

Rules Of Ordinary And Parallel Salam Contracts In Islamic Jurisprudence.

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ABSTRACT

The ordinary Salam contract is among the legally permissible contracts according to Islamic law. It was legislated contrary to analogy due to necessity, and because it is established by liability, the original form of a sale contract is a described liability. It is valid for specification, just like goods. Since it is established by liability in the case of marriage contracts and the dowry, it is permissible to apply cash sales (Salam) in these cases. Additionally, the owner of a Salam contract might enter into another Salam contract where the delivered goods have the same characteristics as those in the first Salam contract. This is known as a parallel Salam contract. Suppose the parallel contract is not linked to the first contract, meaning each one is independent in all its rights and obligations. In that case, it is permissible to establish it as long as it is similar in its characteristics to the original contract. This approach has significant implications for achieving economic development and generating profit for institutions and individuals.

Keywords: Salam, Parallel, Legislated

Introduction:

In Islamic law, sales are among the most important contracts used in transactions between individuals in society. Due to its significance, Islamic law has provided a comprehensive system that outlines how these transactions should be conducted with ease and simplicity. Sales are indispensable contracts as they contribute to economic and investment growth and meet individual needs. Therefore, Islamic law has given considerable attention to this aspect. The Salam contract is one of the sales contracts and has become one of the most important contracts used in transactions today. Moreover, this contract has evolved into a highly efficient financing tool in Islamic economics. Islamic institutions and banks use this type of contract. It has a significant impact on improving the economic status of individuals.

Research Problem:

1. What is Salam in Islamic jurisprudence?
2. What is the ruling on ordinary Salam in Islamic jurisprudence?
3. What is the ruling on parallel Salam in Islamic jurisprudence?

Research Objectives:

1. To clarify the nature and legitimacy of Salam in Islamic jurisprudence.
2. To identify the ruling on ordinary Salam in Islamic jurisprudence.
3. To learn about parallel Salam and its ruling in Islamic jurisprudence.

Research importance:

This study aims to demonstrate the impact of the Salam contract on the Islamic economy as a financing tool for individuals and institutions.

Research methodology:

The researcher has adopted an inductive analytical approach.

Previous Studies:

1. "The Form of Salam and Parallel Salam Contracts and Their Applications in Islamic Banks," by Dr. Muhammad Al-Fatih Al-Maghrabi, Director of the Center for Islamic Economics Studies, University of the Quran and Islamic Sciences, Sudan, 2015.
2. "Salam Contract: Its Legal Rulings and Applications in Sudanese Banks," by Muhammad Abbas Hamza, type of content: research and article, Islamic Sciences University, Sudan, Journal of Sharia Annuals, 2016.
3. "Salam: A Contemporary Jurisprudential Study," by Saleh bin Ahmed, Saudi Jurisprudential Society Journal, research and articles, Imam Muhammad bin Saud University, 2015.
4. "The Salam Contract: Between Jurisprudence and Practice," by Saleh Ibrahim Muhammad, Master's thesis, Omdurman Islamic University, Sudan, 2002.

Chapter One: Defining the Concept of Salam and its legitimacy in Islamic jurisprudence.

First requirement: Salam in linguistics and terminology.

1. Salam in linguistic: The root of the term Salam is "s-l-m," which means to surrender or deliver. It denotes giving or lending. In linguistics, Salam is synonymous with "sarf" (debt) in form and meaning. Salam refers to selling a future commodity for immediate payment, a term used in the Hijaz region. In contrast, "sarf" is used for loans in Iraq, but both terms share a similar connotation. Salam also conveys the notions of advancement and delivery (Ibn Manzur, 1414 AH)

2. Salam in terminology:

- **Hanafi Definition:** A sale where the payment is made on the spot for future delivery (Ibn al-Humam, 1426 AH)

- **Maliki Definition:** A contract of exchange that results in a debt obligation without a specific object or benefit, with the consideration not being identical (Ibn al-Khattab).

- **Shafi'i Definition:** A sale of a specified item that is owed or described in the debtor's account (Al-Nawawi)

- **Hanbali Definition:** A contract for a specified item in the debtor's account, with the price paid at the time of the contract (Al-Suyuti)

Based on the scholars' definitions, the researcher views Salam as a contract involving liability between two parties. In this contract, the capital is present at the time of the agreement, while the delivery to the purchaser (Muslim) is deferred. The item remains a liability owed by the seller until the time of delivery.

Thus, Salam is a contract in which the capital is paid at the time of the agreement, with the condition that the specified item is delivered at a later date.

Second requirement: The Legitimacy of Salam in Islamic Jurisprudence.

1. The Quran:

The verse: "O you who have believed, when you contract a debt for a specified term, write it down" (Quran 2:282).

