

Applying Risk Taking in Islamic Finance: A Fiqhī Viewpoint

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Abstract : The linkage between liability for risk and legitimacy of reward is a governing principle that must be fully observed in financial transactions. It is the cornerstone of any Islamic business or financial deal. The absence of risk taking principle may give rise to numerous prohibited elements such as ribā, gharar and gambling that violate the objectives of financial transactions. However, fiqhī domains from which it emanates have not been clearly spelled out by the scholars. In addition, the concept of risk taking in relation to contemporary risks associated with financial contracts, such as credit risk, liquidity risk, reputational risk and market risk, needs further scrutiny as regard their Shari'ah bases. Hence, this study is imperatively significant to prove that absence of risk taking concept in Islamic financial instruments give rise to prohibited elements particularly ribā. This study is primarily intended to clarify the concept of risk in Islamic financial transactions from the fiqhī perspective and evaluate analytically the selected issues involving risk taking based on the established concept of risk taking from fiqhī viewpoint. The selected issues are amongst others charging cost of fund on defaulting customers, holding the lessee liable for total loss of leased asset under ijārah thumma al-bay' and capital guarantee under mushārah based instruments. This is a library research in which data has been collected from various materials such as classical fiqh books, regulators' policy guidelines and journal articles. This study employed deductive and inductive methods to analyze the data critically in search for conclusive findings. It suggests that business risks have to be evaluated based on their subjects namely (i) property (māl) and (ii) work ('amal) to ensure that Islamic financial instruments structured based on certain Shari'ah principles are not diverted from the risk taking concept embedded in them. Analysis of the above selected cases substantiates that when risk taking principle is breached, the prohibited elements such as ribā, gharar and maysir do arise and that they impede the realization of the maqāsid al-Shari'ah intended from Islamic financial contracts.

Keywords : Islamic finance, ownership risk, ribā, risk taking

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