



Jurisprudential Study of the Client's Infringement of the Banking Contract

Mustafa Ibrahim¹; Mohammad Ehsan Erfani²; Seyyed Abdul Hamid Sabet³; Mohammad Saeed Panahi⁴

¹ Lecturer, Economics Faculty, Kateb University, Kabul, Afghanistan

² Economics Faculty, Kateb University, Kabul, Afghanistan

³ Associate Professor, Economics Faculty, Almustafa International University, Qom, Iran

⁴ Associate Professor, Economics Faculty, Allameh Tabatatai University, Tehran, Iran

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Abstract

Using bank facilities other than the subject of the contract is one of the basic challenges in banking, especially Islamic banking. Sometimes, customers mention some things to get bank facilities during the contract. Still, after the contract, they allocate money outside of what was agreed in the contract, and even in some cases, they may have the intention of deceiving the bank and intending to violate the contract from the beginning. This article raises the question of if the customer violates the contract, what is the obligatory sentence and status sentence of it? It seeks to determine the Sharia ruling on this issue. To find the answer to this question, the hypothesis of obligatory haram and invalidity of the contract has been put to the test, and an attempt has been made to clarify the Sharia ruling of this act by using jurisprudential sources and the opinions of jurists. In this research, the qualitative method of content analysis has been used and an attempt has been made to analyze sources and jurisprudential texts based on scientific theories. The results of the research show that compliance with the contract is mandatory and violation of it is considered a violation of the permission of the owner (bank) and makes the recipient of the facility to be the guarantor for any damages. Jurisprudents differ about the validity of the contract in case of the customer's violation, but the benefits from the capital will belong to the customer, and the customer's possession of these benefits is subject to the bank's permission.

Keywords: *Bank Contract; Jurisprudence; Facilities Received; Customer's Violation*

Introduction

The dependence of all economic activities on liquidity in developing countries has led to many unfortunate consequences, including the growth of liquidity, the quantitative growth of banks and financial institutions, the creation of inflation, the devaluation of the national currency, etc. Dependence of economic activities on cash means that not only manufacturing companies but also households turn to banks for their daily and petty consumption and try to meet their consumption needs by using banking

facilities. On the other hand, even though different and various contracts have been considered by Islamic Sharia and the needs of customers, still the predetermined contracts are limited and many households cannot meet their needs in the form of one of these contracts for various reasons. The data justify, therefore, that they are forced to receive a loan based on one of the contracts in the bank, but after receiving the loan, they use it for other purposes other than what is mentioned in the contract. Of course, this is not specific to loans received by households, but in some cases, loans that are received with specific contracts and for specific matters such as certain production and trade are also directed towards the affairs of the stock market and brokerage such as real estate transactions, currency, gold and others. Activities that are more beneficial to the recipient are pushed.

Considering that the customer has committed in the contract to use the received facilities in the specified matters, not only has he not fulfilled this commitment and has used it in other cases, but in some cases, his intention may be from the beginning. He has received consumption facilities in other cases, how is his possession in these cases from a jurisprudential point of view? Is this contract valid or invalid? Who owns the benefits of using the received facilities? In the following, an attempt will be made to answer the above questions using the general rules of jurisprudence and the opinions of jurists. But before that, the background of the research is examined.

Background of Subject

Considering the importance of observing Sharia rules in usury-free banking, some of the banks' challenges and problems have been discussed from a jurisprudential point of view. Some of the authors' works are mentioned below:

Ahangaran (2012) in the article "A new look at the rule of subordination of contract to intention; Emphasizes its applications in Islamic Bank, and has separated the concepts of intention into three meanings: "Essay", "Goal" and "Will". He believes that what is required by the rule of compliance of contract with intention in transactions is intention in the meaning of composition and it should not be confused with intention in the sense of purpose and will. Based on this, intention means the composition between existence and non-existence, and it cannot be the source of separating the formal and real contract. According to the interpretation provided by the mentioned rule, the correctness of bank contracts requires full knowledge of the customers and bank employees about the nature of the contracts and the intention of creating the contract.

