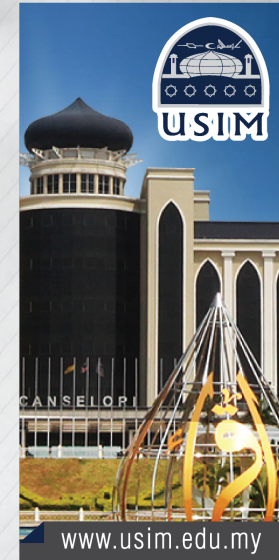


فakultas
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Faculty of Syariah and Law University Sains Islam Malaysia

MEMPELOPORI SAINS ISLAM • MEMIMPIN KEILMUAN
PIONEERING ISLAMIC SCIENCE • SPEARHEADING KNOWLEDGE

Contents (Part II)

- Uqud in financial transactions
- Classification of Uqud
- List of Islamic Banking Products
- List of Takaful Products
- Hasan, Z. (2006). *Uqud In Financial Services For Entrepreneurship*, in Reading in Islamic Financial Services, Negeri Sembilan: USIM, pp. 81-90.

Introduction

- As for evolution of Islamic law of contract, it starts with *al-Quran* which already prescribes several types of nominate contract as well as certain general contractual maxims. Thereafter, the traditions or *al-Sunnah* supplement the Quranic groundwork as a support or additional explanation to its general provision.
- The Muslim jurists in all Islamic school of law later developed the principles of contract.

Cont....

- In *al-Quran*, there are only over forty verses out of 6666 verses on a dozen types of commercial contract.
- Performing contract which enjoins believers to keep faith to contracts (Al-Quran: *Surah al-Maidah*, verse 1), three verses with a common theme of keeping promise (Al-Quran: *Surah al-Isra*, verse 34) and there are few verses which reveal a relatively advanced stage of commercial contracts, such as sale and hire, charges or personal guarantee as (security) and fiduciary contracts such as deposit.

Concept of Uqud

- Al shahh and al rabt: fastening and attaching accordingly
- A connection btm an offer and an acceptance in a lawful manner which has its effect on the SM.
- Sanctity of the contract ‘al maidah: 1, O believers! Be true to your obligations.

Uqud or Contract

- *Uqud* or contract technically means as an expression of the matching between a positive proposal made by one of the contractors and the acceptance of the other contractor in a way which has an impact on the subject of the contract.
- The Mejjelle defined contract as little contracting parties obligating themselves with regards a given matter and binding themselves together with the same as a result of connecting an offer with an acceptance

Types of Uqud

Legality

Purpose

Reciprocity

Validity

Execu
tability

Legality

- Aqd al masyru'
- Aqd ghayr al masyru'

Validity

- Aqd sahiih
- Aqd ghairu sahiih

Executability

- Executable : aqd al nafidh
 - ahliyyah
- Suspended: aqd mawquf
 - guardian

Reciprocity

- Aqd al muawadhat: exchange
 - Property+ money= Bay al mutlaq
 - Service (by a person)= ujr
 - Usufruct of property= Ijarah al manfaah
 - Prop+Prop=Bay al muqayadah barter
 - Money+money= currency sale or bay al sarf
- Aqd al tabarruat- hibah, will (**wasiyyat**), waqf (**fund**).

Purpose

- Uqud Tamlikat- Al-Mua' wadhat and Attabarua' t,
- Uqud Isytirak- mudharabah, musyarakah and muzaraa' ,
- Uqud Tawsiqat (Securities)-Kafalah, Rahnu
- Uqud Itlaqat (removal of restrictions)- wakalah and tauliah
- Uqud Taqyiydat (restrictions)- taflis, al hajr
- Uqud Isqatat (waiver)- ibra' , muqasah and
- Uqud Hifz- refers to wadiah.

Modern Classification

- Partnership Based
- Exchange-Based
- Security contracts
- Charitable Contracts
- Agency Contract
- Supporting Contracts

Partnership Based Contracts

- Mudharabah
- Musharakah

Mudharabah

- an agreement made between a capital provider and another party (entrepreneur), to enable the entrepreneur to carry out business projects, based on a profit sharing basis, of a pre-agreed ratio. In the case of losses, the losses are borne by the provider of the funds. On the basis of a contract of *mudharabah*, financial institution may provide financing to entrepreneurs who want to perform certain project in retail or corporate financing.

Musyarakah

- a partnership or joint venture for a specific business, whereby the distribution of profits will be apportioned according to an agreed ratio. In the event of losses, both parties will share the losses on the basis of their equity participation.

Exchange based Contracts

- Murabahah
- Bay al Istisna'
- Bay al Salam
- Bay al Dayn
- Bay al Sarf-
- Bay al Inah
- Bay al Tawarruq
- Ijarah
- Bay al Istijrar

Murabahah

- the sale of goods at a price, which includes a profit margin as agreed to by both parties. Such sales contract is valid on the condition that the price, other costs and the profit margin of the seller are stated at the time of the agreement of sale. Under this mode of financing the entrepreneur may approach any financial institution to provide his financing for working capital.

