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Debt Sale in Islamic Banks and its Contemporary Applications a Comparative Jurisprudential Study

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Abstract

This research aims at clarifying and explaining what Islamic banks are applying in terms of selling and liquidating debt. Selling debt is the exchange of deferred funds in people's commitments for other funds which may be urgent. In such a case the sale is the sale of debt for an actual price. In case the other funds may be deferred, the sale is a deferred sale for a deferred amount, which is the sale of debt for debt. Debt is the money owed to a third party as a result of a compensation contract or a loan. This is when a man owes another man, so the cr(Verified) sells the debt to a company or a person for less than the value of the original debt which can be collected later. Then the company or person who bought the debt demands payment of this debt. Some Islamic banks have regarded that a necessity to solve the problems of individuals and companies' default, in order to meet their personal or commercial committments, as is the case with Islamic institutions that are forced to sell their debt certificates to pay their financial obligations or finance their new investment projects. This study will provide clarification on the forms of selling debt and its rulings, and the legal controls that it must meet so that it does not deviate from its shariah-based purpose. This study is based on the inductive methodology to collecting scientific material, the critical analytical methodology and the comparative jurisprudence methodology. It contains two sections, each of which includes several topics, and the conclusion of the research, which contained the most important results the study found.

Keywords: Islamic banks, Debt Sale, Contemporary Applications, Comparative Jurisprudence, Purposes of Shari'a

Introduction

Selling debt is considered from the contemporary and emerging issues in the Islamic institutions, because it achieves interests for cr(Verified)s such as accelerating the return of their money and then reoperating them in the fields of investment and production. However, there is a need to search because suspicions around some forms of selling cash debts from other than the debtors, a third party, from the Islamic perspective. They lead to riba an-Nasee'ah (the interest of delay), or contain the risk of uncertainty arising from the inability to

paying back or to hold by hand when selling cash for cash because this confines the ability to liquidate debts. Some Islamic financial institutions have adopted transactions involving forms of selling debts jurists have agreed on preventing for they are forms of *riba* (usury), namely trading in debts. They justified that with various reasonings, some of which are differentiating between debt and another debt, and some of which are new adaptations to selling debt. To bring the picture closer, we will move on to presenting these justifications and studying their accuracy, to know whether these Islamic financial institutions can practice this type of sale, or whether they should reconsider this type of transaction and abandon it in order to avoid falling into what is forbidden. The importance of the research comes through defining the sale of debt, explaining its impact on emerging jurisprudential issues, and knowing the extent of compatibility in the intellectual vision of applying the sale of debt to these calamities and developments. Hence, the need emerged to search for a correct jurisprudential adaptation to reach a statement of the legal ruling on the forms dealt with in Islamic banks, which Those interested in this type of transactions need to know, whether they are investors or those working in Islamic banks, and because many people do not know the legal ruling on these sales, and that one of the conditions for the validity of the sale is the ability to deliver the sold item. If the seller is not able to deliver the sold item, this is a risk of uncertainty sale that is forbidden. This research came to clarify and explain the rulings on selling debt and its forms that are implemented in contemporary Islamic banks.

The Concept of Selling Debt, and its Shariah-Based Ruling

The Concept of Selling Debt

It is what is proven in the someone's commitment of money due to a reason that requires its proof (Ar-Ramly, 1984:131), and accordingly the meaning of selling debt is "Exchanging deferred funds in people's commitments for other funds" (Al-Mawwaq, 1994:232; Ar-Rassaa', 1350H:252), then this other fund may be urgent, so in this case the sale is selling the debt for an actual price, or it may be deferred, so in this case the sale is a deferred debt sale for a deferred price, which is selling debt for debt. The term "reversing debt" is used by some scholars of Hanbali School (Al-Bahooty, 1402H:186; Ar-Ruhaibani, 1995:62), and this term is close to the term "reversing debt in debt". Their use of this term practically means turning the debt on the debtor into another debt of the same type, greater than it or of a different type.