Nazarpour and Mollakrimi (2014) in the article "Examination of Central Bank's Civil Partnership Agreement from the Perspective of Jurisprudence Rules" examined the conformity or non-compliance of civil partnership contracts regulated by the Central Bank with jurisprudence rules, this article uses jurisprudence sources. Imamiyyah has proven the serious problems of this contract to be contrary to the requirements of the contract, the possession of property is void and usury is the condition of guaranteeing interest.

In another article (2015) titled: "Investigation of the condition rule and its application in banking contracts", they conclude by raising the question of whether the banks have correctly used the capacity of the condition rule in concluding the contract or not. It should be noted that some conditions of the bank, such as deposit, irrevocable power of attorney, and compensation for losses in the commandite contract, have sharia forms, and some other conditions, such as the determination of insurance costs, possible damages, and the cancellation of embezzlement, are imposed to guarantee the bank's interests.

Nazarpour and Mollakrimi (2017) in the book "Using Jurisprudential Rules in a Sample of Banking Contracts" have extracted indicators for assessing the health of banking contracts based on jurisprudential rules and checked the compliance of Iranian banking contracts with the rules.

Nazarpour and Mollakrimi (2019) in the article "Investigation of trust rule and its applications in banking contracts" using the descriptive-analytical method, examined the examples of the trust rule in Iranian banking contracts and believed that in these contracts, the capacity of the condition included in the contract was used. The security deposit of the recipient of the facility has become a security deposit, and the customers of the banking system are obliged to compensate for the damage.

All these authors have discussed the challenges in banking from the angle of the bank and the payer of the facility, the existence of conditions that disturb justice and fairness, the contrary condition of the contract in the contract, requiring customers to compensate for damages in contracts where the customer is considered a trustee. The confiscation of some transactions due to the condition of the bank and the formalization of the transaction have all been analyzed with a view to the violation committed by the bank. In this article, an attempt has been made to investigate customer misconduct as a common violation of banking transactions. Therefore, investigating the violations of the request for facilities is one of the innovations of this article.

Bank Conditions

To provide facilities, the bank has included conditions in the contract that the customer is obliged to comply with. Some of these conditions are different in different contracts. The contract is present in all bank contracts with minor differences in the literature. In the following, the condition of using the money received by the customer at the place of agreement is mentioned in some banking contracts.

Articles 9 and 10 of the commandite sale contract say: "Considering that the buyer declared by signing this contract that his job and activity is in a specific matter and under the set of the economic sector that he introduced, and the bank, according to his request, will only sell the transaction to The purpose of use in the above matter was sold to the buyer, so the buyer undertook to use the transaction item only in the stated occupation, and if the violation of the above is revealed to the bank, or if the buyer uses the transaction item in a non-stated occupation, it is a violation of the provisions of It will be considered as a contract and will settle all the bank's claims regarding this contract, and in that case, the bank has the right to cancel it.

Articles 2 and 9 of the reward contract have the same condition: "The rewarder is committed to use the received facility exclusively to fulfill the subject of the contract, and to use all or part of it for purposes other than the subject of the contract, or to pay the debt, or to hand it over to a person It is no longer allowed. The bank has the right to unilaterally terminate the contract and collect all its claims at once in case of fraudulent violation of the terms and conditions of the contract.

In articles 2, 3, 6, and 7 of the commandite contract, the conditions for the execution of the contract are stated as follows: "The agent accepted and undertook to use the commandite capital exclusively for the fulfillment of the subject of the contract and the use of all or part of the capital in other matters It is not allowed to contract or assign it to another person.

Also, Article 12 of this contract says: "If the agent has used the facility subject to the contract in an unauthorized manner, this contract will be terminated from the date of the announcement of the aforementioned violation, and the agent is responsible from the date of conclusion of this contract until the date of full settlement with in addition to its unpaid funds, the bank must pay an amount as damages, which is calculated according to the instructions.

There are similar conditions in other bank contracts such as contract of farm letting and Masakat. Therefore, the text of the contract in all types of received facilities shows that its payment is subject to its use in specific cases and the customer has no right to use it outside the subject of the contract without the bank's knowledge and consent.

