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Profits sale and its legality: Legal jurisprudence study

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Abstract---The research deliberately studied the profits sale and their legality by the study of legal jurisprudence, and it is one of the important topics on which the lives of nations depend, and there is no room for doubt that buying and selling is one of the most important activities that a person performs in his daily life. They put its provisions within frameworks that guarantee the public interest and serve the human being, and the research included two demands, namely: the first in the definition of profits, and the second in the legitimacy of profits sale, so I thought that my research should be in these two demands, which contained the foundations and principles of selling according to trust and honesty, so the first came in a statement The traditional definition of profits is based on the ancient jurists (may God have mercy on them), and contemporary jurists, as well as the definition of profits sale for the non-traditional purchase order. Whoever said that it is not permissible to sell profits and its evidence, and concluded the research with the results it reached, as well as a list of sources and references, and a summary in Arabic and English.

Keywords---profits sale, doubt, legality

Introduction

There is no doubt that buying and selling is one of the most important activities that a person performs in his daily life that works for his benefit, and the benefit of society as a whole, and the person seeks to achieve material profit through buying and selling and from the commercial activities that he carries out, and by this, he achieves his own material profit, as well as works to provide a benefit to society by providing goods and services that needed by members of society, and man enters into many transactions and many provisions through buying and selling. Therefore, the noble Islamic Shari'ah, the purified Sunnah of the Prophet, the scholars of Islamic Shari'ah, and the man-made laws were concerned with the provisions of buying and selling, especially the sale of profits.

This is because the profits sale is one of the sales that has some privacy that makes it distinct from the rest of the sales and qualifies it to have this importance, because the profits sale is one of the trust sales in which the buyer entrusts the seller with the price, and in the quality of the commodity, it is a sale based on trust and honesty, what is meant by this meaning is to find out what is meant by it and to determine its legal and legal purposes. To find out a comprehensive and preventative definition that brings together all the meanings intended to reach the definition of profits sale, and to extract the meanings and purposes that do not stand with profits sale and do not constitute a definition of it from near or far, as well as the legal, jurisprudential and legal controls for this type of sales have been identified, in order to avoid unfairness, fraud and the use of fraudulent methods in this type of sales ⁽¹⁾.

The problem study arises by asking to what extent it is possible to deal with profits sale without falling into legal cautions? Are Islamic banks based on legal controls in their financial dealings? This question represents the problem that the study has begun to solve.

The importance of the study stems from the importance of the topic that it deals or is trying to develop solutions to treat it, and the research on the topic of profits sale and its legitimacy has a great importance, as it sheds light on the extent to which it is possible to deal with this type of sales without falling into legal cautions and legal violations and without losing the rights of individuals who dealing with this type of sale. Therefore, we have tended to treat the topic of the study from all its aspects. .

Based on the foregoing, and in order to present a legal vision that sheds light on the definition of profits sale and its legality, we will divide this study as follows:

The first requirement : the definition of profits sale.

The second requirement : the legality of the profits sale.

The First Requirement

Definition of profits

Profits sale is a sale like all other sales, and it is one of the trust sales and one of the sales that depends on the first sale price in relation to the profits sale to the purchase ordered. Several evidences of its legitimacy have been received from the Holy Qur'an and the purified Sunnah of the Prophet, the consensus of jurists and their jurisprudences.

There are several definitions of profits, including a traditional definition that deals with profits, and the non-traditional definition deals with profits for the purchase ordered (client), which is a type of profits, so we will divide this requirement into the following two sections:

The first section : the traditional definition of profits.

⁽¹⁾ Bachiri Abdel Basset, Ben Hebri Boualem, The Murabaha Contract in Islamic Jurisprudence and its Contemporary Applications, An academic master's note in Islamic sciences, , Mohamed Boudiaf University - M'Sila, Faculty of Humanities and Social Sciences, Department of Islamic Sciences, 1441 AH, 2020 AD. P.10.

The second section : the non-traditional definition (profits to the purchase ordered) of profits.

First Section

The Traditional Definition of Murabaha

First: Definition of the ancient eminent jurists (may Allah have a mercy upon their soul)

We will discuss the definition of profits sale by a group of Islamic jurists, as follows:

Imam Shirazi went on to define profits as : “ It is permissible for a person who bought a commodity to sell it profits and it is to indicate the capital and estimate the profit by saying its price is one hundred, and I sold it to you with its capital, and the profit of one dirham for every ten ” ⁽²⁾ . Ibn Qudamah al-Maqdisi defined the profits sale as: it is a sale with capital and a known profit ⁽³⁾. Ibn Rushd said , “ The majority of scholars are unanimously agreed that selling is of two types: bargaining (musawamah) and profits, and that profits is the mention of seller to the purchased the price at which he purchased the commodity, and stipulates a profit for him in a dinar, or a dirham ” ⁽⁴⁾.

Likewise, Ibn Rushd mentioned in writing the introductions and the precursors of the pledge as one of the types of sales, so it is in two ways, either it is made on a named profit for the total price, or it is done on the basis that he earns it in dirhams as one dirham, and for the dirham is half a dirham, and for ten is eleven or less than that or more according to the agreement between buyer and seller ⁽⁵⁾. Ibn al-Dardir defined it as:

⁽²⁾) Abi Ishaq Al-Shirazi, *Almuhadhab fi fiqh al'imam Al-Shafi'i* (393 AH, 476 AH), investigated by Dr. Muhammad Al-Zuhaili , vol. 3, Financial Transactions, Precedence, Revival of Death , Endowment, Gifts and Wills, Dar Al-Qalam, Damascus, Al-Dar Al-Shamiya, Beirut , P.132.

