

IN THE NAME OF ALLAH, THE BENEFICENT, THE MERCIFUL PARTICIPATION ENDING IN OWNERSHIP BETWEEN THEORY AND APPLICATION IN ISLAMIC BANK

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Abstract

The objective of the establishment of Islamic banks is to be comprehensive, banks operating in all investment formulas are compatible with Islamic law, such as the participation ending in ownership (the diminishing of participation), but noted the lack of focus on the formula of participation ending in ownership, which preferring other formulations based on sales especially for purchase cost-plus that affected by the banking reality based on the basis of usury-based, in addition to the reduction in risk in this version that was not existent in sales, compared to other high-risk versions.

Therefore, this research aims to study the participation ending in ownership and to emphasize the positive potential in the interest of the Islamic banks and financial institutions, if applied within the investment activities, At the end of search reached to a state of result and most important formulae results is that the formula of participation ending in ownership is one of the important formulae to increase economic development, but there is a reluctance in Islamic banks toward the application of this formula in it's the investment, and Perhaps the reason that dealers with Islamic banks, according to this formula is not the moral dimension of Islamic or lack of knowledge and the ignorance of the customers in this format.

Based on these results, the researcher recommended the administration of Islamic banks and financial institutions to expand benefit from the advantages of participation ending in ownership by investing in the commercial, real estate and industrial sectors within the framework of Shariah control. It is also recommended that the administration of the Islamic banks and financial institutions carry out propaganda campaigns and promotion in different media, audio-visual, to show their clients the importance of this formula and marketing best.

Keywords: Participation Ending in Ownership, Islamic Banks, Islamic Financial Institutions.

INTRODUCTION

Islamic banks have become at present time reality and provides all the services provided by the traditional banks, but have become a strong competitive, which Islamic banks have distinguished over traditional banks as investment and financing banks, in the sense that they are comprehensive banks, which finance and invest their money in legitimate ways, away from usury.

And what indicates the importance of Islamic development and investment banks spread in all countries of the world. As such, it is still these banks face criticism from here and there because they deviated in its work to specific cost-plus formula away from the modalities of participation ending in ownership based on the (no reward without risk) rule, therefore there is a incompatibility between the theoretical side of the Islamic banks and the practical side, this is what we are trying to know during this search.

The Importance of the Search

The importance of the research that it was trying to shed light on an important formula of existing investment formulas for participation between the Islamic Bank and the client, this is the core of the work of the Islamic banks, but they deviated from this source to A financing formula represented by the cost-plus formula. Therefore, this research tries to know the reasons for the deviation and deal with this deviation.

The Research Problem

There is a big difference in Islamic Banks to apply the Islamic formulas based on participation, and the theorizing which did by Islamic banks, in the sense that a few participation rate applicable in Islamic banks compared with what is invited to theorizing, and thus this research tries to answer the following question.

What are the reasons for the deviation of the Jordanian Islamic Banks from participating formula? stair this question a group of the following subsidiary questions:

First

What is the reality of a formula to participate in the Jordanian Islamic Banks?

Second

What are the most prominent reasons for deviations from the Jordanian Islamic Banks on the application of the formula?

Third

What are the solutions proposed to treat the Jordanian Islamic banks deviations for a formula to Participate?

Research Objectives

The aim of this research to achieve these objectives, as follows:

First

To know of the reality of a formula to participate in the Jordanian Islamic banks.

Second

To know the reasons for the deviation of the Jordanian Islamic banks from the formula of participation.

Third

Identify the most prominent proposals to address the perversion of the Jordanian Islamic banks on the application of the formula for participation.

