

AR	المضاربة في سوق المال الإسلامي
ENG	Speculation in Islamic finance market
FR	La spéculation dans le marché financière islamique

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Abstract

This study aims to clarify the meaning of speculation in Islamic jurisprudence and economy, also its types and conditions. We find that there is a difference between legitimate speculation in shares known in Islamic jurisprudence, and speculation in financial market, the first is one of the main means of investing in Islamic economy, and it is one of the most important formulas that presented by scholars as essential method than usury. The second is investing money in buying and selling shares to take advantage of the company returns. In Islamic jurisprudence, some of the scholars permit the selling and buying of shares in financial market with conditions, they see that the work in financial market take different forms permissible and forbidden, so they require legitimate conditions to deal in the financial market in order to bargain for avoid financial difficulties.

Key words: Speculation, Financial Market, Economy, Islamic Jurisprudence

الملخص

تهدف هذه الدراسة إلى بيان مفهوم المضاربة في الفقه الإسلامي والاقتصاد الوضعي، وكذا أنواعها وشروطها، حيث نجد أن هناك فرقا بين المضاربة المشروعة في الأسهم المعروفة في الفقه الإسلامي، والمضاربة في الأسواق المالية، فالأولى هي إحدى الوسائل الرئيسية للاستثمار في الاقتصاد الإسلامي، كما تعتبر من أهم الصيغ التي قدمها العلماء كبديل أساسي للربا، والثاني هي استثمار الأموال في شراء وبيع الأسهم للاستفادة من أرباح الشركة.

في الفقه الإسلامي بعض العلماء يجيزون بيع وشراء الأسهم في سوق المال بشروط، ويرون

أن العمل فيه يتخذ أشكالاً مختلفة جائزة وممنوعة، حيث يتطلب الأمر شروطاً شرعية للتعامل في سوق المال من أجل تجنب الصعوبات المالية.

كلمات مفتاحية: المضاربة، سوق المال، اقتصاد، الفقه الإسلامي.

Introduction

Speculation is one of the investment types that investigates abilities production elements from work and capital to produce legitimate goods in Islamic society, and it has various forms and includes a lot of economic activities.

Speculation as a term in Islamic jurisprudence is "an accord between two parties or many persons, one gives his money and the other bestows his own ability, the profit will be as they agreed, in the loss state the capital owner bears finance loss".

According to this definition of Speculation, we find that it is completely different to what known in legal economics that its meaning is "Speculation on the shares and bonds prices in finance market in order to benefit from changes prices".

From this meaning Speculation approaches to the adventure.

So, it is necessary to Speculation in Islamic finance market based on legal methods in bargains to avoid financial difficulties.

1-Speculation in Islamic Jurisprudence and Economy

1-1- Speculation in Islamic Jurisprudence

A-Definition

Speculation as a term from the Arabic language was taken from the verb "to seek", specially from seeking in earth as Allah said: "He has known that there will be among you those who are ill and others travelling throughout the land

seeking [something] of the bounty of Allah “(1) .That means go about in earth in order to trade (2).

Speculation as a term in Islamic jurisprudence is” an accord between two parties or many persons, one gives his money and the other bestows his own ability, the profit will be as they agreed, in the loss case the capital owner bears finance loss, while the employer losing his activity, and doesn’t require of the finance loss if it was due to negligence from him (3).

B-Types

We find two types of speculation, the absolute and restricted speculation.

-Absolute Speculation

It is the speculation which did not restrict with temporal or spatial condition or other type of trade or to some people, the employer given full freedom to delegation, he can sell and buy and travel limited only with legal conditions, and known or correct business customs (4).

- Restricted Speculation

In this type the money owner requires to the employer one or more conditions which can restrict his work, as well as what Ibn Abbas did: if he was paying speculation money he stipulates conditions by what he sees in order to preserve His money. The conditions should be helpful and interest to the contract, if there isn’t any interest the Speculation was correct and the condition will be corrupt(5).