The Rule of Loyalty to the Condition and Loyalty to the Promise

According to this rule, if conditions are included in the contract and the parties agree on them if these conditions are not contrary to the requirements of the contract, it is obligatory to comply with them. (Ansari, 1999, p. 226). There is a difference of opinion about whether the condition should be included in the contract or whether a person can be bound to do something in the initial form. (Yazdi Tabatabai, 2008, Vol. 2, 106).

The Shariah document of the jurists for the rule of loyalty is the first verse of Surah Ma'idah which says: "*Believers, fulfill your obligations*" and the 34th verse of Surah Asrah which says: "*Fulfill the covenants*". From the point of view of jurisprudence, it is not necessary to fulfill any kind of condition, some conditions are not only obligatory, but their implementation may be contrary to the nature of the contract in which the condition is included mentioned: The condition must be possible, legally permissible, rational motive hidden in it, not contrary to the requirements of the contract, not unknown, and explicitly mentioned in the form of the contract or the text of the contract. (Mousavi Bojnordi, 1994, vol. 3, p. 258).

If one of the parties violates the condition, the jurists have considered two solutions, one is to cancel the transaction by the other party, and the other is to oblige the violator to comply with the condition through competent authorities. The contracting party can use these solutions optionally, so both are in the same width. (Naraghi, 1996, p. 136)

Applying the Rule

As stated before, the bank stipulated during the contract with the customer that the facility is used only in the case mentioned in the text of the contract and it is not allowed to use it outside the subject of the contract. With full knowledge of the text of the contract and signing it, the recipient of the facility has accepted this condition of the bank and is committed to comply with the condition of the contract. Considering that this condition is not an initial condition and is part of the contract, the contract in which the facility is paid is obligatory according to the jurists. According to the rule of condition, each of the parties to the contract can include a condition that is not contrary to the requirements of the contract in the text of the contract, considering that the condition requiring the use of facilities in a specific case has all the characteristics that are mentioned for the validity of the condition, and this the condition of the bank does not have any contradiction with the requirements of the contract, it is obligatory to fulfill. In the banking contract, when the customer requests the facility for a specific matter and mentions it in the request, it means that the bank has accepted the condition of allocating funds in a specific case and has committed to using the money only in the agreed-upon case. This type of customer's acceptance of the bank's condition is like a verbal condition, which according to scholars is obligatory. Ansari, 1999 vol. 6, p. 59; Hakim, 1989, vol. 13, p. 306).

Writing about the use of money in the text of the contract alone is enough to oblige the customer not to violate it, but in the text of the bank contracts, it is explicitly mentioned to further emphasize that the unauthorized use of money may result in the actions of the bank. In addition to immediately receiving all the money at once, he also collects possible damages. Writing about the use of money in the text of the contract alone is enough to oblige the customer not to violate it, but in the text of the bank contracts, it is explicitly mentioned to further emphasize that the unauthorized use of money may result in the actions of the bank. In addition to immediately receiving all the money, he also collects possible damages. Because this condition does not have any Sharia problems and its implementation does not lead to confiscation of the facility, if the customer violates the contract, its implementation and the obligation to pay damages will be without problems.

The Rule of Deception

According to this rule, whenever a person commits an act that causes another person to be deceived, and he suffers loss from this passerby, the first person is the guarantor and must compensate for the damage. (Mohaqeq Damad, 2011, p. 163). This rule has been used by jurists in different chapters of jurisprudence. Rational behavior, consensus, and evidence of the rule of causality have been mentioned as the documentation of the rule. To clarify the different situations of deceiver and being cheated, the following situations can be considered:

