive factor unless in case transformed into one of the production factors.

Usury in money is acquired by leasing money, which may not be leased because of not being commodities; they must be transformed into capital. The same applies to exchanging similar commodities mentioned in the Hadith of prophet: “Gold is to be paid for by gold, silver by silver, wheat by wheat, barley by barley, dates by dates, and salt by salt, like for like and equal for equal, payment being made hand to hand. If these classes differ, then sell as you wish if payment is made hand to hand”.

Working as a productive factor acquires every return of it; as it acquires lease and percentage of profit. Working among scientists is very similar to the concept of economic specialists; as they gave such terms for each productive work for a remuneration; which is lease allowance in leasing and profit in trading. The most important applications of work as productive factor is organization; which is a specific type of work that requires risk and efficiency; as the organizer is the one creating production and renting other production factors in the quantities and types he considers appropriate, while marketing production in order to achieve profit and bearing loss.

Scientists did not differentiate between working and organization; as organization is included in the concept of work and it is a type of work but a special one that required creativity and skills.

Al-Kasani says: “the base is that profit is earned either by money, working or guarantee and in case none of these apply then it is not due”.

We should clarify here that guarantee solely does not acquire return unless mixed with money in changing status from cash into commodities, benefits or work.

Usury funds have controls in exchange and profit:

- A. In case of similar category then equality applies and no profit or deferred sale applies
- B. In case money is unified in justification such as being cash in prices and subsistence saved in usury funds then earning and equality shall apply to prevent deferred sale
- C. Profit and deferred sale is allowed in case of being different in justification and type such as wheat and money; then profit and deferred sale is allowed

By reviewing the reasons of profit maturity in Islamic investment tools and necessity of funds being mixed with work; then guarantee and risk and subsidiary and not independent without return. The common factor is noticed when distributing risks among those sharing one event – mixed production elements – as funding process parties seek to exchanging risks equally, which is approved by the Islamic Sharia as in the Hadith of the Prophet: “Profit follows responsibility” in sale, and “responsibility includes profit and loss” in contracts of partnerships and deposits.

Difference is clear between guarantee as commitment to bearing loss in contracted funds resulting from depreciation and risk as commitment to providing the productive factors - funds or work – in remuneration contract while committing to bearing loss resulting from market fluctuations; as guarantee is in funds and loss while risk is in funds and work.

The meaning of guarantee might indicate not losing funds, bearing funds’ risks and changing market

situation, which what we understand from the Hadith: “Profit follows responsibility”

The matter is related to fund protection from loss and bearing the risks resulting from market fluctuations in funds and work.

Taking risk is the positive readiness of bearing results of economic activity whether as profit or loss, which is the positive meaning related to truthfulness of transactions. Risking here is qualifying investor for acquiring profit. Some individuals are subject to a huge mistake when asking to eliminate technical risk of contracts and guaranteeing capital; or even reducing and transforming risk to others in order to maintain funds as a Sharia objective.

The modern theory in profit distinguishes two types of risks were never indicated traditionally:

First type: foreseeable risks that may be accurately calculated and insured especially after development of insurance industry such as fire, death and theft.

Second type: unforeseeable risks that may not be confirmed nor insured; which are the mistakes of mis-estimation of organizer for market status or fluctuation contrary to expectations thus resulting in loss.

The second type is the one to which profit refers; as the first may be calculated and pay insurance for it.

5. Conclusion

Specific recommendations shall be indicated, which aim at supporting and reporting banking products as per the Sharia controls of Islamic Shari'a Control

- Continuous communication and cooperation among Islamic financial institutions, universities and academic commissions especially those including specializations in Islamic banking financial science for the purpose of exchanging expertise and scientific consultations
- Supporting scientific research related to the Islamic banking products and researchers' appreciation by the Islamic financial institutions
- Paying attention to training and development for discovering opportunities and fields of creativity while filling the gap that may appear in the Islamic Sharia among investment tools, banking market requirements and depending on modern technological development.
- Dedicating budgets in proper level for supporting researches in order to fulfill stock market requirements and exploit resources and opportunities
- Cooperation between Islamic financial institutions for issuing unified magazine specialized in Islamic finance aiming at introducing the Islamic financial products and receiving opinions of academics concerned of developing Islamic financial products
- Coordination between Islamic financial institutions, universities, institutes and scientific institutions for approving subjects concerned of Sharia controls and rules of Islamic Shari'a Control

Study recommends dedicating specialized and detailed studies in Shari'a Control controls and rules in addition to constructing contracts and products stemming from such rules concerned of Islamic finance

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