1-2 - Speculation in Economy

A- Definition

In legal economics, its meaning is: "Speculation on the shares and bonds prices in finance market in order to benefit from changes prices" from this meaning Speculation approaches to the adventure (6). Or it is the practice of engaging in risky financial transactions in an attempt to profit from short or medium term fluctuations in the market value of a tradable good such as a financial instrument, rather than attempting to profit from the underlying financial attributes embodied in the instrument such as capital gains, interest, or dividends. Many speculators pay little attention to the fundamental value of a security and instead focus purely on price movements. Speculation can in principle involve any tradable good or financial instrument. Speculators are particularly common in the markets for stocks, bonds, commodity futures, currencies, fine art, collectibles, real estate, and derivatives.

Speculators play one of four primary roles in financial markets, along with hedgers who engage in transactions to offset some other pre-existing risk, arbitrageurs who seek to profit from situations where fungible instruments trade at different prices in different market segments, and investors who seek profit through long-term ownership of an instrument's underlying attributes. The role of speculators is to absorb excess risk that other participants do not want, and to provide liquidity in the marketplace by buying or selling when no participants from the other categories are available. Successful speculation entails collecting an adequate level of monetary compensation in return for providing immediate

liquidity and assuming additional risk so that, over time, the inevitable losses are offset by larger profits.

In simple words, Speculation is the activity of Speculators. The activity of the speculators leads to taking position in the stock market for a short period of time.

B-Types

There are several types of currency speculation, such as:

- **Immediate Speculation**, known as (spot), which is working on rapid movements of exchange rates from second to another. This type of speculation requires the trader to be in front of the trading screen, moment by moment, in order to be able to make quick decisions and seize scarce opportunities. Also in this type, the trader operates a large number of positions each day.

- **Futures Speculations**, known as (Future), which is buying and selling based on future expected price. This type of speculation is subjected to the expectations of traders based on the availability of data and information on the current and future movement of currencies and the economic conditions of countries.

- **Derivatives Speculations**, known as (options), which depends on the specific plans for market entry and exit, and loss percentages that can be tolerated are to be determined before starting the speculation. In this system, plans are prepared and entering the market is based on those prepared plans. Traders can get those plans from consulting firms, which sometimes sell them on compact drives (CD) at prices up to hundreds of dollars for one CD. In this type of speculation, exchange rates are linked with other variables such as oil prices, gold prices, and other commodities such as wheat.

- **Exchange Speculations:** This type of speculation is done by exporting and importing companies. The speculation here depends on the stability of the currency value, and profit for the exporter and importer is realized from changes in exchange rates during the import and export operations together⁽⁷⁾ .

2- Speculation Conditions in Islamic Jurisprudence

There are two kinds of speculation conditions, concerning the capital and the profit.

2-1-Capital Conditions

Required in the paid-up capital to the speculator, the money should be popular or currency, where the majority of scholars go to don't speculate with realties or movable, because the capital in This case was tainted by ambiguity, the value of the realties known by thinking, which leads to ignorance In profit, which leads to the dispute too, and the dispute will lead to corruption. Among the conditions also the capital must be legitimate, shall not be forbidden as well as the money is stolen or illegally. The speculation is not valid on debt nor on absent money owner, so the capital required to be present at disposition, however, true that a person says to another catch from him my debt and work by the speculation, that according to scholarly agreement , and may also speculate with deposit in creed of Shaafia ,Hanafia and Hanabila if it is in the hand of someone as deposit, so the depositor said: "speculate by it" because he is the owner money and can speculate by it as it is present⁽⁸⁾.

2-2- Profit Conditions

Scholars are required in profit be known in the amount by certain percentages of each speculator because the Profit is the locating of the contract and its ignorance leads to the corruption, the scholars go to that the profit should be specified proportions of a percent, if there was a condition leads to profit ignorance the speculation was incorrect ⁽⁹⁾.

