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VOIDABLE FINANCIAL CONTRACTS (*'UQUD FASIDAH*) AND THE RECTIFICATION MECHANISMS: A FIQH JURISTIC REVIEW

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ABSTRACT

This paper examines the concept of voidable financial contracts ('Uqūd Fāsidah) and explores rectification mechanisms within Islamic jurisprudence (Fiqh). Despite their pivotal role in Islamic finance, the complexities surrounding 'Uqūd Fāsidah remain underexplored. This study aims to delineate the conditions that render contracts voidable, and the permissible corrective actions as prescribed by Fiqh. Using a qualitative methodology, the research synthesizes classical Fiqh literature and current applications in Islamic financial practice. The findings reveal that 'Uqūd Fāsidah can arise from violations of contractual conditions regarding subject matter, contract terms, or the contracting parties' capacity. The study identifies several rectification mechanisms, including contract amendment, renewal, and the option of rescission, each aligned with the principles of fairness, transparency, and mutual consent. These rectifications ensure that all parties return to a state of equilibrium, preserving the ethical and economic objectives of Islamic finance. The implications of this study are significant, offering practical guidelines for Shariah-compliant financial institutions and contributing to the robustness of contract enforcement in Islamic finance.

Keywords: *Rectification mechanism, voidable contracts, Islamic finance, Islamic banking.*

1. INTRODUCTION

In Islamic finance, contracts play a central role in facilitating economic transactions while adhering to the principles and guidelines of Shariah law. However, like any legal system, situations may arise where contracts become voidable due to non-compliance with Shariah principles or other invalidating factors. In such cases, it becomes imperative to explore the mechanisms available within the framework of Shariah to rectify these contracts and restore their validity.

The rectification of voidable financial contracts is a topic of great significance in Islamic jurisprudence (*fiqh*) and holds practical implications for various stakeholders, including financial institutions, businesses, investors, and individuals engaged in Islamic financial transactions. Understanding the principles and mechanisms that govern the rectification process is essential for ensuring compliance with Shariah and maintaining the integrity of financial dealings in accordance with Islamic values (Abdullah Thaidi et al., 2019).

This article aims to provide a comprehensive analysis of the Shariah mechanisms available to rectify voidable financial contracts, drawing upon the rich heritage of fuqaha. By examining the opinions and principles articulated by prominent fuqaha throughout history, the study aims to shed light on the various perspectives, methodologies, and practical approaches that have been discussed within the field of Islamic jurisprudence.

This analysis is a valuable resource for practitioners, scholars, and stakeholders involved in Islamic finance, offering insights into the legal and ethical considerations when faced with voidable contracts. By exploring the diverse opinions of fuqaha, the study seeks to promote a deeper understanding of the underlying principles and objectives that guide the rectification process in accordance with Shariah.

Through this examination, the study aims to highlight Shariah law's flexibility, adaptability, and practicality in addressing contractual challenges while upholding the principles of justice, fairness, and equity. Furthermore, by elucidating the mechanisms of rectification, it also aims to provide practical guidance and insights for practitioners, scholars, and stakeholders navigating the complexities of voidable contracts in Islamic finance.

2. UNDERSTANDING THE CONCEPT OF CONTRACT (*'AQD*)

The concept and definition of a contract (*'aqd*) in fiqh (Islamic jurisprudence) encompass linguistic and legal dimensions. Linguistically, the term 'aqd has its roots in the Arabic word 'ahd, which denotes a covenant or a solemn undertaking (Ibn Manzur, 1993). On the other hand, the word *fasid* (voidable) is derived from the verb *fasada*, which conveys the meaning of destruction or spoiling (Ibn Manzur, 1993).

The fiqh jurists have approached the definition of a voidable contract (*'aqd fasid*) from two main perspectives. The majority opinion (Maliki, Shafi'i, and Hanbali Schools) express that a voidable contract is a contract that does not fulfil the necessary conditions for achieving its intended purpose (Al-Basri, 1964). Al-Sam'ani (1998) describes it as a contract that lacks the necessary effectiveness or fails to achieve the intended outcome. Al-Baydawi (2008) states that a voidable contract is anything that does not achieve the intended aim. These definitions primarily emphasize the failure to achieve the desired objective or purpose as a characteristic of voidable contracts.

