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The Paradox of *Mu'allaq* Contracts in *Murabahah* Financing

Panji Adam Agus Putra*

Universitas Islam Bandung, East Java, Indonesia

Dani Durahma

Universitas Langlangbuana, East Java, Indonesia

Cecep Soleh Kurniawan

Universiti Islam Sultan Sharif Ali, Bandar Seri Begawan, Brunei Darussalam

Muhammad Hatta

Universitas Malikussaleh, Aceh, Indonesia

ABSTRACT

Islamic economics requires strict adherence to contracts that comply with Sharia law, but contemporary financial practices, particularly *tamlîk* (purchase with ownership rights) and *mu'âwadhat* (reciprocal exchange) agreements, often face challenges related to *gharar* (excessive uncertainty), raising critical questions about their validity under Islamic law. This study focuses on resolving one of the most controversial issues in modern Islamic finance: the validity of *mu'allaq* contracts in *murabahah* financing structures. Through a normative legal approach, this study systematically analyses classical *fiqh* literature, *fatwa* from the Indonesian National Sharia Council (DSN-MUI), and regulatory guidelines such as the OJK Murabahah Guidelines, revealing fundamental differences of opinion among scholars. The validity of *mu'allaq* contracts in Islamic finance remains a subject of debate, with classical scholars from the Hanafi, Shafi'i, and Hanbali schools rejecting them as non-binding *tabarru'*, while contemporary scholars permit them based on the principle of contractual freedom. This study discloses that transparent *mu'allaq murabahah* contracts, implemented under sharia supervision, effectively balance classical prohibitions with modern banking needs, offering sharia-compliant and practical financing solutions. By maintaining strict contractual clarity while accommodating contemporary transaction requirements, *mu'allaq* emerges as a contract that is legally valid and operationally beneficial for Islamic financial institutions.

Keywords: *Gharar*, *Mu'allaq*, *Murabahah*, Islamic Law

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*Corresponding author: Panji Adam Agus Putra, email: panjiadam@unisba.ac.id

INTRODUCTION

The fatwa of the National Sharia Council (DSN-MUI) of the Indonesian Ulema Council serves as the main institution that sets sharia standards for the Islamic finance sector in Indonesia. Although fatwas do not have formal legal status in the Indonesian regulatory hierarchy (Febriadi & Kurniawan, 2022), they have significant normative authority, guiding both Islamic financial institutions and the Muslim community in Sharia-compliant practices (Adam, 2017; Hasanudin et al., 2023). This is particularly evident in the regulation of *murabahah* contracts, which have become the operational core of Islamic banking (Moosa, 2023; Putra et al., 2022; Wulandari et al., 2016).

Islamic banks, as Sharia-compliant financial institutions, must avoid prohibited contracts such as *riba* while developing alternative transaction frameworks (Islam, 2024; Kurniawan, 2023; Susilawati et al., 2025). Murabahah contracts have evolved significantly from their basic form (*basîth*) to more complex structures (*murakkab*), particularly *bai' al-murâbahah li al-âmir bi al-syirâ'* which is a hybrid contract combining the principles of *murabahah* (sale with a markup on costs) with the principles of *wakalah* (agency) (Ghozali, 2018; Putra et al., 2022). DSN-MUI Fatwa No. 111/DSN-MUI/IX/2017 explicitly supports this structure, reflecting the Council's adaptive approach to Islamic finance (Arwanita et al., 2022).

Contemporary *murabahah* contracts incorporate multiple contractual concepts (*al-'uqûd al-murakkabah*), combining sales (*bai'*) with agency (*wakalah*) and binding promises (*wa'ad mulzim*) as implied in DSN-MUI Fatwa No. 85/DSN-MUI/XII/2012 (Yusl et al., 2024). The 2024 Sharia Financial Services Authority's Murabahah Guidebook introduced *mu'allaq* (conditional) *murabahah* financing (OJK, 2024), presenting both innovative potential and *fiqh* challenges regarding *ta'lîq al-'uqûd* (suspended contracts), particularly concerning *tamlîk* (ownership transfer) and *mu'âwadhat* (reciprocal exchange) agreements. This development highlights ongoing tensions between financial innovation and classical contract law in Islamic finance.

Islamic jurisprudence strictly prohibits *tamlîk* and *mu'âwadhat* contracts due to their inherent *gharar* elements. Fiqh scholars argue these contracts create transactional ambiguity that may disadvantage one party, particularly when critical information about the transaction object remains unclear (Rudiansyah, 2020). As explained by Nurinayah (2023), *tamlîk* contracts specifically violate Sharia principles when they involve uncertain property transfers or speculative elements that create imbalanced risk between parties. This prohibition extends to all Islamic financial institutions, which must eliminate *gharar* from their transactions to maintain Sharia compliance (Asyiqin et al., 2025; Noh et al., 2025; Rozali, 2020; Suaidi, 2025).

The Quranic foundation for this prohibition appears in An-Nisa (4:29), which implicitly condemns *bâthil* (invalid) transactions containing *gharar* (Kementerian Agama Republik Indonesia, 2019). This scriptural prohibition was further reinforced by the Prophet Muhammad (peace be upon him), as recorded in Sahih Muslim: "*The Prophet prohibited transactions that contain uncertainty*." Modern scholars like Hidayat (2020) emphasise that the presence of *gharar* not only invalidates contracts but also creates potential grounds for future disputes between transacting parties.

