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Receiving Fees on Discounting a Bill of Exchange: A Sharia Analysis

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Abstract

Bill of Exchange is widely used in Islamic banking operations around the globe. This paper examines the issue of discounting the Bill of Exchange from a Sharia perspective. The study revolves around the issue of combining sale and borrowing (*bay' wa salaf*). This qualitative research adopts a content analysis approach, using a descriptive, analytical, and comparative method to analyze the collected data. Based on the analysis, the study shows that discounting a Bill of Exchange in its traditional method raises concerns of usury. However, it is permissible to treat it as a form of paid agency. Additionally, it does not involve any impediments related to combining sales and borrowing contracts, making it permissible.

Keywords: Bill of Exchange, Discounting, Bay' Wa Salaf, Fiqh, Muamalat

Introduction

This research presents a detailed overview on the topic of discounting the bill of exchange according to juristic opinions. This mainly covers the ruling on combining sales and borrowing (*bay' wa salaf*) contract in one transaction. The research defines the bill of exchange in Jurisprudence (*fiqh*) and how to apply the rulings of Islamic law on settling this form of transaction. This includes shedding light on and analyzing the opinions of Muslim jurists based on the descriptive, analytical and comparative methodologies.

The researcher concluded that discounting a bill of exchange according to the traditional methods of banks comes under prohibited usury. Thus, it is permissible to treat it as a form of paid agency. And it does not involve any impediments relating to combining sales and borrowing contracts. According to the majority of scholars, fees must not exceed the known limit of its kind in the prevailing forms of transactions. Shafi'i scholars maintained that this is permissible provided neither of the parties involved in the transaction made a condition. It is also permissible to sell the bill of exchange for a commodity or to use it as a form of finance.

Discounting bills of exchange is a frequent form of transaction in our modern daily life. Therefore, it has become a necessity to apply the rulings of fiqh on this issue. This research presents the various theories and juristic opinions maintained in this respect with a special reference to each ruling separately. The research covers the following main questions; What is a bill of exchange? What does discounting a bill of exchange mean? What is the ruling in

fiqh on discounting the bill of exchange? What is the ruling on receiving fees on discounting a bill of exchange?

This study is conducted to clarify the meaning of “bill of exchange” and discounting a bill of exchange. It also examines the jurisprudential adaptation (*takyif fiqhi*) for discounting a bill of exchange as well as explains and clarifies the ruling of receiving fees for discounting a bill of exchange and the juristic opinions on the issue.

This study is divided into four sections. After introduction and four sections, it highlights a definition of commercial papers and its types critically. Subsequently, in the second section, this study is defining a bill of exchange and its types. This followed by a thorough discussion on the definition of discounting a bill of exchange in the third section. Finally the paper discusses the jurisprudential conditioning of discounting a bill of exchange.

Commercial Papers and its Types

Commercial papers are fixed exchangeable instruments that guarantee a right to a cash amount and are maturely payable as soon as they are viewed (handed), or after a short term. What is meant by the mentioned commercial methods: endorsement and delivery.

Endorsement is a statement written on the back of the paper or on a paper attached to it. While delivery means handling of the paper is granted to the bearer. These two cases can be applied on the commercial exchangeable paper accordingly.

The exchangeability is considered one of the basic elements and the essential characteristics of the commercial paper. This allows a smooth exchange of the paper in a way that guarantees the right to the cash when it is due (Ismail n.d).

Characteristics of Commercial papers:

- 1- Exchangeable
- 2- Replaces money in fulfilling the obligations and the fulfillment of debts, and this characteristic distinguishes it from stocks and bonds, as shares have other characteristics, including: collecting profits, participating in the board of directors, and so on. Bonds are entitled to cash interest that is taken every certain period, for example, the debtor cannot pay his debts through stocks and bonds. If commercial papers are close in terms of components and functions to banknotes and are traded through manual handling - nevertheless there are fundamental differences that keep banknotes away from commercial papers. Banknotes do not carry a term whatever their value requires. Banknotes are always a payment instrument, while commercial papers such as (bill of exchange) and (bond) can be a credit instrument rather than a means of fulfillment. On the other hand, there is no choice in accepting banknotes, as individuals are forced to accept them for payment, while this is not the case with commercial papers, as some circles can reject payment through them and require payment in cash. Moreover, the fixed right in the commercial paper is subject to prescription, while the immovable right in banknotes is not subject to any limitations, except when there is a change in the currency itself.
- 3- Commercial papers are due or mature upon sight or shortly after, and it seems that it is difficult to determine this term with a specific period. This is due to what is agreed upon in commercial circles. However, some commentators believe that the short-term ranges between three to six months, and this characteristic distinguishes commercial papers from stocks and bonds. The latter is a distant or uncertain maturity, which makes its real value subject to economic fluctuations, and any changes that may occur in the position of the company or the debtor (Ismail n.d).