⁽³⁾) Muwafaq Al-Din Abi Muhammad Abdullah bin Ahmed bin Muhammad bin Qudamah Al-Maqdisi Al-Jamali Al-Dimashqi Al-Salihi Al-Hanbali (541 - 620 AH) Al-Mughni, investigated by Dr. Abdullah bin Abdul Mohsen Al-Turki, Dr. Abdul Fattah Muhammad Al-Helou, Vol. 6, Dar Alam Al-Kutub for Printing, Publishing and Distribution, Riyadh, Saudi Arabia , P.266.

⁽⁴⁾) Abi Al-Walid Muhammad bin Ahmed Ibn Rushd Al-Qurtubi, (520 AH - 595 AH), *Bidayat Al- Mujtahid Wanihayat Al- Muqtasid* , Volume 2, 6th Edition, Dar Al Maarifa for Printing and Publishing, Beirut, Lebanon, 1402 AH, 1982 AD , P.161.

⁽⁵⁾) Abi Al-Waleed Muhammad bin Ahmed bin Rushd Al-Qurtubi, (520 AH), *Al-Muqaddimāt Al-mumahhidāt li-bayān mā iqtadathu rusūm al-mudawwanah min al-aḥkām Al-shar'iyāt Wa-taḥṣīlāt Al-makhamāt al-shar'iyāt li-umhāt masā'ilihā al-mushkilāt*, vol2, 1st edition , investigated by Mr. Saeed Ahmed Arab, Dar Al-Gharb Al-Islami, Beirut, Lebanon , 1408 AH, 1988 , P.125.

profits is the sale of a commodity at the price at which it was purchased and an increase in a known profit for them ⁽⁶⁾. Al-Kasani defined it by saying: profits is a sale for the same price as the first with an increase in profit ⁽⁷⁾. And Ibn al-Hamam defined it by saying: profits is the transfer of what he owns in the first contract at the first price with an increase in profit ⁽⁸⁾. profits sale is defined as “a sale whose price is arranged over the price of the sale before it” ⁽⁹⁾. The definition of the profits sale was mentioned in Imami Sha'aa school, where the jurists of the Imami Shi'aa schools took over the definition of the profits sale and defined its meaning. Where we present the definitions of the first and second martyrs (may Allah have mercy upon them), where the first martyr (may Allah have mercy upon him) defined profits as: the sale in which the seller is informed of the price of the commodity and he sells it with an increase on his capital ⁽¹⁰⁾. And the second martyr (may Allah have mercy upon him) said about it in the commentary: profits requires knowledge, that is, the knowledge of both the seller and the buyer about the amount of the price and the amount of profit. Muhammed Jawad Mughniyeh said that profits is opposite to alwadeia, i.e. a sale with capital with a particular profit ⁽¹¹⁾.

Second: The Definition the modern jurists

profits can be defined according to what Sheikh Haniyeh Jaballah said: It is a contract in which the price is based on the price of the first sale with an increase, that if someone buys something for a hundred, then says to someone else: I sold you this with what you bought and with a profit of one dirham for every ten ⁽¹²⁾. profits was defined by Imam Al-Rasaa as: “a sale whose price is arranged according to the price of the sale before it” ⁽¹³⁾.

⁽⁶⁾ The scholar Shams Al-Din Sheikh Muhammad bin Ahmed bin Arafa Al-Desouki (1230 AH) 'ala AL-sharh AL-kabir li'abi albarakat Sidi Ahmed Al-Dardir, Hashiyat AL-dusuqi 'ala AL-sharh AL-kabir, part 3, House of Revival of Arabic Books, without mentioning the year of publication, vol.3, P.133.

⁽⁷⁾ Imam Alaa al-Din Abi Bakr bin Masoud al-Kasani al-Hanafi, who is known as "the King of Scholars", (587 AH) vol. 7, 2nd, Bada'i al-Sana'i fi Tartib al-Shara'i, Dar al-Kutub al-Ilmiyya, Beirut - Lebanon, 1406 AH 1986 CE, P.172

⁽⁸⁾ Imam Kamal al-Din Muhammad ibn Abd al-Wahed al-Siwasi, then al-Sakandari, known as Ibn al-Hamam al-Hanafi, (861), Sharh Fath al-Bari ealaa AL Hidayat Sharh Bidayat AL Muhtadi, written by Sheikh Al-Islam Burhan Al-Din Ali bin Abi Bakr Al-Marginani, (593), commentary by Sheikh Abdul Razzaq Ghaleb Al-Mahdi, Volume 6, 1st edition, Muhammad Ali Beydoun for the publication of the books of the Sunnah, Dar Al-Kutub Al-Ilmiyya Beirut, Lebanon, 2003 AD, 1424 AH, P.456

⁽⁹⁾ Abu Abdullah Muhammad Al-Ansari Al-Rasa', (894 AH, 1489 AD) Sharah Hudud Ibnu 'Arafah al-Hidayat al-Kafiyah al-Syafiyah libayan haqayiq al'iimam 'abn Arafa alwafia, achieved by: Muhammad Abu Al-Ajfan - Al-Taher Al-Maamouri, the first section, 1st edition, Dar Al-Gharb Al-Islami, Beirut, 1993, P 384.

