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THE PROFIT/GAIN FROM ISLAMIC LAW OF CONTRACT PERSPECTIVE AND THE ISSUE OF OWNERSHIP RISK (*DAMANAL-MILKIYYAH*)

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Abstract

In Islamic finance it is crucial to discuss the concept and the meaning of al-bay' (Sale) and subsequently the concept of "Iwad", when anyone want to understand issues concerning shariah legitimacy in Islamic banking and finance. The sale (Albay') or the equivalent value "Iwad", from shariah view, should consist of three main components, namely: market risk (ghurm), the work and effort (kasab), while the third component is liability (Daman). Albay; which is trade and commerce, constitutes the Quranic alternative to riba, as the contract of sale in Islamic law requires the seller to own the subject matter (محل العقد) before executing the sale. The prophet Muhamad (pbuh) said: "do not sell what you do not own". Therefore, there is a strong link between ownership and market risk. This research paper is analyzing the concept of profit from Islamic law perspective and discuss the issue of ownership risk in Islamic financial contracts. Using in depth analysis of literature review and qualitative methods of content analysis, this research implicitly explains the effect of Ghurm, Kasab, and Daman on Islamic finance transactions that are based on Albay'. Further, it highlights the principle mutual trade and cooperation (تعاون) in Albay' transactions.

Keywords: Islamic law, ownership risk, Islamic financial contracts, sukuk

1.0 Introduction

By the end of 2019, The Islamic Financial Services Board has estimated the total worth of the three Islamic finance industry sectors by USD 2.19 trillion. In the sectors of Islamic banking and Islamic capital market, the contribution of Murabaha and Ijarah transactions was dominant. Trade (albay') in financing activities, as the Islamic alternative for the Interest (riba), has not received similar attention as had the interest (riba) factor.

Islamic financial transaction should be based on the Al-ghunm bil ghurm maxim which assumes that Islamic finance business runs on the basis of risk sharing. Thus, Murabahah, as the main representative of Albay' in the Islamic finance industry, is a commercial and trading transaction where profits made implicate value-addition (Kasab) and risk taking (ghorm) activities.

It was argued by Ibn Arabi (d.543H/1148) that "The existence of iwad or equal counter value in the transaction, when the requirements of iwad is fulfilled in trading (albay') brings along the sense of equity and justice into a business transaction, that rendered it superior to an interest bearing system, and every increase, which is without iwad is riba".

This indicate that the amount of money any customer pay should be compensated with an fair return that he enjoys from purchasing specific product or service. Therefore, when a trader sells at a price higher than his cost, the profit margin must be that which contains "iwad".

As such theory of profit in Islam is built on the principle of "iwad" and this is explained by the amount of effort and risk imputed in the sale.

In other words, in trading (albay'), the iwad shall consist of three main components namely: the market risk (Ghorm), work and efforts (Kasab), and the liability (Daman). The examples for daman in trading: the suppliers provide guarantees on the goods sold so the purchaser can return the goods if found defective, and here the trader deserve the profit as the sale contain a guarantee. While in case of interest bearing loan say 10,000 at 10% interest rate per annum, here we are looking for exchange money with money. The 1000 represent the interest from the loan, the increase is risk free and does not contain "iwad", as we mention that every increase without iwad is riba.

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The importance of this topic comes from the Hadith of prophet (PBUH) when he said: do not sell what you do not own. " لاتبع ماليس عندك ", therefore it will frame the picture for the Islamic banking and IFIs transactions regarding the importance of ownership risk and explain the two legal maxis al-ghorm bil ghonm and al kharaj bil dhaman .

قاعدة من له الغنم فعليه الغرم: معنى القاعدة هو التلازم بين الخسارة والفائدة، فكل من كان له فائدة المال شرعا" كان عليه خسارة ذلك المال كذلك، وعليه قد يعبر من هذه القاعدة بقاعدة التلازم بين النماء والدرك.

اما قاعدة الخراج بالضمان هو حديث صحيح أخرجه الشافعي وأحمد وأبوداود والترمذي والنسائي وابن ماجه وابن حبان من حديث عائشة وفي بعض طرقه ذكر السبب وهو أن رجلا ابتاع عبدا" فأقام عنده ما شاء الله أن يقيم ثم وجد به عيبا فخاصمه إلى النبي صلى الله عليه وسلم فرده عليه فقال الرجل: يا رسول الله قد استعمل غلامي فقال: الخراج بالضمان.