Commercial Papers are of Three Types

- 1- Promissory note: It is a written form by the borrower to pay a certain amount upon demand, or on a certain date to a person in particular or to its bearer. The promissory note is of two types: Order bond (i.e. paid to a specific person) or to its bearer (in general).
- 2- Cheque: It is a written command based on traditionally specified customs, in which the order is requested and called (drawer) from the drawee (the bank), to pay according to it, and as soon as it is presented.
- 3- The bill of exchange, which we proceed to define.

Linguistically, the bill of exchange is derived from the Italian word "Cambial" which means exchange (Ismail n.d). Technically, it is a written command in a special way by a person called the drawer to another person called the drawee. It is to be paid in a certain amount on a certain date or assignable to a specific person "the beneficiary" or to the bearer without appointment, as in some laws. The people involved in this withdrawal transaction may be natural or legal entities such as banks (Ismail n.d).

The bill of exchange is considered the ideal model for commercial papers. It is rather considered the oldest and perhaps the most important for banks and users involved. These include:

- 1- It is a credit instrument, as the payment of its value is often deferred, giving the debtor the opportunity to repay.
- 2- It accepts trading through endorsement, which makes it exceptionally flexible and accelerates the movement among creditors.

The bill of exchange involves three parties:

First: The drawer, who is the issuer of the order and the author of the bill of exchange.

Second: The drawee, who is the one to whom the order is directed to pay the amount of the bill of exchange.

Third: the beneficiary, who is the holder of the amount of the bill of exchange, and sometimes the drawer himself is the beneficiary (Ismail n.d)

Based on this division, the debtor (i.e the drawer) issues the bill of exchange to be a payment instrument for the debt owed to the beneficiary, transferring it to his debtor, who is the drawee, to pay this debt. With the issuance of the bill of exchange, a new relationship arises between the drawer and the beneficiary on the one hand, between the drawer and the drawee on the other hand, and between the beneficiary and the drawee on the third side (Al-Sulaiman, 2005).

Second: Types of Bill of Exchange

Ordinary bill of exchange: It is created/established by traders

Financial bill of exchange: It is established by the bank in its transactions with the customers. If the bank lends a customer an amount of money, it draws on this customer a bill of exchange and the customer accepts it. This type of bill of exchange allows it to be limited to two parties involved: the drawer and the drawee, and the drawer in this type is the beneficiary (General Presidency n.d)

Definition of Discounting a Bill of Exchange

The discount of commercial papers has been defined in many ways as follows

It is a contract whereby the holder of a commercial paper transfers the ownership of this paper to the bank, which undertakes to accelerate its value, after deducting what represents

the interest of the amount until the maturity date, and the holder (the provider of the paper for deduction) undertakes to refund the nominal value of the paper, if it is not paid at its due date.

It is also defined as an agreement by which the bank accelerates for the applicant the value of a commercial paper, exchangeable bond, or just another right, deducts an amount equals the remaining period until the value of the right is paid, at the maturity of the paper, bond or right, in exchange for the applicant transferring this right to the bank as a matter of ownership, and guaranteeing its payment upon its maturity (Al-Sulaiman, 2005)

The mechanisms of discounting a commercial paper

1. The holder of the bill of exchange shall apply, requesting form the bank to settle it.
- 2- The bank pays its value recorded on it after deducting interest, which varies according to the remaining period for the bill of exchange, the bank's commission, and collection expenses.
3. The holder of the bill of exchange shall endorse the bill of exchange to the bank and shall receive the agreed amount from it.
4. The holder of the bill of exchange shall be considered a guarantor for the payment of its value, so that the bank has the right to refer to it and claim it if the drawee refuses to pay (Al-Dubian, n.d)

Jurisprudential Adaptation (takyif fiqhi) of the Bill of Exchange

There are many theories of jurisprudential adaptation to resolve the bill of exchange, and we mention the following lines of some of these theories:

The first theory: the discount of the bill of exchange is a sale of debt with less cash:

This is what most contemporary scholars have argued, which is that deduction is such as selling the debt for less cash, explaining that the holder of the bill of exchange sells the fixed debt to him in it to a bank, at a price less than its price, provided that the bank receives the full value of the bill of exchange from the drawee on the maturity date.