Existing literature on *mu'allaq murabahah* financing contracts reveals three significant contributions. Rauzi (2010) states the fundamental prohibition of *gharar* elements in Islamic contracts. Building on this foundation, Wahab (2019a) examines *mu'allaq* contracts through a *fiqh muamalah* lens, demonstrating their viability as alternatives to *wa'd mulzim* when aligned with MUI fatwa requirements. Meanwhile, Syauqoti (2018) analyses sharia compliance in Indonesian *murabahah* financing, emphasising the need for rigorous contract structuring to avoid *riba*, though their study omits specific criteria for *mu'allaq* implementation. Thus, this study addresses this gap by developing clear operational criteria for *mu'allaq* contracts that ensure transparency and mitigate *gharar* risks so that it could provide a novel contribution to the field.

The academic debate surrounding *mu'allaq* contracts remains polarised. Hanafi, Shafi'i, Hanbali, and some Maliki scholars reject these contracts as non-binding tabarru' commitments. Conversely, a growing scholarly consensus, as articulated by Wahab (2019b), validates *mu'allaq* agreements based on Islam's principle of contractual freedom absent explicit sharia prohibition. This study enriches the discussion by (1) systematically analysing *ta'lîq al-'uqûd* within the framework of *fiqh mu'âmalah mâliyyah* theory and (2) evaluating the sharia legitimacy of the *mu'allaq murabahah* financing scheme. This dual approach provides much-needed clarity for Islamic financial institutions operating in this controversial area of contracting.

METHOD

This study employed a normative juridical approach (Taekema, 2018), analysing secondary data through a comprehensive literature review (Rowe, 2015). Focusing on *fiqh muamalah*, it investigated the legitimacy of *mu'allaq murabahah* financing contracts by examining relevant

theories, norms, and legal concepts. Primary sources included *fiqh mu'âmalah mâliyyah* literature on *ta'lîq al-'uqûd* and *murabahah* contracts, while secondary sources comprised contemporary *fiqh* studies, books, and prior research.

Using qualitative analysis (Bogdan, 1975; Li, Y., & Zhang, S., 2022), the study explored the underlying characteristics of the subject without quantitative metrics. The process involved data reduction, systematic presentation, and conclusion drawing, eliminating the need for statistical computation (Rasyid, 2022). This approach ensured a thorough, theory-driven examination of the contractual validity in Islamic economic law.

RESULTS AND DISCUSSION

The Permissibility of *Mu'allaq* Contract in Islamic Jurisprudence

Mu' allaq literally refers to relationship (*rabth*) and dependence (Khafif, 2008).

اَلْعَقْدُ اَلْمُعَلَّقُ هُوَ مَا عُلِّقَ وُجُوْدُهُ عَلَى وُجُوْدِ اَمْرٍ آخَرَ

> "A *mu'allaq* contract is a contractual agreement whose validity is depend on the occurrence of a specific condition or event.".

A *mu'allaq* contract depends on something else because of its existence and legal consequences. Examples of *mu'allaq* contracts are as follows:

قَالَ زَيْدٌ لِعَمْرو: اِنْ اَقْرَضْتَ مُحَمَّدًا فَاَنَا كَفِيْلُهُ

"Zaid said to Amr, if you lend money to Muhammad, I will be his guarantor."

Based on this illustration, at least there are parties to the contract, as follows:(1) Akad *kafâlah* between Ziad and 'Amr and Muhammad, in which Ziad was the kâfil, Muhammad was the *makfûl 'an/madîn*, and 'Amr was the *makfûl lah/dâin*; (2) A *qardh* contract between Amr and Muhammad. Amr was the *muqridh*, and Muhammad was the *muqtaridh*. Regarding the applicability of the legal consequences of the *mu'allaq* contract, the following assertions are necessary: Firstly, the *kafâlah* contract established by Zayd with 'Amr was not legally binding at the time of its formation (not *in'iqad*), and thus its legal consequences were not enforced due to 'Amr's use of the term "if". This indicates that at the time the *kafâlah* contract was made between Ziad and Amr, there was no *qardh* contract between Amr and Muhammad. Second, the *kafâlah* contract is automatically executed if 'Amr and Muhammad enter into a *qardh* contract. In the event that Muhammad fails to fulfil his debt obligations to 'Amr, Zayd is required to discharge the debt to 'Amr pursuant to the terms of his *kafâlah* contract. From the perspective of causality theory, the enforcement of the legal implications of the *kafâlah* contract is the consequence (*musabab*) of a cause (*sabab*), specifically the existence of a *qardh* contract. The execution of the qardh contract serves as the cause (*musabab*), whereas the establishment of the *kafâlah* contract constitutes its effect. The *kafâlah* contract will not produce any legal consequences if the *qardh* contract is not executed.

Islamic scholars have extensively debated the permissibility of *mu'allaq* (conditional or suspended) contracts, with Hanafi jurists providing a nuanced classification that distinguishes between prohibited, permitted, and conditionally valid agreements. According to their analysis, certain contracts like *tamlīk* (ownership transfers outside of wills), *taqyīd* (revocation or guardianship arrangements), *iqrār* (acknowledgements), and *rahn* (pledges) cannot be made conditional, while others such as *isqāt* (divorce or rights relinquishment), *wakālah* (agency), wills, and *iltizāmāt* (vows or oaths) may incorporate either compatible (*mulā'im*) or incompatible (*ghayr mulā'im*) conditions. A third category, including *kafālah* (guarantees), ḥawālah (debt transfers), permissions for legal capacity (*ithlāqāt*), and *wilāyah* (authority contracts) – only permits conditional execution when stipulations are harmonious with the contract's nature. Crucially, when invalid conditions (*ta'līq*) are attached to contracts that inherently cannot be suspended, the agreement itself remains binding (*munajjazah*) while the condition is rendered void, treated as legally non-existent (*lā in'iqād*). This sophisticated framework (Al-Zuhaili, 2012) demonstrates Islamic law's careful balance between contractual flexibility and strict adherence to *Sharīa* principles, ensuring transactions remain both practical and theologically sound.

