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Profit Generated from Deposited Funds Its Forms, Rulings, and The Jurisprudential Classification of Banks' Transactions with Depositors' Funds: Enhancing Partnership and Trust Between Depositors and Banks to Achieve Sustainable Development

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Abstract: *If a person deposits money for another person, it is a deposit, and the person with whom it is deposited must keep it and then return it to its owner at the time he requests it. If he disposes of it as a spending, gift, or trade, then he has a hand of betrayal that has pierced the hand of trust. It happens in the system of a number of banks that they dispose of depositors' money without asking their permission. These actions of individuals, banks, and banks result in financial profits, so who is the first to receive these profits? What are the provisions related to these actions?*

The Kingdom of Saudi Arabia is striving to direct the Monetary Agency, the banks, and banks to investigate Sharia controls in monetary activities, and to avoid anything that violates these controls as much as possible, and the Sharia committees whose activities the Kingdom has licensed are the best evidence of this generous approach of the state.

The objectives of the research were the most important:

1. *Providing Sharia answers to people's questions about the Sharia ruling on their deposited funds that were used by the depositor without permission from the depositor and resulted in financial profits.*
2. *Monitoring a group of miscellaneous provisions and controls related to this topic in one place.*
3. *Proving the ability of Sharia to find appropriate solutions to people's calamities in their lives.*

This research concluded with scientific results that we explained at the end of the research.

The research also concluded with three important recommendations listed at the end, which are relevant and related to the field of this research.

Keywords: *Deposit - Profit - Banks - Unauthorised Agent*

INTRODUCTION

Praise be to Allah alone, and prayers and peace be upon the one after whom there is no prophet.

TO BEGIN WITH:

Safeguarding people's deposits, trusts, and property is a substantial responsibility. Whoever undertakes this duty must preserve and protect such deposits and return them fully intact to their owners. It is strictly prohibited for the custodian to dispose of these deposits in any manner, particularly by engaging in trade using cash deposits without explicit authorisation from their owners. Such unauthorised hidden trading

may lead to financial losses, consequently resulting in the loss of depositors' money. Good faith cannot justify such losses or the waste of the depositors' funds, even if the custodian intended to share resulting profits with them. Rather, the custodian is legally required to guarantee these deposits in the event of loss, as his possession, initially fiduciary, became clearly negligent due to his unauthorised use of assets that he does not own, thus transforming his custody from trust to betrayal.

RESEARCH PROBLEMS AND QUESTIONS:

This research addresses one fundamental question: What is meant by profit arising from deposited funds, what are its forms and rulings, and what is the jurisprudential classification of banks' transactions involving depositors' funds? This primary question leads to several subsidiary enquiries closely connected to documenting various rulings related to profits earned by entities entrusted with deposits, particularly banks, when engaging in unauthorised trade using these funds.

REASONS FOR SELECTING THE TOPIC:

The reasons for choosing this topic can be summarised in two points:

First: The urgent desire to document numerous rulings and regulations concerning profit arising from deposited funds, clarifying its various forms and the jurisprudential classification of banks' actions involving depositors' money.

Second: Frequent enquiries received from depositors who find themselves surprised by banks or other depositaries acting upon their funds without prior authorisation, generating financial profits which may subsequently lead to disputes over who is entitled to such profits.

RESEARCH OBJECTIVES:

It can be stated that the primary objectives of this research are as follows:

1. Supporting the research orientations of Najran University in the area of contemporary jurisprudential issues.
2. Contributing, through research such as this, to disseminating jurisprudential rulings and regulations concerning profits arising from deposits, explaining their forms, and classifying banks' transactions involving depositors' funds.
3. Compiling scattered issues related to this topic into one resource.
4. Demonstrating the capacity of Sharia law to resolve societal problems in light of its fundamental jurisprudential principles.
5. Contributing to the prevention of the loss of people's wealth.

LITERATURE REVIEW:

After careful and thorough investigation within the limits of the researchers' available resources, they found some scattered articles and miscellaneous fatwas relevant to the topic. However, these materials do not rise to the level or comprehensive nature of this research.

RESEARCH METHODOLOGY:

The nature of this research necessitated adopting an inductive–analytical approach, focused on clarifying regulations and rulings related to profits arising from deposited funds, illustrating their forms, and classifying the actions of banks involving depositors' funds.