Previous Studies

There are many studies that led on this topic, including:

1. Research (Hattab, 2003). Diminishing participation is an Islamic finance too. The aim of this research is to clarify and explain the diminishing participation formula as conducted by Islamic banks, and at the end of this research the researcher concluded that the diminishing participation contract is an important investment contract that can be relied upon to replace the cost-upon formula the order to purchase, and The researcher defined the diminishing participation formula as: A partnership contract accompanying the condition that one of the partners sell his share to his partner in one payment or in installments, and the research concluded that this formula is lawful, if it is in accordance with the Sharia regulations especially devoid of usury.
2. Study (Al-Kawamleh, 2006), Diminishing Participation and its Contemporary Applications, Jordan Islamic Bank as a Model. The aim of this study is to know the legal conditioning of this formula. The researcher conclude that this formula applies to it the adaptation of the Mudaraba contract and article of partnership And if the sharia controls are available then the diminishing participation formula is free of suspicion of usury, in addition to that the diminishing participation carries with it many advantages, including contributing to achieving economic development.
3. Research (Muluky, 2012), diminishing participation in Islamic jurisprudence and its contemporary applications. The aim of the search is to study diminishing participation as one of the new formulas at the theoretical and applied levels, to know the various forms of participation and how they are applied in Islamic banks free of usury, As this formula is considered suitable for various economic fields, where the Islamic bank is a partner of the client and not a creditor to him, so the money and work are the pillars of economic activity, based on the reconstruction of the land.
4. Research (Amer, 1437, AH), means of activating the principle of participation in Islamic banks, the research aims to study the most necessary means to activate the formula participation in Islamic banks, at the end of the consideration of the results reached to a state of results:
 - i. The implementation of the formulas of participation in Islamic banks is very few compared to the other versions such as cost-plus this is evidence that the effective application of the principle of participation despite the importance and Theoretical Basis of Islamic banks, and there are several reasons led to the deviation of the banks for a formula to other formulas, of which is the higher the proportion of risk in participation.
5. Research (Abdel-Saheb, 2017), the specificity of the Participation Ending in Ownership. The partnership contract ending with ownership is particularly important as it is one of the innovative contracts that originated in Islamic banks, to invest their money in addition to meeting their clients' financing needs in obtaining machines and equipment ... etc., Since the parties to the contract in this formula tend to participate in a specific project, and to divide the profit or loss that arises from it, provided that one of the parties has the exclusive ownership of the project by purchasing the partner's share of the project's revenue or other resources. The researcher has reached a number of results. Among the most important of them: that the partnership contract ending with ownership is an alternative to the forbidden interest-based loan, in addition to that the nature of this contract requires the presence of some special conditions necessary for the validity of this contract.
6. Research (Qahf, 2018), Diminishing Participation in Islamic Jurisprudence, a comparative study with BOT contracts. The importance of this research lies in the fact that the diminishing musharakah formula is one of the new formulas that was used as an alternative to interest-based loans, in addition to that this formula carries with it justice between the partners in The cases of profit and loss, and to reach the results of this research, the researcher followed the inductive approach, and one of the most prominent results of this research was: The formula of participation ending in ownership is one of the Sharia permissible formulas in the Islamic religion that serves the interest of the Islamic bank and the customer where the Islamic bank employs what is available He has liquidity, and as for the client, he finds the required financing for his project without resorting to an interest-based loan.

What distinguishes this research other than previous studies is that it focuses on the formula of participation ending in ownership, in terms of the lack of interest of Islamic banks in

this formula, and its departure to other forms such as murabahah, knowing that Islamic banks are the basis of their work is participation, according to the rule of no reward without risk fine.

THE RESEARCH METHODOLOGY

The research relied on the descriptive analytical formula, reviewing the theoretical literature related to the subject of the research, in addition to reviewing the financial reports of Jordanian Islamic Banks.

The Search Plan

This research has been divided into several topics as follows:

Introduction: It included the research problem, its goals, importance, limitations, methodology, previous studies, and the following topic:

The First Topic

The reality of applying the participation formula in the Jordanian Islamic banks.

The Second Topic

Reasons for the deviation of Jordanian Islamic banks from the participation formula.

The Third Topic

Treating the deviation of Jordanian Islamic banks from the participation formula.

Search Determinants

The focus of this research will be on the format of participation ending in ownership in Jordanian Islamic banks (Jordan Islamic Bank for Investment and Finance) only.

Justifications for Choosing Jordan Islamic Bank

The Jordan Islamic Bank operates within the Islamic banking services sector, which is considered one of the fastest growing economic sectors in the world. In 2015 the assets of Islamic banking reached 2.4 trillion dollars, and it is expected that these assets will grow to reach in 2023 to 3.8 trillion dollars.