Ijarah

- an arrangement under which the lessor leases equipment, building or other facility to a client at an agreed rental against a fixed charge, as agreed by both parties.
- *Al-Ijarah Thumma al-Bai'* (leasing and subsequently purchase) refers to a contract to be followed by purchase. Under the first contract, the hirer leases the goods from the owner at an agreed rental over a specified period. Upon expiry of the leasing period, the hirer enters into a second contract to purchase the goods from the owner at an agreed price.

Bai' al-Salam

- an agreement whereby payment is made in advance for delivery of specified goods in the future. *Salam* is valid, subject to the condition that the quality and the nature of the subject matter, time, place of delivery and the price are clearly stipulated at the time of the contract.
- to acquire any asset for working capital by advance payment at a discounted price and subsequently sells the asset upon delivery.

Istithna'

- a contract whereby a party undertakes to produce specific goods and services, and made according to certain agreed-upon specifications at a determined price and for a fixed date of delivery.
- The main objective of the *Istithna'* mode of financing is to promote manufacturing and construction

Bay' al-Inah (sell and buy back)

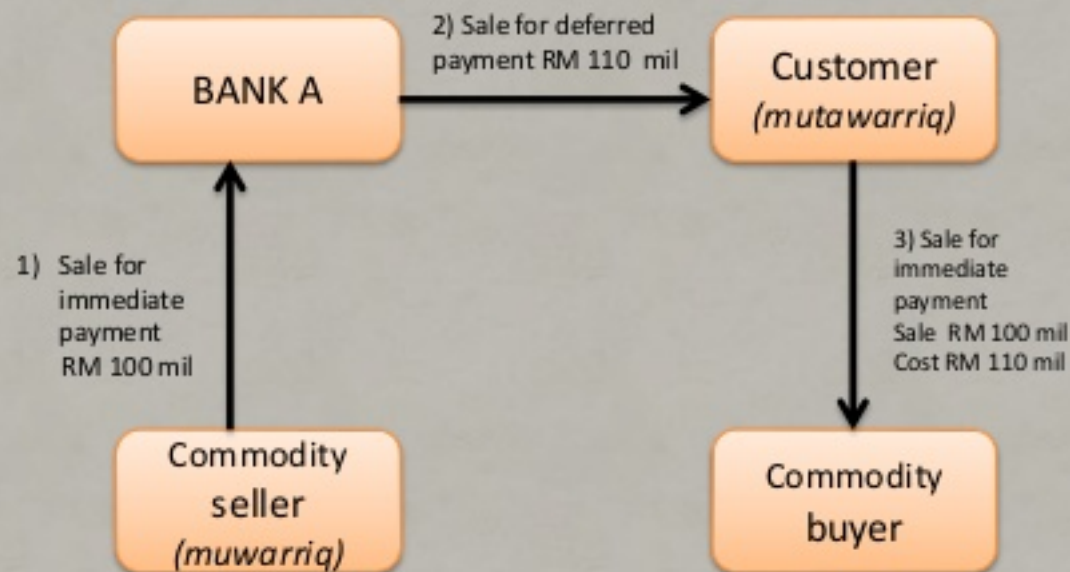
- a contract which involves sell and buy back transactions of an asset by a seller to the customer. The seller will sell the asset on cash basis but the customer will buy back the asset on deferred payment at a price higher than the cash price.
- In the first agreement, the bank sells an identified asset to the customer at an agreed price on deferred payment basis while for the second agreement the bank re-purchases the same asset from the customer at a lower price in cash.

Bay al Tawarruq

- A contract to obtain money.
- Monetisation, cash financing or cash procurement.
- The purchase of commodity possessed and owned by the seller for a delayed payment, whereupon the buyer will resell the commodity for cash to other than the original seller in order to acquire cash.

Modus operandi of Tawarruq

3



Source 1: Money, Islamic Bank and Real Economy (2010)

Bai' Istijrar (supply contract)

- an agreement between the client and the supplier, whereby the supplier agrees to supply a particular product on an on going basis, for example monthly, at an agreed price and on the basis of an agreed mode of payment.

Bay al Dayn

- Sale of debt on cash basis or deferred payment basis.

Bay al Sarf

- Sale of currency
- Modern spot foreign exchange
- Eg. The bank sells US40 million to the C on a spot basis and the customer buys RM100 million from the Bank on a spot basis.

Security Contracts

- Kafalah (guarantee)
- Al rahn (mortgage)

Kafalah (guarantee)

- Refers to a contract of guarantee by the contracting party or any third party to guarantee the performance of the contract terms by contracting parties.

Al Rahn (Mortgage)

- Pawning, mortgage, collateral, charge and pledge.
- Taking a property as a security against a debt whereby the secured property can be utilised to repay the debt in the case of non-payment.