- a) Both the deceiver and the deceived are aware of the effects and consequences of the action, in this case, deception does not apply and there is no deception so that the deceiver can be held responsible because both parties are aware of the consequences of the action.
- b) Both the deceiver and the deceived are unaware of the consequences of the act. In this case, some jurists consider the deceiver to be absolved because his behavior was not knowing the result of his act so that he can be held responsible. (Hakim, 1989, vol. 1, p.p. 269-273; Akhund Khorasani, 1985, p. 45). However, some jurists based on the fact that the truth of actions does not require knowledge of the subject, and as soon as he did the action that caused another person to suffer, it can be placed under the rule of Gharar, so a deceiver who causes damage without knowledge It is considered a "deceived" to another. (Mousavi Bejnourdi, 1998, vol. 1, p. 237; Tabatabai Yazdi, 2008, vol. 1, p. 179).
- c) The deceiver is aware of the result of his action, but the deceived is ignorant. For example, the deceiver encourages a person to make a deal knowing that that person will lose in this deal. This case is a complete example of deception and deception, and according to all jurists, the deceiver will be the guarantor of the damages.

Applying the Rule

In banking transactions, the bank and the recipient of the facility can have three modes regarding the allocation of funds.

- A) The bank and the recipient of the facility both sign a contract and are aware that this facility will be allocated other than as agreed. For example, a person obtains funds for the repair or purchase of home furniture using an installment contract or installment sale, and in this case, not only the customer but also the bank is aware of the use case that the facility will not be used for the agreed-upon item. In this case, deception does not apply and there is no deceiver, therefore, the rule of Gharar cannot be used to invalidate the contract and the customer's guarantee, but the invalidity of the contract is due to its formality and bypassing Shari'a issues and the laws of the sanctity of usury, which the customer and the bank has done.
- B) The bank and the recipient of the facility are both ignorant of the consequences of their actions, neither the customer is aware of the consequences of their actions that lead to the bank's losses, nor does the bank know that the customer has violated the contract.

The bank and the recipient of the facility are both ignorant of the consequences of their actions, neither the customer is aware of the consequences of their actions that lead to the bank's losses, nor does the bank know that the customer has violated the contract. For example, a customer goes to the bank to receive a loan, and the bank operator only explains the interest rate according to the maturity period, then provides the customer with a multi-page form to fill it and hand it over with the collateral document. Finally, the contract is concluded with one of the Islamic contracts such as commandite, Partnership, contract of farm letting, etc., and the client spends the funds for medical purposes. In this case, the bank does not know where the customer allocates this facility, nor does the customer know that in the text of the signed contract, the facility was paid to him under what contract and how far his authority is in possession.

In this case, the customer does not intend to deceive the bank, therefore, according to the opinion of some scholars, it is not possible to refer to the rule of Gharar for the responsibility of the customer, if the customer's action led to deception, it was not voluntary. In contrast to this theory, some scholars believe that many actions are done without any intention and knowledge, and the results of these actions are given an effect even though it is not intended, so in this case, the customer will be the guarantor of the damages caused to the bank. (Mohaqeq Damad, 2001, p. 170).

- C) The bank is ignorant of the customer's behavior, but the recipient of his facility is aware of all actions and consequences. For example, the bank has explained all the terms of payment of the facility to the customer, and the customer also knows that the bank facility is paid for specific activities and with special conditions, and he accepts these conditions, but considering that the bank provides the facility for his desired activity. does not pay or the interest rate is higher, therefore, he accepts the bank's terms and takes the money according to one of the contracts in the bank, but from the beginning, he intends to use the received facility in a different way than the contract.

The customer's violation of the banking contract and trying to prove his Shariah guarantee is the latest case where the recipient of the facility intended to deceive the bank from the beginning. According to the rule of deceivable, the customer is the guarantor for any damages caused to the bank in this area, it may be that in some cases the damage is not only financial and material, but also the dignity and reputation of the bank in the society has been shaken; For example, without knowing that the bank was ignorant of the customer's actions, people accuse the bank of making fake contracts and instrumental use of Sharia contracts, and refrain from doing business with the bank, such as making deposits. If the customer has caused damage to the bank by his deception, he will be the guarantor not only for the facilities received but also for any type of loss that the bank has suffered due to his deception.