In contrast to the majority opinion, the Hanafi school categorizes contracts into three types: valid (*sahih*), voidable (*fasid*), and void (*batil*). While the Hanafi school acknowledges the validity and nullity of contracts, their definition of a voidable contract differs from the majority opinion. According to the Hanafi school, a voidable contract becomes flawed or spoilt due to certain descriptions or attributes (Al-Maydani, 2010). They emphasise that the contract may possess a valid foundation but is flawed due to specific conditions or characteristics.

The disagreement between the majority opinion and the Hanafi school primarily revolves around the understanding and implications of prohibitions (*nahy*) issued by Islamic law. Scholars debate whether a prohibition necessitates the invalidity of the matter being prohibited. Additionally, they discuss whether the prohibition of an essential element of a contract holds the same weight as the prohibition of a non-essential attribute, whether necessary or unnecessary (Al-Tunayji, 2006).

According to the majority opinion, the prohibition by Islamic law regarding a specific contract signifies its lack of validity, rendering it impermissible and sinful to engage in. There is no distinction between a prohibition concerning an essential element of the contract and a prohibition concerning a non-essential attribute. Contrarily, the Hanafi school posits that a prohibition may only entail sinfulness for the one who commits it but does not necessarily invalidate the

contract. They differentiate between prohibitions that pertain to the essence of the contract (e.g., flaws in the form, contracting parties, or the place of the contract) and prohibitions that relate to additional attributes of the contract. For instance, selling goods that have already been purchased by another buyer and conducting transactions during the call (*azan*) to prayer for Friday prayers. According to the Hanafi school, the prohibition nullifies the specific attribute while leaving the contract itself valid (Al-Zuhayli, 2008).

It is worth noting that despite these differences, there are cases where the majority opinion permits contracts that the Hanafi school deems voidable, and vice versa, which will be discussed in the later section. The variation in defining voidable contracts since then has been an ongoing matter of scholarly debate.

3. OPINIONS OF FIQH JURISTS REGARDING THE RECTIFICATION OF VOIDABLE CONTRACTS

There are differing opinions among the fuqaha in discussing the rectification of voidable contracts. The first opinion holds that a contract cannot be rectified if it is initially void. This viewpoint is shared by the Shafi'i and Hanbali schools, as well as some Maliki scholars (Al-Khushani, 1985). (Al-Mawardi, (1999) argues that if a contract is void, it cannot be valid by ceasing its voidness. Similarly, Al-Buhuti (1983) from Hanbali opines that voidable contracts cannot be reversed into validity.

However, proponents of this opinion have not provided explicit evidence to support their stance. A clear argument cannot be found in jurisprudence (fiqh) books that substantiate this position. It may be the case that the inability to rectify a voidable contract stems from the fact that these scholars generally categorize contracts as either valid (*sahih*) or voidable (*fasid*), with the former achieving the intended purpose for the obligated party, and the latter being contrary to that (Al-Durayni, 2008).

Al-Shawkani (2000) pointed out that scholars continue to rely on the notion that prohibition entails invalidity in matters related to usury, marriage, sales, and other areas. This is because some scholars argue against rectifying voidable contracts based on the hadith that said, "Whoever performs an action that is not in accordance with our command, it is rejected." (Muslim, 1955).

Ibn al-Qayyim (2019) argues that there has been a clear indication of the invalidation of any action contrary to Allah's command, as it is rejected and not considered acceptable in its intended ruling. It is well-known that the rejected

(*mardud*) is synonymous with the void itself, or it is more precise than being void. Void can be attributed to something that does not bring benefit or has very little benefit, while the rejected is that which is not given any significance and does not achieve its intended purpose in the first place (Al-Tunayji, 2006).

Some scholars argue that rectifying a voidable contract that includes a description necessitating its prohibition and invalidity combines two contradictory elements. The validity of a contract arises from its benefit, while a prohibited contract lacks any benefit and is the source of pure or predominant harm (Ibn al-Qayyim, 2019).