⁽¹⁰⁾ Abbas Abdullah Abbas, the Murabaha booklet, without mentioning the publishing house, or the year of publication, P.26.

⁽¹¹⁾ ibid, p.26.

⁽¹²⁾ Haniyeh Jaballah, The Istijrar sale in Islamic Shari'ah and its Contemporary Applications, University of Echihd Hamma Lakhdar El Wadi, Institute of Islamic Sciences, Shari'ah Department, 2016, P.44

⁽¹³⁾ Abu Abdullah Muhammad Al-Ansari Al-Rasa', ibid. P.384.

And since the people of law have organized the provisions of murabaha under the guidance of what was organized by muslim jurists, the Iraqi civil legislator has stipulated in this regard the following :

1 -It is permissible to sell profits either by altawliyah , partnership or alwadi'ah.

2 -profits is a sale like the first price at which the seller bought it with an increase in a known profit and altawliyah is the sale like the first price without an or increase decrease , and partnership is tawliya some of the sale for some price, and the alwadi'ah is a sale of the sold with some price as the first price with a decrease in a known amount from it.

3- In these sales, the first price must be known in order to prevent betrayal and accusation ⁽¹⁴⁾ .

The Iraqi legislator referred to the profits sale in a previous article on this article when talking about unfairness with deception as one of the defects of consent, as it stipulated in this regard the following:

1. If one of the contracting parties deceives the other, and it is ascertained that there is rude defraud in the contract ,the contract is based on the permission of the aggrieved contracting party , if the one who was deceived dies due to defraud, the claim of deception passes to his heirs.

2. It is considered a defraud if it is not stated in trust contracts that must be guarded against suspicion of the statement, such as treason in murabaha , al tawliyah , partnership or alwadi'ah ⁽¹⁵⁾.

The researcher believes that it becomes clear to us through these articles that the Iraqi legislator permitted the sale of profits, then he defined the profits sale is a sale like the first price which the seller purchased with an increase in a known profit , the Iraqi legislator also stipulated that the first price be determined in a known way to avoid betrayal and accusation, and the Iraqi legislator considered the failure to declare a deception like betrayal in murabaha.

Second Section

Definition of profits sale to the purchase profits (unconventional)

This type of profits sale is known as profits to the purchase ordered as a well-known naming in Islamic banking transactions , it is also called a dating sale, because this type of sale is based on a promise, whether it is fulfilled or not ⁽¹⁶⁾ .

Dr. Sami Hammoud based this on the saying of Imam al-Shafi'i (may Allah have mercy upon him) in his book Al-Umm, where it was mentioned that if a man sees a man a commodity and says to him, "Buy this commodity, I will make a profit to you in it." So the man bought it, so if the purchase is done, then in this case it is permissible and legitimate and there is no problem in it. As for the man who said, "I will make a profit to you in it , " he is in the option if he wants to sell according to what was agreed upon with the buyer, and if he wants to leave the sale, and the same is the case if he says buy me specified belongings by a prescription , or any belongings according to the seller's desire, and I make a profit to you in it, all of these are permissible whether it is permissible for the

⁽¹⁴⁾ Article (530) of the amended Iraqi Civil Code No. 40 of 1951

⁽¹⁵⁾ Article 120 of the amended Iraqi Civil Code No. 40 of 1951.

⁽¹⁶⁾ Hussam Al-Din bin Musa Afana, Murabaha Sale to the Purchase orderer , an applied study in light of the experience of the Palestinian Arab Bayat Al-Mal Company, 1st Edition, Palestinian Arab Bayat Al-Mal Company, 1966, P.14.

first sale, and this is for what he gave himself by the option, and whether in this what you described if he said I sale and buy it from you with a cash, or a debt, the first sale will be permissible, and they are by option in the other sale. If they renew it, it is permissible ⁽¹⁷⁾ .

Although the term “ purchase orderer ” is a modern term, its formula has been known since the time of the early jurists, as it was mentioned by Muhammad ibn al-Hasan al-Shaybani , the companion of Abu Hanifa, and it was mentioned by Imam Malik in al-Muwatta and Imam al-Shafi`i in Al-Umm ⁽¹⁸⁾ .

The sale can be defined by the purchase ordered as: It is a three-party relationship where this relationship is between The first party, which is the buyer, between the second party, which is the seller, and the third party, which is the mediator between the two parties (the seller and the buyer) which is in this time the bank, where buys the commodity from the seller according to the specifications that the buyer desires, and then sells it to the buyer at the price and the increase in the price agreed upon with the buyer ⁽¹⁹⁾ .

The definition of purchase ordered sale has been mentioned by contemporary scholars and because of its frequent use in Islamic banks as follows:

“ The client asks the bank to buy the commodity he wants to buy with specifying the specifications specified by the client , with his promise to buy that commodity as profits or his commitment to buy what he ordered, with an agreement on the percentage that the bank takes, and the customer pays the price in installments according to the monetary capabilities which he has” ⁽²⁰⁾ .