The Ruling on Selling Debt to the Debtor for an Actual Price

Scholars differed about the selling debt to the debtor with two opinions

The first opinion: permissibility of selling debt to the debtor but with conditions. This opinion was adopted by the Majority of scholars of Hanafi (Al-Kasani, 1986:184; Ibn Nujaim, 1999:280; Ibn A'abidin, 1992:152), Maliki (Al-Kharashi, N.D.:76; Ath-Tha'alabi, N.D.:1037), Shafi'ee (Ash-Sharbini, 1994:464; An-Nawawi, 1412H: 515) and Hanbali (Ibn Qudamah, 1405:95; Al-Mardawi, 2003:115; Al-Bahooty, 1402H:306) Schools.

Evidences of the scholars who adopted the first opinion are as follows

The first evidence is that the original rule of contracts is their validity and permissibility for the evidences of sale legality are general, and there is no evidence preventing debt sale to the debtor. Therefore, the ruling on debt sale is permissible. (Ibn Rushd, 1988: 373; Ibn Taymiyyah, 1995:129)

The second evidence is that Ibn Omar, may Allah be pleased with him, said: "I was selling camels in Al-Baqee' so I sell them for dinars and take dirhams, and I sell them for dirhams and take dinars. I take this from that, and I give that from this. Therefore, I went to the Prophet, Allah's peace and blessings be upon him, while he was in Hafsah's house. I said: O Prophet, wait to ask you. I sell camels in Al-Baqee' so I sell them for dinars and take dirhams, and I sell them for dirhams and take dinars. I take this from that, and I give that from this. The Prophet, Allah's peace and blessings be upon him, said: "There is nothing wrong with you taking it at the price of that day, as long as you both do not part and there is nothing between you." (Ahmed 1438H: 83; At-Tirmithi, 2009: 522; An-Nasa'iee 2018: 283) This hadith proves that selling what is in someone's commitment of any currency for another currency. Other than them is analogized with it (Al-Bahooty, 1402H:307).

The Third Evidence. The debtor is considered to be the holder of what is in his commitment, so his selling it is permissible as selling the usurped item to its usurper is permissible (Al-Kasani, 1986:148). Al-Kasani said: "It is permissible to sell the debt to the indebted, because the obstacle is the inability to deliver, and there is no need to deliver here. Its counterpart is the sale of usurped item is valid from the usurper, but not valid from someone else if the usurper denies its usurpation and the owner has no proof.". (Al-Kasani, 1986:148)

The Second Opinion: Impermissibility of selling debt to the indebted. This opinion was adopted by Al-Thahiriyyah (Ibn Hazm, N.D.:451), and narration of the Hanbalis (Ibn Qudamah 1388H:95; Al-Murdawi, N.D. :49).

They provided evidences as follows
The First Evidence: That the debt does not really exist, so selling it is a sale of something that does not exist, and this is not permissible except in a *salam* transaction (Ibn Hazm, N.D.:452). This evidence is objected to on two grounds (Ibn Taymiyyah, 1995:542; Ibn Al-Qayyim, 1991:7):

The first ground: It is not accepted that the sale of something that does not exist is invalid, for there is no evidence supporting that.

The second ground: Even though the debt does not really exist, it is considered as existing in the debt commitment of the indebted, as evidenced by the shariah-based rulings on it such as *al-hawalah* (transfer) and *zakat*.

The Second Evidence: The sale of a debt is the sale of something whose existence or nonexistence is not known and is not known materially, and this is from the forbidden sale of uncertainty risk (Ibn Hazm, N.D.:452).

This evidence is objected to by the fact that the debt is known in quantity and description, and it is considered as existing and received by the debtor, so there is no uncertainty risk in selling it due to ignorance or inability to deliver.

The Third Evidence: If the cr(Verified) sells his debt, he has sold what he does not have. That is prohibited (Ibn Hazm, N.D.:350).