Evidence: Ibn Abbas mentioned that this verse revealed the permissibility of Salam (advance payment) guaranteed for a specified term (Al-Qurtubi, 1376 AH)

2. The Prophetic Tradition:

It is reported by Ibn Abbas (may Allah be pleased with him) that when the Prophet Muhammad (peace be upon him) arrived in Medina, people were practising Salam (advance payment) for dates for two or three years. The Prophet said: "Whoever gives a loan (Salam) should do so with a known measure, known weight, and for a known period (Ibn Hajar, 1379 AH)".

Evidence: The hadith clearly indicates the permissibility of using advances and dealing with them (Ibn Hajar, 1379 AH).

3. Consensus:

Salam is permitted because people need to engage in it. Farmers and traders need funds for personal expenses and to cover investment and production costs. This consensus supports the allowance of Salam to facilitate their economic activities (Ibn al-Humam).

Third requirement: The Pillars and Conditions of the Salam Contract.

The Salam contract has three main pillars (Ibn Abidin, 1421 AH):

1. The Formula (Offer and Acceptance): For instance, the capital provider might say, "I am lending you 1,000 dinars for 500 kilograms of olives of this type and description," and the borrower (recipient) would respond,

"I accept" or "I agree to borrow." The formula must meet the same conditions required for a sale contract, including the parties' agreement and their mutual consent at the time of the contract.

2. The Contracting Parties: The buyer (Muslam) and the seller (Muslam ilayh) are involved in the Salam contract. The contracting parties must be of legal age and possess mental competence.

3- Subject of Salam (Capital and the Subject Matter):

The capital (price) and the subject matter (item to be delivered) are essential components. The capital must meet the following conditions:

a. The Capital Must Be Known: All jurists agree that the capital in Salam must be specified and known. As Salam is a contract of exchange, the consideration must be clear at the time of the agreement. Even if the subject matter is described, its quantity, quality, and type must be clearly defined and specified to ensure it is recorded as a debt.

b. The Capital Must Be Paid at the Time of the Contract: According to most scholars, the capital must be paid immediately at the time of the contract. However, the Malikis (Al-Khurshi) allow for a delay of up to two days or more, either with or without a condition.

c. Conditions for the Subject Matter (Muslam Fihi):

1. Must Be Described in the Debt: The subject matter must be specified in terms of description rather than being an individual, tangible item. This is because Salam intends to sell a specified item to be delivered later, with immediate payment.

2. Must Be for a Known Term: According to the majority of scholars, the term for delivery must be specified at the time of the contract. However, the Shafi'is allow Salam contracts to be valid even if the delivery is Immediate, arguing that if deferred Salam is permitted, immediate Salam should also be permissible (Al-Shirazi).

3. Must Be Possible to Deliver: The subject matter must be capable of being delivered at the specified time. It should be generally available, even if it is unavailable at the time of the contract (Al-Sarakhsi, 1989).

Chapter Two: Salam in Cash in Islamic Jurisprudence.

First requirement: Cash in Language and Terminology.

1. Cash in Language: The term "nukud" (plural of "naqad") refers to anything that signifies distinction, such as distinguishing between good and bad. It historically refers to coins like dirhams and dinars. The term also means to give or pay; for example, "nqd" means "to give him a dirham," indicating that something was given (Ibn Manzur, 1414 AH).

2. Cash in Terminology:

In Islamic jurisprudence, "nukud" refers to gold and silver and the currency people use for their transactions and needs. It includes anything people use for savings and trade. The researcher views cash as everything people use as a measure of value, a medium of exchange, and a means of saving (Ibn Abidin, 1421 AH).

Second requirement: The Ruling on Salam in Cash in Islamic Jurisprudence.

Scholars differ on the permissibility of Salam in cash:

First Opinion (Ibn al-Humam): The Hanafi scholars hold that Salam in cash is not permissible.

Second Opinion: The Maliki (Al-Adawi), Shafi'I (Al-Sharbini, 1413 AH), and Hanbali (Al-Buhuti, 1414 AH) scholars permit Salam in cash, provided the capital is in a different form (i.e., not cash itself)

Third requirement: Evidence of Scholars on the Issue

Evidence for the First Opinion and its Discussion:

1. The Prophetic Tradition:

The Prophet Muhammad (peace be upon him) said: "Do not sell what you do not possess (Al-Tirmidhi, 1395 AH)."

Evidence for the Ruling: This hadith is used to argue that Salam is a type of sale involving something not yet in the seller's possession. Since cash cannot be precisely specified in financial transactions, it is argued that Salam in cash is not permissible (Ibn al-Humam).

Discussion: While the hadith suggests prohibiting selling something one does not possess, Salam is considered a form of sale permitted by Islamic law. Thus, if Salam is allowed for other goods, it should also be permissible for cash (Al-Sharbini, 1413 AH)

2- The Reasonable Argument.

