

IMPLEMENTATION OF AL-WADIAH (SAVING INSTRUMENT) CONTRACT IN CONTEMPORARY GOLD TRANSACTION

Mohd Sollehudin Shuib, Muhammad Nasri Md Hussain, Amirul Faiz Osman, Hydzulkifli Hashim, and Aiman bin Fadzil

Islamic Business School, College of Business,
Universiti Utara Malaysia, Sintok, Kedah, Malaysia.

Corresponding Author: Mohd Sollehudin Shuib

ABSTRACT

This study focused on how wadiah (safekeeping or saving instrument) applied in contemporary gold transaction. The aims of this article is to substantiate the concepts of wadiah in contemporary gold trading based on the main sources of Islamic law of contract. Contemporary gold trading is like other retails and online trading. However, according to Islamic business contract, gold is categorized under a special law of transaction items and it must follows a specific law of Islamic business transaction. The legality of the wadiah concepts is utmost important to be verified before its implementation. This study was designed as qualitative stle of method in explore wadiah concept, legality and how wadiah implemented in gold transaction. The finding shows that the wadiah concept is permissible in Islam. Furthermore, the wadiah also play important role in contemporary gold trading. (Significant) Hence, wadiah contract can helps to resolve the gold trading issues where the physical assets of gold are distance from the buyer.

© Ideal True Scholar

KEYWORDS: Wadiah Contract, Gold Transaction, Islamic Law of Contract.

INTRODUCTION

Past decades have witnessed that gold transactions become one of the popular investment in Malaysia. They have physical gold transactions and online gold transaction. Gold also will be good saving mechanism in downturn or economic crisis situation. In 1997/98, East Asian country face financial economic crisis (Dexiu Zhang, 1998; Fengqi Cao, 1999). Wadiah in Islam refer to a concept of keeping and saving or hold something for a certain period of time. The term wadiah is derived from the verb wada'a, which means to leave, lodge or deposit (Al-Farabi, 1987).

Muamalat Islam (Islamic law of contract) known gold as jewellery (for women), something that with high valued and become money in certain period of Islamic history. Not like the other items or product, gold categorize one of six ribawi item. Ribawi item means that items with special rule of transaction. Items that not included under ribawi item, we can transact it through cash, by loan and leasing. But rule transaction for ribawi item based on muamalat Islam must be in cash and on the spot (Islamic Finance News, 2016) delivery. That's means gold transaction are not acceptable if payment not in cash and delayed delivery. If gold trade with gold must be equal like 100gram gold with 100gram gold (Security Commission, 2014). Given these purpose of the study, this research addresses the following research questions. to explore the concept of wadiah their legality from main sources of Islamic Law, to

identify contemporary gold transaction style and to study the feasibility of implementing wadiah in gold transactions. This study was designed as qualitative method in explore wadiah concept, legality and how wadiah can be implemented in gold transaction.

LITERATURE RIVIEW

Rifki Ismal (2008) discussed the "Classical Arab Economic Contracts include wadiah and Their Relevance in Modern Financial Institution which cover core economic values and principles, economic system in classical arab history and the relevance of this economic contracts in modern economy. While Herdiana & Aliludin (n.d.), studied on finding determinant profitability in Islamic banking and explained the differences determinant of Islamic banking and conventional banking in Indonesia from July 2010 until September 2013 from eight Islamic banks and eight Conventional banks. In overview of Islamic monetary operation instrument in Indonesia, Auwalin & Sukmana (2012) has found out in keeping the shariah or Islamic law compliance, Islamic monetary operation instrument has adopted a different contracts such as wadiah, contract of ju'alah as it to be better replacing the previous operation instrument in Islamic banks in Indonesia.

Gordon (2002), stated the purpose of his study in authors, publishers, and public goods trading gold for dross was seeks to clarify what ia at stake and what is not in the litigation challenging the constitutional validity of the Sonny Bono Copyright Term

Extension Act (CTEA). In an article wrote by Dusuki (2008) regarding fiqh issues in short selling in Islamic Capital Market in Malaysia, he emphasized that three main issues surrounding the short selling instrument which namely the issue of bay' ma'dum (selling what the seller does not own), the eligibility of stocks as subject of a loan contract and benefiting from loan contract. In a study conducted by Borhan & Aziz (2009), stated that there a different relationship between Muslim people transaction and non-Muslim which give vary perspectives from fiqh Muamalat, Muslim jurists and non-Muslim perspectives. This study also highlighted the significant of Islamic economic principles which imperative to be applied and practiced by Muslim entrepreneurs.