Majority of *usul fiqh* scholars hold a variety of evidence that, when taken as a whole, indicates the impossibility of rectifying voidable contracts. However, most of these arguments are primarily rational in nature. There are counter-arguments and objections, and addressing these objections falls within the scope of further discussions (Al-Amidi, 2003; A. A. M. Al-Ansari, 2002; Al-Ghazali, 1993; Al-Qarafi, 1995; Ibn Qudamah, 2002).

The second opinion by Hanafi and Maliki schools assert the possibility of rectifying a voidable contract by, among other means, removing the element causing the void, with some differences in the details between the two schools ('Illish, 1984; Al-Kasani, 2003).

The Hanafites argue that the basis of rectification is their differentiation between void (*batil*) and voidable (*fasid*) contracts. They argue that a void contract has no legal consequences and is equivalent to non-existence. On the other hand, they distinguish between strong voidability and weak voidability. The strong voidability cannot be rectified, unlike the weak voidability. Al-Kasani (2003) from Hanafites explains that several key criteria define strong voidability:

1. **Integral Element of the Contract**: The void element must be essential to the contract's structure. This includes crucial aspects such as the object of the contract (the goods or services exchanged) or the medium of exchange (the payment or compensation). If the void element is central to the contract's operation, its presence affects the entire validity of the agreement.

2. **Nature of the Void Element**: The element causing the voidability must be explicitly forbidden (haram) under Islamic law. Common examples include the inclusion of interest (riba), gambling (maisir), uncertainty

(gharar), or trading in prohibited goods like alcohol or pork.

3. **Irremediability**: If removing the void element does not change the nature of the contract or if the contract was fundamentally dependent on that void element at its inception, the contract remains void. This criterion underscores that the contract cannot be rectified simply by removing or altering the problematic component post-agreement.

4. **Impact on the Entire Contract**: The presence of a void element under the conditions of strong voidability means that the entire contract is invalid, not just the specific term or condition that is impermissible. The contract is considered null from its inception, and thus, all transactions or exchanges based on it are also void.

Ibn Rushd (1994) mentioned that the reason for the difference of opinion regarding the rectification of voidable contracts is whether the voidability is reasonable or unreasonable. If it is considered unreasonable, the voidability does not cease with the removal of the element causing the void. However, if it is considered reasonable, the voidability ceases with the removal of the element causing the void.

4. THE FACTORS OF VOIDABILITY: TO WHAT EXTENT THEY CAN BE RECTIFIED?

4.1 *The Inability to Deliver the Subject Matter (al-Ma'qud 'Alayh)*

Among the factors contributing to a contract being voidable is the inability to deliver the contracted item without incurring harm. The incapacity to deliver renders the contract void according to the consensus of jurists (Al-Nawawi, n.d.; Al-Samarqandi, 1984; Ibn Abdil Barr, 1978; Ibn Qudamah, 1994). For instance, selling a fish in water or a bird in the air would fall under this category. In the Hanafi school, the contract is considered void if the inability to deliver necessitates harm to the seller. The rationale behind this is that harm is not a consequence of the contract itself, nor is it a requirement for the contracting parties, except for the harm incurred in delivering the contracted item (Al-Kasani, 2003; Al-Zayla'i, 1896).

Concerning the rectification of contracts in cases involving the inability to deliver, it can be classified into two distinct types. Firstly, there is the inability to deliver due to the inherent nature of the object, exemplified by scenarios like attempting to sell a bird in flight or a fish still submerged in water. The

consensus among the majority of jurists deems this type of contract void, and once such a situation arises, rectification is generally not feasible.

The second type pertains to the inability to deliver without harming the seller. This arises when fulfilling the contract necessitates actions that would result in significant financial loss for the seller. For instance, selling the wooden beams from the roof of a house or the stones from its walls. In such instances, the inability to deliver stems not from the nature of the object itself but from the practical constraints faced by the seller (Al-Tunayji, 2006).

According to the Shafi'i school, if significant financial loss is incurred by the seller, the contract is rendered void, as it would involve a loss of their property, which is prohibited. However, an exception is made for cases where a portion of land is excluded, as marking the boundaries between owners can be achieved without causing harm (Al-Haythami, 2016).