RESEARCH STRUCTURE AND PROCEDURES:

The research comprises an introductory introduction, four topics, a conclusion, recommendations, and an index of sources and references, organised as follows:

Introduction: Including a summary of the research idea, its importance, problems and questions, reasons for selection, objectives, literature review, methodology, and structure.

Topic One: Clarification of Key Terms in the Research Title

Topic Two: Obligation of Preserving Deposits and Prohibiting Unauthorised Disposal of Them

Topic Three: Profit Arising from Deposited Funds

Topic Four: Jurisprudential Classification of Banks' Transactions with Customer Deposits

Conclusion: Containing the research's key findings and recommendations.

Index of Topics.

Index of Sources and References.

Topic One: Clarification of the Terms of the Research Title
The proposed title for this research is: "Profit Arising from Deposited Funds: Its Forms, Rulings, and the Jurisprudential Classification of Banks' Transactions with Depositors' Funds." The following is a detailed clarification of the two key terms constituting the title:

1. **Profit (Ribh):** Linguistically, it refers to surplus, advantage, growth, and the increase obtained in trade. It is said: *A man profited in his trade*, and the verb is metaphorically attributed to trade, so it is said: *His trade profited, hence it is profitable.* Additionally, *he profited in his trade* means he gained advantage therein. The term *Arbaha* (with the prefix *Alif*) signifies encountering a market with profit, while *Arbahtuhu* means *I granted him profit*. However, *Rabbahtuhu* with a doubled consonant, meaning *I granted him profit*, is not attested in linguistic sources.[11][23][28]

The juristic definition of profit, in general, does not deviate from its linguistic meaning. Nevertheless, jurists have formulated varying expressions that convey a unified concept. Among their definitions of the term *profit* are the following:

(a) That which a person gains in excess of the value of his exchanged asset.[1]

(b) The increase obtained beyond the capital.[7]

(c) The surplus over the principal capital.[31]

A comprehensive jurisprudential definition of profit may be formulated as follows: **"The increase in capital resulting from converting wealth from one state to another through various exchange transactions."**[32]

2. **Deposit** (*wadi'ah*), Linguistically, it is derived from *wada ʿ*, meaning *to leave* or *to abandon*, from which the term *Tawdee', i.e., bidding farewell* in travel is also derived.[19] In the hadith: *"Some people must cease neglecting Jumu'ah prayers, or Allah will seal their hearts, and they will indeed become among the heedless."*[18]

Shamir, the linguist, stated: *"The meaning of wada ʿihim (their neglect) of Jumu'ah prayers is their abandonment of them, from wada ʿtuhu and wada ʿa, meaning I left it. The grammarians claim that the Arabs abandoned the source forms of yada ʿu and yadharu and relied instead on at-tark (leaving). The Prophet, being the most eloquent among the Arabs, uttered this very word."*[11]

In juristic terminology, the concept of *deposit* has various definitions that revolve around the idea of safekeeping an item with another party. Among these definitions are the following:

(a) An asset placed with a third party for safekeeping.[15]

(b) A trust left with another for the purpose of preservation.[9]

(c) Leaving physical assets with someone competent in safekeeping, while ownership remains with the original owner.[12]

(d) An entrusted act of safekeeping another's property voluntarily, without the right to dispose of it.[5]

From these definitions, it is observed that a deposit involves the transfer of a tangible item from its owner to someone competent in safeguarding it from loss, voluntarily and in pursuit of reward, without any

right of disposal. The item is to be returned to the depositor in the same condition as received.

Thus, profit arising from a deposit in this context refers specifically to the increase in the capital value resulting from the deposit being moved from one state to another through various commercial transactions conducted by a third party without the explicit authorisation of the property's owner.

This disposition by the custodian constitutes a deviation from the fundamental principle, which requires them to preserve the deposit and return it intact to its owner without any disposal. This point shall be addressed further in the following topic.

Topic Two: Obligation of Preserving Deposits and Prohibition of Unauthorised Disposal

The fundamental principle is that the custodian entrusted with people's deposits must preserve and protect them from damage, whether the deposits are in the form of money or movable assets such as cars and similar items. It is prohibited for the custodian to dispose of the deposit by means of trade, leasing, or any other transaction without obtaining explicit permission from the owner. Should the custodian dispose of the deposit without authorisation from its owner, resulting in its loss or destruction, they are legally obligated to guarantee its value.