The Hanafi and Shafi'i schools of thought diverge significantly in their interpretation of *murabahah mu'allaq* contracts, particularly regarding execution and delivery. The Hanafi Madhhab adopts a flexible stance, permitting deferred delivery (*mu'allaq*), allowing the contract to proceed even if goods are not immediately available. In contrast, the Shafi'i Madhhab imposes stricter conditions, requiring immediate delivery (*mudhaf*) and invalidating the contract if goods are undelivered at execution (Ahroum et al., 2010). The Maliki Madhhab presents a nuanced view,

permitting deferred *murabahah* contracts in principle but rejecting conditional (*mu'allaq*) ones due to inherent uncertainty. Meanwhile, the Hanbali school does not explicitly recognise conditional *murabahah* but emphasises immediate transfer of goods upon agreement, even with deferred payment (Rahim, 2023). These juristic differences highlight the varying balances between transactional flexibility and risk mitigation across Islamic legal traditions.

Table 1 The Madhhab's View on *Murabahah* Contracts

Safi`i	Maliki	Hanafi	Hambali
It is notably rigorous in its application of *Murabahah* contracts, particularly concerning the delivery of goods. This school mandates that goods must be delivered concurrently with the contract (*mudhaf*) to ensure certainty	It is deferred or conditional (*mu'allaq*) *murabahah* contract is both valid and permissible. However, the legitimacy of a *mu'allaq murabahah* contract is compromised due to the inherent uncertainty associated with its conditions, which can introduce ambiguity into the transaction.	It is greater flexibility by permitting *murabahah* contracts, wherein the delivery of goods may occur subsequent to the conclusion of the contract. Consequently, *murabahah* contracts do not necessitate the pre-existence or non-existence of goods, or the immediate delivery of agreed-upon goods.	It mandates the transfer of goods, specifically *Murabahah* objects, to the buyer prior to the completion of payment. Consequently, once the contract is agreed upon, the goods must be promptly transferred to the buyer even if the payment is arranged in instalments.

Note. Data compiled and analysed by author

Makliyya scholars argued that the contracts that cannot be performed in *mu'allaq* are *tamlîk, isqathat*, and *iltizâmât* contracts. *Syafi'iyyah* implies that contracts that cannot be carried out in *mu'allaq* are *tamlîk* contracts (except for *waisat* and *al-ishâ* contracts) and *isqathat* contracts. As for the Hanbali scholars, such as Ibn Taimiyyah and Ibn Qayyim al-Jauziyyah, they allow *mu'allaq* contracts completely. The argument is the generality of the hadith, which states that Muslims are bound by contract. The conditions in the *mu'allaq bi syarth* contract are divided by Hanafiyyah scholars into 2 (two), consisting of conditions that are in harmony (*syarth mulâ'im*) and conditions that are not in harmony (*ghair mulâ'im*). The criteria for the conditions in the *mu'allaq bi syarth* contracts are as follows.

1) This condition must not have been present at the time of the *mu'allaq* contract. If the condition is present at the time of the *mu'allaq* contract, it constitutes an artificial condition (*shûri*), converting the *mu'allaq* contract into a *munajjazah* contract.
2) It is essential that there exists a connection between the *shaat* (*mu'allaq*) and *mu'allaq 'alaih* (effect) characterised by *tartib*, similar to the ordered sequence of cause and effect; the cause initiates the effect, or the effect is present due to the cause.
3) There must be no incompatible separation (*'adam fashl ajnabiy*) between the *mu'allaq* condition and the *mu'allaq 'alaih*. It is imperative that no other statement that is incompatible with the *mu'allaq* contract intervenes between the condition and the response, as this would suggest that the agreed *ta'lîq* of the contract will not be executed.
4) In *mu'allaq* contract, it is essential for all parties to thoroughly understand the stipulated conditions and their potential consequences, as any lack of awareness in these areas constitutes a *gharar*.
5) The stipulated conditions are expected to be met in the future.
6) The specified condition mandates the use of words in their fundamental meanings, explicitly avoiding figurative expressions (*majâz*).
7) The condition stipulated in a *mu'allaq* contract must be executed by an individual who has the legal competence and capability to fulfil the specified requirements.
8) According to Muhammad Abdul Wahab, the legitimacy and permissibility of *mu'allaq* contracts are affirmed based on specific criteria (Wahab, 2019a): (1) There is no explicit *Sharia* text that prohibits the transaction of *mu'allaq* contracts; (2) Islamic doctrine supports the liberty and adaptability of contractual agreements, sanctioning all contract forms provided there is mutual consent between the involved parties and no violation of Sharia occurs; (3) The critiques presented by certain scholars against *mu'allaq* contracts have been thoroughly addressed and refuted, thereby minimising their relevance in the discussion regarding *mu'allaq* contracts.