In contrast, the Maliki school permits the seller to sell items that they cannot deliver except by incurring harm and hardship, with two conditions. First, the loss to the seller should not be excessive, such as taking a crucial component from a valuable building that would significantly decrease its value. Second, the buyer must be protected from any damages when taking possession of the item, ensuring that it is removed without breakage or harm, which can be determined by experts in the field. If these conditions are not met, the sale would not be permissible (Al-Hattab, 2010).

The Hanafi school holds that if an item cannot be delivered except by incurring harm to the seller, the contract is void. They argue that harm is not a consequence of the contract itself and should not be a condition for its validity. However, if the seller voluntarily delivers the item to the buyer, the contract becomes binding and valid. In this case, the hindrance to the validity of the contract is the harm that would be incurred by the seller. By delivering the item willingly and with satisfaction, the contract can proceed (Al-Kasani, 2003).

In Islamic contracts, the inability to deliver the contracted item without incurring harm stands as a significant determinant of contract validity. Scholars concur that contracts involving items impossible to deliver, like selling a fish in water or a bird in flight, are void. This consensus extends to scenarios where fulfilling the contract would cause undue harm or financial loss to the seller. While the Shafi'i school emphasizes the prohibition of property loss, the Maliki school permits sales under specific conditions to safeguard both parties' interests. The Hanafi school, while initially voiding contracts involving harm,

allows validity if the seller voluntarily delivers the item without detriment.

4.2 *Element of Jahalah (Lack of Knowledge)*

According to the Hanafi school, lack of knowledge or *jahalah* can be classified into three categories, namely, ignorance regarding the object of sale, ignorance concerning the sale price, and ignorance related to the time frame. Ignorance regarding the object of sale occurs, such as when a seller says, "I am selling you a sheep from this flock" or "a garment from these clothes" without specifying, this renders the contract void. Regarding ignorance of the sale price occurs when multiple currencies are prevalent in the region, it is essential to specify the type of currency during the sale. Failure to do so could lead to *gharar* and potential disputes.

Regarding ignorance of the time frame, if the sale is made without specifying a particular deadline, the contract is rendered void due to the resulting ambiguity and potential disputes (Al-Zuhayli, 2008). When ignorance is present in a contract, particularly regarding the time frame for fulfilling the debt or completing the sale, whether due to the absence of a specific deadline or due to the impossibility of determining the occurrence of an event (e.g., rain, the arrival of a person, or harvest), the contract is considered void according to the consensus of the four major imams (Hanafi, Maliki, Shafi'i, and Hanbali). In such cases, rectification is not possible according to the opinions of Malik and Ahmad. Therefore, if the buyer and seller intend to proceed with the transaction, they must create a new contract. However, the Shafi'ites permit rectification if a valid deadline is set during the contract's negotiation before separation occurs. In this case, the ruling of the contract is contingent upon the state of affairs during the negotiation.

On the contrary, Abu Hanifah, Abu Yusuf and Muhammad hold that contracts can be rectified in the presence of time frame ignorance given that two conditions must be fulfilled (Al-Tunayji, 2006):

1. The contracting parties must establish a valid deadline before separation from the contractual session (*majlis al-'aqd*) occurs. If they separate before determining the deadline, the contract is considered void, and rectification is impossible.

2. The valid deadline must be set before the dissolution of the contract by either party. If either party dissolves the contract before determining the deadline, rectification is impossible.

The factors of voidable contracts, such as ignorance, play a pivotal role in determining their validity in Islamic finance. While the Hanafi school provides a mechanism for rectification under certain conditions, other schools emphasize the voidness of contracts in ignorance, leading to the necessity of creating a new contract. These differences highlight the scholarly deliberations surrounding the complexities of contract validity and rectification in Islamic finance.

4.3 *Nullifying Conditions (Shart Mufsid) in Contract*

It is unanimously agreed upon by scholars that a valid contract must be free from nullifying conditions. However, there are differences among jurists regarding the definition and classification of nullifying conditions. The Hanbali school identifies two types of nullifying conditions:

1. **Condition within a condition**: This occurs when one condition is stipulated within another condition, such as selling an item on the condition that the buyer purchases something from the seller.

2. **Condition contradicting the contract**: This type of condition contradicts the essence of the contract. Examples include a condition prohibiting the buyer from selling the purchased item or gifting it to someone else (Ibn Qudamah, 1997).