It was also defined as a purchase ordered for a specific commodity with specific descriptions submitted by the client to the Islamic bank, in return for the requester's commitment to buy what he requested according to the agreed price and profit, and the price shall be paid in installments ⁽²¹⁾ .

In sum, in the profits sale, the basis upon which the Murabaha sale is based on the purchase ordered , or the traditional profits sale, is to know the price of the commodity with which the first seller bought it, and to know the increase that he added to the commodity and that he takes from the buyer. In this knowledge, ignorance and deception are eliminated, and the sale is valid from the jurisprudence and legal point of view. The second buyer has the option after knowing the price at which the seller purchased and knowing the increase

⁽¹⁷⁾ Dr. Akram Ali Muhammad, *ibid* , p. 13

⁽¹⁸⁾ *ibid* ,P.15.

⁽¹⁹⁾ Haniyeh Jaballah , *ibid* ,P.45 .

⁽²⁰⁾ Ahmed Qassem Awad Nairat , *Islamic Banks in Palestine and the Extent of Their Commitment to Shari'ah Murabaha Standards “The Palestinian Islamic Bank and the Arab Islamic Bank as a Model ”*, Master's Thesis, College of Graduate Studies, An-Najah National University, 2015 ,P.28.

⁽²¹⁾ Hussam El-Din Afaneh, *Selling compound profits as carried out by Islamic banks in Palestine* , presented Presented to the conference "Islamic Economics and Banking Business" / Hebron University , within the first axis of the conference: Islamic Banks in the twenty-first Century, challenges and hopes of Islamic Bank Transactions , Control And rooting, and the research was presented in the conference on Sha'ban 5, 1430 AH, according to 7/27/2009 , P.7.

that he imposes on him, either he accepts the sale at the price of the increase, or he refuses to sell, for all matters will be clear to him and the matter will not be ambiguous to him and he will not be exposed to unfairness or deception ⁽²²⁾.

The Second requirement

The legality of the Murabaha sale

he jurists differed about the legality of the profits sale, and they were divided in this regard into two groups: the group said that it was legal, and the group said that it was not. Each group has its own arguments and supports, so we will divide this requirement into the following two sections:

Section one: Those who say that profits sale is legal and their evidence

The second subsection: Those who say that profits sale is illegal and their evidence

Which we will discuss in some detail as follows:

First Section

Those who say that profits sale is legal and their evidence

The jurists did not agree on the legality of the profits sale, except that some of them said that the profits sale is permissible, referring to the existence of many evidences which are taken from :-

First : Holy Qur'an

where they relied on the Almighty's saying: ⁽²³⁾

أَنْ تَبْتَغُوا مِنْ بَيْنِ يَدَيْهِ

(Others travelling through the land , seeking of Allah 's Bounty) ⁽²⁴⁾

And Almighty Allah says :⁽²⁵⁾

أَلَّا تَرْضَوْا مِنْ مَوْلَىٰ أَبِي بَرْزٍ

(There is no sin on you if you seek the Bounty of your Lord (during pilgrimage by trading)) ⁽²⁶⁾

يَخْتَصِمُ فِي ذَرْبِ

Whereas Allah has permitted trading and forbidden Riba (usury)) ⁽²⁸⁾

In commenting on this Holy Qur'anic Ayah, Imam al-Shafi'i went to say that Almighty Allah mentioned selling in more than one place in the Book, and this is an evidence of the permissibility of selling by Almighty Allah, and there is two possibilities for this divine permissibility of selling ,which are :

⁽²²⁾ Haniyeh Jaballah , ibid ,P. 44.

⁽²³⁾ Surat Al-Muzzammil , Ayah (20)

⁽²⁴⁾ Al-Hilali and Khan (trans.) 1996, The Noble Qur'an: English Translation of the Meanings and Commentary , P.795.

⁽²⁵⁾ Surat Al-Baqarah, Ayah (198).

⁽²⁶⁾ Al-Hilali and Khan (trans.),ibid ,P.44.

⁽²⁷⁾ Surat Al-Baqarah, Ayah (275).

⁽²⁸⁾Al-Hilali and Khan (trans.),ibid ,P.62.

to concerns this type of usury , if the time of the debt is up , the creditor comes to the debtor and says to him: either you repay of the debt or you make an usury, either the debtor will pay the amount of the debt at the specific time agreed upon with the creditor, or he will be late for the date of paying the debt, but on condition that the amount of the debt is doubled on him, so the Islamic debt came prohibition of this type of dealing , and in His saying :
(وَأَحَلَّ اللَّهُ الْبَيْعَ وَحَرَّمَ الرِّبَا)

(whereas Allāh has permitted trading and forbidden Ribā (usury))

He clarified that in the case that the debt is advent and the debtor is unable to pay the debt, the creditor is obligated to grant him a term to pay the debt, which is known in his view as the easement. The Holy Prophet Muhammed (peace be upon him and) copied this type of usury on the Day of Arafah in his Farewell Pilgrimage sermon by saying:

“Except if that every usury is abolished, and the first usury that I put in place is the usury of Abbas bin Abdul Muttalib, for it is all abolished.” So, he, peace and blessings of God be upon him, began with his own family in the prohibition of usury, and then the prohibition on the rest of the people, and this is the habitude of the righteous people begin to apply the matter to themselves and their own people , then circulate it to the rest of the people ⁽³⁵⁾ .