Numerous pieces of evidence indicate the obligation of preserving deposits and prohibiting unauthorised disposal, including the following:

1. The Almighty Allah states: "Indeed, Allah commands you to render trusts to whom they are due." [Al-Nisa': 58]. A deposit constitutes a trust under the liability of the custodian, who is legally required to preserve and return it as received. A custodian who disposes of the deposit without authorisation or causes its destruction fails to discharge the trust satisfactorily.

Ibn al-Mundhir stated: "Allah Almighty has commanded, in general terms, that trusts be returned to their rightful owners. Jurists are unanimously agreed that trusts must be returned to their owners, irrespective of whether the owners are righteous or immoral individuals"[2].

2. The Prophet (peace be upon him) said: "It is not permissible to take the wealth of a Muslim unless given willingly by himself"[16]. Using a deposit without the original owner's permission is an act carried out without their consent, thus causing distress and infringing upon their property rights.
3. The Prophet (peace be upon him) said: "Muslims must adhere to their stipulated conditions"[17].

The reasoning derived from this Hadith is that depositing property constitutes an act of entrusting by the depositor, while the custodian commits to preserving the deposit. As the custodian is legally capable of fulfilling this obligation, compliance becomes binding based on the explicit statement of the Hadith[32].

4. Jurists have unanimously agreed that a custodian is obliged to preserve the deposit on behalf of its owner and is prohibited from using it without authorisation, as usage inherently poses the risk of loss or damage.
   Ibn al-Qattan al-Fasi stated: "Jurists are unanimously agreed that the custodian is obligated to safeguard and protect the deposit, and unanimously agreed that the custodian is prohibited from using or causing damage to the deposit"[4].
5. Furthermore, since the purpose of depositing property is preservation, the custodian commits to this responsibility. If the custodian fails to preserve the deposit, he violates his established commitment[14].
6. Among established jurisprudential principles is that: "In principle, property belonging to others is prohibited for use. Thus, even the slightest usage of another's property is impermissible without the owner's consent, as minor usage may lead to significant abuse unless explicitly authorised by the owner or permitted by clearly defined conditions or established custom"[20].

Once it is established that the custodian must preserve the depositor's property, the custodian may use it only if explicitly authorised and strictly within the scope of the granted permission. For example, if the

depositor permits driving the deposited car solely within the village, the custodian is not permitted to travel outside that area. If no authorisation has been granted, usage of the deposited property by the custodian is unlawful. Permission thus becomes the determining factor for permissibility, and this is unanimously agreed upon by the jurists.

Ibn al-Mundhir stated: "Jurists unanimously agree that the custodian is prohibited from using or damaging the deposit, and unanimously agree that using the deposit is permissible only with the owner's authorisation"[3].

When the custodian utilises the deposited funds in trade without obtaining permission from their owner, resulting in profits, jurists differ regarding who has the primary right to these profits. This difference will be addressed in the following topic.

Third Topic: Profit Derived from Deposited Funds

If the custodian who holds a deposit disposes of it by conducting trade (in the case of cash deposits) or renting it out (if it is a physical asset), and if such disposition has been carried out based upon prior authorisation from the depositor, then this is permissible. In this case, the custodian acts lawfully as explicitly authorised, and they are entitled to remuneration as agreed. Similarly, pledging or mortgaging the deposited property follows the same rule if permission is explicitly given by the depositor. Jurists unanimously agree on this matter. Ibn al-Mundhir stated: "Jurists unanimously permit usage of a deposit if authorised by its owner"[2].

Majallah al-Ahkam al-'Adliyyah states: "The custodian may use the deposit with the owner's permission"[25].