Jordan Islamic Bank is one of the largest banks in Jordan, and it has a long history and extensive experience in the field of Islamic banking services in addition to its commitment to continuous development and innovation of new Islamic products. The proof of this is that Jordan Islamic Bank received the best rating AA+, by the International Islamic Agency for classification (IIRA) as a result of applying the highest levels of compliance standards and adherence to Sharia principles and provisions of quality.

THE FIRST TOPIC

THE REALITY OF THE FORMULA FOR PARTICIPATION IN ISLAMIC BANKS

There are many studies that have led on the formula for participation in Islamic banks, including the Samhan study (Samhan, 2013), but this research will be limited to the formula for participation in Islamic banks in Jordan.

The First Requirement: What is Participation

First

Participation in the language: comes in the sense of mixing, it is said: We participated in the meaning of our participation, and the two men had participated and participated.

Second

The idiomatic definition of participation.

1. Defined by the Hanafi: A contract between the participants in capital and profit (Al-Sarkhasi, 2000, p152).
2. Al-Maliki defined it: The company is the permission of each of the participants for its owner to dispose of his money or body for him and his owner with their behaviour themselves (Al-Hattab, 2003, p64).
3. Shafi'i defined it: The right to something of two and more is proven on the side of communism (El-Sherbiny, 1985, p211).
4. Hanbali defined it: a meeting in merit or disposition (Al-MaqdisiUndated, p109).

It is noted on these definitions that they indicate the mixing of two shares and more, as one cannot distinguish between them (Abu-Alhol, 2012, p160).

Third

The concept of banking participation: The Council of the Islamic Fiqh Academy, which emanates from the Organization of the Islamic Conference, which was held on 6-11 the effects of 2004 in the Sultanate of Oman, defined in Decision No. 136, (diminishing participation: a company between two parties in an income project, in which one of them undertakes Gradually buying the other party's share, whether the purchase is from the buyer's share of the income, or from another supplier).

Fourth

The economic definition of participation ending in ownership: it is that which takes place between two parties, provided that the Islamic bank funds a certain part of the project costs, in exchange for a share of the net profits, and the customer has the right to pay the price of the bank's share gradually or periodically in instalments, whether from the return Who gets it or from other resources during an appropriate period to be agreed upon (Al-Zahleily, 2002, p434).

The researcher can define participation ending in ownership as: a company that gives the Islamic bank the right to the partner to replace him in the ownership of the company in one go or in batches according to the agreed terms.

Fifth

Legality of the Participation Form:

There are many legal texts in the Qur'an and the Sunnah of the Prophet on the permissibility of the formula of participation, including: The Almighty's saying: "They share a third" (Al-Nisa, verse 12)

And from the purified Sunnah of the Prophet Muhammad, peace and blessings be upon him, in the Qudsi hadith that he narrates on the authority of his Lord, the Exalted, the Majestic: "I am the third of the two partners unless one of them betrays his friend (Abu -Dawood, 2009).

Sixth

Types of participation in Islamic banks, The participation formula is one of the most flexible investment formulas, as it is comprehensive for all commercial operations and investment in agriculture and industry ... etc., in addition to the risk distribution between the Islamic bank and investors, and the types of participation can be identified as follows (Samhan, 2013, p221-226).

Fixed or Ongoing Participation

It is the participation of the Islamic bank in a specific project without specifying a specific term for this company in order to achieve profits, and the bank can participate with the customer in providing expertise and advice, and the participation remains permanent as long as the project remains continuous.

The Diminishing of Participation

It is the participation of the Islamic bank with one of the customers to establish a specific project with a certain capital in order to achieve profit, and this type gives the customer the right to buy the bank's share of this project gradually until the project becomes in the name of this customer and the bank waives its share in this project.

The Second Requirement: Islamic Banks (Definition, Origins, Characteristics)

In this requirement, the definition of Islamic banks, their origins, their characteristics, their objectives and the justifications for their creation will be addressed according to the following:

Definition of the Islamic Bank

Islamic banks started from Islam's view of money, which is property of God Almighty, and people are subjugated to it. Therefore, the individual is not absolutely free to dispose of his money as he pleases because his ownership of this money is deficient and the real owner of this money is God Almighty. Definition of an Islamic bank: It is a financial institution that performs banking and financing activities within the framework of the provisions of Islamic Sharia (Al-Wadi, 2016, p42).

