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Jurisprudential study of electronic wallets in Iran

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About a decade has passed since the beginning of the activity of "**Electronic Wallets**" in Iran that provides microfinance, facilitates micropayments for the people and the Central Bank, and increases social welfare. Problems with other payment instruments, including the online nature of bank payments, time-consuming and inconveniency, security challenges, high costs, and lack of infrastructure to manage large volumes of transactions, have led to the emergence of this new micropayments method. Electronic wallets are one of the tools that facilitate the payment process for its users. With its set of hardware and software systems, this electronic payment technology enables the user to purchase goods and services without the presence of cash or even a physical card. The hardware in these systems can be mobile or computer or peripherals. The buyer and seller's communication can be internet, Bluetooth, mobile communication, or NFC. In an e-wallet, the wallet balance is usually stored offline on the wallet, and there is no need to connect to the central switch each time you make a payment through this type of wallet.

Considering the benefits of using an electronic wallet, the opportunities created by this new payment instrument can be numbered in the following cases:

- Developing the performance of trade and mobile businesses, especially in the micro field;
- Aggregation of micro-transactions;
- Reducing traffic load and overhead costs of payment network (SHETAB and SHAPARAK);
- Addressing the concerns of the Central Bank in the field of microfinance and facilitating micropayments.

Despite the opportunities created through the use of e-wallets, the existing threats in this area can be listed as follows:

- Lack of appropriate regulatory framework (wallet support policies by legislators) for accepting micropayments;
- Conflict of interest between stakeholders and lack of cooperation (interaction) between ecosystem actors;
- Low public awareness and high acceptance in the use of debit cards among the people;



- Imposition of high costs for banks compared to the benefits gained by equipping and exchanging cards and sales terminals with NFC technology and contactless modules and upgrading the network to pin-less mode.

E-wallets offer various capabilities and applications to attract users to choose an e-wallet according to their needs. The most important applications of e-wallet can be defined in the following areas:

- Public transportation (metro, bus, taxi, bicycle, etc.);
- Areas of intercity services (trains, intercity buses, intercity tolls, etc.);
- Parks and parking service areas (street meters (parking meters), public parking lots, private parking lots for terminals, cinemas, shopping malls, libraries, etc.);
- Retail shopping centers (newsstands, supermarkets, bakeries, etc.);
- Recreational and sports areas (swimming pools, gyms, recreational tracks, etc.);
- Cultural areas (theater, cinema, exhibitions, libraries, etc.).

As described above, various types of transactions such as purchasing goods, services, or financial transactions by an **Automated Teller Machine (ATM)** are performed by electronic wallets. In the meantime, the amount of their use and the type of services available depends on the type of wallet. The following are the types of electronic wallets.

Closed Wallets

Some companies offer closed wallets to their customers to buy goods and services (only from the same company). The money in these wallets can only be used in transactions that have been issued by other similar companies. The amount stored in the wallet is transferred to the company's account as a block and in case of cancellation of the purchase, the money is returned to the account as a credit (charge). In this wallet model, it is not possible to withdraw money, and some companies even make a profit from the residual of these amounts, or it is recorded as a debt in the company's balance sheet until the customer makes the payment. Flipkart, Jabong, and Ola wallets are examples of these wallets in the world (Rathi and Pinali, 2016).

Semi-Closed Wallets

Semi-closed wallets are much more common in the system of many countries. To set up and implement a semi-closed wallet, approval, and permission must be obtained from each country's central bank. These wallets can be used for online and offline purchases such as purchasing goods and services, financial services, payment of bills, premiums, etc. Of course, you can deal with some sellers who also have specific contracts with the wallet exporter. These wallets are managed by institutions and companies other than banks, but these institutions are required to hold these wallets as deposits with a bank's cooperation. The



interest accrued on these deposits depends on the agreement reached between the payment company and the bank. Paytm, Venmo, Oxygen, Airtel Money, and Citrus wallets are universal examples of semi-closed wallets.

Open Wallets

Open wallets are issued only through banks or by companies that cooperate with banks. The money in these wallets is transferred to the bank account and the banks are in charge of managing these wallets. These wallets can be used to buy goods and services and perform all financial transactions and can also be used to withdraw money from ATMs or banks or to transfer money. M-Pesa by Vodafone and ICICI, MasterCard, Visa, and Rupay wallets are a global example of open wallets (Prata and Kumar Binha, 2018).

Jurisprudential study of electronic wallets

The numerous benefits of the e-wallet and its role in speeding up the micropayment process have led the Central Bank to consider the regulatory process at various stages to develop this tool. In the latest instruction, "Criteria for the activity of credit institutions and e-wallet operators in the country's payment system," which was prepared by the Central Bank in the summer of 2020, a very good effort has been made to explain the rules and requirements related to the issuing and managing the electronic wallet in the monetary and banking field of the country. The use of an e-wallet as one of the means of micropayment and the development of its functions requires compatibility with the country's legal structure.