The Rule of Trust

According to this jurisprudential rule, if a person seizes another's property as a trustee, lessee, lender, benefactor, and all the possessions that have been allowed by the owner or owner, he is not a guarantor as long as he has not transgressed. Therefore, in case of loss, it is not possible to claim the same or its price from the trustee. (Mohqeq Damad, 2010, p. 91) Some jurists have accepted the principle of the rule by using the hadiths in this chapter and the rule of beneficence, and some jurists (Fazel Lankarani, 1995, vol. 1, p. 27). Some researchers have conditioned the non-guarantee of the trustee to two things: permission of the owner or Shariah and non-exchange. (Mohqeq Damad, 2013, p. 91). In cases where a person takes possession of someone else's property through commandite, lease, or company contracts, his property is still a trust, and the existence of rent or profit share of the commandite and partner is not an exchange of property, which causes the tenant, agent, and partner to be guaranteed.

If the trustee transgresses, his trust becomes a surety. (Shahid Thani, 1989, vol. 4, p. 383; Najafi, 1983, vol. 27, p. 347). These jurists have interpreted trespass as doing an act without permission and taking possession contrary to usual on the part of the owner, and trespassing means shortness and negligence in the care and maintenance of the property or abandoning an action that should be done. In both cases, the trespasser will be the guarantor for any violation and loss of property (Maraghi, op. cit., p. 448).

Applying the Rule

Bank facilities are mostly paid under the headings of Shariah transaction contracts. The recipient of the facility will be a trustee as long as he acts within the scope of the agreements made to allocate the funds, and in case of loss, he will not be a guarantor. What happens in bank contract violations is that the

customer receives facilities with specific contracts and for specific activities, but allocates them in other works, for example, he receives facilities with a farm contract that is only for agricultural activities. but he uses it for the stock exchange and brokerage transactions of currency, coins, real estate, etc., which is a clear example of an exception to the rule of trust and leaving the scope of the owner's permission. At the time of application, the recipient of the facility signs a contract in which the use of the funds is clearly stated and the bank, as the owner of the money or the attorney of the depositors, has given permission to seize only in that particular case, and if the client's activities He expressed his opinion for the bank, he would have received facilities with other contracts and with a different interest rate, or at all, according to his macro policies, the bank considered providing services for such activities to be contrary to its economic and social approach, and in These cases did not pay the facility. Therefore, in such cases where the possession is outside the scope of the bank's permission, whatever the contract, the customer's guarantee will follow, and in case of loss, even without trespassing, he must compensate for the damage.

Although in practical terms, in Iran, to prevent the losses of banks, some solutions oblige the recipient of the facility to pay the capital even without excesses, as in articles 8, 11, and 12 of the executive directive of commandite. It has clearly said that the commandite agent must undertake to pay damages while concluding the peace agreement. But firstly, the principle of stipulating the trustee's guarantee is doubtful because it is against the requirements of the contract, and secondly, if such a condition is not stipulated in the contract, the recipient of the facility will be the guarantor in case of using the funds outside the contract.

The Rule of Following the Contract from the Intention

Following the contract from intention is one of the important rules of jurisprudence that jurists have discussed and implemented in different chapters. Based on this rule, the formation of contracts is subject to the intention of the parties to the contract, and without the intention of a contract, a contract will not be formed, therefore, the contract of people who are sleepy, forgetful, drunk, witty, and sloppy is not valid because they have no intention. Some believe that the meaning of this rule is that the specific effects of each contract follow its specific intention. Because every contract has special effects and their difference is in the intention of the parties to the contract, therefore, whatever the parties of the contract intend, the effects will be arranged according to their intention. Similar actions may be performed with different intentions and have different effects. (Naraghi,1996, p. 159). The intention and will of the parties to the contract is one of the hidden things, it does not have an effect on its own, but it has an effect when people do or want to create the current abandonment in their minds and use exactly that tool to create and intend. People use expression methods such as words, writing, and pointing, to express their intentions. (Bojnordi, 1998, vol. 3, p. 126). In Islam, the ways of expressing intentions are usually left to custom, so most of the ways of expressing intention and rational will are signed by the Shariah. The custom of each community to express intentions may also be different, in the old days speaking and compositional words were used to express intentions and the jurists also considered it the most complete way of expressing intentions and having legal and Shariah effects. But today, other methods such as writing a contract are more common, and due to the approval of common practice by the Shariah, the drafting of a contract can be considered as having legal-Sharia effects (Emami, 1995, vol. 1, p. 181, Rouhani, 1993, p. 18, Mohaqeq Ardabili, 1991, p. 361). The jurists have referred to numerous jurisprudential sources to prove the rule that the contract follows the intention. Some jurists (Naraghi, 1996, p. 159; Maraghi, 1996, vol. 2, p. 50) have considered consensus as evidence for proving the rule, while some other jurists have not considered consensus to be relied upon in this case despite the presence of other evidence (Bojnoordi, 1998, vol. 3, p. 123). Some jurists consider the condition of intention in the contract to be a rational matter that existed before Islam. The Prophet only signed it, and it is not one of the established matters of Islam that special sources such as consensus can be cited to prove it (Makaram Shirazi, 1990, Vol. 2, 371).

