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RESEARCH ARTICLE

OPTIONS CONTRACTS: DEFINITION, GOVERNANCE AND EFFECTS ON CONTEMPORARY FINANCIAL TRANSACTIONS

Prof. Dr. Ragab Abou Maliha Mohamed Soliman¹, Dr. Saad Gomaa Gomaa Zaghloul² and Dr. Ahmed Ramadan Mohamed Ahmed Harec²

1. Associate Prof. Dr., Kulliyah of Shariah & Law, Universiti Islam Antarabangsa Sultan Abdul Halim Mu'adzam Shah (UniSHAMS), 09300, Kuala Ketil, Kedah, Malaysia.
2. Senior Lecturer, Kulliyah of Shariah & Law, Universiti Islam Antarabangsa Sultan Abdul Halim Mu'adzam Shah (UniSHAMS), 09300, Kuala Ketil, Kedah, Malaysia.

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Abstract

This paper deals with the definition of options contracts, the statement of their ruling, the wisdom of their legislation, the difference between them and the option in Islamic jurisprudence, and trying to adapt this contract so that we can judge it in a correct way. The option in the terminology has many definitions, but they often dealt with this term coupled with another term for the types of options without the definition of the option in general, but the definition of the option can be derived from where it is through the definitions of the types of option by saying: It is the right of the contractor to rescind or sign the contract, because of the emergence of a legitimate justification or under a contractual agreement. The purpose of the options is to avoid the deficiency that occurs after the failure of the contract, provided that the contract is necessary. This is after the convening, validity and enforceability tapes have been achieved, that is, the judgmental options are to mitigate the consequences of breach of the contract at the beginning due to lack of complete information, or to enter confusion and injustice and the like, which leads to damage to the contractor, or in the end as a failure to perform. The purpose of the judgmental options is to scrutinize the two wills and purify the element of consent from impurities in order to pay the damage to the contractor. These contracts, the subject of which is the option, are completely accidental contracts, and the world or the jurists do not entrust them in the manner described above, and since they are accident contracts, the duty requires that they be conducted on the rules of dealing to be based on them until their rule in Islam becomes clear for the clear difference in the principles of rulings, between the rule of dealing in secular countries, and the rule of dealing in the Islamic system.

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Corresponding Author:- Prof. Dr. Ragab Abou Maliha Mohamed Soliman

Address:- Kulliyah of Shariah & Law, Universiti Islam Antarabangsa Sultan Abdul Halim Mu'adzam Shah (UniSHAMS), 09300, Kuala Ketil, Kedah, Malaysia
drragab@unishams.edu.my

Introduction:-

Praise be to Allah, we praise Him, we seek His help, we guide Him, we appease Him, we believe in Him, we trust in Him, we praise Him for all good, we bear witness that there is no God of Allah alone, no partner, and we bear witness that Muhammad is His servant and Messenger, and then after.

Some scholars - non-specialists - have been caught between contemporary options contracts practiced through the stock exchange and the option in Islamic jurisprudence, and therefore it is necessary to differentiate between them, and to know the jurisprudential ruling of each.

In this paper, we deal with the will of God Almighty, options contracts, their definition, the difference between them and option in Islamic jurisprudence, and try to adapt this contract so that we can judge it correctly.

Research problem:

The research problem lies in the statement of the purpose of options in financial contracts of all kinds, is to avoid the shortage that occurs after default, provided that the contract is necessary. This is after the convening, validity and enforcement tapes have been achieved, that is, the judgmental options to mitigate the consequences of breach of the contract in the beginning for lack of complete information, or for the entry of confusion and injustice and the like, which leads to harm to the contractor

The importance of research:

From here appears the importance of this research, through which we try to show the reality of options in contracts, and their importance / and the extent of the need for them in contemporary financial transactions, and in the custom of contemporary economics, and in the financial markets Verad it: the right to buy, or sell a commodity on a specific date at a pre-agreed price, and does not entail the buyer of the option obligation to sell, or buy, but just a right that he can exercise.