Gold Investment account in Malaysia according to Hafizi, Al Habshi, Janor, Naseem, & Kamarudin (n.d), are offered for public through two different method, physical gold and gold investment account (GIA). A comprehensive discussion were studied including the characteristics, structure and contemporary applications of gold investment account in Malaysia. The shariah compliance issues are also discussed. A study of Shariah Analysis on the operation of gold investment in Malaysia by Rahman, Markom, Ismail, Yusoff, & Zakuan (2013) was focus on examining the shariah compliance of the gold operation and analyzed the gold investment parameter in Malaysia and the implications to the customer. It includes the features of gold investment, the rulings of gold investment in Malaysia and the practice of gold investment nowadays. However, according to Alwi, Suhaimi, & Mohamed Kamil (2013) on study of Gold Investment account between Kuwait Finance House (M) Berhad and Maybank, they found out many differences in the investment gold operation especially in their modus operandi, gold types, purchasing gold price and Shariah compliance.

WADIAH CONTRACT

Sudin Haron (1994) discuss that wadiah one of the syariah principles govern the operations of Islamic banks. Wadiah refer to agreement to deposit an asset, excluding immovable fixed asset, in the custody of another party who is not the owner or non-owner (Sudin Haron, Norafifah Ahmad & Sandra L. Planisek (1994). Another article discuss on how wadiah can be implement in halal hotel operation as saving instrument (Mohd Rizal Razalli, Risyawati & Noorulsadiqin (2016). Legally, the Islamic scholars define wadiah as an empowerment to someone for keeping the owner's property explicitly and implicitly, presentation in keeping possession of respectable private goods in specific way or representation in keeping (other's property) and it is done (by the keeper) as charity (ISRA, 2012; Issa Qaed Mansour Qaed, 2014).

Legality in Islamic law of contract is very important. Sources of legality normally will refer to main sources of Islam law and second sources of Islamic law. Main sources of Islamic law is Quran and Sunnah, then follow by second sources like qiyas, istihsan, masalih mursalah and more. Legality for wadiah refer to al-Quran Surah al-Nisa' verse 48:” *Indeed, Allah commands you to render trust to whom they are due and when you judge between people, to judge with justice*”. Another evidence also from al-Quran Surah al-Baqarah verse 283 means:” *If you trust one another, then let him who is trusted fulfil his trust, and let him be conscious of God, his sustaine*”. This evidence from Quran story on how trust concept deeply very important in Islam way of life. Man must fulfil his trust and man must render trust when judge between two people.

Pillars is very important in Islamic law of business contract. All party in the contract require to fulfill the pillars to make sure the contract become binding and acceptable. Pillars for wadiah (deposit) (Issa Qaed Mansour Qaed, 2014):

- a. Contracting parties: the depositor and the custodian must be person of sound mind.
- b. The depositor is able to the take the property whenever he wants.
- c. Offer (ijab) and acceptance (qabul): the majority of jurists are the view there is must be a valid offer and acceptance made in wadiah contract
- d. Deposited property: it must be owned and deliverable. The item must be also form of property that can be physically possessed (ISRA, 2013).

Example how to fulfill the pillars in wadiah, like Ahmad save his money at Islamic bank use wadiah deposit account. Ahmad be a depositor, while Islamic bank is custodian. Ahmad able to withdraw his money from custodian whenever he want. The also must be offer and acceptance between Ahmad and Islamic bank to create wadiah agreement (wadiah contract). Another example is, Mikhail ask Raimi to keep his car for a week. This is due to Mikhail need to go outstation. Mikhail become depositor, Raimi become custodian, offer and acceptance happen between Raimi and Mikhail. Agreement between Mikhail and Raimi about to keep the car for a week. The custodian under wadiah contract permissible to charge some amount for their service based on agreement between them.