The Shafi'ites and Malikites view nullifying conditions as those that contradict the purpose of the sale. It includes selling an item with a condition prohibiting the buyer from selling, benefiting from, receiving, or buying it from someone else. The sale is void in all these cases due to the contradiction with the contract's purpose (Al-Nawawi, n.d.; 'Illish, n.d). The Hanafites view that a nullifying condition can be acceptable if it benefits the contracting parties or the intended recipient. Examples include selling a house on the condition that the seller inhabits it for a month or selling land on the condition that the seller cultivates it for a year (Al-Zayla'i, 1896).

Rectifying a contract due to a nullifying condition has been a subject of agreement among scholars, except for the Shafi'i school (Al-Sarakhsi, 1989; Al-Sharbini, 1997; Al-Shirazi, 1992; Ibn 'Abidin, 2003). The Hanafi and Maliki schools argue that the nullifying condition may not be acceptable but does not necessarily invalidate the contract. This kind of condition is usually the one that is not inherent in the nature of the contract, is not authorized by the available

dalil or customary practices (*'urf*) and does not provide any benefit to either of the contracting parties or the intended recipient. For example, if one party conditions the other party not to sell or gift the purchased item, the condition is void but the contract is still valid (Al-Sarakhsi, 1989; Ibn 'Abidin, 2003; Al-Dardir, 2006). Ibn Rushd proposed a categorization of the effect of conditions on contracts into three groups. First, the conditions that significantly affect the contract's validity, such as usury and gambling, invalidate both the contract and the condition. Second, the conditions that bring moderate impact, where the condition is void but the contract remains valid. Third, the conditions with minor impact, where both the condition and the contract are valid (Ibn Rushd, 1994). Ibn Rushd's categorization requires further refinement, as understanding the impact of conditions on contracts in terms of significant, moderate, or minor effects needs clarification.

Ibn Taymiyyah (2004) argued that if a condition contradicts the intended purpose of Islamic law, the condition is void but the contract remains valid. Examples include stipulating interest in a loan or a lessor prohibiting a lessee from performing prayers or other acts of worship on the leased premises. However, if the condition contradicts the purpose of the contract itself, such as the seller stipulating that the buyer cannot sell or gift the purchased item, both the condition and the contract are void.

The presence of nullifying conditions in contracts poses challenges for their validity. Scholars have different perspectives on the definition and impact of nullifying conditions, leading to variations in the proposed mechanisms for rectification. Understanding these factors and mechanisms is essential for ensuring compliance with Shariah principles in Islamic finance.

4.4 *Consent Under Duress (Ikrah)*

Most jurists believe a valid sale contract requires mutual consent (*al-taradi*) between the contracting parties. If one party is forced into the contract to the extent that their choice is eliminated, the sale is considered void according to the Hanafi school (Ibn 'Abidin, 2003). On the other hand, the majority view is that the sale is invalid unless it is approved by the coerced party (Al-Dusuqi, 2006; Al-Qalyubi, 1956; Ibn Qudamah, 1997).

The Hanafi school distinguishes between two types of coercion in contracts and financial transactions: perfect coercion (*ikrah mulji'*) and imperfect coercion (*ikrah ghayr mulji'*). Perfect coercion refers to a situation where one is threatened with the destruction of oneself or a body part. The contract is considered void

and cannot be rectified in such cases. This ruling is because this type of coercion eliminates mutual consent and undermines the rights of free choice (Ibn al-Humam, 2003).

On the other hand, imperfect coercion refers to the one that does not result in bodily harm or destruction, such as imprisonment or non-lethal physical assault. In such cases, the contract is considered voidable. This ruling is because imperfect coercion eliminates consent, but it does not undermine free choice because the coerced party is not compelled to fulfil what they were coerced into. In other words, they can endure the consequences of the coercion. This type of coercion can be rectified through the approval (*ijazah*) of the coerced party. If the coerced party approves, the contract becomes binding, as the impediment to the contract was coercion and it has ceased to exist (Al-Kasani, 2003).