The item sold in a sale is the subject of the sale and must be specified by designation. However, money is not specified by designation, so it cannot be considered sold. Additionally, the subject of the sale must be valued, and since money itself is a form of valuation, it cannot be the subject of the sale.

The counter-argument is that money is considered compensation in a contract and thus becomes specified just like other items, as it is one of the compensations and is specified by the other (Ibn Qudamah, 1405 AH)

Evidence for the Second Opinion and its Discussion:

1. The Prophetic Tradition:

The Prophet Muhammad (peace be upon him) said: "Whoever gives a loan (Salam) should do so with a known measure, known weight, and for a known term."

Evidence for the Ruling: This hadith indicates the permissibility of Salam in any measurable and weighable item, and since cash falls under measurable and weighable items, Salam in cash should be allowed.

Discussion: While the hadith does permit Salam in items that are quantifiable, some argue that Salam specifically requires the subject matter to be determinable by specification, which cash is not. Furthermore, Salam typically involves items of value (thaman), and cash itself is a measure of value, making it unsuitable as the subject of Salam.

2. Rational Arguments:

1. Cash as a Debt and Salam: Cash has been recognized as a debt (such as in the context of dowries), so it should also be valid in Salam, similar to other goods. There is no issue of usury (riba) concerning cash in Salam, as there is no disparity or delay in payment between the parties.

2. Requirement Against Dual Use of Cash: It is argued that the capital and the subject matter of Salam should not both be in cash to avoid the issue of usury related to delay (riba al-nasi'ah) and the lack of immediate exchange at the time of the contract.

3. Distinction Between Exchange and Salam: Salam involves delivering one of the items (the cash) at the time of the contract, while an exchange (sarf) requires immediate delivery. This distinction supports the permissibility of Salam in cash despite it not being permissible for both items to be cash due to the different requirements of each transaction type (Ibn al-Humam).

Preference in the Issue:

After reviewing scholars' opinions and their discussions, the researcher concludes that Salam in cash is permissible if the cash is treated as a sale price rather than the subject matter itself. This is because treating cash as the subject matter of Salam could lead to usury (riba). Therefore, if cash is involved in Salam, it should be handled as a sale where both the cash and the item should be exchanged in the contract meeting, even if the cash and the item are of different types.

Chapter Three: Parallel Salam in Islamic Jurisprudence.

First requirement: Definition of Parallel Salam in Islamic Jurisprudence.

Parallel Salam is a contract in which the seller commits to delivering a specified item in debt, where the item's description matches that of a commodity purchased in the initial Salam contract. This allows the seller to fulfill their obligation without directly connecting the two contracts (Sayyid).

The previous definition clearly shows that Parallel Salam involves two separate contracts. In the first contract, the buyer in the initial Salam transaction becomes the seller in the second transaction. This arrangement allows the sale of the item (Muslam Fihi) before it is actually received by the seller

Second requirement: The Ruling on Parallel Salam in Islamic Jurisprudence.

The Jurisprudential Classification of Parallel Salam:

The issue at hand is whether it is permissible to dispose of the item (Muslam Fihi) before it is received.

First Opinion: Hanafi, Shafi'i (Al-Nawawi), Hanbali scholars (Ibn Qudamah, 1405 AH), and some contemporary scholars like Dr. Siddiq Muhammad Amin Al-Darir (Muhammad), argue against the permissibility of disposing of the Muslam Fihi before it is received, regardless of whether it is food or another commodity.

Second Opinion: Maliki scholars, a narration from the Shafi'i school (Al-Shafi'i), Ibn Taymiyyah from the Hanbali school, and some contemporary scholars like Dr. Muhammad Atta Al-Sayed (Sayyid) and Sheikh Nazih Hamad, permit the disposal of Muslam Fihi before it is received.

Third Opinion: Some Hanbali scholars, including Ibn Taymiyyah (Ibn Taymiyyah, 1996 CE), allow the sale of the Muslam Fihi if it is sold at the same value or less than the value specified in the Salam contract.

Third requirement: Evidence of Scholars on Parallel Salam in Islamic Jurisprudence

Evidence for the First Opinion:

1. The Prophetic Tradition: The Prophet Muhammad (peace be upon him) said: "Do not sell what you do not possess."

Evidence: This hadith clearly states that a person cannot sell something they do not possess, as ownership has not been established. Thus, disposing of something before it is received is not permissible.

2. The Prophetic Tradition: The Prophet Muhammad (peace be upon him) said: "Whoever gives a loan (Salam) in something, he should not transfer it to someone else."

Evidence: This hadith explicitly prohibits the transfer or disposal of the Muslam Fihi before it is received.

Discussion: The prohibition mentioned in the hadith is interpreted as applying specifically to food and not other sales types.

