



Journal of Arts, Humanities and Social Science (JAHSS)

ISSN: 3006-9491 (Online)

Volume 2 Issue 3, (2025)

 <https://doi.org/10.69739/jahss.v2i3.403>

 <https://journals.stecab.com/jahss>



Published by
Stecab Publishing

Review Article

The Bay'al-Wafa Contract from the Perspective of Hanafi Jurisprudence

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About Article

Article History

Submission: March 12, 2025

Acceptance : August 14, 2025

Publication : September 12, 2025

Keywords

Bay' Wafa', Contract, Hanafi Fiqh, Pledge

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ABSTRACT

The article discusses the contract of Bay' Wafa' (Sale with Promise) in the context of Islamic jurisprudence (Hanafi Fiqh). Bay' al-Wafa is a term within a contract that allows the buyer to return the goods to the seller, typically in exchange for a loan, after taking possession of the goods. If the buyer defaults on the loan, the seller has the right to retain the goods. The importance of defining Bay' al-Wafa in Hanafi Fiqh is to clearly outline the ruling of the contract and to familiarize oneself with the terms of Bay' Wafa'. The objectives of this study include elucidating the concept and significance of Bay' al-Wafa and comparing it with other similar contracts such as Rahn (pledge), highlighting the practical implications and examples of Bay' Wafa'. In this study, written sources are extensively utilized, with efforts made to cite reputable sources. However, it is crucial to ensure that one's own interpretations are not mistaken for direct quotations from these sources, and to properly reference borrowed ideas. Moreover, it is important to ensure that secondary sources are also appropriately acknowledged. This study aims to establish that Bay' al-Wafa is a valid contract in Hanafi Fiqh and can be applied in various circumstances, particularly in conjunction with the concept of Rahn. Similarly, if we look at the present time, many people are not familiar with the concept of a sale contract (Bay' wa Fa') and this contract is not visible in practice. The reason for this is that people are largely unaware of this contract. This is why, nowadays, people do not repay their debts. If individuals were to fulfill their debts, then others would also repay their loans. According to Hanafi jurisprudence, this is a permissible contract, and it should be utilized in practice.

Citation Style:

Malakzai, T., Sahibzada, Z., & Khedam, A. B. (2025). The Bay'al-Wafa Contract from the Perspective of Hanafi Jurisprudence. *Journal of Arts, Humanities and Social Science*, 2(3), 32-35. <https://doi.org/10.69739/jahss.v2i3.403>



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1. INTRODUCTION

This article delves into the discussion of the Bay' al-Wafa contract within the framework of Islamic jurisprudence, particularly in the Hanafi school of thought. Bay' al-Wafa is a contract where the buyer has the right to return the goods to the seller on certain conditions, typically after taking possession of the goods in exchange for a loan. If the buyer defaults on the loan, the seller retains the right to keep the goods. This type of contract is an essential topic in the field of jurisprudence, where we aim to analyze the Bay' al-Wafa contract solely from the perspective of Hanafi jurists who hold different opinions on the validity of the Bay' al-Wafa contract. Some consider it invalid, others view it as permissible under certain circumstances, and yet others see it as a form of Rahn contract in reality. The various viewpoints on this subject are explored in this article, supported by discussions and evidence.

The sale contract (Bay' wa Fa') is a topic of discussion in the current time because there is a need for this contract. If this contract is established in transactions, it can create an atmosphere of trust, allowing people to lend money to one another. The sale contract serves as a type of guarantee where one party gives something to another and says that when the loan is repaid, the item will be returned. Essentially, the party receiving the item has no fear or anxiety because if the other party repays the money, they will return the item, thereby ensuring that they receive their money back. If the money is not repaid, then the item given serves as a guarantee, remaining in the possession of the lender.