Charitable Contracts

- Hibah
- Wadiah (Deposit)

Hibah

- A voluntary contract that results uncompensated ownership transfer between living individuals.

Time of Tabarru'	SM	Contract	Purpose/Rule
Lifetime	Property	Hibah	General
		Hadiyah	Respect or love
		Waqf	Perpetual
		Sadaqah	needy and poor
After Death	Property	Wasiyah	Not exceeding 1/3rd

Wadiah Yad Dhamanah

- Goods or deposits, which have been deposited with another person, who is not the owner, for safekeeping.
- As wadiah is a trust, the depository becomes the guarantor and, therefore guarantees repayment of the whole amount of the deposits, or any part thereof, outstanding in the account of depositors, when demanded.
- The depositors are not entitled to any share of the profits but the depository may provide returns to the depositors as a token of appreciation.

Agency Contracts

- Wakalah
- Wakalah means protection or remedying on behalf of others.
- a contract where a person authorizes another to do a certain well-defined legal action on his behalf.

Supporting Contracts

- Hiwalah
- Muqasah
- Ibra
- Wa'd

Hiwalah

- **Transferring a debt from one debtor to another.**
- A is indebted to B and has claim against C. He can settle his debt by transferring his claim against C to the benefit of B.

Muqasah

- Debt settlement by contra-transaction or set-off
- Eg. Ahmad owes Ali RM500. Then Ali owes Ahmad the same amount.

Ibra'

- An act of absolving or dropping one's financial rights (to collect payment) from a person who has the obligation to repay the amount borrowed from him.

Wa'd

- Wa'd means promises.
- Commitment made by one person to another to undertake a certain actual or verbal disposal beneficial to the second party. Or undertaking something to the benefit of another person.

List of Islamic Banking Products

Products / Services (Deposit)	Applicable Concepts
Current account- i	<i>Wadi'ah Yad Damanah/ Tawarruq/ Al Qardh</i>
Savings account-i	<i>Wadi'ah Yad Damanah/ Al Qardh/ Tawarruq</i>
General investment account- i	<i>Mudarabah/ Tawarruq/ Wakalah bil istithmar</i>
Special investment account-i	<i>Mudarabah/ Wakalah bil istithmar</i>
Specific investment account- i	<i>Mudarabah/ Wakalah bil istithmar</i>

Products / Services (Financing)	Applicable Concepts
Cash line facility-i	<i>Bay^c ^cInah / Bay^c Bithaman Ajil / Murabahah</i>
Computer financing-i	<i>Bay^c Bithaman Ajil</i>
Education financing-i	<i>Murabahah / Bay^c Bithaman Ajil / Bay^c ^cInah</i>
Equipment financing-i	<i>Bay^c Bithaman Ajil</i>
Fixed asset financing-i	<i>Bay^c Bithaman Ajil</i>
Hire purchase-i	<i>Ijarah Thumma Bay^c</i>
Home/house financing-i	<i>Bay^c Bithaman Ajil / Istisna^c / Variable Rate Ijarah</i>
Land financing-i	<i>Bay^c Bithaman Ajil</i>
Leasing-i	<i>Ijarah</i>

**Products / Services (Treasury/
Money Market
Instrument)**

Applicable Concepts

Negotiable debt certificate-i

Bay^c Bithaman Ajil

**Negotiable instrument of
deposit-i**

Mudarabah

**Sell and buy back agreements
(Repo-i)**

Bay^c 'Inah

Foreign exchange

Ujr

**Products / Services
(Trade Financing)**

Applicable Concepts

Accepted bills-i

Murabahah / Bay^c Dayn

Bank guarantee-i

Kafalah

**Export credit
refinancing-i**

Murabahah/ Bay^c Dayn

Letter of credit-i

*Wakalah/ Murabahah //
Ijarah/Bay^c Bithaman
Ajil*

Shipping guarantee-i

Kafalah

Trust receipt-i

Wakalah/Murabahah

Products / Services (Card Services)

Applicable Concepts

Charge card-i

Qard

Credit card-i

*Bay' c'Inah/Tawarruq/
Musharakah
Mutanaqisah/ Ujrah*

Debit card-i

Ujr

Products/Services (Banking Services)	Applicable Concepts
Stockbroking services	<i>Ujr</i>
TT/funds transfer	<i>Ujr</i>
Travellers' cheques	<i>Ujr</i>
Cashiers' order	<i>Ujr</i>
Demand draft	<i>Ujr</i>
Standing instruction	<i>Ujr</i>
ATM service	<i>Ujr</i>
Telebanking	<i>Ujr</i>

Range of Takaful Products

Products	Applicable Concepts
Family Takaful	<i>Mudharabah</i> <i>Wakalah</i> <i>Waqf</i> <i>Hybrid</i>
General Takaful	<i>Mudharabah</i> <i>Wakalah</i> <i>Waqf</i> <i>Hybrid</i>

THANK YOU



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