Others cited the legality of the profits sale Almighty Allah's saying,

أَلَا تَرَىٰ أَنَّمَا تُخْرِجُونَ مِنَ الْأَرْضِ يَوْمَ تَبْرُرُ³⁶

(There is no sin on you if you seek the Bounty of your Lord (during pilgrimage by trading) ⁽³⁷⁾).

Second: The purified Sunnah of the Prophet

The pure Sunnah of the Prophet confirmed the permissibility of the profits sale, in the hadith of Ubadah bin As-Samit on the authority of the Prophet Muhammad (peace be upon him) that he said:

”الذهب بالذهب والفضة بالفضة، والشعير بالشعير، والبر بالبر، والتمر بالتمر، والملاح بالملاح، مثال بمثل، يدا بيد، فإذا اختلفت هذه الأصناف فبيعوا كيف شئتم إذا كان يداً بيد“

“ 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 on the spot. If these classes differ, sell as you wish if payment is made on the spot.” Muslim transmitted ⁽³⁸⁾ .

His saying (may peace be upon him) that if these classes differ, then sell as you wish is an evidence of the permissibility of the profits sale, because the profits is done through the specific sale for a price, and in this case the gender of the sold thing will differ from the gender of the price. So ,it is a specific sale for a price with a known and agreed increase, so it is a permissible sale and is not included in the usurious sale which the noble Islamic Shari' ah and the purified Sunnah of the Prophet forbade, His saying (peace be upon him) sell as you wish, is evidence of the permissibility of profits sale and its approval in the pure Sunnah of the Prophet , provided that it does not contain anything that

⁽³⁵⁾ Abu Abdullah Muhammad Al-Ansari Al-Rasa', ibid, P.356.

⁽³⁶⁾ Surat Al-Baqarah, Verse (198).

⁽³⁷⁾ Al-Hilali and Khan (trans.), ibid ,P.44.

⁽³⁸⁾ Sunnah .com.

corrupts it from a legal point of view, such as usury. In fact, the profits sale does not differ from the ordinary sale except in the way of the price ⁽³⁹⁾.

Third: unanimity

The fundamentalists differed in the definition of consensus according to their differences in many issues of consensus related to its pillars, conditions and provisions, except that it was defined as the agreement of the diligent scholars from the nation of Muhammad (peace be upon him) in an era on a legal ruling⁽⁴⁰⁾.

The consensus on the permissibility of profits sale is represented by the existence of this type of sale for a long time, as people inherited this sale and no one denied it, and this is evidence of the validity and permissibility of profits sale.

Fourth: Reasonable

The profits sale has been licensed due to meeting the terms of sale and because people proceeded to deal with it due to their need to deal with this type of permissible sale, many people cannot deal with barter or bargaining, and they desire the usual business of trade and increase profit and money growth, especially if this increase, this profit, and this growth fall under the umbrella of legitimate sales and lawful profit, which Almighty Allah and His Noble Messenger (peace be upon him) don't forbid.

Fifth: The legality of profits sale according to the jurists

The Islamic jurisprudence has gone to the permissibility of the profits sale, because it is not one of the sales prohibited by Shari'ah, such as usury, fraud or deception. Profits is permissible according to the general principle, which does not prohibit people from dealing with what they need, unless the Holy Qur'an and the honorable Sunnah of the Prophet indicate that it is prohibited, and profits sale is a legitimate sale because it has its conditions and people have dealt with it from ancient times to the present time, due to the people's need for this type of sales and its legality and the absence of legal prohibitions from dealing with it, and it is one of the sales based on trust, because many people do not know the value of things so He is forced to seek the help of a person who knows her, so he chooses good things for him in return for paying him more money, profits is one of the sales that are dealt with at the present time because people need it and do not dispense with it in their daily life. The jurists have unanimously agreed on the validity of the profits sale if its conditions are met, and from these conditions, but with conditions:

1. Knowing the price
2. knowledge of profit
3. That the capital be of parables
4. The validity of the first decade
5. Not meeting the price in the first sale contract with its gender.

Although the jurists of the four schools agreed on the permissibility of profits sale, they differed on some subsidiary issues, the matter that we will undertake to explain by reviewing the positions of the four jurists on the legality of the profits sale.

The Hanafi school went to the absolute permissibility of the profits sale, and it was not disliked in it, and they based their justification on their view that the evidence that permitted sales and their permissibility are general evidence for

⁽³⁹⁾ Mawadda Bilal Abdullah, ibid, P.17.

⁽⁴⁰⁾ Ali Abdel-Razzaq, The Consensus in Islamic Law, Dar Al-Fikr Al-Arabi, Cairo, 1947, P.6-7.

the general sale, including the profits sale, so it is permissible by virtue of the legal evidence and the people's need for it, so everything that is good and beneficial for people are permitted by the glorious Islamic Shari'ah, and in this Ibn al-Hamam went on to say that profits transfers what owned in the first contract at the first price with an increase in profit, and the transfer of what owned in the first contract at the first price without an increase in profit, and the two sales are permissible, due to the meet of the conditions of the permit , and the urgent need to this type of sale ⁽⁴¹⁾.