As for the three other schools (Maliki, Shafi'i, and Hanbali), there is no explicit references in their works regarding the rectification or invalidation of contracts in cases of coercion. However, the principles and foundations of their schools suggest that contracts should not be rectified if they are flawed by coercion (Al-Tunayji, 2006).

Coercion poses significant challenges to the validity of contracts. The mechanism for rectifying sales under coercion involves the approval of the coerced party. The lack of explicit guidance from the three other schools suggests that contracts are generally not rectified when coercion is involved. Understanding these factors and mechanisms is crucial for ensuring the integrity and compliance of contracts within the framework of Islamic finance.

4.5 *Divergent Fiqhi Views on Riba: From Void to Rectifiable Contracts*

The prohibition of *riba* is explicitly mentioned in the Quran, where Allah states, "But Allah has permitted trade and has forbidden interest" (Quran 2:275). The majority view (Maliki, Shafi'i, and Hanbali) considers contracts with *riba* to be void or invalid (Al-Nafrawi, 1995; Ibn Qudamah, 1997). This is because *riba* is explicitly prohibited by the Quran and is deemed impermissible and detrimental. The hadith also strictly forbids the seven most destructive sins, one of which is engaging in usurious practices or earning (Muslim, 1955).

However, according to the Hanafi School, the inclusion of riba in a contract does not automatically invalidate it but rather categorizes it as voidable or irregular (*fasid*) (Ibn Nujaym, 1997). Consequently, this irregularity allows for

the possibility of rectification. In such instances, the contract can be rectified by either eliminating the riba condition or returning the riba component to its rightful owner. This position highlights a nuanced view within Islamic jurisprudence concerning the treatment of contracts involving riba.

In practical terms, if a contract contains riba, the Hanafi scholars advocate two primary methods of rectification (Ibn Nujaym, 1997):

1. **Removing the riba condition**: One way to rectify the contract is by eliminating the riba condition. By doing so, the contract becomes free of any usurious elements and aligns with Islamic principles. This approach reflects the belief that the parties involved should be given the opportunity to salvage the contract without any elements that contravene Shariah.

2. **Returning the riba element**: The Hanafi school suggests that the riba component should be returned to its original owner when paid or accrued. This action serves as a form of rectification by correcting the financial transaction and removing the illicit gain.

The Hanafi School's stance underscores the importance of not hastily nullifying contracts but rather seeking ways to rectify them, promoting fairness and upholding agreements while adhering to Islamic principles (Al-Tunayji, 2006). This nuanced approach to contracts involving riba showcases the diversity of opinions within Islamic jurisprudence and the careful consideration given to issues of financial ethics and contractual obligations.

5. OTHER MECHANISMS OF RECTIFICATION

5.1 *Approval of Principal on an Unauthorized Agent (Tasarruf Fuduli)*

The concept of *tasarruf fuduli* refers to the unauthorized disposition or transaction carried out by an individual on behalf of others without legal authority or beyond the scope of the mandate given to them (Kamaruzaman & Ezhar, 2014). It can be used as a mechanism to rectify a contract in certain situations.

According to Al-Qaradaghi (2009), some Islamic financial institutions are employing *tasarruf fuduli* in certain specific circumstances. For instance, there are cases where the bank believes that the client genuinely intended to purchase on behalf of the bank, like through invoices and bills of lading. In such a

scenario, the bank can engage in a *fuduli* contract, validating the client's purchase and then selling the item to the customer using a *murabahah* arrangement. Another situation of *tasarruf fuduli* can be exemplified where a bank establishes a letter of credit for a client and sets a limit for their import and export activities. However, before finalizing a murabahah transaction, the client buys goods to purchase them on behalf of the bank. In this scenario, it is acceptable for the bank to proceed with the transaction by granting consent and then selling the goods to the client through a murabahah arrangement.
Nevertheless, to practice *tasarruf fuduli*, the contract initiated by an unauthorized agent must be conditional and awaiting approval and ratification from the principal. Once the principal gives their approval, the contract becomes valid and is subjected to all the legal rules governing the agency (*wakalah*). However, if the principal does not approve the contract, it remains binding on the unauthorized agent.