There is a scholarly difference over the following forms of transaction

The scholars differed on the permissibility of this sale into two views:

The first view: Malikis maintained that it is permissible to sell debt to someone other than its owner, on certain conditions (Al-Dasouqi n.d). The same opinion adopted by Shafi'is (Al-Ramly, 1404) and it is one of the opinions maintained by Ahmed in this regard (Al-Mardawi n.d)) The conditions stipulated by the Malikis were mentioned by al-Desouki as follows:

It is not permissible to sell the debt unless the price is in cash and the debtor is present in the country of residence, if he does not attend the sale setting and acknowledges the debt and the judgments take it, if it is sold for something of the same kind or equals it if there is no enmity between the buyer and the debtor, and that the debt is something that may be sold before receiving it as a precaution against the food, if these conditions are met, it may be sold, and if one of them is missed, the selling must be abrogated (al-Dasouqi, n.d)

The Hanafi and Hanbali scholars maintained that it is impermissible to sell a debt for anything contradicting its essence (al-Mardawi n.d)

Based on this, discounting of the bill of exchange according to this adaptation is not permissible in Shariah, even according to the statement of the jurists who permitted the sale of the debt to a non-debtor because of the lack of conditions. This because this sale falls into two cases

First Case

That the sale of the debt to the non-debtor at a similar price is immediate. This form is not circulated in banks. However, jurists agreed on the impermissibility of this form of transaction since it involves into usury. In this case, the bank does not receive the price of the bill of exchange from the drawee immediately, and cash exchange is not permissible except with equality in amount.

Second Case

If the sale of the debt to the non-debtor on the spot is less than its real price, this case becomes impermissible as well. This is because it involves falling into usury (i.e. *fadl* and *nasi'ah*), as the bank exchanges cash with less value in the same amount, this is so-called (riba al-Fadl), while in riba al-Nasi'ah, that bank exchanges or receives the price of the bill of exchange in a deferred amount. Both forms of transactions are impermissible (Al-Isma'il, 2011).

The second theory: The discount of a bill of exchange is an interest-based loan:

This is the opinion maintained by some contemporary scholars, because, according to them, the goal of discounting the bill of exchange is the loan in itself. The bank is not entitled to the fixed right in the bill of exchange, nor to be assigned to it, but rather the intention of lending, before the transfer of ownership of the discounted bill is not maintained, as a guarantee, if the maturity date is not due. And if any of the two parties involved did not pay any of its value, the bank returns to the debtor's value.

Therefore, the case of discounting the bill of exchange is considered a form of an interest-based loan. Consequently, the bank's acceptance of the bill of exchange is either as a mortgage, in order to ensure fulfillment, or as a transfer, as the bank lent to the holder of the bill of exchange, provided that it assigns this to the debtor for an extra amount. This is a form of explicit usury, because the transfer stipulates equality of the two debts, and therefore it is deemed an invalid.

Based on the above, the bill of exchange discounting becomes forbidden according to the unanimous agreement of jurists, because if the lender requires the borrower to return more than the amount he lent, this enters under the category of a loan that draws benefit, which is unanimously forbidden (Al-Shubayr, 2005)

The third theory: The discounting of the bill of exchange is a form of (deposit and haste)

The jurists maintaining this opinion agreed that if the transaction is between the bank and the customer only without the presence of a third party, the bill of exchange is either drawn on the bank, and the bank wants to hasten to pay and discount the bill of exchange, or drawn on the customer and wants to settle it with the creditor bank. The jurists define this form of transaction as (*Da'aa wa ta'ajal*) or (deposit and haste). This is the opinion maintained by some contemporary jurists (Al-Shubayr, 2005)

Scholars differed over the ruling on this form of transaction as follows

The first opinion maintained by Hanafis (al-Ghunaimi n.d), Shafi'is (Al-Sharbini, 1994) and Hanbalis (Ibn al-Mufleh, 2003) who agreed that it is prohibited.

The second opinion maintained by Imam Ahmed, Ibn Taymiyyah and Ibn al-Qayyim who agreed that it is permissible (Ibn al-Mufleh, 2003; Ibn Taymiyah, 1978; al-Buhuti, 1997).

This view (opinion of Imam Ahmed, ibn Taymiya and ibn al-Qaiym) was approved by the Islamic Fiqh Assembly's resolution, which stated: The (deposit) is a form of deferred debt, and it is permissible in Shari'ah to hasten to repay it whether at the request of the creditor or the debtor. This does not enter under the forbidden usury, if it is not based on prior agreement. This form of transaction is permissible provided the relationship between the creditor and the debtor is bilateral, if a third party enters it becomes impermissible.

Based on the above

The discounting of the bill of exchange in this case is permissible according to the second view of jurists and the opinion approved in the resolution of the Islamic Fiqh Assembly. This is because the transaction is between a debtor and a creditor, whether the debtor is the bank or the customer, so they may reconcile to reduce the debt in exchange for accelerating payment.

However, if a third party joins this form of transaction, it is deemed prohibited, because then the transaction does not apply to the case of (deduct and hasten). This transaction becomes prohibited if a third party joins.