However, if the custodian engages in trade or rental using the deposit without prior authorisation from the depositor, and subsequently realises profits, then upon the owner's discovery of such profits, if the depositor willingly relinquishes their right to the profits either partially or entirely in favour of the custodian, there is no dispute among jurists regarding the legality of the custodian's entitlement to these profits. This scenario falls under the category of "sale by an unauthorised agent" (fuduli), who sells or disposes of something not owned by them. Al-Sarakhsi stated: "If one sells without the owner's authorisation, the ruling is that of an unauthorised sale, which is not valid unless ratified by the owner... Its foundation lies in the case where a custodian of a deposit engages in a transaction with the deposit and makes a profit."[24]. The predominant view among jurists is that an unauthorised sale is contingent upon the owner's ratification.[29]

However, if the depositor does not consent to the custodian's action, and profits are generated from trading the deposit, jurists have differed regarding the rightful owner of these profits. Do the profits belong to the custodian or to the depositor who did not authorise such use? There are five major jurisprudential views on this matter:

First View: The entire profit belongs to the original depositor. This opinion was held by Ibn Umar, his servant Nafi', Abu Qilabah, and is also the opinion of Ahmad ibn Hanbal and Ishaq ibn Rahawayh[27][2].

The evidence supporting this view includes the following:

(a) The Hadith of the three Israelites trapped in a cave, where one of them said: "One of them said: 'O Allah, I hired a labourer who departed without taking his wages, so I invested his wages until they grew significantly. Later he returned and said: O servant of Allah, give me my wage. I replied: All that you see—camels, cows, sheep, and slaves—is your wage. He said: O servant of Allah, do not mock me. I said: I do not mock you. He then took everything, leaving nothing behind'"[17][18].

Ibn Hajar stated: "This indicates that if a custodian of a deposit engages in trade with the deposited funds, the profit belongs to the depositor."[21]

(b) The profit is considered the natural yield and growth of the depositor's property, as it is well established in legal principles that profit follows the capital from which it originates. Therefore, it belongs to the person who owns the principal sum.

Second View: The entire profit belongs to the custodian who engaged in the trade, and the depositor has no claim to it. This view is attributed to Shurayh, Al-Hasan Al-Basri, Ata' Ibn Abi Rabah, Al-Sha'bi, Yahya Ibn Sa'id Al-Ansari, and Rabi'a. It is also the opinion of Malik[10] and Al-Thawri, with Al-Thawri further stating: "Abstaining from such profit is preferable to me." Similarly, Al-Awza'i shared this view and added: "It is safer for the custodian to donate the profit in charity."[2]

The justification for this opinion is that the depositor entrusted the custodian with the deposit solely for safekeeping, not for use or profit. Since the custodian's primary role was preservation, the depositor has no right to any profit generated from its use.[30] In this case, the custodian is considered to have acted wrongfully, yet their wrongdoing does not prevent them from acquiring ownership of the profit, provided that they return the principal amount to its rightful owner.

Third View: The profit belongs to the custodian who traded with the deposit, but he is obligated to give it away in charity. This is the view of Al-Sha'bi, Mujahid, Al-Nakha'i, Hammad, and also the opinion held by proponents of independent reasoning (*Ashab al-Ra'y*), headed by Abu Hanifah[2][6].

Their justification is that the custodian closely resembles a usurper who trades using the usurped property, as the resulting profit is generated through his effort. However, to absolve himself, he must give the profit in charity. The custodian is not entitled to retain the profit since the depositor's intention was solely to safeguard the deposit, and no agreement was made with the custodian permitting trade or claiming any profits resulting from it.

Fourth View: The depositor is given a choice between reclaiming the original deposited capital or claiming the resulting profit[8].

The rationale behind offering this choice is the depositor's best interest, as the resulting profit may exceed or be less than the original deposit. Therefore, whichever is most advantageous for the depositor should be chosen at his discretion.

Fifth View: The deposit transaction is transformed retrospectively into a profit-sharing (*mudarabah*) arrangement, with profits divided equally between the depositor and the custodian. Ibn Taymiyyah stated: "This is the best of all jurisprudential views discussed by jurists regarding trading deposits without permission"[26].

After consideration, the researchers favour the opinion stating that the profit belongs to the depositor; however, the custodian is entitled to fair compensation equivalent to the typical remuneration for his effort. "The custodian's exertions and labour invested in achieving the profitable trade should be fairly compensated. However, the transaction cannot be considered a valid *mudarabah* (profit-sharing arrangement), as the essential condition of mutual consent between both parties was not fulfilled. If the trade resulted in a loss, the custodian must bear full responsibility unless pardoned by the depositor, as the transaction was neither a proper *mudarabah* nor a previously agreed partnership"[20].