3-Definition of Financial Market

Financial market is an organized market found to deal in the stock exchange, with shares, corporate bonds, and government tradable bonds on where prices are determined in accordance with the requirements of supply and demand, and be persistent and consistent place, performed in the centres of commerce and finance, on specific dates, by daily timing, the capital owners meet with intermediaries and brokers, to sell and buy shares, according to specific regulations . Also the term of bourssa took its name from the hotel in Belgium, where the business men were meeting for the disposal of their business ⁽¹⁰⁾.

4- Investing in Shares in Islamic Jurisprudence

In Islamic jurisprudence ,investing in shares has three types, and each type take its own conditions as follows:

4-1-Shares That are Forbidden, that means the company activity is forbidden, such as the sale of pork, liquor, and dealing in riba, these shares are prohibited, may not be created, nor dispose of a sale and buy, Allah said: "you who have believed, do not consume one another's wealth unjustly but only [in lawful] business by mutual consent. And do not kill yourselves [or one another]. Indeed, Allah is to you ever Merciful" ⁽¹¹⁾.

4-2- Shares That are Permissible such as selling and buying of real estate in companies , libraries , transport , property hospitals, the investing in it is permissible , as Allah said : “O you who have believed, fulfill [all] contracts. Lawful for you are the animals of grazing livestock except for that which is recited to you [in this Qur'an] - hunting not being permitted while you are in the state of ihram. Indeed, Allah ordains what He intends. “(12).

4-3- Shares That are Mixed, there origin is allowable and its activity is forbidden , like industrial or agricultural companies which borrow from banks with riba , its best to the muslim be far from this kind of transactions (13).

5- Speculation in Shares in Islamic Jurisprudence

One can find that there is a difference between legitimate speculation known in Islamic jurisprudence , and speculation in financial market, the first one, dual contract between two parties , one provides the money, and the second party with work , the profit will be divided between them according to a common share of profit determines with agreement between them , which is one of the main means of investing in the Islamic economy, and it is one of the most important formulas that Presented by scholars as essential method than usury. The speculation in the financial market , is investing money in buying and selling shares to take advantage of the company returns, or the current share price , the speculation predicts a rise , prices or decline , based on scientific studies on the company's reality, as well as the reality of the market, and its variables , according to this, speculation deals with the market in order to take advantage of the

company's profits , and shares rising in the financial market , because of the demand increasing for the company's shares ⁽¹⁴⁾.

The scholars differed in shares speculation to three opinions:

A-Some of the scholars today permit the selling and buying of shares in financial market, including: Mohammed Sayed Tantawi, Abdel Moneim namir, Mohamed Maarouf Dawalibi and Ahmad Chalabi, and quoted on their minds by the following:

* Original contracts are permissible, even shown evidence of prevention and prohibition, there is no evidence prohibiting of sale or purchase of shares, which remains on the original license.

* There is no forbidden usury in selling and buying of shares, and this kind of trade is Permissible.

* Expansion to the people, and to facilitate the development in investing money, is a legitimate interest and unrealized in the sale and purchase of shares.

They answered them that Negus verified in the sale and purchase of shares, which is forbidden, and that increases in Negus, because the Prophet -mohamed Peace be upon him –said: "Trick in the fire and action that is not us it is give back»⁽¹⁵⁾.

B- Some of the scholars prevent the selling and buying of shares in financial market, this view attributed by Abdul Razzaq Afifi, Ahmad Darwish, Ahmad Salous, Youssef Kamal and Mohiuddin Ahmed, they quoted on their minds by the following:

* Allah said in the verse: “you who have believed, do not consume one another's wealth unjustly but only [in lawful] business by mutual consent. And do not kill yourselves [or one another]. Indeed, Allah is to you ever Merciful”⁽¹⁶⁾. The verse indicates that the speculation is a kind of taking people’s wealth with unlawfully because of the risk and gambling.