This study is organized as follow: first, we will discuss the issue of risk taking and identify the profit from Islamic prospective, and then we will define the meaning of ownership risk "damanal-milkiyyah" and what it is meaning in Islamic law of contract. In the following point we will define the implementation of "damanal-milkiyyah" in the current Islamic financial contracts, and here we discuss mainly two contracts which are mostly used by IFIs: the case of Murabaha/ BBA, and the case of Sukuk. Finally, we conclude with summery points.

1.1 Profit from Islamic prospective and risk-taking

Islam instructs its people to be moderate in their pursuit for profit, and behave in the prescribed way to order the Halal and legitimate profit, not to maximum. Therefore, the concept of Halal (Permitted) and Haram (Prohibited) are sufficient for Muslims to keep themselves on the right track based on the Shariah requirements.

Islamic Laws (Shariah) with respect to business activities indicate that any economic activities linked to the interest (Riba) will be prohibited. Since, riba do not allow for just and fair distribution of wealth among the community including shareholders, investors and clients and therefore it is against the benefit of Ummah. In addition, interests reduce the velocity of money circulation and treat money as a product instead of medium of exchange. Allah SWT said: "Those who devour riba shall rise up before Allah like men whom Shaitan has demented by his touch; for they claim that trading is like riba. But Allah has permitted trading and forbidden riba" [2:275].

بسم الله الرحمن الرحيم: الَّذِينَ يَأْكُلُونَ الرِّبَا لَا يَقُومُونَ إِلَّا كَمَا يَقُومُ الَّذِي يَتَخَبَّطُهُ الشَّيْطَانُ مِنَ الْمَسِّ ۚ ذَٰلِكَ بِأَنَّهُمْ قَالُوا إِنَّمَا الْبَيْعُ مِثْلُ الرِّبَا ۗ وَأَحَلَّ اللَّهُ الْبَيْعَ وَحَرَّمَ الرِّبَا ۚ فَمَن جَاءَهُ مَوْعِظَةٌ مِّن رَّبِّهِ فَانتَهَىٰ فَلَهُ مَا سَلَفَ وَأَمْرُهُ إِلَى اللَّهِ ۖ وَمَنْ عَادَ فَأُولَٰئِكَ أَصْحَابُ النَّارِ ۖ هُمْ فِيهَا خَالِدُونَ (275)

Economics activates should therefore be driven by these Quranic realities. Albay' as opposed to riba, exemplifies these Quranic realities as profit generated from al-bay' are not risk free. Risk taking and risk sharing are a manifestation of Islamic ethical principles, such as 'adl, taqwa, ta'wun, and ukuwah. Therefore, Al-bay' is legitimate because it assumes risk taking, while profit from loans (riba) rejects the idea of risk taking and risk sharing. As in Islam no sale or transaction is free from risk, therefore the profit from sale is an outcome of risk taking, as the seller takes the risk to make sure that man cannot expect to make profit without assuming loss or risk in his transactions.

In addition to the previous rule, we have many rules relating to trades for Halal transaction, and legitimate profit in Islamic law. The Holy Prophet Peace be upon Him, Said: "May God show mercy to a man who is kindly when he sells, when he buys, and when he demands his money back".

حدثنا علي بن عياش حدثنا أبو غسان محمد بن مطرف قال حدثني محمد بن المنكدر عن جابر بن عبد الله رضي الله عنهما أن رسول الله صلى الله عليه وسلم قال رحم الله رجلا سمحا إذا باع وإذا اشترى وإذا اقتضى.

According to teaching of Islam, business should be conducted with honesty and justice, tempered with human kindness. The conduct of a seller in a transaction should be characterized not only by justice but also by magnanimity. The Holy Prophet (PBUH) disapproved all transactions which were unjust or caused hardship to the buyer or the seller. He wanted both to be sympathetic and considerate towards each other. The seller must not think he has unrestricted liberty to extort as much as possible from the buyer. He should take his own due and give to the buyer what is his.

In line with the above discussion and according to Hassan (2009) there are three types of risks from Islamic perspective.

1- Essential risk – Al ghunm bil ghurm & Al kharaj bi al daman.
2- Permissible risk – business risk, operational risk, liquidity risk etc.
3- Prohibited risk – Gharar or excessive uncertainty on existence/ possession or in quantity/quality of the subject matter or consideration.