This evidence is objected to because selling a debt is not in this or in its meaning. The meaning of what was mentioned about the prohibition of selling what the seller does not have is that the specific goods cannot be sold before buying them, and that is to sell a commodity in his commitment that he does not have, on the condition that he goes to the market and buys it and gives it to the buyer. This is an uncertainty risk, as he may or may not find the commodity (Ibn Al-Qayyim, 1991:301; Al-Baji, 1332H:286).

Preference: The first opinion which is the opinion of the majority of scholars is the most preferred. It is permissible to sell the debt to the indebted, because the basic principle in contracts is permissibility and permission; and because there is no harm in this contract. In addition, it achieves a clear interest, which is the debtor's release from debt, and the cr(Verified)'s obtaining payment of his debt (Az-Zuhaili, 1997: 28).

Conditions of Permissibility of Selling Debt to the Indebted for an Actual Price

Conditions for the Permissibility of Selling Debt to the Debtor for an Immediate Price

The following conditions must be met for the permissibility of selling a debt

The First Condition: The debt must be known. If it is unknown, the sale is not valid unless it is conducted as a settlement (Al-Kasani, 1986: 44; As-Sarkhasi, 1421H: 26; Ad-Dardeer, 1393H: 62; An-Nawawi, N.D.: 331; Ibn Qudamah, 1405: 95; Al-Mardawi, 2003: 111).

The Second Condition: The equivalent payment must be received during the contract session if the sale involves something that cannot be sold on credit, due to the saying of the Prophet (peace be upon him) regarding exchanging dirhams for dinars, and vice versa: "There is no harm in taking them at the rate of the day, as long as you do not separate while there is something still owed between you." (Ibn Hanbal N.D.: 83; At-Tirmithi, 2009: 522; An-Nasa'iee 2018: 283) This occurs when the debt is in gold and is sold for silver, or vice versa. In such cases, immediate payment is required according to the consensus of the jurists, as it constitutes a currency exchange, which requires immediate receipt (Al-Kasani, 1986:44; Al-Mawwaq, 1994:140; Al-Haithami, :470; Al-Bahooty, 1402H:307). The same rule is applicable to modern paper currency as gold and silver.

The Third Condition: The debt cannot be sold for a deferred payment, as selling it for a deferred payment would fall under the prohibited category of selling debt for debt, which is unanimously agreed upon as impermissible. Ibn al-Mundhir said: "There is consensus that selling debt for debt is impermissible." (Ibn al-Mundhir, 1402H: 92)

The Fourth Condition: The debt must be due and stable. If the debt is unstable, such as in the case of a deferred payment for a writing contract, a dowry before consummation and privacy, a wage before work is done, or payment before the end of the work period or before the benefit has been fully received, its sale is not valid because ownership is incomplete, and it may or may not become stable. (Ibn Qudamah, 1405:264; Al-Mardawi, 2003:196, 199; Ibn Muflih, 2003:331)

The Ruling on Selling Debt to the Indebted for a Deferred Price

This refers to selling a previous debt which is a commitment of the debtor and that has become due but has not been paid back, so the debtor agrees to exchange it for another

deferred debt of a different kind. In this case, the buyer of the debt is the debtor, and the seller is the cr(Verified) (Nazeeh Hammad, 1990: 244). There are two forms:

The First: Selling the debt to the debtor for a bigger amount of the same kind on a deferred on a term. This involves selling a previously established deferred debt owed by the debtor for a new deferred debt with an increase (Hammad, 1990: 253). An example of this is mentioned by Ibn al-Athir in Al-Nihayah: "A man buys something for a deferred price, and when its date is due but he cannot repay it, he says, 'Sell it to me on a new term with an increase, so he sells it to him without exchanging of the goods between them."(Ibn Al-Atheer, 1979: 194) There is no disagreement among jurists on prohibiting this form, because it is selling debt for debt (Al-Kasani, 1986:323; Ibn Rushd, 1988: 400; Ibn Qudamah, 1405: 106; Al-Murdawi, N.D: 44; Ibn Hazm, N.D.: 610). In reality, this is considered a form of pre-Islamic usury (riba al-jahiliyyah), which is obviously prohibited.