CONTEMPORARY GOLD TRADING

Gold have unique functions, portable, divisible, indestructible, scarce and cannot creatively be produced (A.M. Hafizi, Noreha Halid, Norzalita Abdul Aziz and Hawati Janor, 2016). Gold known as an ideal value keeper of which it can be kept for future use and will not be obsolete like fiat money

(Syed Alwi, S.F., Suhaimi, M. & Mohamed Kamil, M. M., 2013). Gold bullion show support for the safe haven property (Tim Pullen at all, 2014). Gold also acceptable worldwide and easily recognize as a payment form. Demand of gold comes from many segments namely from its consumers in the form of jewellery, from industry as gold is an excellent conductor of electricity (World Gold Council, 2011).

According to Habib Ahmed, Riba (interest) of delay or credit Riba prohibits sale of commodities in the future even if the counter-values are equal (Islamic Finance News, 2016). The rule of Six ribawi items transactions based on Hadith by Muslim is: "Gold is to be paid for by gold, silver by silver, wheat by wheat, barley by barley, dates by dates, and salt by salt - like for like, equal for equal, payment being made on the spot. If the species differ, sell as you wish provided that payment is made on the spot". *Hadith : Muslim no 1587* (web Islamic finance, 2016). Based on the hadith, any transaction use this six ribawi items must be in cash and on the spot delivery. If Muslim buy a gold, silver, wheat, barley, dates and salt, must be in cash and on the spot delivery to make sure approved contract. If we void on cash part or on the spot delivery part, the contract are not approved or not acceptable based on Islamic law of contract. Islamic finance thinker believe that interest-based financing leads to a false economy, creating instability, inflation, unemployment, and cyclical crashes (Islamic Finance News, 2016).

Nowadays, awareness people in gold or to buy gold in Malaysia are more and high than before. This is due to more campaign on saving gold, more product and good in demand power. Types of gold products in market is gold investment account that offer by Islamic bank (KFHMB, 2016) and conventional bank (Maybank, 2016), trading physical gold like offer by Bank Negara Malaysia (BNM, 2016) and buy gold through online transaction. Some product of gold in Malaysia nowadays offer transaction through online. That's mean, we buy a gold, pay online (in cash) and waiting for certain period (not on the spot delivery).

One of the idea can be extend for discussion, using wadiah contract will void party from issue of delayed in delivery of gold. Delayed may happen due to the party involve in buy and sell gold stay far each other. Wadiah in gold transaction happen when one party ask another party to buy a gold or physical gold from him. Example in practice is Mahmud ask Zain to buy a gold at Singapore. This is due to Mahmud at Kuala Lumpur and Zain at Singapore. This transaction involved 25gram of gold. Mahmud transfer the amount of money to Zain like RM5000. Then Zain after foreign exchange process, will buy the gold for Mahmud. Zain will buy it from another party or jewellery shop at Singapore. Mahmud promise to go and take the a gold from Zain after one week. So for the period of waiting one week, Zain will keep the

gold with him. Under muamalat rule, wadiah can be use for process of keeping that gold. That's mean Mahmud agree with Zain to use and follow wadiah contract for keeping that gold for a week.

Based on wadiah pillars, Mahmud will be the depositor and Zain will be the custodian. The deposit is 25 gram of gold (maybe coin, maybe jewellery). Offer and acceptance under wadiah contract will do by Mahmud and Zain. Offer and acceptance can do through writing agreement, verbal or any any communication that can understand by both party. Mahmud can go and take the gold when complete one week of before it due to under wadiah depositor can withdraw whenever he want. Zain also can charge Mahmud for keeping service based on agreed by both party in early agreement. Wadiah between Mahmud and Zain will finish when Mahmud withdraw all 25 gram of that gold. Using muamalat contract like wadiah at least will make muslim far from involved in uncertainty contract. This is due to Mikhail and gold seller clearly done their transaction based on Islamic law of contract.