Research Questions:

The research problem results in several questions that we try to answer through this study , the most important of which are:

1. What are options?
2. What does options have to do with transaction contracts?
3. Why are options important in the global economy?
4. What is the wisdom behind the legality of options in contracts?

Research Objectives:

The research aims to achieve a set of objectives, including:

1. Demonstrate the importance of options in contemporary financial transactions
2. Statement of the reality of options in contemporary transaction contracts
3. Statement of the relationship between options and the will of contractors in financial transactions

Research Methodology:-

In this research paper, we try to show the importance of options in financial contracts and its impact on contemporary scientific trade , and the research depends on the comparative approach and the inductive approach

Research Plan:

This research includes an introduction, two sections and a conclusion

The first topic: the definition of options contracts and their forms, and the difference between them and the option in Islamic jurisprudence

Definition of options (OPTIONS):

Definition of option linguistically and idiomatically:

Option in the language is a source name from the choice, which is selection and selection, and the verb of them chose, and the saying: You are by choice, means: choose what you want. And his choice between the two things means: he was authorized to choose one of them.

The option in the terminology has many definitions, but they often dealt with this term coupled with another term for the types of options without the definition of the option in general, but it can be extracted a definition of the option in terms of it is through the definitions of the types of option by saying: is the right of the contractor to rescind the contract or sign it, for the emergence of a legitimate justification or under a contractual agreement (Ibn Arafa 277-278 , Fiqh Encyclopedia 20/41).

The wisdom of legislating option:

The purpose of the options is to avoid the deficiency that occurs after the failure of the contract, provided that the contract is necessary. This is after the convening, validity and enforceability tapes have been achieved, that is, the judgmental options are to mitigate the consequences of breach of the contract in the beginning due to lack of complete information, or to enter confusion and injustice and the like, which leads to damage to the contractor, or in the end as a defect in implementation. The purpose of the judgmental options is to scrutinize the two wills and purify the element of consent from impurities in order to pay the damage to the contractor (al-Mawsoo'ah al-Fiqhiyyah 20/45, an-Nawawi 11/332).

As for the choice - or option - in the custom of the contemporary economy, and in the financial markets, it is reprisal: the right to buy, or sell a commodity on a specific date at a pre-agreed price, and the buyer of the option does not have an obligation to sell, or buy, but only a right that he can exercise, or leave, and the speculator (risker) becomes the owner of the option once its value is paid, the choice is an agreement between two parties that undertakes the first party (the seller) to give the second party (the buyer) the right - not to force - to buy, or to sell securities, or commodities According to the conditions stipulated in the contract (Journal of the Islamic Fiqh Academy 1/7).

The difference between legitimate option and market choices

- 1) The choice that people deal with in the capital markets is a contract independent of the contract of sale, while the option in Islamic jurisprudence is merely the right of annulment due to a conditional voluntary provision, or for another reason established by Sharia.
- 2) The place of the contract in the legitimate option exists and is realized, while the place in the market choice is just a right and not the shares, or the commodity.
- 3) It is most likely that the market choice is sold by those who do not own the commodity or shares that belong to another, while the legitimate option is not sold first and is dependent on the contract that was made, and related to it.
- 4) Choices can be up to years while in the option of the Sharia condition is limited to a specific period. Therefore, the legitimate option should not be confused with the market choice, as the two things are different in form and content.

Through this comparison, it is clear to us that the choice contracts in the contemporary financial concept have nothing to do with the option in Islamic jurisprudence, and then we can not call the jurisprudential provisions of the option in Islamic jurisprudence to judge them on this new contract, and we will see how contemporary jurists this contract, and how they judged it in the following two sections hopefully Almighty.

The second topic : adapting options contracts, and judging them

The word of contemporary jurists differed about this contract, the contract of choice, is it similar to one of the contracts named in Islamic jurisprudence, or is it a new contract that has no analogue in jurisprudence?

