

A Critical Examination of the View that Bank Deposits Constitute a Wadī'ah or a Qard

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ABSTRACT

Regarding the reality of deposit-making, particularly interest-bearing deposits in banks, various viewpoints have been proposed, such as wadī'ah, qard, muḍārabah, wakālah, and being a new contract. Undoubtedly, the Sharī'ah and legal rulings and conditions thereof will also differ based on each of the aforementioned transactions. One of the longstanding opinions is that deposit-making in banks constitutes wadī'ah, while in contrast, the prevailing opinion among jurists and legal scholars is that deposits constitute qard. The most important implication of deposits being qard is the application of the prohibition of ribā qardī with respect to receiving interest in this type of banking transaction. In this article, employing an analytical-descriptive method, after elucidating some necessary concepts, the two viewpoints of deposit-making as wadī'ah and as qard are examined, evaluated, and critiqued. The most important finding of this research is that deposit-making in banks is not a wadī'ah contract. Furthermore, although deposit-making in banks as qard is the common viewpoint, it is not established with certainty. Consequently, the implications and rulings of these two fiqhī titles do not apply to deposit-making. Of course, it is evident that the general conditions and regulations of transactions must be observed in these cases.

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Introduction

Various perspectives have been proposed regarding the nature of the deposit contract, particularly for interest-bearing deposits in banks and financial institutions. Some, due to the historical background and title of this transaction, have described the contract in question as an instance of *wadī'ah* (safekeeping or deposit) and a type of entrustment. A second group, based on the depository's permission to use the deposited funds, has considered the nature of this transaction to be an *ūriyah* (commodate loan). Another group, because the bank and the owners of the financial institution act as guarantors for the deposited money, views the reality of this contract as a *tamlīk* (transfer of ownership) of property in exchange for a guarantee for it, i.e., a *qard* (loan). A fourth group, due to the mutual benefit of the principal owner and the agent from the profits of banking transactions with these funds, has regarded the essential nature of this contract as a form of *muḍārabah* (profit-sharing partnership). Fifth and sixth groups, citing issues of incomplete correspondence between the aforementioned transactions and the act of depositing, as well as real or claimed similarities of depositing with *wakālah* (agency) and *mushārah* (partnership), have defined this banking transaction as a form of agency by the bank on behalf of the money's owner or as a type of partnership contract. Of course, in the statements and writings of some researchers, the deposit is considered a new and emergent contract born and developed within the context of banking.

Undoubtedly, the conditions, religious and legal rulings (*ahkām shar'ī wa ḥuqūqī*), and the effects consequent upon the act of depositing will differ based on its inclusion within any of the aforementioned transactions. For instance, one of the established views is that depositing in banks constitutes a *wadī'ah*, while the prevailing view among jurists (*fuqahā'*) and legal scholars is that deposits are a form of *qard*. Certainly, if this transaction were a *wadī'ah*, then in addition to the general conditions for contracts, all the specific conditions, rulings, and effects of a *wadī'ah* would have to be applied to the deposits. Similarly, if this transaction is an instance of *qard*, then all the conditions, rulings, and effects of a *qard* must be imposed upon it.

Methodology

In this article, which has been prepared using an **analytical-descriptive method**, reference has been made to books, articles, and the opinions of *fuqahā'* regarding the nature of deposits and their religious and legal rulings and effects. Attention has been primarily given to the perspectives and statements of those with extensive and profound studies in both economic issues, particularly banking, and Islamic jurisprudence (*fiqh*). After a detailed study of the opinions of great jurists and experts in banking and *fiqh* in this field, two long-standing and prominent viewpoints—namely, that of the

deposit being a *wadī'ah* and a *qarḍ*—have been extracted, examined, evaluated, and critiqued.

3. Research Findings

Some believe that the act of depositing, as its name suggests, is a *wadī'ah*. In this contract, the owner places their money in the bank as a trust (*amānat*) to be withdrawn and used at an appropriate time.