CONCLUSION

Islamic law of contract offers a lot of instrument to be practice in Islamic finance and banking industry and any trading and transaction related. Wadiah (safekeeping contract) can play an important role to make sure all the transaction compliance with syariah (Islamic law). As discussion in this article, wadiah practice can help people far from interest transaction when involved in ribawi items trading. As discussed in this article, wadiah practices can avoid any interest (riba) immersion in gold trading as a gold is a ribawi items which must follows a very strict condition.

Gold is one of the ribawi items and people always give high intention on gold trading. Using wadiah, can help Muslim to ensure that their ribawi items transaction is syariah compliance. It will helps muslim to buy gold or ribawi items if the items are not at their close custody, for example, are kept at 500 km away. Islamic law of contract guide us to trade according to syariah. All these efforts will help trade, investor, community at large, economic growth and most importance; blessing from Almighty God.

ACKNOWLEDGEMENT

This research was supported in part by a Fundamental Research Grant Scheme (FRGS) (s/o code. 12939) Minister of Higher Education, Malaysia.

REFERENCES

A.M. Hafizi, Noreha Halid, Norzalita Abdul Aziz and Hawati Janor. (2016). 'Gold Investment in

Malaysia: Its Operation, Contemporary Applications and *Shariah* Issues'. Derived from conference.qfis.edu.qa/app/media/7026.

Hafas Furqani (2013), *Fatwa in Islamic Finance Bulletin*, Kuala Lumpur: ISRA

Abdullah, A. (n.d.). Is Garnishee Proceeding Feasible on Islamic Banking Deposits and Investment Accounts in Malaysia? *Islam and Civilisational Renewal*, vol. 6.

Hafizi, A. M., AlHabshi, S. M. S. J., Janor, H., Naseem, N. A. M., & Kamarudin, M. F. (n.d.). Gold Investment Account in Malaysia. In *E-Prosiding Seminar Kebangsaan Emas Dalam Institusi Kewangan Di Malaysia*.

Abu Nasr Ismail bin Hammad Al-Farabi. 1987. *Al Shahah Taju Al Lughah Al Shahah Al Arabiyah*. : Beirut Dar El Ilm

Herdiana, D., & Aliludin, A. (n.d.). Comparing Determinant Of Profitability Between Islamic Banks and Conventional Banks in Indonesia Case Study Eight Islamic Banks and Eight Conventional Bnaks in Indonesia Period 2010-2013. *Journal of Business and Management*.

Alwi, S., Suhaimi, M., & Mohamed Kamil, M. M. (2013). Gold Investment Account in Kuwait Finance House (M) Berhad and Maybank Berhad, 3(1), 31-40.

International Shari'ah Research Academy for Islamic Finance (2012), *Islamic Finacial System; Principle & Oparations*. Kuala Lumpur: International Shari'ah Research Academy for Islamic Finance (ISRA)

Auwalin, I., & Sukmana, R. (2012). Evaluating the Change of Islamic Monetary Operation in Indonesia. In *Proceeding International Conference on Sustainable Innovation (ICoSI)* (p. 20).

Islamic Finance news. (2016). All that glitters: What impact could gold really have on Islamic finance?'. Derived from <http://www.islamicfinancenews.com/glossary/ribawi>

Azman Mohd Noor. (2013). Wakalah Paper, derived from drazman.net/wp-content/uploads/2013/03/wakalah-paper.pdf.

Bank Negara Malaysia. (2015). Wakalah Concept Paper, Kuala Lumpur: BNM, derived from http://www.bnm.gov.my/guidelines/05_shariah/Wakalah.pdf

Issa Qaed Mansour Qaed (2014), The Concept of Wadiah and its application in Islamic Banking, *Journal of Research in Humanities and Social Science* Volume 2, Issue 11 (2014) pp: 70-74.