Scheme of *Murabahah Mu'allaq* Financing

The DSN-MUI's Fatwa No. 111/DSN-MUI/IX/2017 establishes *murabahah* as a core Sharia-compliant financing mechanism, mandating full price transparency in cost-plus-profit transactions

(Ibrahim & Salam, 2021). Islamic banks implement this through a two-stage process: first acquiring assets, then reselling them to customers at disclosed markups via instalment plans (Muqorobin & Kurniawan, 2022). The framework incorporates innovative flexibility through *murabahah-wakalah* arrangements, where customers may act as procurement agents – though strictly prohibited in personal financing cases. When combined with conditional (*mu'allaq*) contracts, the model requires customers to submit complete procurement documentation within 15 days, ensuring rigorous compliance while maintaining transactional efficiency. This sophisticated structure exemplifies Islamic finance's balance between commercial viability and strict adherence to Sharia principles.

In 2024, the Financial Services Authority (OJK, 2024) Islamic Banking Department published the Islamic Banking Murabahah Financing Product Guidebook, representing an updated version of the Murabahah Product Standard, first introduced by OJK in 2016. This book presents an analysis of the implementation of *murabahah* financing through three distinct schemes: (1) *murabahah* financing without a purchase promise (wa'ad), (2) *murabahah* financing with a purchase promise (*wa'ad*), with or without the inclusion of *wakalah*, and (3) *murabahah* financing in the form of a *mu'allaq murabahah* contract.

Analysis of Divergent Scholarly Views on *Mu'allaq Murabahah*

The validity of ta'līq al-'uqūd (conditional contracts) remains contested among Islamic jurists, with two primary positions emerging. A majority consensus—spanning the Hanafi, Maliki, Shafi'i, Hanbali, Zahiri, Zaydi, Imami, and Ibadi schools—rejects its application to mu'āwadhāt (compensatory contracts), including murabahah financing agreements ('Aql, 2009). This opposition stems from the inherent nature of mu'āwadhāt, which demand immediate and unambiguous terms to avoid gharar (excessive uncertainty).

For murabahah contracts specifically, scholars opposing ta'līq argue that conditional execution undermines the transactional clarity required in cost-plus-profit sales. Their reasoning hinges on Sharia's prohibition of deferred obligations without clear parameters, ensuring fairness and preventing exploitation. This perspective dominates classical jurisprudence, emphasising strict adherence to contractual certainty in trade-based financing.

Ibn Nujaim al-Hanafi, a Hanafiyyah scholar, argued the following (Nujaim, 1999):

تَعْلِيقُ التَّمْلِيكَاتِ وَالتَّقْيِيدَاتِ بِالشَّرْطِ بَاطِلٌ؛ كَالْبَيْعِ وَالشِّرَاءِ وَالْإِجَارَةِ

"Making ownership/tamlîkât contracts (such as sale and lease contracts) dependent on a condition is void."

Abu Ishaq Ibrahim Ibn 'Ali Ibn Yusuf al-Syirazi of Shafi'iyyah scholars opined the following (Al-Syirazi 2013):

وَلاَ يَجُوْزُ تَعْلِيْقُ الْبَيْعِ عَلَىَ شَرْطٍ مُسْتَقْبَلٍ كَمَجِيء الشَّهْرُ وَقُدُوْمُ الحَّاجُ لأَنَّهُ بَيْعٌ غَرَرٌ مِنْ غَيْرِ حَاجَةٍ فَلَمْ يَجُزْ

"It is impermissible to make a sales contract contingent upon a future condition, such as predicting the lunar month or returning from Hajj, as this constitutes a gharar sale contract without a hâjah (necessity), and is therefore not allowed.".

Similarly, al-Bahuti, a Hanbali scholar states:

أَيْ شَرْطٌ (لَا يَنْعَقِدُ مَعَهُ بَيْعٌ) وَهُوَ الْمُعَلَّقُ عَلَيْهِ الْبَيْعُ (كَبِعْتُكَ) كَذَا إنْ جِئْتَنِي، أَوْ رَضِيَ زَيْدٌ بِكَذَا (أَوْ اشْتَرَيْتُ) كَذَا (إنْ جِئْتَنِي، أَوْ) إنْ (رَضِيَ زَيْدٌ بِكَذَا) ; لِأَنَّهُ عَقْدُ مُعَاوَضَةٍ وَهُوَ يَقْتَضِي نَقْلَ الْمِلْكِ حَالَ الْعَقْدِ وَالشَّرْطُ يَمْنَعُهُ

"A condition that renders a sales contract non-binding involves stipulating a prerequisite for the contract's execution. For instance, one might state, "I will sell this item to you if Zayd visits me or if Zayd approves of it." This is because a sales contract is a mu'âwadhat (exchange) contract, which fundamentally requires immediate transfer of ownership without any attached conditions. These terms and conditions are therefore prohibited." (Al-Hanbali, 1993).

The predominant view among *fiqh* scholars, which holds that *ta'līq al-'uqūd* is impermissible, is based on several important considerations. *First*, primary among these is a textual prohibition articulated in a Hadith of the Prophet Muhammad, as reported by al-Thabrani, which clearly prohibits the practice of *ta'līq al-'uqūd*.

نَهَى عَنْ بَيْعٍ وَشَرْطٍ...(رواه الطبرانى)

"The Prophet Muhammad prohibited a conditional sale." (Al-Thabrani, n.d.)