One of the objections to this theory is that "the characteristics of a *wadī'ah* do not apply to cash deposits":

In a *wadī'ah*, there is **no transfer of ownership** (*tamlīk*); rather, it is an agency for the preservation of property. The depository does not have the right to use the deposited item. The depository is responsible for preserving and returning the exact item (*'ayn*). In the absence of transgression (*ta'addī*) or negligence (*tafrīt*), the depository is not a guarantor (*dāmin*) for the property.

However, the features of a cash deposit are as follows: the bank has the **right to use the deposit** in any manner; the bank is not obligated to preserve the exact deposited funds but can instead pay its equivalent from other funds; after the deposit operation, the bank is not only a guarantor for the deposit but, in the case of savings and time deposits, is also obligated to pay profit.

Therefore, the characteristics of a *wadī'ah* and a cash deposit are inconsistent, and the aforementioned theory is rejected.

The most significant argument for the deposit being a *qarḍ* can be presented in the form of a logical syllogism (*qiyās manṭiqī*). This syllogism consists of two premises:

First Premise (ṣughrá): The act of depositing is the transfer of ownership (*tamlīk*) of money to the bank, in exchange for the bank's guarantee (*damān*) to pay its equivalent to the customer.

Second Premise (kubrā): Any transfer of ownership of property to another, in exchange for their guarantee to repay that property, is a *qarḍ*.

Apparently, proving the second premise requires no argument, as *qarḍ* is defined in *fiqh* as "*tamlīk al-māl li-ākhar bi-l-damān*" (the transfer of ownership of property to another with a guarantee).

However, to prove the first premise, evidence has been put forward, all of which is open to critique. Here, one of those pieces of evidence and its critique is presented as an example. To study the rest and their critiques, refer to the original article.

First Evidence for the Minor Premise (ṣughrá) and its Critique

The deposit agreement, in the common understanding of rational people (*irtikāz 'urf wa 'uqalā*), has the nature of a *qarḍ*. From their perspective, the deposit is transferred in ownership to the bank, and the bank is obligated to return its equivalent.

Regarding the critique of this view and the presumed common understanding of ownership transfer, it can be said: this claim is made while others believe that the various types of bank deposits are not, in essence, a

transfer of ownership or a *qarḍ*. According to one view, in a current account, the principal of the money remains the property of the owner, and the bank only has the right to use the deposit, on the condition that its equivalent is paid upon the customer's demand. According to another, in the public perception, current and savings accounts are more akin to a trust (*amānat*) than a loan.

However, in the case of interest-bearing time deposits, from the perspective of banking custom and customers, the principal of the money also remains the property of the owner, and the bank may use the deposit in profitable economic transactions. Therefore, it is not permissible for the bank to spend these funds on charitable and non-profitable matters. Whereas, if it were the bank's property, it could spend it wherever it wished.

Some have expressed that if the customer provides the money to the bank with the intention of profiting from it, even if the bank determines the profit rate, this contract falls within the category of a religiously valid profit-sharing partnership (*muḍārabah sharʿiyyah*). But according to others, applying the concept of absolute agency (*wakālah muṭlaqah*) to most bank transactions is preferable to using titles such as *muḍārabah* and others.

Conclusion

The classification of the deposit contract as either a *wadīʿah* or a *qarḍ* is not established, and all the evidence presented for this contract being a *wadīʿah* or a *qarḍ* is flawed and unconvincing. Based on them, the subject of a religious ruling cannot be proven. Consequently, the specific rulings and effects of *wadīʿah* and *qarḍ*—such as the obligation to preserve the exact property (*ʿayn*) and the prohibition of benefiting from a *wadīʿah*, and the prohibition of usury in a loan (*ribā qarḍī*) for receiving profit—do not apply to this customary and rational agreement. Of course, the general conditions and regulations of transactions must be observed.

It is worth noting that if the parties to the contract conclude this agreement with the specific intention of it being a *wadīʿah*, *qarḍ*, or any other particular transaction, then adherence to the specific religious rulings and conditions of that agreement becomes necessary.

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