The Emergence of Islamic Banks

There are many serious attempts to establish Islamic banks to get rid of traditional banks based on forbidden usury. The first of these attempts was to establish savings banks in Egypt in 1963, then the attempts were followed, so the Kuwait Finance House and Faisal Islamic Bank were established in 1977, then the Islamic Bank of Jordan in the year 1978, and then Islamic banks began to spread around the world, so that traditional banks established what are known as Islamic windows to provide Islamic services, such as Citibank, until the number of Islamic banks reached more than 270 Islamic banks (Al-Wadi, previous reference, p43).

Characteristics of Islamic Banks

Islamic banks have many characteristics that distinguish them from other banks, among the most important of these characteristics:

1. All its transactions are subject to the provisions of Islamic Sharia, as it does not deal with usury at all, neither taking nor bid (Abdel Ghaffar, 2002, p66).
2. Also, all its transactions are based on the profit and loss sharing method (Al-Sawan, 2001, p94).
3. The social characteristic, as Islamic banks offer a lot of work that traditional banks do not do, such as: providing good loans, meaning that these loans are without interest (Al-Sawan, previous reference, p99).
4. The economic projects undertaken by Islamic banks are real investments and this is what leads to stimulating the economy (Al-Rifai, 2004, p45-55).
5. Therefore, we can say that Islamic banks are Islamic institutions based on the principle of profit and loss, not profit and safety, as they represent one of the parts of the Islamic economy.

Objectives of Islamic Banks

Islamic banks strive to achieve many goals, the most important of which are (Irsheed, 2007, p21):

1. Contributing to raising the standard of living of society by contributing to economic development and improving social conditions within the Islamic community.
2. Improving the resources of the Islamic bank by making profit
3. Contribute to directing society's savings to areas that serve economic and social development, away from usury.

Justifications for Establishing Islamic Banks

Islamic banks have many justifications, including (Irsheed, previous reference, p18):

1. Stay away from dealing with forbidden benefits.
2. Work to implement banking transactions in accordance with the provisions of Islamic law.
3. Trying to solve the economic and social problems that the Islamic world suffers from, especially with regard to the accumulation of wealth.

Participation and its Investment Position in Islamic Banks

If we look at the budget of the Jordanian Islamic Bank, we notice that the expired participation formula is not mentioned in these budgets. When the researcher about the reason, during an interview with some of the managers of the Islamic Bank, the answers varied, including: that the client of the Islamic Bank do not Know the nature if this transaction, or that the religious or moral dimension of some clients is not at the level.

THE SECOND TOPIC

THE REASONS FOR THE DEVIATION OF JORDANIAN ISLAMIC BANKS FROM THE PARTICIPATION FORMULA

It is noticeable that the participation formula faces many obstacles that led to the departure of Islamic banks from their application. Islamic banks have come to see themselves as competing with the traditional banks that guarantee them deposits and achieve a certain amount of liquidity, and despite the Islamic banks conflict with the money of depositors, the banking mentality It remains in control of bank administrations, and as for the reasons for the deviation of Islamic banks from the participation formula, some of them are due to internal factors in the Islamic bank, some of which are external, and as follows:

The First Requirement: The Internal Obstacles

Human Resources

Due to the modernity of the Islamic banking experience and the lack of qualified human cadres to do this work, human cadres were used from traditional banks, which practiced banking work based on usury (a debtor-debtor relationship) and found the formula of participation close to their experiences, and this formula depends on guarantees (Ali, 2000). Introduction, in addition to that, some Islamic banks prefer to hire employees from different administrative specialties, and such cadres do not have sufficient knowledge in Islamic banking.