3. Precedents in Sales: Disposing of the Muslam Fihi before receiving it is akin to selling something that is not guaranteed, selling food before it is received, or selling something nonexistent.

Discussion: The prohibition is understood to apply specifically when the Muslam Fihi is actually nonexistent or not physically available at the time of the contract.

4. Risk and Uncertainty (Gharar): Salam is a sale of something that does not yet exist, allowed due to people's needs. However, using this concession in a manner that introduces excessive uncertainty or risk is not permissible.

Discussion: The concern is not about the actual physical item but rather about the obligation recorded in the seller's account. Therefore, the seller should be allowed to fulfill this obligation from any available resources (Nazih Hamad).

Contemporary jurists, such as Sheikh Al-Siddiq Al-Dharee', have agreed that this type of contract is not permissible according to Islamic law because it is a source of usury and involves uncertainty arising from the inability to deliver, and that what is delivered before receipt is the seller's guarantee and does not fall under the buyer's guarantee.

Evidence for the Second Opinion:

1. Specificity to Food: The prohibition mentioned in the hadith is interpreted as applying specifically to food items and not to other types of sales.

Discussion: The restriction on food does not necessarily imply permissibility for other types of goods. As Ibn Abbas noted, everything similar should be considered. Thus, the prohibition might extend beyond just food.

2. Description in Debt vs. Physical Existence: The prohibition on disposing of the Muslam Fihi before it is received is applied only when the item is truly nonexistent. If the item is described in the debt (i.e., it is a specified, future item), it is considered as if it exists, and thus, disposal before receipt may be allowed.

Discussion: Even if described in the debt, the prohibition is based on a legal restriction, and the item is treated as nonexistent in legal terms.

3. Legal Implications and Understanding: Although the item may be described in the debt, the legal prohibition is a religious directive that does not require understanding the underlying reasons or implications, and thus, it is treated similarly to a nonexistent item.

4. Text from Al-Umm: The book Al-Umm mentions the permissibility of such transactions. It states: "Whoever gives a loan (Salam) in food and then sells that food before receiving it, it is not permissible. However, if he sells food with the intention of receiving it from that food, it is permissible, as he can fulfill his obligation from another source. If the food is not as described, he is not obligated to provide it, even if it perishes; he must provide food that matches the description he sold."

Discussion: This text suggests that a transaction may be permissible even if the item has not yet been received as long as it can be fulfilled by another source or is properly described.

Rationale for the Second Opinion:

The rationale is that the buyer's right in the second contract is not tied to the specific item (Muslam Fihi) but rather to the seller's obligation. Therefore, the seller can fulfill this obligation using any available asset, not necessarily the exact item. If the item perishes, the contract does not automatically dissolve, and the seller must provide a commodity that meets the agreed-upon specifications (Al-Mirghinani, 1412).

Discussion:

The objection is that transferring the Salam contract to another item introduces the risk of profit from something that is not guaranteed by the contract, especially when the item is not physically existent but only theoretically so. This could lead to uncertainty and exploitation, which is against the principles of Salam, which is meant to avoid such risks.

Evidence for the Third Opinion:

1. Narration from Ibn Umar: Ibn Umar reported that he would sell in dinars and receive in dirhams, or sell in dirhams and receive in dinars. When a discrepancy occurred, he asked the Prophet Muhammad (peace be upon him), who replied: "There is no harm in taking them at the price of the day as long as you have not parted and there is no outstanding issue between you."

Evidence: This indicates that Salam debt can be sold, and the liability does not shift to the buyer, as it remains with the seller (Ibn Taymiyyah, 1996 CE).

Discussion:

- Weakness of the Narration:- That the meaning of the narration indicates the exchange, which is a contract of exchange that is not valid except by exchange. The prohibition reported selling what was not received and the profit of what was not guaranteed.

Preference in the Issue:

After reviewing scholars' opinions, the researcher concludes that Parallel Salam is permissible if the parallel contract is entirely separate from the initial Salam contract, with each contract being independent in terms of its rights and obligations.

This arrangement allows the sale of the item before its receipt. It addresses the juristic concerns about selling something before it is received and the potential for *riba* in selling Salam items of the same kind through another contract. This approach helps avoid the issues of uncertainty (*gharar*) and *riba* related to profiting from what is not guaranteed.

Conclusion

Results and Recommendations:

1. Salam is a sale of a described item in debt, where the payment is made immediately, and the delivery of the sold item is deferred.
2. Salam in money is permissible if the money is considered as a sale rather than just a price.
3. To address the prohibition on disposing of Salam items before receipt, a separate parallel contract should be established with the same description and obligations as the initial Salam contract.
4. The researcher recommends that future studies focus on contemporary rulings related to Salam, including critical jurisprudential analysis.

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