These contracts, the subject of which is the option, are completely accidental contracts, and the world or the jurists do not entrust them in the manner described above, and since they are accident contracts, the duty requires that they be conducted on the rules of dealing to be based on them until their rule in Islam becomes clear for the clear difference in the principles of rulings, between the rule of dealing in secular countries, and the rule of dealing in the Islamic system.

In the laición systems that separate religion and state, contracts are considered valid and acceptable contracts as long as each of the parties signed the contract by choice, and without coercion or deception, but in Islamic dealing, free will and non-deception are not enough for the integrity of contracts, but the contract must be acceptable in Sharia to have evidence of permission in it, or to be not forbidden and the rules of dealing do not contradict it.

The option contract may be confused with legally authorized contracts, including the sale of a deposit. (Salami 1/229)

After Dr. Al-Salami talks about the sale of the deposit and its ruling and the differences of jurists about it, he says that there are differences between the sale of the deposit and the choices.

The sale of a deposit differs from the choices in a fundamental way:

First: The sale of the deposit upon its completion is considered the advance deposit part of the price, so it is subtracted from the amount to be paid to the seller, while the right of choice is to own the right to buy or sell, and is not deducted from the price upon completion.

Second: The price of the choice may be paid by the buyer and may be paid by the seller.

Third: The option price is a separate contract from the execution contract, as the buyer of the call option or the put option can dispose of it by sale or gift.

Fourth: The motive for dealing with options is not intended to collect the contract and win each party the price or the appraiser, but rather the intention to collect profit, what is happening in the markets that it ends with clearing by calculating the profit achieved for one of them.

Fifth: What the price of an option is based on is an expectation based on the interest rate, linked to the duration of the option, and expectations of price fluctuation.

Sixth, the issue of options is not commodities, but even indicators that are nothing more than gambling.

The result is that if we allow the sale of the deposit, this does not affect the judgment on the disposition of the choices, and one is not measured against the other because of the fundamental differences that we have mentioned (Al-Salami 1/229).

After comparing with other named contracts, Shaykh al-Salami comes up with this adaptation of the options contract:

The closest depiction of dealing in options is that it expanded in gambling images, and devise new ways to be able to obtain gain, or bear the loss according to luck or depression, and gambling seems clearer in some forms of dealing in options, it is open gambling in index options, and it is usury in banknotes, because the buyer of the currency at a specific price by buying an option has spent a contract subject to money from this and money from that at a specific value for a certain period, exchange for a term, and exchange In the event that the buyer chooses to execute the contract, the seller is obliged to sell the dollar, for example, for three riyals, and the buyer performs his right, which is also related to his liability (al-Salami 1/235).

After Dr. Ali Mohiuddin Al-Qaradaghi discussed the possibility of attaching the previous options contract to one of the so-called contracts such as the peace contract or the sale of the deposit, and denied the possibility of attaching it to any of the named contracts due to the clear differences between them, he says:

Is it a new contract?

Yes, it is a new type, but it is not true in our view, although it is more likely that the original in contracts and conditions is permissible, because this contract is based on something abstract that has no reality, because what is contracted is the right to buy, or the right to sell from one party and the obligation to buy or sell from the other party, in light of this, the contract is non-existent and does not have a sensory existence, so one of the pillars of the contract does not exist, so the contract is void, because the contract itself is contained In the choices on this right alone, and as for what is exchanged later in terms of shares, bonds, or commodities . . . It comes later and has no organic relationship with the choice contract itself, because each of them is independent of its own and has its own price.

On the other hand, this contract is composed of two deals: the right to buy and sell (i.e. choice), shares and the like, and it can be considered contained on money and a pure right that cannot be considered money in the eyes of jurists.

The second thing: the right to buy or sell the choice, as we have seen that this right is sold and bought on the stock exchange independently of stocks, bonds and the like, is that permissible in Shariah? (Al-Qaradaghi 1/183)

Dr. Wahba Al-Zuhaili asks whether there is a relationship between the choice contract and other sales or contracts, such as the sale of a deposit, or the sale on the capacity, peace or gift?