5.2 *Removal of the Invalid Elements*

Islamic jurisprudence recognizes that contracts often involve a mix of valid and invalid elements or permissible and impermissible components. This raises the question of whether a contract's invalid or impermissible aspects render the entire transaction void or if there are mechanisms for rectification. Prominent scholars within the Hanafi and Maliki schools are among those who endorse the approach of transaction segregation to rectify this kind of *fasid* contract (Al-Tunayji, 2006).

According to the Hanafi school, if a contract combines assets that the contracting parties possess and those they do not (e.g., the sale of one's property alongside another's property) the sale is deemed valid. The price is divided based on mutual consent, with the portion involving what the seller does not own contingent upon obtaining permission from the rightful owner.

However, if the contract mixes valid and invalid components, such as the sale of a lawful item alongside a prohibited one (e.g., selling a dead animal alongside permissible goods) or the sale of property owned by the seller and property owned by another without proper authorization, it becomes void. This voidance can be avoided if a separate price is assigned to each component. Notably, there are differences among scholars in the Hanafi school regarding contracts that mix these elements. Abu Hanifah's opinion is that the sale becomes void for both components because items like *maytah* (dead animal) and *khamr* (wine) are not considered property. He likens accepting the maytah

component to imposing an invalid condition on the sale, which is detrimental to the entire contract.

Conversely, Abu Yusuf and Muhammad assert that the contract remains valid for the lawful components when separate prices are assigned. Their rationale is that the flaw does not extend beyond what is inherently flawed, i.e., the lack of ownership in the maytah. Consequently, this flaw does not affect other components, as each is meticulously separated by the specified price (Al-Dabusi, n.d.; Al-Sarakhsi, 1989). The Maliki school posits that if a contract blends lawful and unlawful elements and both parties are aware of the unlawful aspect, such as selling two containers without specifying which contains wine (haram), the buyer can retain the lawful part by paying its proportional price, while the seller must reimburse the buyer for the unlawful part (Al-Mawwaq, 1994; Malik, 1994).

5.3 *Rectification by Contract Replacement*

It is not uncommon for contracts under consideration to encounter certain issues or observations that lead to prohibited or non-compliant elements. However, such contracts can be rectified by transforming them into another contract that is free from these issues. This principle is rooted in the legal maxim, "The consideration in contracts lies in their objectives and meanings, not in their expressions and forms" (Al-Barkati, 1986), or " Contract should not be evaluated based on their wording but their meanings (*maqasid*)" (Al-Suyuti, 1983; Al-Zarkashi, 2000). This implies that contracts should be evaluated based on their objectives and meanings, which are the contextual indications present in a contract that give it the legal ruling of another contract. The focus should not be on the specific words used by the contracting parties at the time of contract formation, as the true intention lies in the meaning of the contract rather than its literal expression (Kamil, 2000).

Hence, it is possible to reconsider an irregular contract into a different form of contract, which often serves as the preferred method of rectification. This approach is highly advantageous as it enhances the flexibility of the process, ultimately benefiting all parties involved in the contract. Scholars have mentioned various scenarios where contracts have been rectified by transforming them into other contracts. An illustrative instance, as noted by Al-Suyuti (1983), involves a scenario where a buyer resells an item back to the initial seller for the same price before taking possession of it. This particular situation is categorized as a sale revocation (*al-iqalah*) when one delves into the substance of the sale contract. A superficial assessment, based solely on the

transaction's form, would render the sale invalid since it occurred prior to the original buyer taking possession, thereby making it a void sale. However, when the underlying intention of revocation is considered, it transforms into a valid revocation because the contract effectively encompasses all the essential elements of al-*iqalah*.

Al-Zarkashi (2000) also mentions a scenario if a *mugharasah* contract is to be annulled. The implication is that the farmer who has cultivated the field halfway cannot enjoy any returns because his farming efforts have not yet yielded results. This situation appears to disadvantage the farmer who has diligently planted crops. To avoid this scenario, the *mugharasah* contract can be transformed into an *ijarah* contract to enable the farmer to receive wage payment (*ujrah*).

Rectifying voidable contracts through their transformation into alternative contracts aligns with the fundamental principle of assessing contracts based on their intended purposes and meanings rather than just their surface form. This approach provides a means to rectify contracts that may have inherent flaws or elements inconsistent with Shariah principles. Scholars have elucidated this mechanism through various illustrative cases, underscoring the significance of grasping the deeper intentions and significance of contracts within the realm of Islamic finance.