2. LITERATURE REVIEW

Regarding the topic of Bay' al-Wafa in Hanafi jurisprudence, many books have been written, which we mention as follows:

1. Al-Mabsut by Al-Sarakhsi: This book discusses not only the contract of Bay' al-Wafa but also other types of contracts. However, in our research, we have focused solely on the Bay' al-Wafa contract from among those contracts.
2. Al-Ashbah wa al-Naza'ir by Jalal al-Din al-Suyuti (may Allah have mercy on him): This book contains a detailed discussion on Bay' al-Wafa. However, in our writing, we have only briefly analyzed the Bay' al-Wafa contract from the perspective of Hanafi jurisprudence.
3. The main reason for the disagreement regarding the sale contract (Bay' wa Fa') is that some Hanafi scholars have likened this contract to a pledge (Rahm), stating that there is no difference between them. However, other Hanafi scholars argue that the sale contract differs from a pledge and has been deemed permissible based on public interest, as it allows people to obtain loans and solve their problems.

3. METHODOLOGY

In this writing, we have utilized a bibliographic approach and have made extensive efforts to rely on the authoritative books of Hanafi jurisprudence regarding Bay' al-Wafa. In cases where nothing was found in the authoritative books, we have also referred to secondary sources.

This text is derived from important and reputable Hanafi jurisprudential books, focusing on the aspects related to "Bay' al-Wafa" (the contract of deferred sale). It explores the

opinions of Hanafi scholars on this matter and analyzes these viewpoints. Additionally, a comparison of these opinions is made, highlighting the arguments supporting each position. Ultimately, the most preferable opinion is selected based on the provided evidence. Furthermore, this study investigates whether such contracts are currently present in transactions, and if not, it identifies the reasons for their absence.

4. RESULTS AND DISCUSSION

It can be said that Bay' al-Wafa is a contract in which the sold item is returned to the seller upon the repayment of the price. In Hanafi jurisprudence, some scholars consider such a contract to be absolutely invalid, while others deem the Bay' al-Wafa contract permissible. Additionally, some scholars view the Bay' al-Wafa contract as being similar to a mortgage (rahn) contract.

4.1. First Topic: Introduction to Bay' al-Wafa (Contract of Deferred Sale)

The term "Bai' Wafa'" is formed from two words: "Bai'" which means sale, and "Wafa'" which, in linguistic terms, signifies fulfillment. In the context of transactions, Wafa' is the act of fulfilling one's obligations, either by asserting one's rights or by fulfilling one's obligations (Ibn Manzur & Ibn, 1414 A.H.) and Wafa' means fulfilling one's obligations faithfully, which implies either fulfilling one's rights or delivering them (Al-Fayruzabadi & Ibn, 2005).

4.2. The Terminological Definition of Bai' al-Wafa

In the Terminological terminology of Islamic jurisprudence, scholars have provided various definitions for Bai' Wafa', aiming to encompass its essence in a concise form based on a comprehensive understanding of its various aspects.

4.2.1. First: The Definition of Bay' al-Wafa According to Hanafi Scholars

Bay' al-Wafa is a contractual expression within a contract that allows the buyer to return the goods to the seller, typically in exchange for a loan. If the buyer defaults on the loan, the seller retains the right to keep the goods (Al-Zayla'i & Ibn, 1314 A.H.).

4.2.2. Second: The Definition of Bay' al-Wafa According to Maliki Scholar

According to the Maliki scholars, Bay' al-Wafa is a contract in which the seller places a condition on the buyer that when the buyer repays the full amount, the seller will return the sold item. In this regard, Maliki scholars also consider the condition of sale in Bai' al-Wafa (Makhluf & Ibn, 2003).

4.2.3. Third: The Definition of Bay' al-Wafa According to Shafi'i Scholars

According to the Shafi'i scholars, Bay' al-Wafa is a contract in which both the buyer and the seller agree that when the buyer repays the agreed amount, the seller will return the sold item. However, Shafi'i scholars emphasize that this agreement and contract should not be void of conditions (Al-Haytami & Ibn, n.d.).



4.2.4. Fourth: The Definition of Bay' al-Wafa According to Hanbali Scholars

The Hanbali scholars view Bay' al-Wafa as a contract in which the buyer agrees to repay the seller, and when the buyer returns the full amount, the seller will return the item. In my case, I will act as the seller of my goods, and the buyer will be responsible for the repayment. Through this agreement, the buyer can gradually fulfill the payment, and in the process, the seller can secure the item from being sold elsewhere (Al-Buhuti & Ibn, 1968).

