

Legal Maxim: “Every Loan That Brings Benefit Is Usury,” Its Related Issues and Implementation In Pre-Islamic And Malaysian Financial Transactions

Kaedah Fiqhiyyah: “Setiap Pinjaman Beserta Faedah Itu Riba,” Isu-Isu Berkaitan dan Perlaksanaannya Sejak Zaman Pra Islam dan Transaksi Pembiayaan di Malaysia

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Abstract

An important Islamic legal maxim is “Every loan that brings benefit is usury”. A normal ruling of the *Sharī‘ah* is that if anyone receives a loan from a person or a bank, he is supposed to return its exact amount to the moneylender. Any increase to it is considered usury (*ribā*) and therefore forbidden. However, jurists dispute over the following issue: “If this increase is not stipulated at the time of giving the loan, and the borrower gives it at the time of paying the loan back to the lender.”¹ Some jurists maintain that this is lawful, while others consider it as forbidden. Using descriptive and analytical methods, this paper discusses this legal maxim, its proofs, and the disputes of jurists on its related issues, while placing emphasis on the stronger opinion. It then strives to discuss its implementation in some pre-Islamic and Malaysian financial transactions.

Keywords: Legal maxim, loan, *ribā*, lawful, implementation, financial transactions.

Abstrak

Satu kaedah fiqhiyyah yang penting ialah "Setiap pinjaman yang menghasilkan manfaat adalah riba". Kaedah sebenar dalam *Sharī‘ah* ialah jika sesiapa menerima pinjaman daripada seseorang atau bank, dia sepatutnya mengembalikan jumlah yang sama kepada pemberi pinjaman itu. Setiap lebihan yang dikenakan atas jumlah pinjaman dianggap riba (*ribā*) dan hukumnya adalah haram. Walau bagaimanapun, para fuqaha

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¹ Ahmad Hasan, “*Al-Qarḍ alladhī Jarra Manfa‘atan*,” in *Majallat Jāmi‘at Dimashqlil-‘Ulūm al-Iqtisādiyyah wa al-Qānuniyyah*, (23:2, 2007), pp. 431-438.

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berselesis pendapat terhadap isu ini: "Sekiranya lebihan ini tidak disyaratkan semasa pemberian wang pinjaman tetapi diberikan oleh peminjam semasa pembayaran balik dilakukan maka ianya dibolehkan menurut sesetengah fuqaha". Beberapa ahli hukum berpendapat bahawa praktis sebegini adalah sah, sementara yang lain menganggapnya sebagai haram. Dengan menggunakan kaedah deskriptif dan analisis, makalah ini akan mengupas secara detail kaedah fihiyyah ini, dalil-dalilnya, dan perselisihan pendapat terhadap isu-isu yang berkaitan kaedah tersebut, dengan memberi penekanan pada pendapat yang lebih kuat. Seterusnya akan membincangkan pelaksanaan kaedah ini dalam beberapa transaksi kewangan pra-Islam dan di Malaysia.

Kata Kunci: Maksud undang-undang, pinjaman, riba', sah, pelaksanaan, transaksi kewangan.

Introduction

Usury (*ribā'*) was widely used in financial transactions during the pre-Islamic period, especially for lending and borrowing of cash money. This system of *ribā'* has been used by conventional banks for many years. The basic concept of these lending activities is that the lender will lend his/her money to a borrower with the condition that the latter will give some extra money to the former. For example, a lender will lend 100 Malaysian Ringgit (RM) to a borrower with the condition that the borrower will pay RM 105 to the lender at the end of the lending period. There are many other forms of this lending with interest. A number of Qur'anic verses and *aḥādīth* of the Prophet (pbuh) clearly prove that *ribā'* is forbidden. Therefore, in Islamic jurisprudence, a legal maxim “Every loan that brings benefit is usury” (*Kullu qarḍ Jarra Manf'atan fahuwa Ribā'*) has existed from the beginning of Islam. The benefits of lending are sometimes stipulated from the beginning of the lending contract, while at other times it is not. An example of a benefit that has not been stipulated at the beginning is when the borrower gives the lender some extra money willingly at the time of paying the loan back. Islamic rulings for the second option — when a benefit has not been stipulated at the beginning differ from the first option. Since the banking system, including Islamic finance, is essentially based on lending or borrowing money, it is crucial to elaborate on this legal maxim, discuss its related issues and highlight some examples to clarify which benefit of lending is legal and which is not in Islamic *Sharī'ah*.

A number of books have been written in English on Islamic legal maxims, some of which include: The Economic Relevance of the

Sharī‘ah Maxims,² A Mini Guide to Sharī‘ah & Legal Maxims,³ and Islamic Legal Maxims: Essentials and Applications.⁴ However, as per the knowledge of the researcher, no detailed discussion on the maxim of “Every loan that brings benefit is usury” has been conducted in English. Likewise, some articles have also been written in English on Islamic legal maxims, but no detailed discussion has been conducted on the maxim mentioned above. Some of these articles are: “Sharī‘ah Maxims and Their Implications on Modern Financial Transactions”,⁵ and “The Major Fiqh Legal Maxims and Their Effects in Financial Transactions”.⁶

On the other hand, a number of contemporary Arabic sources were found on the topic, with varying degrees to the extent that they dealt with the maxim. Some examples include, *Al-Qarḍ alladhī Jarra Manfa‘atan*,⁷ *Al-Taṭbīqāt al-Mu‘āṣirah lil-Qarḍ alladhī Jarra Manfa‘atan*,⁸ and *Hukm al-Ziyādah ‘alā al-Qarḍ: Sharḥ al-Qā‘idah “Kullu Qarḍ Jarra Naf‘an fahuwa Rib’.*”⁹ Based on these as well as several other classical and modern sources written in Arabic, texts of the Qur’an and *aḥādīth* of the Prophet (ṣbuh), the researcher will try to analytically and critically discuss the topic, dividing it into the following sections: (1) explanation of the maxim “Every loan that brings benefit is usury” and its proofs, (2) *Sharī‘ah* rulings on benefits received as a con-

² S. M. Hasanuzzaman, *The Economic Relevance of the Sharī‘ah Maximxs* (Riyadh: Centre for Research in Islamic Economics, King Abdulaziz University, 2007).