The Second Form: Selling the debt to the debtor for a different kind of debt on a deferred term. This involves selling a previously established deferred debt owed by the debtor for a new deferred debt of a different kind. In this case, the buyer of the debt is the debtor, and the seller is the cr(Verified). (Hammad, 1990: 256)

An example of this form would be if someone owes another person a debt of 1,000 dirhams, and they agree that the cr(Verified) will take 100 sa' (a weight of 2.04 Kgs) of dates from the debtor, with delivery deferred to a specified term (for example, one year later) (Al-Mutrak, N.D.: 293). This form has caused two different opinions among jurists:

1- The majority of scholars, including the four imams and the Dhahiri school, hold the opinion that selling debt for debt to the debtor, even if it is a debt of a different kind, is prohibited. They relied on the hadith of Ibn Umar (may Allah be pleased with them), in which he said that the Prophet (may Allah’s peace and blessings be upon him) prohibited selling deferred debt for another deferred debt. An example of it is selling debt to the indebted with a deferred price.

Their argument was refuted by pointing out that the hadith of Ibn Umar includes Musa bin Ubaidah al-Rabadhi, about whom Imam Ahmad said, "It is not permissible, in my view, to narrate from him." Ahmad bin Adi also said, "The weakness in his narrations is evident." (Al-Muzzi, 1400H: 107, 113)

As for the hadith of Abu Saeed al-Khudri (may Allah be pleased with him), the Messenger of Allah (peace be upon him) said: "Do not sell gold for gold but in equal amounts, and do not sell silver for silver but in equal amounts, and do not give more of one in exchange for the other, and do not sell that which is absent for that which is present." (Al-Bukhari, 2001:74; Muslim:1208)

The point of evidence: The Prophet (may Allah’s peace and blessings be upon him) forbade selling something absent from the contract session for something present. Therefore, selling something absent for something absent is even more deserving of prohibition, since selling debt for debt is essentially selling something absent for something absent. (Ibn Abdil-Barr, 1327H:290)

This argument was refuted by stating that using this hadith as evidence in this context is not valid, since the hadith specifically requires immediate exchange in currency transactions during the session. (Az-Zailai'ee, 1997:56)

They also countered it by citing consensus on the prohibition of selling debt for debt. This consensus was mentioned by Imam al-Shafi'i (al-Shafi'i, 1994:30), Imam Ahmed (Ibn Qudamah, 1405:35), Ibn al-Mundhir (Ibn al-Mundhir, 1402: 92), and Ibn Rushd (Ibn Rushd, 1988: 166).

However, this claim of consensus was contested, the Maliki scholars allowed delaying payment for a day or two days, arguing that this short period is considered immediate payment (Al-Hattab, 1992: 517). They also permitted the exchange of debt for specific benefits and permitted currency exchange on credit in his commitment. For instance, if one person owes another dirhams and the other owes him dinars, it is permissible for one to buy what he owe with what the other owes, as the commitment serves as a substitute for present goods, and immediate exchange is not necessary here. In these cases, the transaction of selling debt for debt is valid, although they did not explicitly call it as such (Ibn Al-Qayyim, 1991: 264). The principle in contracts is that what matters is the intent and meaning, not the words and forms (As-Siyuti, 1990: 166). Additionally, the Hanafi scholars allowed *muqassah* (offsetting debts), which is essentially the selling debt for debt (Az-Zaila'ee, 1997: 140). Therefore, the claim of consensus on the prohibition of selling debt for debt is not considered valid.