Second, there was a *nash* that prohibited it, such as the Hadith of the Prophet Muhammad (PBUH) narrated by al-Bukhari:

«أَمَّا بَعْدُ، مَا بَالُ رِجَالٍ يَشْتَرِطُونَ شُرُوطًا لَيْسَتْ فِي كِتَابِ اللَّهِ، مَا كَانَ مِنْ شَرْطٍ لَيْسَ فِي كِتَابِ اللَّهِ فَهُوَ بَاطِلٌ، وَإِنْ كَانَ مِائَةَ شَرْطٍ،...(رواه البخارى)

"What would a people be like if they made conditions that were not in the Kitabulloh?" Regardless of the type of condition, if it is not in accordance with the Kitabulloh, it is void even if it is made a hundred times (Al-Bukhari, 2008)."

Third, the primary objective of a *mu'âwadhât* contract, such as a sale, purchase, or lease agreement, is to transfer ownership. In a sale or purchase contract, the *tsaman* is transferred from the buyer to the seller, and the *mutsman* is transferred from the seller to the buyer. Consequently, the presence of *a gharar* (which makes the contract contingent upon a condition or cause) undermines the fundamental purpose of the *mu'âwadhât* contract, rendering it void and invalid. *Fourth*, the contract contains elements of *gharar* (uncertainty) and *muqâmarah* (gambling or speculation), as it is uncertain whether the condition can be fulfilled, leading to ambiguity regarding the existence or non-existence of the condition within the contract. Therefore, in *ta'lîq al-'uqûd*, *gharar* has significant implications for the contract's validity. *Fifth*, the practice of *ta'lîq al-'uqūd* can be analogised to *mulāmasalah* and *munābazhah* sales, both of which were prohibited by the Prophet. Consequently, engaging in *ta'lîq al-'uqūd* rendered the contract invalid. *Sixth*, the objective of both the sale-purchase contract (*al-bai*) and lease contract (*ijārah*) is to facilitate the transfer of ownership based on mutual consent. However, this mutual consent necessitates certainty (*jazm*), which is compromised if a *ta'lîq* is present in the contract.

The second opinion was that of Imam Ahmad, Ibn Taymiyyah, Ibn Qayyim al-Jauziyyah, and Ibadhiyyah, which states that the ruling on *ta'lîq al-'uqûd* is permissible and the contract is considered valid if it contains benefits for humans and does not conflict with the norms of Sharia ('Aql, 2009). The foundation for this second opinion is grounded in the Qur'anic verses, and the traditions of the Prophet Muhammad, as well as analogy (*qiyâs*) and maslahah (benefit). Notably, two specific Quranic verses are relevant to the legitimacy of *ta'lîq al-'uqūq*: Surah al-Maidah (5:1) and Surah al-Isra (17:34). The interpretation of these verses underscores the obligation to fulfil promises or contracts. Due to the broad applicability of these verses, they extend to conditional contracts, provided such contracts do not contradict the Qur'an and the Sunnah of the Prophet.

Furthermore, there are Hadiths regarding the signs and criteria of hypocrites, as referenced in the discussion of *wa'ad muzlim*. Hadīth indicates that a hypocrite fails to uphold his promise. Consequently, this *hadīth* confirms the legality of *tîq al-'uquûd*.

Imam Abu Dawud in his Sunan narrated the words of the Prophet Muhammad implies:

الْمُسْلِمُونَ عَلَى شُرُوطِهِمْ إِلَّا صُلْحًا أَحَلَّ حَرَامًا، أَوْ حَرَّمَ حَلَالًا (رواه ابى داود)

"The parties to a contract are obligated to adhere to the terms they establish, except for those terms that sanction prohibited acts or prohibit permissible acts (Abu-Dawud, 2007)."

This *hadith* aligns with the fundamental principles of *muamalah*, which assert that all forms of *muamalah* are permissible unless there is evidence of the contrary. This perspective was consistent with the views of 'Aql (2009):

فَالأَصْلَ فِي الْعَقْدِ الإِبَاحَةُ, وِلاَ يَحْرِمُ مِنْهَا اِلاَّ مَا حَرَمَهُ اللهُ تَعَالَى وَرَسُوْلُهْ وَلَمْ يَحْرِمْ عَقْدًا فِيْهِ مَصْلَحَةً لِلْمُسْلِمِيْنَ بِلاَ مَفْسَدَةً تُقَاوِمُ ذَلِكَ, وَتَعْلِيْقُ الْبَيْعَ لاَ يُوْجَدُ فِيْهِ شَرْطٌ يَحِلُّ حَرَامًا وَلاَ يَحْرِمُ حَلاَلاً, فَيَكُوْنَ مِنَ الْعُقُوْدِ الْمُبَاحَةِ.

"Contracts are considered valid as long as they do not impose prohibitions beyond those established by Allah and His Messenger, do not restrict agreements that provide advantages to Muslims, and do not result in harm. In the context of a contract (*ta'lîq al-'uqūd*) that does not include stipulations such as prohibiting the forbidden or forbidding the permissible, engaging in *talîq al-'uqūd* is allowed".