Applying the Rule

Banking transactions that are done with Shariah contracts must have all the elements and conditions of a correct contract so that effects corresponding to that contract can be arranged. The relationship between the intention and the contract on the part of the recipient of the facility can be considered in two ways; If the customer carries out the same activity that he intended and based on which he has contracted with the bank, for example, he received the facility with a farm contract for agricultural activity and allocates the received funds to the same activity, there will be no problem. However, if the customer intends to allocate the received facilities in his mind to something other than the subject of the contract, but declares to the bank what he has signed in the contract, there will be a contradiction between intention and action that "we intend to do it and we do not do it." What was intended was not done and what was done was not intended, which is based on the rule of *complia* Iran's civil law also considers the existence of the intention and will of the parties to the contract as one of the conditions for the validity of the contract. "A contract is realized to create on the condition that it is compatible with something that indicates the intention" (Civil Law, Article 191). On the other hand, some (Moradkhani and Shams, 2014, p. 34) do not consider only the intention of one of the parties as a condition for the fulfillment of the contract, but also consider the matching of the intentions of the parties to the contract as a condition for the validity of the contract. For example, if the bank intends to pay the facility as *commandite* and for commercial activity, but the customer intends to allocate the received facility for the repayment of his debt due to the mismatch of the intentions of the parties, this contract will not be fulfilled. Therefore, according to the rule of intention, if the intention of the parties to the contract does not agree, and if the intention and action of the customer are inconsistent, the contract is not valid, and the customer does not have the right to seize the funds received.

The Rule of Not Taking Possession of Another's Property Unjustly

This rule is one of the most common jurisprudential rules that has been cited by jurists in various chapters of jurisprudence. According to this rule, any seizure of property must be done based on the right and correctly. The reasons and documentation for this rule are the verses of the Qur'an (Baqarah, verse 188; Nisa, verse 29; Towbah, verse 34) which in some cases forbid the taking of property in an invalid manner. This rule has been examined in detail in jurisprudence books, the meaning of "eating" here is any type of possession. (Tabatabaei, 1996, vol. 2, p. 519) with several verses in which it is forbidden to eat wealth unjustly, it has had different reasons, such as some regarding bribery, some regarding usury and illicit and corrupt transactions, and others in the case of coercion and usurpation (Tabarsi, 2006, vol. 1, p. 134), but in general, the meaning of "false" includes any kind of unjust and irrational possession and encroachment on the rights and property of others. What is the detection and recognition index of falsehood? That is, any action that has proof of invalidity from the Shari'ah is invalid, or what is considered invalid by custom can also be considered invalid in the realm of reason. The jurists differ. Some jurists (Khoei, 1996, vol. 2, p. 141; Fazel Moqdad, 1964, vol. 2, p. 35) believe that what is meant by false in this verse is only Shari'i falsehood and does not include customary falsehood. Some other jurists (Mousavi Khomeini, n.d. vol. 1, p. 64) left the understanding of all the words and titles in the topics to custom, so they consider the invalidity of custom to be included in this verse.