Nature of Financial Resources

- A. **Credit Deposits:** Islamic banks accept these deposits as loans that must be returned without increase or decrease, and these accounts are invested with the authorization of the account holder, and the customer does not bear any loss and does not pay him any interest, and such accounts do not benefit the Islamic bank in investment operations in long projects Term (Irshaid, 2007, p160).
- B. **Investment Deposits:** These deposits are aimed at profit, and are considered the most important source of funds in Islamic banks, which reach 50% (Samhan'previous reference, p125) in some banks, and they are varied including dedicated investment accounts, joint investment accounts, term accounts, and under notice and savings accounts, and these accounts give their owners the ability to withdraw from them at any time. After giving the bank a waiver of the profits of the amounts withdrawn before the date of maturity of the profits of the deposit, in addition to not accepting the idea that there are no profits or losses, and this has led to the dates of these accounts being short-term, and the inability of Islamic banks to invest them in long-term projects (Al-Jarrah, 2017, p9).
- C. **Guarantees:** Due to the great risks involved in the participatory formula due to the absence of the guarantee requirement, especially the moral risks, the wrong selection of the client, in addition to the inefficiency of Islamic banks in evaluating economic projects (HabibAhmed, 1423AH, p69).

The Second Requirement: External Obstacles

These impediments are related to the environment in which the Islamic bank operates, and this is of great importance, especially with regard to clients to attract them in order to deal with the Islamic bank, in addition to that related to the laws of the central bank that govern the banking business, and explain this as follows:

- A. **Clients of the Islamic Bank:** The relationship that governs dealing with clients is the relationship of sharing in profit and loss, and not that of a creditor and debtor, therefore one of the

requirements of the customer is to have good Islamic morals, and not to hide any information from the company, and to keep correct and accurate records of the company's business.

- B. The Banking Market:** where competition prevails between banks to obtain the largest market share from customers, meaning there is no cooperation between banks among them.

THE THIRD TOPIC

TREATING THE DEVIATION OF JORDANIAN ISLAMIC BANKS FROM THE PARTICIPATION FORMULA

We noticed during the course of this research that banks deviated from the sharing formula to other formats, knowing that the nature of Islamic banks 'work is participations, and we noted that there are multiple reasons for these deviations, and in this topic we present the most important proposals to treat these deviations as follows:

Proposed Solutions for Human Resources

Islamic banking departments must have the important foundations for selecting their employees and not only who having a university degree in business administration. Rather, they must focus on selecting employees to be those with specializations in the field of Islamic banking, especially if we know There are many Jordanian universities that qualify students for such a specialization, but there are universities that grant masters and doctorates in the field of economics and Islamic banks, whether public universities or private universities (such as Ajloun National University). Because it is derived from the principles of Islamic law, and if an employee is chosen from outside the specialties of Islamic banks, then banking departments must qualify him by holding courses that focus on Islamic banking topics.

Financial Resources

The departments of Islamic banks should search for investment opportunities that will achieve rewarding profits for them, and they must study the economic feasibility of such opportunities, and that they be transparent, which the customers of Islamic banks can view, especially if they carry some risks, so that customers accept The participation of Islamic banks while they are reassured that their participation is in the hands of the trustee and able to overcome such risks.

The Administrations of Islamic Banks

must pay attention and exploit the various media, to inform the public of customers, in the form of participation ending in ownership, and to adopt the form of participation ending in ownership within the bank's forms, and that the customer's entry as a participant in the project will own him after a period of time, so he is keen on Youth success of this project And it is necessary to investigate the clients of the Islamic bank who want to participate, and that they are religiously and morally committed, and such matters have become easy to investigate.

Guarantees

Since the Islamic bank is a company whose aim is to profit and preserve its money, it is its right to take adequate guarantees, to face any risk that it faces in the future, and these

guarantees are studied and approved by the Central Bank (The Islamic Fiqh Council Decision on Deposit Insurance, <http://arb-msn.com>).

CONCLUSION

After completing this research, the research has reached a number of results, including:

- A. Islamic banks do not focus on the participation formulas ending with ownership, preferring other forms based on sales, especially murabahah for the one who ordered the purchase, thus affected by the banking reality based on the usury-based basis.
- B. The participation ending with ownership formula is considered one of the important formulas for increasing economic development. However, there is a reluctance in Islamic banks to apply this formula in their investments. Perhaps the reason behind this is that those dealing with Islamic banks according to this formula do not have the Islamic ethical dimension or lack of knowledge and ignorance of customers in this important formula.

RECOMMENDATIONS

- a. I advise Islamic banks to work towards activating the participation formula in their investments.
- b. I advise Islamic banks to work on searching for important profit-making investment opportunities that are of interest to competent clients.

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