Receiving Fees on Discounting the Bill of Exchange

This has three cases

1. Either it is the fees required for conducting the process that the bank shall pay to the customer.
2. It shall be in return for the expenses required to implement the discount.
- 3- It shall be in return for the bank's work to collect the drawn debt service while making the amount of the bill of exchange available to the customer.

First: Taking the fees in return for paying the amount of the bill of exchange to the customer: If the bank pays the amount of the bill of exchange to the customer prior to the due date, this entails two cases:

First case:

The bank requires the customer to return the value of the bill of exchange in the event of non-payment, so the ruling in this case is that it is not permissible for the bank to take a fee on the amount it gave to the customer. This is because the bank is considered a lender to the customer, and taking the fee for paying the loan amount is considered usurious interest.

Second case

The ruling in this case is based on the issue of selling the debt to a person other than the debtor at a current price, because the customer has sold the debt in the bill of exchange to the bank, and the bank does not owe its value at the time of payment. We have mentioned that discounting the bill of exchange on this description is forbidden due to the existence of usury and therefore taking the rent is also not permissible.

Second: Ruling on taking the fees for the expenses required to pay the amount to the holder of the bill of exchange

If the transaction between the bank and the customer is based on a loan. Meaning, the bank stipulates that the customer returns the value of the bill of exchange, the expenses required to pay the amount to the holder of the bill of exchange if the payment is not accompanied by the collection service are indirect and difficult to identify and control. Therefore, the general resolutions of the assemblies and authorities disregard these expenditures.

If the transaction is based on selling the debt for less amount of cash, then the transaction is forbidden in the first place, as previously mentioned.

Third: Taking the fee for the collection service when it is combined with the amount available to the customer:

If the bank makes the amount of the bill of exchange available to the customer and provides him with the service of collecting it, there are two cases:

First case

The bank makes the amount of the bill of exchange available to the customer, provided that the collection service is granted through it. In this case, the lease is combined with the loan paid by the bank to the customer as a conditional agreement, and the Prophet (peace and blessings be upon him) forbade borrowing and sales in one transaction (Abu Dawood in Kitab al-Ijarah, chapter on a man selling what he does not possess (3504), and al-Tirmidhi in Kitab al-Bai'u', chapter on hating to sell what one does not possess (1234) through the hadith of Abdullah bin Amr.)

The scholars unanimously agreed on the prohibitions of combining borrowing and sales in one transaction based on conditions (Ibn Abd al-Barr, 1387)

Ijarah (paying fees) takes the same ruling as sale, and therefore the bank is only entitled to take the actual costs of the service. This comes in accordance with the resolution of the Islamic Fiqh Academy held at its third conference session in Amman, Jordan on 13/8/ 1407 AH No: 13 (1/3). It stated:

First, it is permissible to take fees in return for conducting loan services, provided that this is carried out within the limits of actual required expenses.

Second: Any increase in the actual amount required for conducting the services is prohibited, because it is classified as usury, which is forbidden by Shari'ah (International Islamic Fiqh Academy, the Organization of Islamic Cooperation)

Second case:

The collection shall not be a condition for making the amount of the bill of exchange available to the customer; i.e. the bank make the value of the bill of exchange available to the customer, and giving him the option to collect it: if he wishes to collect it from the bank that made the amount available to him or from any other. In this case, the bank may take the equivalent fee for the debt collection service because the condition does not exist (Al-Isma'il, 2011).

Results

Based on the analysis, it can be safely concluded that a bill of exchange is a type of commercial paper that is a written command in a specific manner from a person called the drawer to another person called the drawee to pay a certain amount of money on a certain date or assignable to the order of a specific person called the beneficiary or to the bearer without appointment. By the issuance of a bill of exchange, a new relationship arises between the drawer and the beneficiary on one side, and the drawer and the drawee on the other, and between the beneficiary and the drawee on the third side

There are multiple theories regarding the adaptation of discounting bills of exchange, including that it is a sale of debt with less cash value, or that it is an interest-based loan, or that it is a type of deducting and hastening repayment. The fee for discounting a bill of exchange has three cases, each with its own ruling:

- i. The bank pays the amount of the bill of exchange to the customer in exchange for discounting it
- ii. The fee is in return for the expenses required for discounting the bill.
- iii. The fee is in return for the bank's service of collecting the drawn debt with the amount of the bill of exchange available to the customer.

Conclusion

The discounting of a bill of exchange in the manner that traditional banks do is considered to be usury. It is permissible to treat it as a form of paid agency, and there is no suspicion of a loan and sale within it. The agency fee should not exceed the customary rate among the majority of scholars, and it can be increased among the Shafi'i school as long as neither of the two contracts stipulates anything regarding the other. It is also permissible to sell the bill of exchange with goods and finance it through tawarruq.

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