* The speculation in financial market, within the moot contracts because there isn’t a real contract with the acquisition and ownership.

*Speculation is a type of Aina sale, because the speculators catch the difference between the selling and purchase price in shares before taking possession, and sale of things before taking possession is forbidden.

* Speculation intents to take advantage of price fluctuations, up and down, is one of the bet which is forbidden⁽¹⁷⁾.

C- Some of the scholars permit the selling and buying of shares in financial market with conditions, they see that the work in financial market take different forms permissible and forbidden, so the scholars require legitimate conditions to deal in the financial market as follows:

* Do not permit buying shares of companies that their primary purpose is dealing in riba, such as usury banks.

* The contract be completed in its legitimate conditions, the futures sales are not permissible.

* The contract does not contain forbidden selling, such as monopoly.

* A legitimate shape should be found in the financial market in order to prevent forbidden transactions.⁽¹⁸⁾

6- Comparison between Speculation in Islamic Jurisprudence and Economy

	Speculation in Islamic Jurisprudence	Speculation in Economy
Definition	An accord between two parties or many persons, one gives his money and the other bestows his own ability, the profit will be as they agreed	Speculation on the shares and bonds prices in finance market in order to benefit from changes prices
Types of Speculation	Absolute Speculation Restricted Speculation	Immediate speculation Futures speculations Derivatives speculations Exchange speculations
Speculation Conditions	- Capital Conditions Profit Conditions	
Speculation in Shares		-The speculation in the financial market, is investing money in buying and selling shares to take advantage of the company returns.

Conclusion

After this study ,one can deduce that the speculation take different forms between the Islamic and legal vision, in the first one it is an accord between two parties or many persons, one gives his money and the other bestows his own ability, the profit will be as they agreed, in the loss case the capital owner bears finance loss, while the employer losing his activity, however in the second form the Speculation is on the shares and bonds prices in finance market in order to benefit from changes prices.

The third opinion of scholars about the speculation in shares is the most preponderate because if these conditions found, the speculation was permissible and correct, however if there is a forbidden things such as the monopoly, the speculation in shares prohibited, and as recommendations for practitioners; bankers and stock market managers take into consideration the jurisprudence conditions and legal methods in Islamic finance market to bargains for avoid financial difficulties.

Footnotes

- 1-Verse 29 from Sourat Elmuzamil.
- 2 –Hassen Amin, *Legitimate Speculation and Its Practices*, Islamic Institute for Development, 2000, p19.
- 3- Mohamed Hossin el Wadi and Mohamed Samhan, *Islamic Banks, Theories Basis and The Scientific Practices*, El Massira For Distribution, Amman, Jordan, 2008, p56
- 4- Dīaa Madjid, *Islamic Banks*, University Company, Egypt, 1997, p48
- 5- Khatir Messaoud and Bougreen Abdelhm, "legitimate speculation in Islamic economics", from, www.lefpedia.com/arab/25369
- 6- The Same Article.
- 7- R. Sobel , *Panic on Wall Street: A History of America's Financial Disasters*, Beard Books 1999, p23
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- 9- The Same Reference, p59.
- 10- Ali Abd El Ahmed Abou Albasal, "Speculation in Selling and Buying Shares, Jurisprudence Study", Dumas University, Journal of Economic Sciences, 2009, v2, p804
- 11- Verse 29 from Sourat Al-Nissa.
- 12- Verse 1 from Sourat Al-Maida.
- 13- Khatir Messaoud and Bougreen Abdelhim," Legitimate Speculation in Islamic Economics", from, www.lefpedia.com/arab/25369.
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- 16- Verse 29 from Sourat Al-Nissa.
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- 6-- Mohamed Hossin El wadi and Mohamed Samhan, *Islamic Banks, Theories Basis and The Scientific Practices*, El Massira for Distribution, Amman, Jordan, 2008.
- 7- R. Sobel , *Panic on Wall Street: A History of America's Financial Disasters*, Beard Books, 1999.