Bank Negara Malaysia. (2016). Kijang Emas, http://www.bnm.gov.my/index.php?ch=statistic&pg=statistic_kijangemas

KFHMB. (2016). Gold Account-i, http://www.kfh.com.my/kfhmb/v2/contentView.do?contentType=3000&displayPage=%2Fver2%2Fcontent%2Fstandard.jsp&channelPath=%2Fver2%2Fv2_Navigation%2FCommercial+Banking%2FInvestments&programName=04_Gold+Account&tabId=1&cntName=01-GoldAccount-i

Borhan, J. T., & Aziz, M. R. A. (2009). International Business Transaction From The Islamic Economic Perspective. *Jurnal Teknologi*, 50. <http://doi.org/http://dx.doi.org/10.11113/jt.v50.185>

Maybank. (2016). Gold Investment Account Products, http://www.maybank2u.com.my/mbb_info/m2u/public/personalDetail04.do?channelId=INV-Investment&cntTypeId=0&cntKey=INV03.02&programId=INV03-Gold&chCatId=/mbb/Personal/INV-Investment

Dexiu Zhang. (1998). The Impact of the East Asian Financial Crisis on China's Economy, *Information Journal*, Vol.1, No.1, July, 1998. Derived from http://www.information-iii.org/abs_e.html#No1-1998

Mohd Rizal Razalli, Risyawati & Noorulsadiqin (2016), "An Assessment Tool for Shariah-Compliant Hotel Operations", *International Journal of Islamic Marketing and Branding*, vol 1 no 1.

Dusuki, A. W. (2008). Fiqh Issues in Short Selling as Implemented in the Islamic Capital Market in Malaysia. *Islamic Economic Journal*, 21(2).

Fengqi Cao. (1999). The Asian Financial Crisis and Chinese Currency, *Information Journal*, Vol.2, No.3, July 1999, derived from http://www.information-iii.org/abs_e.html#No3-1999

Muhammad Yusuf Saleem. (2015). *Islamic Commercial Law*, John Wiley & Sons: NJ USA
Online Dictionary (2016), <https://www.google.com/search?q=meaning+of+gold&ie=utf-8&oe=utf-8>

Gordon, W. J. (2002). Authors, Publishers, and Public Goods: Trading Gold for Dross, *Vol.36, Loyola of Los Angeles Law Review*, p.159.

Rahman, W. F. I. B. W. A., Markom, R., Ismail, R.,

Yusoff, S. S. A., & Zakuan, Z. Z. M. (2013). Shariah Analysis on the Operation of Gold Investment in Malaysia and its Implications to the Consumer. *International Business Management*, 470–474.

Rifki Ismal. (2008). *Classical Arab Economic Contracts and Their Relevance in Modern Financial Institution*.

Sang-Lyul Ryu and Jayoun Won. (2015). The Global Financial Crises and Intermediation Efficiency in the Korean Banking Sector, *Information Journal*, Vol.19, No. 6(A), June, 2016. Derived from http://www.information-iii.org/abs_e2.html#No12-2015

Security Commission. (2014). Shariah Parameters on Islamic Exchange-Traded Fund Based on Gold and Silver. Derived from http://www.sc.com.my/wp-content/uploads/eng/html/icm/Shariah_Parameters_7October14.pdf

Sheila Nu NuHtay & Syed Ahmad Salman. (2013). Shari'ah and Ethical Issue in the Practice of Modified Wakalah Model in Family Takaful, *International Journal of Business and Social Science*, vol. 4 no. 12, September 2013.

Sudin Haron, Norafifah Ahmad & Sandra L. Planisek (1994), "Bank Patronage factors of Muslim and Non-Muslim Customers", *International Journal of bank Marketing*, vol. 12 Iss 1, pg. 32-40

Syed Alwi, S.F., Suhaimi, M. & Mohamed Kamil, M. M. (2013). Gold Investment Account in Kuwait Finance House (M) Berhad and Maybank Berhad, *Journal of al-Thaqafah*, vol. 3 issue 1, KUISAS: Ipoh

Tim Pullen, Karen Benson, and Robert Faff. (2014). A Comparative Analysis of the Investment Characteristics of Alternative Gold Assets, *A Journal of Accounting, Finance and Business Studies (ABACUS)*, Vo. 50, No. 1, 2014

Web Islamic Finance. (2016). http://www.islamic-finance.com/item_sarf_f.htm. Please also refer to Hadith Collection by Imam Muslim (primary sources).

World Gold Council (2011), 'Liquidity in the Global Gold Market', WGC: United Kingdom.