This preferred opinion achieves justice, as many custodians genuinely intend to invest depositors' funds properly but err by failing to obtain prior authorisation. As they are held liable for any loss incurred, they deserve a share in any resulting profits. Thus, the original capital is returned to its owner along with additional profits, from which both parties benefit. This outcome fully embodies the fairness advocated by Sharia.

This does not negate the permissibility of a settlement between the depositor and the custodian, reaching an arrangement satisfactory to both parties—such as dividing the profit equally and obtaining forgiveness from the depositor for the custodian's unauthorised use of the deposit. Jurists unanimously agree on the permissibility of settlements between disputing parties in financial matters.

Al-Mawardi stated: "The basis for the permissibility of settlement lies in the Book (the Qur'an), the Sunnah, historical precedent, and consensus... As for consensus, it is the unanimous agreement of Muslims on the permissibility of settlement and its legitimacy in Islamic law."[13]

If the view that the depositor is entitled to the profit generated from their deposit while the custodian is entitled to a fair wage is upheld, the question arises: Does this principle also apply to customer deposits in banks? This matter shall be examined in the following topic.

Topic Four: Jurisprudential Classification of Banks' Transactions with Customer Deposits

The true nature of a deposit, as previously established, is that the owner places it with another party for safekeeping without authorising its use, and the deposit is to be returned at the agreed time. This applies to what is known as the safe deposit box, which is found in hotels, airports, and some banks.

However, what is termed a bank deposit falls outside this concept, as banks do not merely retain the deposited funds in their exact form; rather, they engage in financial transactions with them, the details of which remain unknown to most customers. From a legal standpoint, bank deposits fall into two categories:

Type One: Non-Investment Deposit, also called demand deposit or referred to as a current account, whereby the client places their money in the bank, to be withdrawn whenever they wish without earning any profit from it, and there is no religious objection to this process because it is essentially a loan from the client to the bank.

However, if the bank is usurious, it is not permissible to deposit in it; because it benefits from this money and is strengthened by it to carry out its prohibited usurious activities, unless the client is forced to safeguard their money in the bank, and cannot find an Islamic bank to safeguard their money, then there is no objection for them to keep it in a usurious bank.

Type Two: Investment Deposits: An investment deposit is defined as a deposit where the client places their funds in the bank in exchange for profits earned over specific periods as agreed upon. This type of deposit has both permissible and impermissible forms.

Permissible Forms: A permissible form exists when the contract between the client and the bank is a Mudharabah contract (profit-sharing agreement). In this case, the bank invests the funds in lawful projects in return for a specified percentage of the profit. The following conditions must be met:

(a) The investment must be in lawful activities and not in prohibited sectors.

(b) The principal amount must not be guaranteed in case of loss, unless the bank is proven to have committed negligence. If the principal is guaranteed, this effectively transforms the contract into a loan, and any additional earnings would be considered interest (Riba).

(c) The profit must be clearly determined at the outset of the contract as a percentage of the profit, rather than a fixed percentage of the principal amount. If the profit percentage is unknown or unspecified, the contract is deemed invalid according to Islamic jurisprudence.

Impermissible Forms:

(a) When the principal amount is guaranteed: For example, if a client deposits 100 and is guaranteed a profit of 10, while the full 100 remains secured, this constitutes a usurious loan. This practice is prevalent in conventional interest-based banks, often under names such as investment deposits, certificates of investment, or savings accounts. However, these modern terminologies do not change the fundamental nature of the transaction, which remains prohibited interest-based lending disguised under appealing names.

(b) When the investment is directed towards unlawful sectors, particularly industries or businesses that promote immorality and unethical practices.

The Islamic Fiqh Academy, affiliated with the Organisation of Islamic Cooperation, has issued the following ruling:

First: Demand deposits (current accounts)—whether held in Islamic banks or interest-based banks—are considered loans from a jurisprudential perspective. This is because the receiving bank assumes full

liability for these deposits and is legally obligated to return them upon request. The financial stability of the borrowing bank does not alter the legal ruling on the loan.