Regarding the essential risk, In Islamic finance, the first condition is that investors have to bear the risks. As there is no gain without holding risk, and this supported by the legal maxim which is "al-ghunmu bi al-ghurmi" which means that entitlement to profit is accompanied by responsibility for attendant expenses and possible loss. This is backed by the Hadith "al-Kharaj Bi al-Dhaman" (Hadith narrated by al-Tirmizi, Abu Dawud, Ibn Majah and Ahmad) which means the entitlement to revenue on corresponding liability for bearing losses.

2.0 Ownership risk (Damanal Milkiyyah)

Islam enjoins market agents to take risk in their business engagements, the Islamic legal maxis (al-ghorm bil ghonm) " no reward without risk" as we see is invoke to invite people to participate in ventures involving both risks and reward such as albay', alijarah , salam , mudarabah and other Islamic contracts. Legitimate profit generated from commercial activities implicating elements of risk taking is a virtue in Islam, and the term "no pain no gain" confirm a positive towards risk in business dealing. Daman almilkiyyah and ownership risk: the link between those two comes from the Hadith of the prophet (saw): Do not sell something that you do not own. Since when one owns the asset or the property it will expose him to the market volatilities and therefore as a trader the asset is exposed to price or market risk.

This Hadith about (Milkiyah) actually conveys two main principles, the transparency and the risk taking, therefore when someone sells goods that he owns, the Gharar about delivery and ownership does not exist. The contract is transparent (without Gharar) so the disputes and disharmony between the contracting partiers can be avoided.
In case of spot sale, the trader purchases goods from the wholesaler and stores the goods before any sale is made, so he is exposed to the risk of ownership , and if fail to find buyers he will hold this goods in the inventory with high overhead cost, as well as the risk of obsolesce. In worst case, he may lose his capital. Investments: Actually this trader is facing price or market risk (ghorm) which will legitimate his profit. The ownership requirement must also be tied to the object of sale (محل العقد). In law of contract the object of sale must constitute a property (مال متقوم). Therefore, in Islamic law the money or the currency is not mal Mutaqawim. In this way, it cannot be traded at a price. Thus, the ownership argument to signify Islamic legitimacy to profit cannot be applied to loans and bonds.
Another important point to mention about riba albuyu which is riba in sale involving the six tradable items namely: gold, silver, dates, barley, oats and salt which are mentioned in Hadith (saw): when exchange 100 grams of gold for 110 grams of the same, this 10 extra is riba albuyu' (ربا البيوع). Thus, the contract is invalid since unjustified enrichment violates the Islamic concept of justice. If the same trader uses the ownership arguments, then the extra 10 grams is lawful gain since it is based on ownership factor which legitimacy the transaction.
It is clear now that the ownership factor alone cannot be made to explain the prohibition of interest in Islam.

3.0 The implication of damanal milkiyyah in IFIs

3.1 Case of Murabaha/ BBA

After the explanation of the concept of Daman milkiyyah, we are explaining its implication in case of BBA contract and how it is implemented in Islamic banking in Malaysia.
Bai' Bithaman Ajil (BBA) is the most common kind of financing for almost every Islamic banks in Malaysia (البيع بثمن أجل), as it constituted most of the total financing granted in addition to the Tawarq products.
The Majallah which is mainly a Hanafi-based codification refers to BBA as Bay' al-Muajjal or Bai' Bithaman Ajil, and it can be defined as "a sale contract in which the payment of the price is deferred and payable at a certain particular time in the future".

The dispute in BBA came since the price will be different if its was in form of deferred payments. and according to the majority of shairah scholars who studied this issue they said that the increasing the price due to the deferment in payment is allowed if it is linked to real assets and it is not exchanging money with money. For instance: Al-Kasani said: "The price may be increased based on deferment." Ibn Rushd said: "The time has been given a share in the price". Also Al-Nawawi said: "Deferment earns a portion of the price."
As for the BBA facility, basically in the market three main agreements are of supreme importance for this contract, these are:

A. Sale and Purchase Agreement

This is the first agreement to be signed between the person who want to purchase the asset (house, car, etc) and the bank who finance the transaction. Thus, the client will pay advance payment to the bank (lets say 10 – 15%) of the price of the asset. And this agreement is compulsory in order to make sure the client is serious in his purchase.