4.2.5. Fifth: The Preferred Definition

When it comes to defining terms, it is almost always close in meaning across different interpretations, with some differences in wording and nuances. However, it is worth noting that a specific emphasis can be placed on the detailed definition of Bay' al-Wafa for a better understanding (Bay' al-Wafa being a contract where the seller entrusts the sold item to the buyer with the condition of returning it upon repayment).

4.3. Second Topic: Historical Background of Bay' al-Wafa Contract

Historical accounts indicate that the concept of Bay' al-Wafa first emerged in the 5th century Hijri in Bukhara and Samarkand (Al-Zarqa & Ibn, n.d.).

With the purpose of providing interest-free loans to the poor and needy, preventing people from falling into usury, and addressing the prevalent practice of exploiting the vulnerable and impoverished. Although this was not an ideal situation, the Hanafi scholars justified it due to the necessity of helping the people and preventing them from falling into debt and interest (Al-Suyuti, 1983).

However, the reality is that the concept of Bay' al-Wafa was scrutinized and defined more precisely by the Maliki and Hanbali scholars in the 5th century Hijri (Malik, n.d.).

4.4. Third Topic: The Legal Ruling of Bay' al-Wafa Contract According to Hanafi Jurisprudence

In Hanafi jurisprudence, there are differing opinions regarding the ruling on Bay' al-Wafa, which are explained as follows:

4.4.1. First View: Bay' al-Wafa is perfectly invalid as a contract

According to Hanafi jurists, the contract of Bay' al-Wafa is considered invalid by its nature. These jurists provide strong arguments to support their claim.

- *Primary Argument:* Abdullah bin Umar (may Allah be pleased with him) narrates a hadith from the Prophet (peace be upon him) stating, (لا يَحِلُّ سَلْفٌ وَبَيْعٌ، وَلَا شَرْطَانٌ فِي بَيْعٍ، وَلَا رِبْحٌ مَا لَمْ،) (Al-Suyuti, 1983).

- *Translation:* Neither preemption is allowed nor two conditions in a single sale, nor is it permissible for the seller to declare that he is not responsible for the item being sold or that the item being sold does not exist.

- *Justification:* The blessed hadith emphasizes that "لا يَحِلُّ سَلْفٌ وَبَيْعٌ" meaning that preemption is not permissible. This hadith implies that in a contract, preemption is not allowed, indicating that imposing conditions that lead to usury and engaging in

such practices for the sake of profit are forbidden.

- *Secondary Argument:* Imposing conditions in a contract leads to disagreement between the parties involved, hindering the effects of the sale agreement on both sides. The buyer may not use the purchased item immediately, leading to its deterioration, and the seller may also impose a condition that payment be made at a later date, thus rendering such conditions in the sale agreement void (Al-Sarakhsi & Ibn, n.d.).

- *Third Argument:* The second view, which states that in this form of sale, satisfaction is not reached, that the buyer does not have real possession of the sold item, rather deals with it in the form of a loan, and the seller does not have real possession either but delays the payment instead of handing over the goods promptly, so this is not a valid sale, but rather an increase in debt and an increase in the prohibition of debt (Al-Zayla'i & Ibn, 1314 A.H.).

4.4.2. Second View: Bay' al-Wafa is a valid contract

According to Hanafi jurists, the contract of Bay' al-Wafa is valid based on various contract principles, where the buyer has possession of the item being sold, and the seller has possession of the price, meaning that possession must not be absent from both parties, which the jurists rely on their claims and present clear evidence in support.

- *First Argument:* The practice of Bay' al-Wafa has become widespread among people, and it has become a customary practice. Based on this customary practice, many Islamic legal rulings have been established, and considering the numerous rulings based on this practice, it is not correct to establish the validity of Bay' al-Wafa based on this practice (Al-Zayla'i & Ibn, 1314 A.H.).

- *Secondary Argument:* For the sake of achieving benefit, a suitable contract is one that adheres to legal principles without conflicting with them, and this principle is based on the fact that Bay' al-Wafa is a valid contract according to the legal rules (Al-Suyuti, 1983).