The Malikis went to the permissibility of profits, but they said contrary to the first, and in that the scholar Ibn Rushd went in his book *Almuqadimat Almumahidat* and in his mention of the types of sales that the sale of *Alaistimanih* and *Alaistirsal* when a man says buy from me as you buy from people, and that is in the case that the seller does not know its values, the buyer buys the commodity from him at the price that people pay for the commodity , and Ibn Habib said that *Alaistirsal* sale is to be carried away in the sale when the man says to the man, " Sell from me as he sold from people, and that is not in the purchase". The scholar Ibn Rushd said that the most beloved and preferable to the people of knowledge is to sell by bargaining (*musawamah*) , and to engage in unfairness in buying and selling if it is necessary to be *alaistimanih* and *alaistirsal* is a duty according to the consensus of the Muslims⁽⁴²⁾ .

And the Prophet Muhammed (peace be upon him) said : " the fraud of *almustarsil* is injustice " ⁽⁴³⁾.

In this regard, the scholar Al-Allamah Al-Desouqi went in *Al-Sharh Al-Kabeer* and *Hashiyat Al-Desouki*: to the permissibility of the sale in the case that it is a profit, and the best and most likeable is the opposite. What is meant by permissibility is different from the first, and what is meant that the bargaining sale is unlike the profits sale , and in this, the scholar Allamah Al-Desouqi went in explaining this, as he contradicted the first as for the *murabaha* sale, it is not likeable due to the great need of the seller for clarification ⁽⁴⁴⁾.

The researcher believes that it becomes clear to us through the position of the Maliki scholars that they permitted the sale of profits, but they preferred the sale of bargaining over profits sale , although both of these types of sales are permissible. Dealing with either of them is legally permissible and permissible according to the Maliki school of thought, according to the consensus of its eminent scholars. .

The Shafi'is were of the view that it is absolutely permissible to sell profits and there is not antipathy in it , and in this Al-Shirazi went to say: "profits sale is permissible provided that the capital and the amount of profit are stated by

⁽⁴¹⁾) Imam Kamal al-Din Muhammad ibn Abd al-Wahed al-Siwasi, then al-Sakandari, known as Ibn al-Hamam al-Hanafī, *ibid* , P.456.

⁽⁴²⁾) Abi Al-Walid Muhammad bin Ahmed Ibn Rushd Al-Qurtubi , *ibid*, P.139.

⁽⁴³⁾ Al-Tabarani narrated by 'abi 'amamah , with the wording (the fraud of *almustarsil* is forbidden) mentioned by al-Suyuti in *al-Jami' al-Saghir*, and he placed a sign of weakness (th) on it and mentioned it from the narration of al-Bayhaqi on the authority of Anas with the wording of the fraud of *almustarsil* is usury. See *Fayd al-Qadir* 4 / 400, Quoted by Abi Al-Walid Muhammad bin Ahmed bin Rushd Al-Qurtubi, *ibid*, p. 13

⁽⁴⁴⁾) The scholar, the scholar Shams Al-Din, Sheikh Muhammad bin Ahmed bin Arafa Al-Desouqi, *ibid*, p . 159

saying its price is one hundred and I sold it with its capital and a profit of one dirham for every ten ”⁽⁴⁵⁾ .

When it was narrated on Ibn Masoud (may Allah be pleased with him) that he did not see anything wrong with it ⁽⁴⁶⁾ .

Al-Nawawi says : “profits sale is permissible without antipathy ”.

The jurists of the Hanbali school of jurisprudence went to the permissibility of the profits sale, and in that Ibn Qudamah went to say, “The meaning of the profits sale is the sale with the capital and a known profit, and their knowledge is stipulated by the capital. He says: My capital is in it, or he is on me for a hundred I sold you with, and he earned ten, this is legally permissible, and there is no dispute about its validity ⁽⁴⁷⁾ .

The researcher believes that as long as the profit is known and the capital is known, the unfairness in the sale will be eliminated and it will be valid from a legal and jurisprudential point of view, and there is no dispute in that.

Sixth: The legality of profits sale according to the honorable Companions

The honorable Companions permitted the sale of profits and inferred the permissibility of this sale in addition to the Holy Qur’an and the honorable Sunnah of the Prophet, what was narrated from Abdullah bin Masoud, and it was narrated from Othman bin Affan, regarding the permissibility of profits sale :

He did not see anything wrong with the legal aspect of selling ten by twelve or selling ten by eleven. This legal view on the part of this companion indicates the permissible of profits sale from the legal point of view and there is nothing wrong with it. In addition to that, the Companions approved the transaction of profits , they were not satisfied with the permissibility of the profits sale as a mere opinion, but they accepted dealing with it as a practical application of this legal permissibility , profits is a sale at the first price with a known and agreed-upon profit between the sellers, and the price is known for its amount and its tenth is mentioned, and the profit is one, so the profits became eleven ⁽⁴⁸⁾ .

Narrated about the companion Uthman bin Affan, he said, “ I used to buy dates from one of the Jewish clans who were called Banu Qainuqa`, and sell them at a profit. News of that reached the Messenger of Allah (peace be upon him) who said: `O `Uthman, when you buy, take your dues with nothing extra, and when you sell, give (the other party`s) dues with nothing less.` This is evidence that the Islamic law permitted asking profit in a sale, and permitted selling and striving to obtain lawful profit ⁽⁴⁹⁾ .