B. Property Purchase Agreement

This is the second agreement which will be signed also between the client and the bank after signing the first agreement. In this agreement the client will apply to the bank for request of financing, and the bank will approve it.
Based on this agreement, the Bank will purchases the asset at certain purchase price, which is represent the remaining balance of the asset price (90 – 85%). However, the financing amount that the bank will able to finance is negotiable between the client and the bank, and it will be change from one bank to another.

C. Property Sale Agreement

This third agreement is signed also between the client and the bank. In this agreement the bank approve selling the same asset to the client, while the client approve to purchase it at certain sale price (cost + profit) upon the terms and conditions of the bank. The Property Sale agreement shall be signed after the signing of the Property Purchase Agreement, in order to allow the Bank to sell back the same asset to the client.
The main issue here in the "Sale and purchase agreement" as it should be signed directly between the bank and the client, therefore the bank will hold the asset in his Balance sheet, and then sell it to the customer, as the customer here do not have to deal anymore with the agent, as he conduct the sale directly with the bank. Thus, and in this case the bank will be exposing to ownership risk, as this consider the "true sale".
As we have seen in our current market practice, the difference between the theory and implementation of this sale in the Malaysian market from "true sale" steps and Inah sale.
It is apparent that, the current practice of Islamic banking in Malaysia has been criticised as insufficiently different from conventional banking system. "One of the main criticism is using bay' al-Inah and Tawarq in creating a number of so-called Islamic financing products. Bay' al-Inah is a sale contract with immediate repurchase. It takes place between two people so when a person sells an asset in credit and immediately buys back the asset in cash at lower price, while Tawarq apply the same process but the sale will be for third party instead of the person himself. As was argued by Shaharuddin (2012) that "the classical scholars were in disagreement in assessing the legality of the contract, it was prohibited by majority of jurists including the Hanafis, Malikis and Hanbalis, but allowed by al-Shafi'".

The issue here in BBA is that BBA based consumer and asset financing cannot deviate significantly from interest bearing operation, especially in the pricing issues, so the margin remains the same and customers in both systems will see no significant difference as far as yields deposits and financing are concern.

The good example is in product pricing. In loans, the contractual interest rate is the sum of 1- interest rate of deposits 2- overhead 3- credit or default risk and 4- the profit margin.

In the case of BBA the shariah can only recognize the overhead and profit margin elements. However banks must impute the cost of deposit factor, since no promise to pay is made on wadiah and mudarabha is given. This implies that Islamic banks do not need to worry about determining of the targeted rate of return to depositors.

For example the bank sells asset for 200,000 RM on BBA credit term. As the customer, the BBA gave him the right to know the cost of this asset. We can say if its 20 years the term of maturity with annual profit rate 10 percent, the nominal mark-up is 100,000 RM. But how the bank explains the 100,000 as profit is legitimate profit, if there is no "Iwad" or equivalent counter value found as the bank implement the Inah sale which we discuss before. As any increase have to contain "Iwad".

If the transaction is made on spot or cash basis there is no time element here and here there is no problem of lawful or unlawful gain. Which means the banks buy the goods at wholesale price and take the risk of ownership and then sell it later for higher price to the customer.

In our case of Inah sale it is seems that the profit is made on the basis of time factor alone, without holding the Daman milkiyyah or the ownership risk.

It may also argue that BBA is Halal since this is not loan (قرض) but sale, but one has been misled to think that BBA is based on spot sale. And the mark-up from the spot sale is lawful since it is containing "Iwad" but we cannot imply the same for BBA credit sale when no tendency of "Iwad" can be detected here. Since the profit created from BBA is a consequence of waiting.

To conclude this point, our main idea here was supported with study done by Dzuljastri et al (2008) shows that "the practice of BBA in Malaysia is similar to the concept of debt financing which is often results in high cost that cause the BBA contract seen as not in compliance with the Shariah principle because the bank does not take the risk of ownership and liability on the property. Based on this study there is high level of dissatisfaction among the customers as evidenced by their low intention to use BBA. They recommended that Islamic banks or Islamic financing needs to come up with alternatives of Islamic home financing product".

4.0 Case of Sukuk

Sukuk represents undivided shares in the ownership of tangible assets in particular company or particular projects. As a result, sukuk investors "holders" will get entitled to receive any profits share generated by the Sukuk assets. The sale of sukuk relates to the sale of a proportionate share in the assets.