Applying of Rule

According to the usury-free banking law, the bank acts as an intermediary between the depositors and the recipients of the facilities and will play the role of the depositors' attorney in allocating their deposits. The recipient of the facility has received the funds to perform a specific activity and has agreed in the text of the contract not to use it outside of the subject of the contract. Therefore, the customer's violation in using the facilities outside the subject of the contract will be usurpation without the permission of the owner. Based on this rule, this type of possession is not only legally binding, but the

accuracy of any subsequent customer transactions will also depend on the owner's (bank) permission. For example, if the customer receives the facility with the Murabaha sale contract to buy household appliances, but uses it to buy a car, due to the violation of the bank contract and unauthorized seizure of people's property (the bank), the car purchase transaction and his possessions require permission. will be the owner.

The Validity and Corruption of the Original Contract in Case of Violation

The validity and corruption of the original contract can also be discussed in the form of different jurisprudence rules. According to the rule of the condition, if we consider the contract and the condition to be binding, it means that the condition is a condition that binds the contract to a specific case, in this case, with the violation of the condition and the loss of the condition (applying the facility in the subject of the contract) the binding (contract) will also be invalidated and will not be effective. However, some jurists do not consider such a collateral connection between the contract and the condition (Dorafshan, 2012, p. 2). According to jurists, the invalidity of the customer's violation of the condition at the beginning and during the contract is the point of dispute. If the customer intends to commit a violation from the beginning and intends to allocate the received funds in a way other than the contract, considering that the bank has made the contract conditional and the customer did not intend to comply with the condition from the beginning, a group of jurists The reason for the mismatch between the demand and the acceptance and the lack of agreement between the wills of the parties to the contract, they consider the contract invalid (Naini, 1994, p. 114, Ansari, 1999 p. 175, Hakim, 1998, p. 21, Makarem Shirazi, 2004, p. 134, Sistani). , 1996, p. 24). Some jurists have not explicitly stated the nullity of the contract, but they have stated that in this case, the contract will not be valid because the difference between demand and acceptance in terms of conditions does not cause the inherent difference between demand and acceptance, but in this case, the lack of conditional consent. will follow, and the satisfaction declared in the contract by the bank (bank) was subject to the acceptance of the condition by the customer. When the customer intended to violate the condition from the beginning, he did not accept the condition.

Therefore, the influence of the contract requires the consent of the bank and it can accept or reject the contract (Hosseini Rouhani, 1991, p. 359). Subjecting the influence of the contract to the constitutional consent of the bank shows that the customer does not consider the contract invalid and only the bank has the right to confirm the transaction or cancel it. Conditioning the legitimacy of the customer's possessions with the subsequent permission of the owner will be the same as snooping on the transactions. The rule of trust is used in such a way that in the event of a customer's breach of the banking contract, although he has committed a forbidden act in terms of duty, and his deposit is converted from a trust to a guarantee, and about any losses and losses and the loss of the facilities received with any the type of contract that he has found is responsible and guarantor. However, the contract itself is not invalidated because the nullity of the contract is a definite matter, such as the termination of the contract by one of the parties to the transaction, the death of one of the parties in permissible contracts, and the dismissal of the lawyer in the contract of representation, none of which happened here. Also, the customer or the recipient of the facility still has the owner's or the bank's permission to take possession, but this permission to take possession was specific and limited in the case that the customer violated this part of the contract. (Mohaqeq Damad, n.d. p. 98) Therefore, according to this rule, the contract is correct.