In addition to the Qur'anic verses and the hadith of the Prophet, there is an *atsâr* in Imam Malik's al-Muwathâ that addresses the permissibility of *ta'îq al-'uqûd*, which states:

حَدَّثَنِي يَحْيَى عَنْ مَالِك عَنْ ابْنِ شِهَابٍ أَنَّ عُبَيْدَ اللَّهِ بْنَ عَبْدِ اللَّهِ بْنِ عُتْبَةَ بْنِ مَسْعُودٍ أَخْبَرَهُ أَنَّ عَبْدَ اللَّهِ بْنَ مَسْعَودٍ ابْتَاعَ جَارِيَةً مِنْ امْرَأَتِهِ زَيْنَبَ الثَّقَفِيَّةِ وَاشْتَرَطَتْ عَلَيْهِ أَنَّكَ إِنْ بِعْتَهَا فَهِيَ لِي بِالثَّمَنِ الَّذِي تَبِيعُهَا بِهِ فَسَأَلَ عَبْدُ اللَّهِ بْنُ مَسْعُودٍ عَنْ ذَلِكَ عُمَرَ بْنَ الْخَطَّابِ فَقَالَ عُمَرُ بْنُ الْخَطَّابِ لَا تَقْرَبْهَا وَفِيهَا شَرْطٌ لِأَحَدٍ (رواه مالك)

"Yahya narrated to me from Malik, who received it from Ibn Shihab, from 'Ubaidullah ibn Abdullah ibn 'Utbah ibn Mas'ud. He recounted that Abdullah ibn Mas'ud purchased a slave girl from his wife, Zainab Ats Tsaqafiyah, as a gift. His wife stipulated that, if he were to sell the slave girl again, she would have the right to repurchase her at the same price. Subsequently, Ibn Mas'ud sought counsel from Umar bin Khattab. Umar advised: "Do not engage with the slave as long as she remains subject to any condition"." (Al-Madani, n.d.)"

According to Ibn Qayyim al-Jauziyyah, Imam Ahmad Ibn Hanbal used this hadith to argue for the permissibility of *ta'lîq al-'uqûd* (Al-Jauziyah, 1991). The legitimacy of the concept of *ta'lîq al-'uqûd* is derived from an analogy to conditional grants. This is supported by the hadith narrated by Imam Ahmad.

حَدَّثَنَا مُسْلِمٌ، فَذَكَرَهُ وَقَالَ: عَنْ أُمِّهِ أُمِّ كُلْثُومٍ بِنْتِ أَبِي سَلَمَةَ قَالَتْ: لَمَّا تَزَوَّجَ رَسُولُ اللَّهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ أُمَّ سَلَمَةَ قَالَ لَهَا: «إِنِّي قَدْ أَهْدَيْتُ إِلَى النَّجَاشِيِّ حُلَّةً وَأَوَاقِيَّ مِنْ مِسْكٍ، وَلَا أَرَى النَّجَاشِيَّ إِلَّا قَدْ مَاتَ، وَلَا أَرَى إِلَّا هَدِيَّتِي مَرْدُودَةً عَلَيَّ، فَإِنْ رُدَّتْ عَلَيَّ فَهِيَ لَكِ» ، قَالَ [ص:247]: وَكَانَ كَمَا قَالَ رَسُولُ اللَّهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ، وَرُدَّتْ عَلَيْهِ هَدِيَّتُهُ، فَأَعْطَى كُلَّ امْرَأَةٍ مِنْ نِسَائِهِ أُوقِيَّةَ مِسْكٍ، وَأَعْطَى أُمَّ سَلَمَةَ بَقِيَّةَ الْمِسْكِ وَالْحُلَّةَ (رواه احمد)

"Muslim narrated an account involving his mother, Umm Kultsum bint Abu Salamah, who recounted: "When the Messenger of Allah (peace and blessings be upon him) married Umm Salamah, he informed her: 'I presented a gift of jewellery and several *uqiyah* of *misk* oil to Najashi, yet I did not encounter him until after his death, resulting in the return of my gift. If it is indeed true that the *haidah* has been returned to me, then it is yours.' Musa ibn Uqbah reported: 'Thus, he acted in accordance with the Messenger of Allah's (blessings and peace be upon him) words, and his gift was indeed returned to him. Consequently, he distributed one *uqiyah* of *misk* oil to each of his wives and allocated all the remaining *jewellery* and oil to Umm Salamah'." (Ahmad-IbnHanbal, 2001)

The relationship between the sale contract and the grant contract lies in their classification as *tamlīk* contracts, which require ijab (offer) and kabul (acceptance) for validity. By analogising *ta'lîq al-'uqūd* (conditional contracts) to *bay' al-'urbūn* (advance purchase contracts) and grounding the argument on the principle of *al-ibāḥah* (permissibility) in business transactions, the author asserts that the second opinion—which permits conditional contracts under certain conditions—holds *rājiḥ* (superior) status. This position aligns more closely with contemporary *muāmalah* realities and is supported by stronger juristic reasoning.