At the beginning of sukuk appearance it was categorized as "equity-based" and "asset or trade based". While the former was defined as a sukuk where the return will be determined based on the profit or loss sharing in the underlying investment principle, the later defined as a sukuk where the underlying asset provides a fairly predictable return to the holders of sukuk (IFSB, 2005) This situation continued till the financial crisis of 2008 when some sukuk default cases occurred, leading to a reclassification of sukuk to "asset-based sukuk" and "asset-backed sukuk" (Hidayat, 2013).

Since 2000, the sukuk market has got an escalating importance to get long-term funds for projects. For the first time, sukuk was issued by in 2000 by Malaysia, followed by Bahrain in 2001. Since then, the corporate sector started to use sukuk broadly as alternative financing resource. Although sukuk market affected by financial crisis of 2008, it continued to grow on a wide scale globally.

The basic requirement for Shariah compliance of any sukuk structure is that it shall be backed by tangible assets. According to Rahman (2011) "In the Shariah matter and in order to comply with Shariah requirements these assets must be essentially tangible assets, and the position of the investor must be one of a full owner throughout the tenure of the sukuk. Ownership in this contact must mean full ownership as understood in Shariah law that confers all rights and privileges to the relevant owner who, on his part, is entitled to receive whatever income that can be generated by the asset including possible rise in its value".

Therefore, based on the above discussion, the IFIs have to make sure that any sukuk issuance is backed by tangible assets, otherwise it will trigger the Shariah non-compliance risk by repeating the conventional securitization which is not more than lending the one who seek the fund in the capital market, that's why we have to know the difference between the two instruments, where sukuk are not basically debt, since it is backed by real tangible assets as opposite to the conventional bond.

<u>The difference between Assets backed and assets based Sukuk:</u>

As we discuss before taking risk is one of the requirements of earning lawful profits in Islam which is different from exposing our bank to risk in conventional concept. Another requirement is to sharing profits or losses. For any one to claim a share of income generated by an investment he helps to finance, without taking responsibility for its outcome, is inconsistent with the Islamic principles, so he has to bear risk. Income needs to be earned, if not by effort, then at the very least by taking risk, but as result of some recent defaults of a number of sukuk and the near defaults of others, a new classification entered the sukuk discourse, that between "asset-backed" and "asset-based" sukuk.

After the crises of 2008 some Sukuk default took place in the world and it seem to be that small number of investors were aware of the differences between the "asset-based" and "asset-backed" and all those defaults were occurring to the "asset-based" category just, but not for" assets-backed".

One need not look far for the reason why the "asset-based" sukuk defaulted while the "asset-backed" did not. All sukuk that defaulted the "asset-based" type, were structured to replicate conventional bonds. The debt structure of the asset-based sukuk provides both investors as well as issuers with the desired structure that is not backed by a tangible asset. The structure of asset-based sukuk allows the originator of sukuk only transfer the beneficial ownership of the underlying asset to the sukuk holders while maintaining it in its balance sheet. In a sense, the ownership of the underlying asset remains under the originator. Thus, the existence of Damanal-milkiyah in asset-based sukuk transaction is missing which make its generated profit against the theory of profit in Islam.

Profit - loss sharing securities (PLS) cannot default simply because they did not guarantee the profit or the capital itself, therefore the Issuers of PLS securities pay profits to investors when the underlying assets earn profits, and here it is legitimate the profit since the investors will bear the risk e.g. Musharakah and Mudarabah as there is no fix rate of return. Which means, the profit will be based on the actual profit earned by the project.

Coming back to the issue of guarantee the profit rate, It was argued by Abdullah (2018) that "such guarantees are key features of conventional bonds, as the incorporation of income and capital guarantees ensured that a single failure to make a periodic payment on time, or to redeem the principal amount on the due date, would constitute default not only the ijarah but also participatory sukuk such as the musharakah or mudaraba were structured to replicate debt instruments".

Asset-based claimed to be similar to conventional bonds even in matters related to dividends. The calculations of dividends in sukuk are based on a specific percentage of the total invested sum-up rather than a predetermined percentage of the total gained profit. This calculation mechanism seemed to be very similar to interest calculation mechanism.

Additionally, the calculation of dividends in sukuk were based on interest rate benchmarks (e.g. LIBOR).