The interactions in the e-wallet are based on the relationship between executives, customers, the operating credit institution, and the payment service providers as the main pillars of this tool. Since these interactions have legal effects, defining them in the form of one definite or indefinite contract is necessary. According to the country's legal structure, individuals and legal entities' economic relations should be regulated in the form of a contract to clearly define the role, rights, and responsibilities of each party. In addition, determining the type of contract used in the e-wallet and concluding the contract correctly in order to remove the jurisprudential doubts of this payment instrument is also of great importance. However, in the instructions prepared by the Central Bank (Summer 2020) in several cases, the need to conclude a contract between e-wallet holders and e-wallet providers has been emphasized; But what kind of contract this is, has been neglected.

Failure to determine the type of contract raises several religious suspicions, including lack of proper intention, invalid possession of the property, and Gharar (uncertainty), and deprives the possibility of paying interest due to encountering usury. Therefore, using the e-wallet, the payment of any additional funds in the form of interest, rewards, cashback, or discounts to users will face suspicion of usury. At present, the interactions between the main pillars of the e-wallet, namely the leaders and the users, bring to mind that the contract between them is a loan.



To determine the basic contract, the loan's jurisprudential model is proposed along with three other models, including Wadiah (deposit), Joaleh, Wakalah, and the usury challenge in each of them is examined. The results show that Wakalah contract can take into account the religious criteria such as easy usability, and the possibility of easy intention, lack of suspicion of usury, no restrictions on the scope of seizures, the possibility of paying interest, rewards and discounts to users and a share of profits to managers. Hence, it is the most appropriate contract to determine the electronic wallet's contractual framework (open and closed).

Under a Wakalah agreement, e-wallet holders give their representatives (attorneys) the right to use their credit and balance in two areas of small debt settlement as well as for-profit activities and to receive a fee as Wakalah's honorarium. According to this framework, e-wallet holders do not need a new intention; they once gave Wakalah to banks and financial institutions to make bank deposits. Now they transfer part of this deposit to the e-wallet and only change their client. In a bank deposit, the bank was his lawyer, but in the e-wallet, the leaders are his lawyer. This Wakalah agreement replaces the original Wakalah in terms of credit and wallet balance, and part of the Wakalah relationship that the bank deposit holders had with the bank is transferred to their new representative, the wallet issuing companies. Accordingly, the title of bank depositors also changes to e-wallet holders.

E-wallet holders authorize executives to use their credit and balance in two areas: to pay off their small debts as well as profitable activities and to receive a fee as honorarium. Easy usability and not the need for a new intention in concluding the e-wallet process is a special advantage for the Wakalah contract; Because it reduces the complexity of the contract.

In addition, since the contractual relationship between users and administrators is Wakalah, there is the possibility of additional payments in the form of interest on account or any rewards and discounts, and usury will not be suspected. It should be noted that dividends paid to users are of the indefinite and uncertain type, and it is necessary, as the rules of dividends on bank investment deposits, at the end of the financial period, the definitive interest is calculated and settled with users with the existing differences.

In general, the use of Wakalah contract as the basic contract of the e-wallet does not have the loan agreement's sensitivities, and due to the great flexibility of this contract, its use in compliance with other terms and conditions of the contract has a greater advantage over other contracts. Of course, as is common in many Islamic countries, a loan agreement can be used as a basic contract in designing an e-wallet. However, if a loan agreement is used, the amounts in the e-wallet will be removed from the property of the wallet holders and transferred to the credit institution. Therefore, the profits also go to the institution.

It should be noted that the Jurisprudential Council of the Central Bank, in a meeting dated January 15, 2021, chaired by Dr. Hemmati; The Governor of the Central Bank, and in the



presence of other members of the Jurisprudential Council, the rules for using the electronic e-wallet were approved, including the following:

1. It is allowed to use the two contracts of "loan" and "Wakalah" to use the electronic wallet tool.
2. In using a loan agreement, the amounts in the e-wallet have become the credit institution's property, so the profits obtained from this place belong to the institution.
3. In using a Wakalah contract, the amounts in the e-wallet and the profits obtained from this place belong to the e-wallet holders.
4. The parties' jurisprudential relationship must be clearly defined in the contracts that are concluded between parties (credit institution, managers, and e-wallet holders) to provide e-wallet service.
5. Receipt of actual fee for providing e-wallet service is allowed for the credit institution.

Finally, to develop an e-wallet in Iran, the following operational solutions are proposed:

- Increasing the dynamic cycle of awareness, education, education, and culture-building;
- The evolutionary and gradual process of changing the habits and preferences of customers (consumers) on a large scale;
- Increase the level of trust and reliability of products and services that brands and activists in this field can provide;
- The gradual elimination of inefficient micropayment alternatives;
- Utilization of powerful technologies (non-contact cards, NFC / QR cards);
- Exceeding e-wallet beyond the payment platform and becoming versatile;
- More interactive and participatory space among ecosystem actors;
- The evolutionary and gradual process of changing the habits and preferences of customers (consumers) on a large scale;
- Transparent, accurate, comprehensive, and timely policymaking and legislation;
- Using open architecture and a high level of interactivity;
- Use value-creating and sustainable business models.



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