He answers: In fact, there is no link between the choice contract and any one of these contracts, because they respond to certain known material things, and the choice contract responds to the right of mere purchase or sale, for example, the sale of the deposit: a contract contained on a property or commodity, and the buyer pays an amount of money that is part of the price if the sale is made, and compensation for missing the opportunity if the buyer refuses to buy (Al-Zuhaili 7/94, blind 7/200)

Dr. Muhammad Al-Siddiq Al-Blind answers this question: Does the selection contract fall under one of the well-known named contracts or is it a new type? If it is a new type, what is the ruling and what is its shar'i adaptation in the sentence?

He says: It is a new type, and its ruling is that it is an incorrect contract, and its adaptation is that it is a netting contract in which what is required in the netting contracts is required, and it is clear from the definition that the object in the choice contract is the right to buy a certain thing or sell it at a certain price, at a specific future time, or during a specific period, and this right is not a valuable money, nor a financial right, but it is a right to buy, or sell at a specific price, given by one of the parties to the other for money, it is similar to the option of the condition in Islamic jurisprudence that one of the parties gives to the other and gives him the right to sign the sale or annul it in this part only, but it differs fundamentally from it in that the option of the condition is within an existing contract, and the choice is an independent contract in itself, and I do not know a jurist who may take the compensation for the option of the condition, so taking the compensation for the option contract is the first to prevent (blind 7/96, Abu Suleiman 7/248).

Jurisprudential ruling on options contracts

Through the above, it becomes clear to us that there is agreement between contemporary jurists, jurisprudence academies, specialized jurisprudence seminars, and legal standards on the inadmissibility of options contracts as they are now, and the dispute arose between them about the possibility of correcting and correcting these contracts, so some of them went - and the right with him - that there is no way to fix them, as they are international contracts, and no one, whoever he was, is allowed to add some items, restrictions or precautions on them or delete, and some of them, as mentioned above, worked hard to try to reform these contracts.

Those who tried to reform it emptied it of its content, for which it was created, and thus became a contract other than the one we are talking about. (Abu Ghuddah 7/264, blind 7/205)

Conclusion, Research Results and Recommendations:-

1. Contracts of choices are similar in terms of pronunciation only and linguistic derivation option in Islamic jurisprudence, but they are different in form and content, as mentioned above in this research.
2. Contemporary jurists have made a commendable effort in adapting this contract, most of them believe - and the truth with him - that this is a new contract that has no analogue in Islamic jurisprudence and therefore must be examined under the general rules of Islamic law and Islamic jurisprudence in the jurisprudence of financial transactions, and some of them cost and tried to attribute this contract to several contracts such as the lease contract, the sale contract, the deposit contract, dating and others.
3. The word of contemporary jurists met to reject these contracts in their current form and most of them - and the truth with him also - believe that there is no way to reform these contracts because the global markets do not accept deletion or addition to these contracts and have been established for gambling and forbidden betting and therefore can not be repaired, and some believe that we strive to provide an alternative from the point of view of Islamic jurisprudence, whether people take them or not, so they put conditions that took these contracts out of their current description to other contracts such as Selling a deposit, dating, etc.
4. The reason for the prohibition is that these contracts are based on a right that cannot be separated from the deal, as it is similar to the sale of the destitute, which the Prophet (peace and blessings of Allaah be upon him) forbade, and some jurists believe that the sale prepared itself on the prevention and others say that the reason for

the prevention is gharar and not the sale of the destitute only, as Sharia has permitted images of the sale of the destitute, some of them by text and some by ijihad.

5. In conclusion, many stock market contracts are mired in usury, gharar, damage and the sale of the destitute, and according to the testimony of fair-minded people, it is a fragile and imaginary economy that does not say about the development of money except rarely, and what one team gains is lost by another team.

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