5.4 *Limiting an Unrestricted Contract*

One of the mechanisms discussed by the jurists is the possibility of rectifying a contract by limiting the scope of its application. This approach entails adding specific conditions or restrictions to the contract to eliminate any elements that render it void. The contract can be rectified and compliant with Shariah principles by imposing these limitations. The following examples illustrate the application of this mechanism in specific scenarios mentioned by scholars.

If a contract, due to its broad and unrestricted nature, includes elements that render it invalid, it can be rectified by imposing conditions or restrictions that remove these problematic elements. Scholars have mentioned various scenarios where contracts have been rectified through this mechanism (Al-Tunayji, 2006). Two such examples are as follows:

5.4.1 *Mudarabah with an Unspecified Profit Ratio*

If a person invests a thousand dirhams in a *mudarabah* without specifying the exact percentage of profit ratio, the default ruling is that the *mudarabah* contract is invalid because the ratio is not clearly defined. However, this broad and unrestricted arrangement can be rectified by imposing a condition that the profits should be shared equally, thereby specifying the profit distribution and validating the contract (Al-Kasani, 2003).

5.4.2 *Undefined Duration in a Ijarah Agreement*

When an individual employs a worker for a particular job lasting ten days but fails to define the precise dates, the rental contract becomes null and void owing to the absence of clarity concerning the timeframe. Nevertheless, this matter can be rectified by constricting the agreement's duration to a definite period. This can be achieved by explicitly designating the days involved or establishing the timeframe. This clarification of the timeframe serves to validate the agreement, resolving the initial issue of ambiguity (Haydar, 2003).

Rectifying voidable contracts by limiting their scope of application through the imposition of specific conditions or restrictions is an effective mechanism in Islamic finance. By adding these limitations, contracts that would otherwise be considered invalid due to absolute or unrestricted terms can be rectified in accordance with Shariah principles. The examples scholars provide highlight the practical application of this mechanism and its role in ensuring contract validity and compliance. Individuals involved in Islamic finance need to consider the specific circumstances of each contract and employ appropriate mechanisms for rectification, when necessary, to maintain the integrity and compliance of contractual relationships.

6. CONCLUSION

This article has examined the crucial topic of rectifying voidable financial contracts from a Shariah perspective. By analysing the opinions of esteemed fiqh jurists, the discussion offers various mechanisms available within Islamic jurisprudence to address and rectify contracts that suffer from inherent defects, non-compliance with Shariah principles, or invalidating factors. This analysis sheds light on the flexibility and practicality of Shariah law in dealing with complex contractual situations while ensuring justice and fairness in financial transactions. Throughout the study’s examination, several key factors have emerged as pivotal in determining the validity and

rectifiability of voidable contracts. These factors include mutual consent, absence of compulsion or coercion, prohibition of *riba* (usury/interest), clarity of terms, absence of prohibited elements, and adherence to Shariah principles and objectives. Understanding these factors is vital for practitioners and scholars in Islamic finance to navigate the intricate landscape of contractual agreements.

Additionally, the study's exploration of rectification mechanisms has revealed significant insights. It is essential to note that the opinions of fiqh jurists may differ in specific cases or interpretations, reflecting the rich diversity within Islamic legal thought. However, the common thread among these opinions lies in the shared commitment to upholding the principles and objectives of Shariah, while considering the specific circumstances and goals of the contracting parties.

This study underscores the dynamic nature of Islamic jurisprudence, which accommodates the needs and complexities of modern financial transactions while remaining rooted in the fundamental principles of Shariah. It highlights the relevance and adaptability of fiqh jurists' opinions in shaping effective mechanisms for rectifying voidable contracts in Islamic finance. Moving forward, further research and scholarly discourse are necessary to explore the application of these mechanisms in contemporary Islamic finance practices. Additionally, efforts should be made to enhance awareness and understanding among market participants, regulators, and legal practitioners regarding the importance of adhering to Shariah principles and seeking remedies for voidable contracts in line with fiqh jurists' opinions.

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