2- Ibn Taymiyyah, Ibn al-Qayyim, Ashhab from the Maliki School, al-'Awza'ee, Ibn Shubrumah, and Ishaq permitted the selling of debt for debt to the debtor if he sells it for a new debt of a different kind from the original one (Ibn Taymiyyah, 1995: 512; Ibn al-Qayyim, 1991: 8; Ibn Rushd, (1408H/1988) : 166; Ibn Hajar, 1979: 316).

They supported their opinion with the narration of Jabir, may Allah be pleased with him, that he was riding a camel that became exhausted. The Prophet (may Allah's blessings and peace be upon him) passed by, hit the camel and prayed for it, and the camel began to move with unprecedented speed. The Prophet then said, "Sell it to me for a waqiyyah (a unit of silver)." I said, "No." He repeated, "Sell it to me for a waqiyyah," so I sold it to him, while reserving the condition that I would keep riding it until I returned to my family. When we arrived in Al-Madinah, I brought the camel to him and he paid me the price. Then I left, but he sent someone after me and said, "I would not take your camel; keep it, for it is yours" (Al-Bukhari, 2001: 189; Muslim, 1208: 1221).

The meaning of the evidence: This sale took place during one of the Prophet's journeys, and Jabir stipulated that the delivery of the camel would occur in Al-Madinah. The Prophet (may Allah's blessings and peace be upon him) also fulfilled the payment in Al-Madinah. Therefore, the item sold (the camel) became a debt upon Jabir, and the price became a debt upon the Prophet (may Allah's blessings and peace be upon him), which indicates the permissibility of selling debt for debt to the debtor (Ibn Hajar, 1979: 316).

However, this argument was refuted by suggesting that there is some possibility (uncertainty) in this story, and that the Prophet (may Allah's blessings and peace be upon

him) intended to give him the price, not to complete an actual sale (Ibn Hajar, 1979: 316; An-Nawawi, 1412H: 30; Ibn Abdil-Barr, 115; Ibn Taymiyyah, 1995: 472).

Their evidence was refuted as the debtor is considered to have possession of what is in his commitment, so the transaction would be considered a sale of goods that are fully possessed and immediately delivered. That is absolute because full possession exchange is required in some types of transactions.

The proponents of the second view argued that the debtor, being in possession of what is in his commitment, makes a sale of goods that are fully possessed and immediately delivered, which is valid (Ibn Taymiyyah, 1995: 472; Ibn Al-Qayyim, 1991: 264).

This reasoning, however, was challenged as it is not in general. There is a condition of full possession exchange in certain types of items.

The view permitting the sale is more likely to be permissible for the following reasons:
1. The strength of the argument of the jurists supporting permissibility, their rebuttal of their opponents' views, and their alignment with the original principle in transactions, which is permissibility.
2. The weakness of the hadith upon which the majority relies. Even if the hadith is authentic, it can be understood as a prohibition of exchanging deferred debts for deferred debts, as interpreted by those who permit it.
3. The realization of mutual benefit for both parties, as the debtor may be unable to repay the debt and can instead purchase it from the cr(Verified) in a way that suits his financial capacity, thus achieving his interest.

Two conditions must be met for favouring the opinion of permissibility:

1. The debt must be established and stable, to avoid disputes and conflicts.
2. The two debts must not belong to categories involving usurious items, in order to prevent the risk of engaging in interest (riba).

The Ruling on Selling Debt to Someone Other Than the Debtor

Jurists had two main opinions regarding the ruling on selling debt to a someone other than the debtor

First Opinion: It is permissible to sell debt to someone other than the debtor. This is the view of the Maliki jurists (I'leesh, 1299H: 46; Ad-Dardeer, 1393: 63), the dominant opinion among the Shafi'i jurists (An-Nawawi, 1412H: 516), and one narration from the Hanbali jurists (Al-Murdawi, N.D: 112), adopted by Ibn Taymiyyah (Ibn Taymiyyah, 1995: 401). The Shafi'i jurists stipulated that the debt must be collected from the debtor, and its substitute received from the buyer, within the contract session (Ar-Ramly, 1984: 91).

