

▶ *[In French]* Défis Juridiques de L'utilisation du Contrat de Ju'alah Comme un Instrument de Crédit Dans le Système Bancaire Islamique; Cas des Banques Iraniennes.

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“Legal Challenges of Using the Ju'alah Contract as a Financing Instrument in the Islamic Banking System; Case of Iranian Banks”

Introduction

Research Overview:

- Examines the legal challenges of using Ju'alah contracts as a credit instrument in the Islamic banking system
- Focuses on the Iranian banking system
- Aims to provide insights into the legal and economic challenges faced by the Islamic banking industry

Introduction

Importance of Research Topic:

- Islamic finance is a rapidly growing industry
- Understanding the legal and economic challenges is crucial for its continued success
- Our research contributes to the field by providing insights into the challenges faced by the Islamic banking industry in Iran
- Iran's banking system is based on (Shi'i) Islamic principles and faces unique challenges that need to be studied to find solutions

Roadmap

The following presentation will cover:

- ❖ A Brief history of Islamic banking in Iran
- ❖ Definition and characteristics of Ju'alah contracts based on Iranian civil law and (shi'i) Islamic jurisprudence
- ❖ A brief explanation of how a contract called Ju'alah is being implemented in Iranian banks
- ❖ Challenges faced by the Iranian banking system when using Ju'alah contracts
- ❖ Conclusion
- ❖ Proposed solutions and discussed our limitations

Islamic Banking in Iran

Focus on the principles of Islamic finance

Developed after the Islamic Revolution of 1979

Relies on 12 nominate contracts for granting credit

Iranian Banking laws only recognize these contracts for granting credit



Definition of Ju'alah Contracts

The Basics

Characteristics

Implementation of Ju'alah Contract in Iranian Banking System

Three main ways:

- Primary ju'alah contract and secondary ju'alah contract,
- Primary ju'alah contract with granting wakalah to conclude a secondary ju'alah contract,
- Primary ju'alah contract with conclusion of secondary ju'alah contract with the client.



Challenges and Inconsistencies in the Implementation of Ju'alah in the Iranian Banking System

Change of Ju'alah in banking regulations

- Ju'alah in Iranian banking system is considered a bilateral contract, contrary to the approach known by jurisconsults who consider it a unilateral act
- The Civil Code avoids the term bilateral contract.

Challenges and Inconsistencies in the Implementation of Ju'alah in the Iranian Banking System

Change of Ju'alah in banking regulations

- The Ju'alah contract is initially a revocable contract according to legal and jurisprudential texts, but the contract concluded by banks conforms to the characteristics of irrevocable contracts and is not considered a revocable contract

Challenges and Inconsistencies in the Implementation of Ju'alah in the Iranian Banking System

Change in the Ju'alah in Banking Practice

- The nature of the Ju'alah contract is not well understood by the general public or even by some bankers.
- Intention and consent of the parties may not be met in cases where clients seek credit for purposes other than the intended use of the funds.

Challenges and Inconsistencies in the Implementation of Ju'alah in the Iranian Banking System

Change in the Ju'alah in Banking Practice

- Conclusion of primary and secondary Ju'alah contracts was a solution for the bank to not engage in carrying out the work on the one hand, and to allow the client to find a master contractor on the other hand.
- Some believe that the primary contract is a formality, and the bank has no commitment in this regard.

Challenges and Inconsistencies in the Implementation of Ju'alah in the Iranian Banking System

Change in the Ju'alah in Banking Practice

- The client becomes the offering party in the secondary Ju'alah contract, whereas in the primary Ju'alah contract, the bank was the offering party.
- The stratagem used in the secondary Ju'alah contract is suspected of being a bank borrowing process with a usurious nature.

Research Methodology

Conducted a qualitative study, analyzing existing literature on shi'i Islamic finance and legal research on Iranian banking system.

Collected data through systematic review of academic articles, legal documents, and reports from Iranian banks.

Analyzed data using content analysis to identify key themes and patterns.

Limitations: Focused only on Iranian banking system. Future research could explore other Islamic banking systems and challenges facing other types of determined contracts.

Findings

- The Ju'alah contract used in the Iranian banking system differs significantly from the original contract in sharia and civil law.
- Banking system considers Ju'alah a bilateral contract, contrary to the approach known by jurisconsults who consider it a unilateral act.
- The Ju'alah contract in the banking system is considered irrevocable due to a termination clause included by banks, which changes the originally revocable contract to an irrevocable one.
- The conclusion of secondary Ju'alah contracts with clients has posed significant legal and practical challenges.

Conclusion

Our study analyzed the differences between the Ju'alah contract in Sharia law and the Ju'alah contract as implemented in the Iranian banking system.

We found that the Ju'alah contract in the Iranian banking system is significantly different from the original contract in Sharia law and should be considered an independent and indeterminate contract.

We recommend that the banking system revise its contracts to avoid legal risks and adhere to the provisions of the Civil Code.

The Ju'alah contract in the Iranian banking system has deviated from its original form in terms of both its unilateral or bilateral nature and its revocability or irrevocability.

The nature of primary and secondary Ju'alah contracts and the conclusion of a secondary Ju'alah contract with the client pose major challenges.

The use of formal contracts that do not comply with Sharia may result in the nullity of the contract.



Proposed Solutions

- ❖ Our proposed solution is to modify the banking contracts from a determinate form, such as the Ju'alah contract, to an indeterminate form in accordance with the provisions of the Civil Code.
- ❖ The legitimacy of this independent and indeterminate banking contract is confirmed by Sharia law, the principle of the sovereignty of the will or the autonomy of the parties, and the freedom of contract in economic transactions.
- ❖ The recognition of this new contract contributes to the restoration of order in financial transactions.



Limitations

- One limitation of our study is that we only focused on the Iranian banking system.
- Future research could explore other Islamic banking systems and the challenges facing other types of determined contracts.
- Our study was also limited to a qualitative analysis of existing literature and legal documents.

The slide features a decorative background. On the left, there are several envelopes in white, green, pink, and blue, arranged in a descending staircase pattern. The background is split into a light blue upper half and an orange lower half. On the right, there is a dark teal vertical bar with a red rectangle at the top right corner.

Thank you!

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