Critical Analysis of the First Opinion (Prohibition of Ta'lîq al-'Uqūd)

1) *Weak Hadith Evidence*
   The first viewpoint relies on a hadith narrated by al-Thabrani (n.d), wherein the Prophet reportedly forbade conditional sales. However, al-Zaila'i (1997) deemed this narration ḍaʿīf (weak) due to the presence of Ibn al-Qaṭān, an unreliable narrator. This undermines the prohibition argument, as weak hadiths cannot form the basis of definitive rulings.
2) *Misinterpretation of the Prophetic Prohibition*
   Opponents cite another hadith: "Any condition not in accordance with the Book of Allah is void, even if stipulated a hundred times." However, this does not categorically invalidate all conditions—only those explicitly contradicting the Qur'an and Sunnah. Since ta'lîq al-'uqūd does not inherently violate Shariah, the prohibition argument is flawed.
3) *False Analogy to Speculative Sales (Bay' al-Mulāmasah and Bay' al-Muḍābanah)*
   The first opinion erroneously equates *ta'lîq al-'uqūd* with speculative sales like bay' al-*mulāmasah* (touch-based sale) and bay' *al-muḍābanah* (unseen commodity sale), where uncertainty (*gharar*) compels the buyer to purchase before inspection. Unlike these transactions, *ta'lîq al-'uqūd* does not involve gambling or speculation, as the condition's fulfilment is clear and mutually agreed upon.
4) *Misapplication of Gharar (Uncertainty)*
   While the Prophet (PBUH) prohibited *gharar* sales, this pertains to transactions involving unlawful risk or unjust property appropriation. In *ta'lîq al-'uqūd*, the condition is transparent, mutually consented to, and does not entail exploitation, thus negating the claim of impermissible *gharar*.
5) *Ownership Transfer (Intiqāl al-Milkiyyah) Remains Intact*
   Critics argue that conditional contracts negate the essence of sale/purchase by delaying ownership transfer. However, *ta'lîq al-'uqūd* does not nullify the contract's substance and it

merely postpones execution until the condition is met, ensuring the primary objective (ownership transfer) is fulfilled lawfully.

6) *Voluntary Consent is Preserved*
The assertion that *ta'līq al-'uqūd* lacks voluntary participation is unfounded. Both parties willingly agree to the condition, making contractual effects contingent upon its fulfilment. Thus, mutual consent remains central, upholding the contract's validity.

The second opinion, which permits *ta'līq al-'uqūd* under Sharia-compliant conditions, is more robust. It avoids weak hadith reliance, distinguishes conditional contracts from speculative sales, and ensures transparency and mutual consent—key principles in Islamic commercial law. As modern transactions evolve, this flexible yet regulated approach better serves contemporary *muāmalah* needs while adhering to foundational juristic principles.

As previously noted, the scholars who oppose *tal'îq al-'uqûd* include Imam Ahmad Ibn Hanbal, Ibn Taimiyyah, and his disciple, Ibn Qayyim al-Jauziyyah. Notably, both Ibn Taimiyyah and Ibn Qayyim contend that *mu'allaq* contracts are permissible for all types of contracts without exception, encompassing *al-tamlîkât, faskh*, *tabarrû'at*, *iltizâmât*, and even marriage agreements.

Ibn Qayyim al-Jauziyya, in the book I'lâm al-Muwaqqi'în 'An Rabb al-îlamîn, argued as follows:

وَقَدْ شَرَعَ اللهُ لِعِبَادِهِ التَّعْلِيْقَ بِالشُّرُوْطِ فِي كُلِّ مَوْضِعٍ يَحْتَاجُ إِلَيْهِ الْعَبْدُ،

"Allah Swt determines (allows) his servants to do mu'allaq bi al-syarth (tal'îq al-'uqûd) contracts on all things because humans need this" (Al-Jauziyah, 1991).

Ibn Qayyim further explains this as follows:

وَتَعْلِيْقُ الْعُقُوْدِ وَالْفُسُوْخِ وَالتَّبَرُعَاتِ وَالإِلْتِزَامَاتَ وَغَيْرِهَا بِالشُّرُوْطِ أَمْرٌ قَدْ تَدْعُو إِلَيْهِ الضَّرُوْرَةُ أَوْ الحَاجَةُ أَوْ الْمَصْلَحَةُ؛ فَلاَ يَسْتَغْنِيَ عَنْهُ الْمُكَلَّفُ، وَقَدْ صَحَّ تَعْلِيْقُ النَّظْرِ بِالشَّرْطِ بِالإِجْمَاعِ وَنَصَ الكِتَابِ،

"Indeed, ta'līq al-'uqūd, fasakh, tabarru'at, and obligations (iltizām), among others, are permissible under conditions of compulsion (emergency), necessity (ḥājah), or maslahah, as no legal subject (human) can avoid them. The validity of ta'līq al-'uqūd is based on ijmā' (consensus of scholars) and the Qur'anic text" (Al-Jauziyah, 1991).

Ibn Qayyim al-Jauziyyah affirmed the legitimacy of mu'allaq contracts, drawing upon evidence from the Qur'an, particularly Surah Yusuf (12:72). He also referenced the teachings of the Prophet Muhammad, who stated, " a person is bound by the conditions he agrees to, except for those that permit the haram or prohibit the halal." This perspective is further corroborated by the consensus of scholars.

Conditional Contracts in Islamic Jurisprudence

1. *Imam Aḥmad ibn Ḥanbal's Juristic Approach to Conditional Contracts*

Jastanīh (1998) systematically examines Imam Aḥmad ibn Ḥanbal's permissive stance on conditional contracts (taʿlīq al-ʿuqūd bi al-sharṭ). His juristic methodology demonstrates a principled flexibility in recognising conditional stipulations across multiple contractual domains:

a) Marital Contracts (Taʿlīq al-Nikāḥ): Permitting conditional clauses in marriage agreements, grounded in the Prophetic dictum: "The Muslims are bound by their conditions" (Sunan Abī Dāwūd).
b) Commercial Transactions: Sanctioning conditional sales (taʿlīq al-bayʿ), particularly in bayʿ al-muqābalah (repurchase agreements) where sellers retained rights of first refusal.
c) Collateral Arrangements: His personal engagement in a rahn muʿallaq (conditional pawn contract) with the stipulation: "If I redeem my sandals, they remain mine; otherwise, ownership transfers to you."
d) Agricultural Leases (Muzāraʿah Muʿallaqah): Citing Caliph ʿUmar ibn al-Khaṭṭāb's (رضي الله عنه) conditional sharecropping contract with variable profit-sharing based on seed provenance.
e) Debt Settlements (Ibrāʾ bi al-Sharṭ): Validating conditional debt discharges when compliant with Sharīʿah parameters.