The proponents of this opinion provided the following evidences:

First Evidence: The basic ruling in contracts is validity and permissibility, based on the general evidences supporting the legitimacy of sales, unless there is specific evidence indicating otherwise. Since there is no clear evidence prohibiting the sale of debt to someone other than the debtor, it remains permissible.

Second Evidence: It was narrated that Umar bin Abdulaziz that the Prophet Mohammed (may Allah's blessings and peace be upon him) said: "Whoever buys a debt owed by a person, the

original cr(Verified) has more right to it if he pays the same amount as the buyer" (Abdur-Razaq, 1403H: 427).
This hadith was criticized for being weak as it is classified as mursal (a type of weak hadith for it is an incompletely transmitted hadith). (Ibn Hazm, N.D.: 488)
Third Evidence: Debt is a fixed asset in the debtor's liability, and since the debt can be sold to the debtor, it can also be sold to someone else, like a deposited item. (An-Nawawi, 1412H: 275)
Fourth Evidence: It is permissible to sell a particular item for a specified debt in the buyer's liability. Then the buyer can transfer the debt to another person. Based on the principle of validity and permissibility in contracts and conditions, it should be permissible to sell a specific item for a debt owed by someone other than the buyer in one contract without unnecessary complications.
Second Opinion: It is not permissible to sell debt to someone other than the debtor. This is the opinion of the Hanafi jurists (As-Sarkhasi, 1421H: 22; Al-Kasani, 1986:148), Hanbali jurists (Ibn Qudamah, 1405: 384; Al-Murdawi, N.D : 112), and Dhahiri jurists (Ibn Hazm, N.D.: 487), as well as one opinion among the Shafi'i jurists that some of them considered correct (Ar-Rafi'ee, N.D.: 439).

The proponents of this opinion supported their opinion with the following evidences:

First Evidence: The seller cannot ensure delivery of the debt, and any sale, the item of which the seller cannot deliver, is invalid (Al-Kasani, 1986:148).
This was refuted by arguing that he cannot deliver it, so the ability of delivery is a condition. It is stipulated that there is a possibility of the buyer receiving it, whether through the seller or otherwise. This is evidenced by the permissibility of selling a deposited or usurped item to someone capable of retrieving it from the usurper (Ar-Ramly, 1984: 11).
Second Evidence: A sale must be based on valuable property, and what is in the debtor's liability is not valuable property in relation to a third person, so it is not permissible to be sold to him (As-Sarkhasi, 1421H: 22).
Third Evidence: Debt has no real existence, so selling it is like selling something non-existent, which is impermissible. (Ibn Hazm, N.D.: 452)

This was refuted by rejecting the claim that all sales of non-existent items are invalid, for there is no evidence supporting this claim. (Ibn Taymiyyah, 1995: 300; Ibn Al-Qayyim, 1991: 7)
Fourth Evidence: Selling debt involves the risk of uncertainty, because its existence or exact amount is unknown, making it a form of *gharar* (deceptive uncertainty), which is prohibited. (Ibn Hazm, N.D.: 487)

This was refuted by arguing that the debt is known in terms of its amount and description, and it is considered existent on the debtor's liability. Thus, selling it does not involve gharar, or deceptive uncertainty.

Preferred Opinion: The first opinion appears stronger, and Allah knows best. This is based on the default permissibility and validity of contracts. Moreover, selling debt to a third person benefits both the seller and the buyer. There is a need for it, and there is no prohibition or corruption in it.

Contemporary Applications of Selling Debt in Islamic Banks

Debt Securitization

Securitization, in its basic form, is the process of converting illiquid funds, i.e. those that are not cash, such as fixed assets, into cash by issuing bonds equivalent to the value of these illiquid assets and offering them for sale and trading in the market. The purpose of this process is to obtain liquidity that a company may lack and need for various purposes. The company issues bonds based on the value of some of its assets like buildings and equipment, and offers them for sale and trading in the market (Al-Hijazi, 2001: 3; Hammad, 1421H: 214).