Second Section

Those who say that Murabaha sale is invalid and their evidences

Some of the jurists went to the invalidity of the sale of profits and the sale of profits to the purchase ordered , as they went to the invalidity and legitimacy

⁽⁴⁵⁾ Abi Ishaq Al-Shirazi, ibid, p. 133

⁽⁴⁶⁾ Deh: means ten in Persian, and Yazda means, eleven, and Du Azdah: means twelve, meaning he does not see anything wrong with selling what he bought for ten for eleven, or for twelve, (Al-Nazm 1/287) quoting from Abu Ishaq Al-Shirazi, a previous source, p. 133

⁽⁴⁷⁾ Muwafaq Al-Din Abi Muhammad Abdullah bin Ahmed bin Muhammad bin Qudamah Al-Maqdisi Al-Jamali Al-Dimashqi Al-Salihi Al-Hanbali , ibid ,P. 266.

⁽⁴⁸⁾ Mawadda Bilal Abdullah , ibid , P.23.

⁽⁴⁹⁾ ibid ,P.24.

of it, and they formulate many arguments and supports for that, we will deal with them briefly, so we discuss the sayings of the jurists who say that the sale of profits is not valid, and then we will refer to the sayings of the jurists those who say that the profits sale is not valid to the purchase ordered, as following

First: profits Sale

Ibn Hazm held the nullity of the profits sale and his argument for that :

1. profits sale requires a certain profit, and the stipulation of profit is not found in the Holy Quran.
2. The price is unknown in the profits sale.

However, despite the prohibition of Ibn Hazm on profits sale, he permitted it in the case that a person is in a country where he buys profits sale and there is no other sale, provided that the purchase price is stated or done it ⁽⁵⁰⁾.

Second: profits sale to the purchase ordered

Controversy and discussion arose among the Muslim jurists about the validity of the profits sale to the purchase profits, Some of them commented on the validity of the contract with conditions, and others said that it was valid without conditions, which we will discuss briefly as follows:

The First Trend: Some have argued that it is not permissible to profits sale to the purchase ordered

Supporters of this trend are of the view that the sale of profits is not permissible and its rule is that it is a forbidden sale, because this sale is made between the seller and the buyer before the property of the sold thing is transferred to the seller, and that is because the promise is binding between the insistent and the purchase ordered, and this is also prohibited ⁽⁵¹⁾.

Some jurists who support this trend add that in the case when the promise was obligated, this means that the bank is obligated to sell what it does not own, and that there is quasi usury if it is not the reality of usury ⁽⁵²⁾.

And that any amount of money paid by the purchase ordered as a guarantee to the bank obligating the order to pay several voids such as deposited, or a bill of exchange drawn on the purchase ordered to the bank ⁽⁵³⁾.

Among the jurists who see that the obligated promise to the contracting parties nullifies the sale and forbids it, where Al-Wonsharisi went to the fact that the rule of the principle in preventing dating with what is not right to occur at the moment is protection, so the owner of the dating was prevented in the kit where the Malikis argued that this contract is not permissible and considers it a type of usury, and it is forbidden to sell food before the time of the Friday call to

⁽⁵⁰⁾ Mufaid Al-Rahman, Shari'ah View on profits and its Banking Formula, Journal of International Islamic University Chittagong Studies, Volume IV, December 2007, P.171.

⁽⁵¹⁾ Dr. Khaled Al-Mushaiqeh, Ruling on profits Sale to the purchase ordered of, Contemporary Financial Transactions, Azadi platform, website, date of visit 24/10/2021

⁽⁵²⁾ Abdul Mohsen Al-Zamil, Ruling on Murabaha Sale, published Research on the Internet on the website, date of visit 24/10/2021.

⁽⁵³⁾ Salman Al-Rahili, Detailing the Issue of profits sale, date of visit 24/10/2021.

prayer, and for what you do not have, and profits sale to the purchase ordered with the Malikis is included in the sale of what you do not have ⁽⁵⁴⁾.

The Second Trend: Some went to rely on the buyer's intent

The proponents of this trend went to distinguish between two things based on the intention of the buyer:

First: If the buyer intended the commodity and not the cash

In this case, the sale is permissible and lawful, and there is no problem in it from a legal point of view.

Second: If the buyer intended the cash and not the commodity

If the buyer intended cash and did not intend the commodity, in this case the sale is not valid because it is one of the ways of usury, as if a person applies to the bank with a bogus transaction in order to obtain finance in order to purchase a commodity or its goods, provided that he pays the bank the money with an usurious increase ⁽⁵⁵⁾.

The Third Trend: permitted profits by the purchase ordered, and they only stipulated that the sale be real. They based this on some arguments and evidence, including:

In this regard, the eminent scholar and scholar Dr. Yusuf al-Qaradawi went to the view that the principle in the transactions and contracts are the legality and permission, except for what came with a text that is authentic and explicitly established prohibits and forbids it. In the practical sub-provisions, the correct and explicit text suffices for us ⁽⁵⁶⁾.