Jastanīh (1998) refutes later Ḥanbalī scholars (mutaʾakhkhirīn) who reject taʿlīq al-ʿuqūd, noting the absence of definitive textual (naṣṣ) or jurisprudential (uṣūlī) evidence supporting such restrictions in Imam Aḥmad's corpus.

2. *Legal Analysis: The Preponderant Permissibility of Conditional Contracts*

The permissibility of *taʿlīq al-ʿuqūd* emerges as the *rājiḥ* (preponderant) position through four key considerations:

1) Evidentiary Strength: Prohibitionist arguments rely on weak (*ḍaʿīf) ḥadīth*, for instance al-Ṭabarānī's narration criticised by al-Zaylaʿī (1997), whereas permissive stances derive from sound Qurānic-Sunnatic principles of contractual autonomy (*al-aṣl fī al-ʿuqūd al-ibāḥah*).
2) Utilitarian Benefits (Maṣlaḥah): Conditional clauses prevent harm (*ḍarar*) and facilitate socioeconomic welfare by:
   a) Allocating commercial risks
   b) Ensuring contractual transparency
   c) Protecting parties from *gharar* (excessive uncertainty)
3) Necessity and Need (Ḍarūrah wa Ḥājah): Modern financial complexities (e.g., Islamic banking) necessitate structured conditional agreements.
4) Sharīa-Compliant Parameters: The juristic maxim "Conditions conflicting with Sharīa are void; compliant conditions are binding" provides clear evaluative criteria absent in prohibitionist arguments.

This aligns with classical endorsements of *khiyār al-sharṭ* (stipulated options) in sales, which institutionalise equitable risk mitigation.

3. Contemporary Application: Muʿallaq Murābaḥah in Islamic Finance

The Murābaḥah guidelines (Financial Services Authority) operationalise *taʿlīq al-ʿuqūd* through two Sharīa-compliant mechanisms:

1) Juristic Validation: Scholars permit embedding conditions in compensatory (*muʿāwaḍah*) contracts like *murābaḥah*, provided they avoid *ribā* and *gharar*.
2) Functional Necessity (Ḥājah): Conditional clauses enable Islamic financial institutions to:
   a) Mitigate inventory ownership risks.
   b) Guarantee commodity availability.
   c) Enhance transactional transparency.
   d) Pre-empt legal disputes (nizāʿ).

This application exemplifies *maqāṣid* al-Sharīa in fostering equitable commerce (*taysīr al-muʿāmalāt*).

4. Balanced Framework for Conditional Contracts

Imam Aḥmad's jurisprudence establishes conditional contracts as intrinsically permissible when grounded in valid Sharīa evidence, structured to achieve tangible benefits (*maṣāliḥ*), and devoid of exploitative uncertainty (*gharar*). Contemporary applications must maintain this equilibrium between juristic integrity and socioeconomic pragmatism.

CONCLUSION

The debate surrounding the validity of *mu'allaq* contracts (*ta'līq al-'uqūd*) in Islamic finance reveals a fundamental tension between traditionalist and contemporary juristic perspectives, with Hanafi, Shafi'i, Hanbali, and some Maliki scholars generally rejecting them as non-binding *tabarru'* arrangements that potentially introduce *gharar* (excessive uncertainty), while a growing body of modern scholarship affirms their permissibility based on the absence of explicit Qur'anic or Sunnah prohibitions, the principle of contractual freedom (*al-asl fi al-'uqud al-ibahah*), and their practical necessity (*hājah*) in contemporary finance. Proponents argue that when properly structured with clear conditions, transparent terms, and Sharia-compliant safeguards – particularly in applications like *mu'allaq murabahah* financing. These contracts effectively balance flexibility and risk management while avoiding *riba* and *gharar*, provided they maintain asset-backed transactions, precise ownership transfer protocols, and full disclosure requirements. The model's legitimacy ultimately rests on its alignment with *maqasid al-Sharia* (objectives of Islamic law) through fair risk allocation, dispute prevention, and transactional transparency, though its successful implementation demands standardised frameworks, enhanced Shari'ah governance oversight, uniform disclosure practices, and regular compliance audits to ensure these innovative instruments serve modern financial needs without compromising Islamic legal principles.

The validation of *mu'allaq* contracts strengthens Islamic finance by facilitating flexible and risk-managed transactions while remaining compliant with *maqasid* al-Sharia. Key implications include (1) expanding sharia-compliant financing tools for Islamic financial institutions (IFIs), (2) placing greater emphasis on contract transparency, and (3) the need for a standard governance framework to prevent disputes. Future research should focus on empirical analysis of the application of *mu'allaq* in trade or project financing and regulatory comparisons in major markets. Addressing these areas will optimise *mu'allaq* contracts as innovative yet principled financial instruments.

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