Debts have been introduced into the securitization processes, involving the documentation of deferred debts, which are not immediately due, into bonds and offering them for sale and trading in the financial market. This is considered securitization for deferred debt is not liquid cash when securitized, as it cannot be instantly consumed. It only becomes liquid when it is due.

The cr(Verified) may see that it in his best interest to liquidate the debt. Debt liquidation has become one of the common contracts in financing transactions for Islamic financial institutions and their clients (Hamood, 1982: 281; Shubair, 1998: 207). This is an agreement where the bank advances the bondholder the bond’s present value, minus an amount proportional to the remaining time until the bond's maturity, in exchange for the transfer of the cr(Verified)'s rights to the bank, ensuring repayment date is due (Hamood, 1982: 281; Shubair, 1998: 207).

The essence of commercial deduction of bonds is that the client holds a bond payable after a certain period, for instance a month, and endorses it to the bank in exchange for receiving its value in advance, minus an amount representing the interest for the period between the deducting date and the maturity date. The bank then collects the debt when it at its due time (Hamood, 1982: 283; Shubair, 1998: 207).

This process is no different from the deduction of securities practiced in conventional banks. Its summary is that the client presents the trade paper (debt bond) to the bank before its due time to immediately receive its value, with the bank deducting a financial percentage from the debt amount as its commission. The amount deducted proportional to the debt's value and duration. Basically, the client seeks to convert their deferred debt into immediate cash, and the bank facilitates this by discounting the debt for a fee. The bank fulfils his purpose. (Siraj, 2001: 103)

This transaction is not permissible in Islamic Shariah, because it certainly involves *riba* (usury), as it contains the sale of money for money. Since securities represent money and act as its equivalent, they must meet the conditions of immediate exchange and equality in type if the currencies are the same. In this case, this transaction contains similar types, but lacks the immediate exchange in the contract session, resulting in both *riba al-nasi'ah* (interest due to delay) and *riba al-fadl* (interest due to inequality) (Journal of the Islamic Fiqh Academy, 2/217).

This is a financing transaction aiming at generating profit for the bank. When the bank pays the debt to its client after deducting, it becomes the cr(Verified) for the discounted amount

it paid. The difference between the deducted bond and the full value collected later by the bank represents a usurious interest (Islamic Fiqh Academy, 1992). Therefore, the transaction amounts to an interest-bearing loan from the bank to its client, secured by the debt bonds that the client pays to the bank, as evidenced by the fact that the bank returns to the client to whom the deduction is made, to collect from him the amount written in the bond if the debtor refuses to pay the amount due on him, or delays it. (Hamood, 1982: 284)

Bank Debts

Selling debt process through deduction securities is an important field of short-term investment and can be automatically liquidated. It is also distributed between two different debtors, making it easier for the bank to collect when due. As for the client, it provides an easy way to obtain necessary funds that might not be immediately available to him for fulfilling urgent needs (Hamood, 1982: 284).

The expansion of banks in purchasing debts due to merchants encourages them to deal in debt. Knowing that they can sell securities to banks, merchants may expand in selling on credit, which could lead to defaults, deductions and disputes.

Upon examining debt deduction process, the following can be concluded:

1. It is a loan of an amount in which the lender receives a transfer of a greater amount, payable after a specified period. It constitutes explicit *riba* that is not subject to interpretation because making the transfer valid requires the debt in both cases to be equal, but here there is an increase for the delay, which is *riba al-nasi'ah* (Hammad, 1990: 212).
2. The loan is guaranteed by the securities fully endorsed to the bank. The bank does not intend to purchase the debt in the person's liability, nor to be a transferee; rather, it aims to lend money so it accepts the discounted bond as collateral. If the debt is not paid when due, the bank returns to the client for the full amount, without the hassle of pursuing the debtors, as commonly happens (Hammad, 1990: 212).