Second: Bank deposits are categorised into two types based on actual banking practices:

a. Deposits that generate interest, as is the case in interest-based banks, constitute usurious loans (riba-based transactions), which are prohibited. This prohibition applies regardless of whether the deposit is a demand deposit (current account), a fixed-term deposit, a notice deposit, or a savings account.

b. Deposits placed in banks that are genuinely committed to Shariah-compliant banking, where funds are received under an investment contract based on profit-sharing, are considered mudarabah capital (silent partnership financing). Consequently, the rules of mudarabah (qirad) in Islamic jurisprudence apply, one of which prohibits the bank (as the mudarib) from guaranteeing the capital of the investment. [22][33]

Accordingly, if a client's deposit is placed under a mudarabah (silent partnership) contract, the bank must inform the client about how the funds will be invested and used for trading. Additionally, the bank must disclose the client's profit share in exchange for the bank's own profit percentage. The bank is not permitted to invest the client's funds without the client's explicit authorisation. If the bank does so, and the client subsequently becomes aware of the bank's actions, the previous scholarly disagreement regarding whether an entrusted party may invest a deposit without permission becomes applicable. As previously established, the profit belongs to the client as the owner of the capital, and the bank should receive a fair market-based service fee. Alternatively, the bank and the client may agree on a mutually acceptable profit-sharing ratio, followed by the establishment of a new contract that is transparent and clearly defines the nature of their future investments.

It may be appropriate in the coming periods to expand the use of technology to support this field (Ahmed, Alharbi, & Elfeky, 2022; Elbyaly & Elfeky, 2023a, 2023c, 2023e, 2023f, 2023g, 2023h, 2023i; A. Elfeky, 2017; A. I. M. Elfeky & Elbyaly, 2016, 2019, 2023a, 2023b, 2023c, 2023e, 2023f, 2023g; A. I. M. Elfeky, Najmi, & Elbyaly, 2023, 2024a, 2024b; Elfekyand, 2016; Masada, 2017; Masadeh & Elfeky, 2016).

CONCLUSION:

The research produced several findings, as follows:

1. Linguistically, "profit" means an increase or growth. Jurisprudentially, it has been defined as an increase in capital resulting from changing its condition through various exchange transactions.
2. "Profit arising from deposits," as discussed here, refers to the increase in capital resulting from changing the condition of the deposited funds through various exchange transactions conducted by a third party without the owner's authorisation.
3. The fundamental principle is that the custodian entrusted with people's deposits must safeguard and protect them from damage or risk.
4. Any disposal or trading involving the deposited property must be explicitly authorised by the depositor.
5. Jurists unanimously agree that if the custodian uses or trades the deposit with the depositor's permission, the custodian is considered an agent and entitled to fair remuneration.
6. If the custodian trades or uses the deposit without authorisation from the depositor, but the depositor subsequently approves upon discovering the transaction, the custodian's actions are treated as an unauthorised sale, the validity of which depends on the subsequent approval of the original owner.
7. However, if the depositor does not approve the custodian's unauthorised use and profits are realised from trading the deposited funds, jurists differ regarding who is entitled to the profits: the depositor (owner of the capital) or the custodian who traded without permission. Researchers identified five

juristic opinions on this matter, favouring the view that profits belong to the depositor, with the custodian entitled to fair remuneration equivalent to standard market rates.

8. A mutually agreeable settlement between the depositor and custodian is permissible, such as dividing the profit equally while seeking forgiveness from the depositor for unauthorised trading. Jurists unanimously allow settlements between disputing parties concerning financial matters.
9. If a bank deposit is invested based on a legitimate *mudarabah* (profit-sharing) agreement, the bank must obtain explicit authorisation from the customer before investing the funds. Neither the bank nor its employees may exploit the customer's lack of awareness about financial transactions to invest their funds without authorisation. Should the bank nevertheless invest without the customer's permission, the profits belong to the customer, with the bank entitled to fair remuneration, unless they mutually agree on a suitable settlement.
10. This research encourages strengthening partnerships and trust between depositors and banking institutions.
11. The research generated four important recommendations.

RESEARCH RECOMMENDATIONS:

The researchers identified four specific recommendations for further detailed study, namely:

1. Factors Transforming Fiduciary Custody into Breach of Trust: Regulations and Jurisprudential Rulings.
2. Trade between Profit and Loss: A Jurisprudential–Economic Study.
3. Jurisprudential Issues Concerning Deposits on which there is Consensus among Jurists.
4. Principle of "The Default Rule in Property is Prohibition": Contemporary Jurisprudential Applications in Financial Transactions.

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