Also, Imam al-Shafi'i went to say that if a man sees a commodity and says, "Buy this commodity and I will make a profit to you from it, and the purchase was made based on that, it is a valid purchase in Shari'ah." and the man who said to the buyer, "I will make a profit to you from it with the option, if he wants," he made a sale in it, and if he wanted, he left it, the same is true if the man said to the man, "Buy me a commodity specified by a specific description and gender, or any commodity". Whenever you want him to make a profit in it, here the first sale is permissible and he is at the option of what he gave for himself from the other sale. The first matter is open to two options, that you sell it before the seller owns it, and the second is that you are on the risk that if you buy it on such-and-such, it will make you profit in it on such- and-such. And if a man buys food for a fixed term and takes it back, then there is no harm in the case of the pledge of allegiance from the one who bought it from him or from someone else, It is implemented for a term, and whether it is specified or not ⁽⁵⁷⁾.

Some honorable Shiah jurists and imams are of the view that it is not permissible to sell a commodity for more than its price due to the postponement of its price, among those who were forbidden to increase the price in return for

⁽⁵⁴⁾ Ahmed bin Yahya, investigation by Al-Sadiq bin Abdul Rahman Al-Gharbani, Idah AL masalik ila Qawa'id AL imam Malik, Vol. 1, Dar Ibn Hazm, Beirut, Lebanon, 1427 AH, 2006 AD, P.114.

⁽⁵⁵⁾ Salman Al-Rahili, ibid., date of visit 24/10/2021.

⁽⁵⁶⁾ Dr. Yousef Al-Qaradawi, Murabaha the Sale to the Purchase Orderer as Conducted by Islamic Banks in the Light of Shari'ah Texts and Rules, 3rd Edition, Wahba Library, Cairo, 1415 AH, 1995, P.14.

⁽⁵⁷⁾ Imam Abi Abdullah Muhammad bin Idris Al-Shafi'i, (150-204 AH), Al-Umm, vol.3, Edited by Muhammad Zahr Al-Najjar, Dar Al-Maarifa for Printing and Publishing, Beirut - Lebanon, without mentioning the year of publication, P. 39.

postponing the sale was Zain al-Abidin bin Ali bin al-Hussain and Ibn Hazm al-Zahiri ⁽⁵⁸⁾.

In addition to the general texts of the Holy Qur'an and the purified Sunnah of the Prophet, in addition to the fact that this type of sale is in the interest of the seller and the buyer ⁽⁵⁹⁾.

The researcher supports the jurisprudential opinion that says that the profits sale is valid because its validity is advent in the Holy Book and the purified Sunnah of the Prophet, and because of the importance of this type of sales and the people's need for it.

Conclusion

At the conclusion of our study, we reached a set of results and recommendations that are not a repetition of the above, but rather a summary of the findings and recommendations, as follows:

First: The Results

1. profits sale is legal according to the most correct opinion of the scholars, if it is carried out according to the practical steps established by the Shari'ah supervisory boards.
2. The experience of Islamic banks in developing countries in general is still a primitive experience, and therefore it suffers from some defects, and Islamic banks in our country need to achieve their goals to develop their methods in various fields, especially in introducing new products in Islamic banking.
3. The lack of joint Islamic banking cooperation with those concerned with Islamic banking issues, such as the Islamic Fiqh Academy and other relevant institutions.

Second: Recommendations

1. The necessity of training bank employees who are knowledgeable in financing in the form of profits and informing them of the provisions of Islamic Shari'ah in the banking application of profits.
2. The necessity of a joint Islamic banking cooperation with the bodies concerned with Islamic banking issues, such as the Islamic Fiqh Academy, in addition to activating the role of other bodies such as the Accounting and Auditing Organization for Islamic Financial Institutions and central banks, to work on finding an Islamic indicator alternative to the interest rate indicator, based on Foundations consistent with the provisions and principles of Islamic Shari'ah.
3. The necessity of creating a law for the work of Islamic banks, regulating their operations in accordance with Islamic law, and enacting penalties up to the point of dissolving institutions that violate the provisions of Shari'ah.

⁽⁵⁸⁾ Nasser Ahmed Al-Ajali Al-Hamrouni, Exclamation onward for the islamization of banking system in libya (The Idea and the Experience of Application), Master's Thesis, Maulana Ibrahim State Islamic University of Malang, College of Graduate Studies, Department of Islamic Studies, 1434 AH, 2013 AD ,P.108.

⁽⁵⁹⁾ Dr. Yousef Al-Qaradawi, Murabaha the Sale to the Purchase Ordered as Conducted by Islamic Banks in the Light of Shari'ah Texts and Rules, 3rd Edition, Wahba Library, Cairo, 1415 AH, 1995 ,P.15.

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- 7 Imam Kamal al-Din Muhammad ibn Abd al-Wahed al-Siwasi, then al-Sakandari, known as Ibn al-Hamam al-Hanafi, (861), Sharh Fath al-Bari ealaa AL Hidayat Sharh Bidayat AL Muftadi , written by Sheikh Al-Islam Burhan Al-Din Ali bin Abi Bakr Al-Marginani, (593), commentary by Sheikh Abdul Razzaq Ghaleb Al-Mahdi, Volume 6, 1st edition , Muhammad Ali Beydoun for the publication of the books of the Sunnah, Dar Al-Kutub Al-Ilmiyya Beirut, Lebanon, 2003 AD, 1424 AH
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