This transaction is entirely different from "pay less and take earlier" (*d'ah wa ta'ajjal*), where the cr(Verified) agrees to waive part of the deferred debt in exchange for the early payment of the remainder. This is a form of settlement between the cr(Verified) and the debtor, releasing the debtor from the liability. As for here, it is a usurious process that includes *riba an-nasi'ah* (usury of delay) by creating a debt and occupying a liability. Also, the issue of "pay less and take earlier" (*d'ah wa ta'ajjal*) is always a relationship between two parties namely, cr(Verified) and debtor. As to the issue of reversing the debt, the relationship is tripartite, where the bank enters a third party, a financier, and provides an interest-bearing loan, which is prohibited as affirmed by the resolution of the Islamic Fiqh Council No. 101 (4/11) in its eleventh conference in Manamah, Bahrain on Rajab 25-30, 1419H, corresponding to November 14-19, 1998.

The Resolution States

It is impermissible to sell deferred debt to a third party for immediate cash, either of the same or different currency, as this leads to *riba*. It is also impermissible to sell it for deferred cash of the same or different currency, as this falls under the category of selling a debt for a debt (*bay' al-kali' bi al-kali'*) which is prohibited in Islamic Shariah, regardless of whether the debt arises from a loan or a deferred sale (Islamic Fiqh Academy Journal, 1992: 53).

The Council's resolution (No. 64/2/7) regarding the deduction of securities in its seventh conference in Saudi Arabia on 7-12 Thil-Qi'dah, 1412H, corresponding to May 9-14, 1992 similarly concluded that deduction of securities is not permissible in the Islamic Shariah, as it results in *riba al-nasi'ah* which is prohibited (Islamic Fiqh Academy Journal, 1992: 9).

Conclusion

Results

1. Permissibility of Selling Debt to the Debtor for actual cash price. This opinion is chosen by the majority of jurist, as this contract causes no harm and provides a clear interest by clearing the debtor's liability and allowing the cr(Verified) to receive payment for his debt.
2. Of the conditions for the Permissibility of selling debt to the debtor is to be known, to be sold at its market current value, to receive its price in the contract session, not to be sold for a deferred payment, and to be a stable debt.
3. Permissibility of selling debt to the debtor for a deferred payment is a preferred opinion. This is allowed to serve the interests of both parties. The debtor may not be able to settle his debt, so he purchases it from the cr(Verified) at a price he can afford, clearing his liability, while the cr(Verified) receives payment and resolves the debt.
4- The process of reversing debt through deducting securities is a significant field of short-term investment, which is subject to automatic liquidation, and it is distributed among different debtors, which facilitates the collection of it upon maturity for the bank. As for the customer, it facilitates for him obtaining the money actually needed, which may not be available to him to meet his immediate needs.
5. In case of selling debt to the debtor for a deferred payment greater than the debt amount, this practice, commonly referred to as debt rescheduling, is considered a form of *riba* (usury) and is prohibited in Islamic *Shariah*.
6. In the event of selling debt to someone other than the debtor for a deferred payment, whether in the same or a different currency, this is considered a form of selling one debt for another (bay' al-kali' bi al-kali') and is prohibited in Islamic *Shariah*.
7. If the debt is one of the types of *riba* (usury); such as currency, and is sold for more than its value with excessive, deferred payment, this constitutes a prohibited interest-bearing contract (riba), involving both riba al-fadl (due to the excess) and riba al-nasi'ah (due to the delay). In this case, the company or individual purchasing the debt is effectively lending money to the cr(Verified) with the expectation of receiving a higher amount later.

Recommendations

Finally, the researcher recommends the following:

i. The community should be educated about the importance of Debt Sale in Islamic Banks.
ii. Conferences and seminars should be organized to introduce the most important ways to invest in the Islamic finance and investment.

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