The issue raised in asset-based sukuk is that the sukuk originators want to retain the underlying asset at the time of maturity. Hence, they always ensure to structure the sukuk in a way that prevent the sukuk holders from any disposal of the underlying asst at the maturity date. However, to ensure compliance with Shariah, the sukuk agreement should contain a clause that allows originators to repurchase the underlying asset from sukuk holders on a per-determined price at a specific date. Thus, the repurchasing price of the underlying asset is similar to that of the initial issuance price of the sukuk. This pricing mechanism results in a capital claim to the sukuk holder amount to the capital initially invested in the sukuk. In a sense, the eventual financial result in substance, is similar to that of repaying a loan. Therefore, it is hardly surprising that this kind of sukuk known as "Islamic bonds". This argument is also supported by the taxation laws that always deal with asset-based sukuk as conventional bonds. Initially, asset-based sukuk was structured to reflect a debt instrument that fulfil investors and market needs. However, the "market" is not eligible to guide investors through what is considered shariah compliant sukuk and what is not. Markets came to facilitate the trade and reflect what investors are buying and selling, along with providing trade quantities and price volume data. Markets have no eligibility to judge what could be Shariah compliant and what could not be Shariah compliant product.

Consequently, in 2008, asset-based sukuk was confirmed by Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI) to be a non-shariah compliant product. This happened months before some defaults in asset-based sukuk occur during the 2008 global financial crisis.

The structures of the two types of sukuk (i.e. asset-based and asset-backed sukuk) have created a confusing situation in the Islamic debt market. This confusion happens as a result of that one of the sukuk structure reflects only the form of the Shariah, while the other structure reflects both the form and substance of the Shariah. Although AAOIFI considered asset-based sukuk to be non-shariah, consensus among Shariah scholars regarding this matter is needed to have fully, in form and substance, Shariah complaint finance industry.

Conclusion

Islamic law of contracts provides many alternatives to muslims and non-Muslims who are looking at Shariah compliant products and services as way to achieve Islamic purpose and human justice. Our main discussion here was mainly on the legal maxims al-ghorm bil ghonm and al kharaj bil dhaman.

تقوم المعاملات بصفة عامة على ربط العائد بالتضحية و الكسب بالخسارة و الأخذ بالعطاء , وهذا ما يطلق عليه في كتب الفقه اسم : " الغنم بالغرم والخراج بالضمان " و يعني هذا العائد يقابل تضحية , ولا كسب بلا جهد , ولا جهد بلا كسب, ومن نماذج ذلك من القرآن الكريم صفقة التجارة مع الله في الجهاد حيث قال سبحانه وتعالى : " إِنَّ اللَّهَ اشْتَرَى مِنَ الْمُؤْمِنِينَ أَنفُسَهُمْ وَأَمْوَالَهُم بِأَنَّ لَهُمُ الْجَنَّةَ " (التوبة: 111) , و ربط الرسول صلى الله عليه وسلّم بين الجهاد وتوزيع الغنائم .

The Quranic verse (Al-Baqarah:275) said that "Allah hath permitted trade and forbidden riba...", to counter back the claims made by the Meccan pagans that the trade (al-bay) is like usury.

In Our Islamic law the legal maxim "al-ghorm bil ghonm" or "no reward without risk" holds the truth. This means that one cannot expect to make profit without associating it with risk in his undertakings.

The study shed the light on a very important issue that is exists in the most dominant Islamic finance products (i.e. Murabaha, and Sukuk). Thus, the study adds to the literature by embodying the issue of "damanal-milkiyyah" in these two dominant products, showing how critical is the issue for the Islamic finance industry as a whole.

As we have discuss in details the case of Murabaha which is being used by Islamic Financial institutions as a mode of financing by routing the transaction through Bai Muajjal (بيع مؤجل), and the main issue here that the Islamic bank must hold the ownership of the assets before they can sell or lease it in order to take the ownership risk which will legitimate his profits as mention before. Therefore, in the case of Ijarah the bank must own the title deed of the leased asset as it should be remains in the hand of the lessor during the rent period. Under the Shariah concept of leasing finance, the bank first of all they purchase the asset required by the client and own it, and then leases the asset to the requested client for a given period, and all the all liabilities arising from its ownership must be borne by the Islamic bank.

While in the issue we discus in sukuk, the development of the two types of sukuk (Asset backed and assets based) created something of a crisis in the sukuk industry, reflecting differing visions of Islamic securitisation.
In conclusion, Islamic finance industry shall stick to both, the form and substance, in all of its offered products and services to fully comply with the Islamic rules and principles. By following our real and main Islamic rules, and not just focusing on the form, the spirit of Islamic finance will go forward toward achieving Maqasd alshariah which is refers to the higher ideals and objectives of Islamic Law.

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