- *Third Argument:* In the context of Bai' al-Wafa, both parties use the term "Bai' al-Wafa" in the contract, and the words used in the contracts are not for intentions but for purposes, similar to when a person says "I intend to divorce" with the intention of intimacy. Thus, the contract is valid (Al-Kashani & Ibn, 2000).

4.4.3. Third View: Bay' al-Wafa is essentially a mortgage contract

According to this opinion, the Bay' al-Wafa contract is essentially a pledge (mortgage) contract, which can be explained as follows:

The Literal Definition of Pledge (Mortgage)

In Arabic, mortgage implies stability and continuity, as the Arabs say: (رهن الشيء أي دام وثبت) (Omar, 2008).

In line with this, the concept of a pledge (Ghani) is also emphasized, as Allah (Glory be to Him) says: (كُلُّ امْرِئٍ بِمَا كَسَبَ) (Quran).

- *Translation:* Every individual is responsible for their actions.

The Concept of Mortgage in Legal Terminology
The act of securing an item due to a right, so that this right can be regained through the item itself (اعداد الاجزاء ١٠/١٣٥/١٠).



The Differences between Bay' al-Wafa and Pledge (Mortgage)

1. The contract of Bay' al-Wafa or mortgage in common ownership is valid, but according to the Hanafi view, this condition is specific to mortgage, not to Bai' al-Wafa (Al-Zarqa & Ibn, n.d.).

2. The contract of Bay' al-Wafa is considered a lease at first, but the contract of mortgage is not considered a lease at first. (Al-Zarqa & Ibn, n.d.)

3. The contract of Bay' al-Wafa can be annulled halfway, while the contract of mortgage cannot be annulled halfway (Jama'ah min-al-'Ulama, 1310 A.H.).

4. If a mortgage is not annulled, the mortgagee can annul it, and if the contract of Bay' al-Wafa is not annulled, the seller can annul it (Al-Hanafi, n.d.).

4.5. Arguments of the above Scholars

Primary Argument: According to the two views of the jurists, the goals and meanings are the basis of contracts, not the words. In the contract of Bai' al-Wafa, the primary purpose and goal is mortgage, even though the words used in the contract are not related to mortgage (Ibn 'Abidin, 1966).

4.6. Fourth Topic: Practical Examples of Bay' al-Wafa Contract

In examples, the first is the Bay' al-Wafa contract for cars, and the second is the Bay' al-Wafa contract for real estate, as explained below:

4.6.1. First Example: Motor Vehicle Sale with Bay' al-Wafa

First Buyer (Lessee):

Second Buyer (Purchaser):

The first buyer agrees to transfer the motor vehicle to the second buyer in exchange for the total amount agreed upon.

Once the total amount is paid by the second buyer, the first buyer transfers the motor vehicle to the second buyer and hands it over.

If the second buyer fails to fulfill their obligations, the first buyer has the right to reclaim the motor vehicle through legal processes.

This sale agreement was reached by both parties and documented in writing.

First Buyer (Lessee):

Second Buyer (Purchaser):

4.6.2. Second Example: The Bay' al-Wafa Contract for Real Estate

First Buyer (Lessee):

Second Buyer (Purchaser):

The first buyer agrees to transfer the property to the second buyer in exchange for the total amount agreed upon.

Once the total amount is paid by the second buyer, the first buyer transfers the property to the second buyer and hands it over.

If the second buyer fails to fulfill their obligations, the first buyer has the right to reclaim the property through legal processes.

This sale agreement was reached by both parties and documented in writing.

5. CONCLUSION

In the Hanafi jurisprudence, the conclusions regarding the contract of Bay' al-Wafa vary among the scholars.

In the Hanafi jurisprudence, there are different opinions regarding the contract of Bai' al-Wafa. Some of the Hanafi jurists consider Bay' al-Wafa to be invalid, while others consider it permissible under certain circumstances and in reality, it is a form of mortgage.

Bay' al-Wafa is fundamentally a separate contract, and if the mortgage condition is not included in the contract, it may lead to various legal implications in different scenarios.

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