Benefits Obtained from the Facility in Case of Violation

Although it was explained in the previous section that according to some jurisprudence rules such as the rule of trust, the customer's violation does not cause corruption and invalidity of the contract, and based on some other rules such as the rule of Gharr, the rule of compliance of the contract with the intention, fulfillment of the condition, the validity of the contract is doubtful Is. Now, assuming that such an action causes the transaction to be void, the customer is only a guarantor for the principal of the

capital, the benefits from the relevant facilities are divided according to the agreement, and the customer has no guarantee for the total benefits obtained. (Ansari, n.d. p. 104; Tabatabai Yazdi, n.d. vol. 5, p. 39). The ownership of the interests will be subject to the ownership of the object, so if we believe that by violating the contract, the customer has left the circle of permission of the owner (bank) and the entire principal of the capital is returned to the bank's property and the customer has no right of possession, the resulting interests from that, the principle will be related to the bank. However, most of the jurists (Makaram Shirazi, Sistani, Fazli Behsoudi, Vahid Khorasani) answered in this case that although the customer did not have the right to possession, the interests would belong to the customer. Some jurists (Makaram Shirazi) have considered the payment of interest to the bank as an usurious transaction. However, the suspicion of usury arises if the addition to the principal of the capital was stipulated from the beginning, in this case, it was not stipulated from the beginning but the customer lost the possession permission due to the violation of the contract and only because the capital was owned by the bank. and the customer pays the interest to the bank according to the principle, how does the suspicion of usury occur? Based on some jurists (Khamenei) who believe that the customer does not have ownership in banking facilities (other than Qarz al-Hasna), and only consider the customer to be allowed to take possession with the owner's permission, it should be possible to acquire the benefits after the customer's violation justified in the property of the bank.

Jurists' Judgment

Argumentative opinions of some contemporary jurists were explained in addition to the previous material by referring to their jurisprudence books. However, to clarify the mandatory and conditional rulings on the use of facilities in non-contract matters, some authorities were asked about the Shari'a ruling of this type of banking violation.

All the jurists who have been consulted have considered the commitment to the contract to be obligatory and the violation of it has been considered unlawful if it is done with a valid Sharia contract and by the standards of jurisprudence. (Sistani, Vahid Khorasani, Khamenei, Fazeli Behsoudi, Makarem Shirazi). Also, according to contemporary jurisprudence, in case of violation of the contract, the recipient of the facility will be the guarantor of the loss and damages incurred (Makaram Shirazi, Khamenei). Some jurists (Khamenei) believe that bank facilities other than Qarz al-Hasaneh are not owned by the customer, and the customer is allowed by the bank (the owner of the money) to use it in the place designated by the bank according to the contract, so spend it in the place Otherwise, usurpation will be illegal. If he does not have a serious intention towards the transaction, this transaction will not be valid (Makaram Shirazi, Sistani). However, if the customer violates the contract, due to the suspicion of usury, the bank cannot demand an excess of the capital, so the benefits from the use of facilities outside the subject of the contract are related to the customer, but the customer must obtain the bank's consent to take possession of it (Sistani, Makarem Shirazi).

Conclusion

The customer's violation of the banking contract and the allocation of funds outside the scope of the contract is one of the basic challenges of banking, especially interest-free banking, despite receiving various guarantees and the customer's obligation to comply with the contract and supervision of banks, this type of violation is one of the problems. It is common in banking transactions. This article examines the issue from a jurisprudential point of view. Therefore, it was analyzed with jurisprudential rules related to the subject. According to the customer's obligation to use the money in a specific case based on jurisprudence rules, violation of the condition is forbidden, the customer will be the guarantor for the damages with any contract that received the money. According to the jurisprudential rules of possession of property by the invalidity, the rule of compliance with the intention of the contract, the rule of Gharar,

and the rule of the fulfillment of the condition, the contract is void, if the customer from the time of the contract (if he intended to violate from the beginning) or from the time of committing the violation (if after receiving and he has violated without prior intention) he has no right to seize the money and any kind of seizure will be aggressive and usurping; But, some jurists believe that although the act of the customer is unlawful in terms of obligations, it does not invalidate the principle of the contract, so his subsequent possessions will be nosy and with the permission of the owner (bank) is valid.

The benefits obtained from the facility after the customer's violation will be subject to the principle of capital. Some jurists believe that the customer does not become the owner of the facility by violating the contract. Therefore, according to this fatwa, the interests are related to the bank; on the other hand, to escape the suspicion of usury, they consider the benefits to be related to the customer, whose possession requires the permission of the owner (bank).

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