³ Mohammad Akram Laldin, *A Mini Guide to Sharī‘ah & Legal Maxims* (Kuala Lumpur: Centre for Research & Training, 2007).

⁴ Azman Ismail, and Md. Habibur Rahman, *Islamic Legal Maxims: Essentials and Applications* (Kuala Lumpur: IBFIM, 2013).

⁵ Abu Umar Faruq Ahmad (et al.), “Sharī‘ah Maxims and Their Implications on Modern Financial Transactions,” *Journal of Islamic Economics, Banking and Finance*, (n. d.), 6: 3.

⁶ Umar Abdullah Kamil, *The Major Fiqh Legal Maxims and Their Effects in Financial Transactions*, a paper prepared for a Ph. D. degree in the Faculty of Arabic and Islamic Studies, al-Azhar University, n. d.

⁷ Ahmad Hasan, “*Al-Qarḍ alladhī Jarra Manfa‘atan*,” in *Majallat Jāmi‘at Dimashq lil-‘Ulūm al-Iqtiṣādiyyah wa al-Qānūniyyah*, (2007), 23(2): 415-48.

⁸ Ahmad Hasan, “*Al-Taṭbīqāt al-Mu‘āṣirah lil-Qarḍ alladhī Jarra Manfa‘atan*,” in *Majallat Jāmi‘at Dimashq lil-‘Ulūm al-Iqtiṣādiyyah wa al-Qānūniyyah*, (2008), 24(1): 673-95.

⁹ Jamal Ahmad Zayd al-Kilani, *Hukm al-Ziyādah ‘alā al-Qarḍ: Sharḥ al-Qā‘idah “Kullu Qarḍ Jarra Naf‘an fahuwa Ribā’.* Nabls: Kulliyyat al-Sharī‘ah, Jāmi‘at al-Najāh al-Waṭaniyyah, blogs.najah.edu/staff/emp_2259/article/article-1/file/---2.pdf, retrieved on 24-04-2014.

dition of a loan, (3) *Sharī‘ah* rulings on benefits received without any condition of the loan, and (4) implementation of the maxim “Every loan that brings benefit is usury.” This last sub-topic will highlight a number of pre-Islamic modes of financial transactions in which loans used to be given on the basis of usury, as this is closely related to the maxim under discussion. Likewise, it will also discuss different types of benefits that are received by clients through their current accounts; whether they are according to the maxim under discussion, allowed in Islam or forbidden. Examples from Malaysian financial institutions that are related to this maxim will also be discussed in this section.

This research strives to accomplish the following objectives:

1. To discuss the legal basis and detailed explanation of the Islamic legal maxim: “Every loan that brings benefit is usury.”
2. To highlight important Islamic legal issues related to this maxim.
3. To provide pre-Islamic examples of financial transactions in which this maxim can be implemented.
4. To provide contemporary examples of financial transactions, including examples from Malaysian financial institutions in which this maxim can be implemented.

This research is based on library works. The researcher intends to collect materials on the topic from the IIUM Library and different websites. Likewise, this research uses descriptive and analytical methods to give detailed explanations of the maxim, to discuss important Islamic legal issues related to it, to analyze the related verses of the Qur’an and *ahādīth* of the Prophet (pbuh), and to discuss examples of its implementation in selected pre-Islamic and contemporary financial transactions, including examples from Malaysia.

Explanation of the Maxim “Every Loan That Brings Benefit is Usury” and Its Proofs

Although the apparent meaning of the maxim “Every loan that brings benefit is usury” is clear, its meaning from the Islamic legal point of view could be different from our normal understanding. Likewise, any Islamic legal maxim is not acceptable unless it is proved by the texts of the Qur’an, *ahādīth* of the prophet (pbuh) and/or other sources of the *Sharī‘ah*. Therefore, it is necessary to discuss the meaning, explanation and proofs of this maxim. Hence this section will discuss the meaning of the words “*qard*,” “*manfa‘ah*,” and “*ribā*” followed by an explanation of the maxim and its proofs in the following pages.

Meanings of the Words “*Qard*,” “*Manfa‘ah*,” “*Ribā*” and Explanation of the Maxim

The Arabic word “*qard*” literally means to cut, as the moneylender cuts some of his money and gives it to the borrower. *Qard* as an Islamic legal term has been defined by a number of classical and modern scholars. The best definition is, “To give some wealth/money to someone so that he will get benefit out of it and will return its substitute [to the lender].”¹⁰ According to this definition and texts of the Qur’ān and *Sunnah* of the prophet (*pbuh*), in Islam, giving a loan to anyone should be free of any return, i.e. when giving a loan to someone, the loaner should not expect any extra money to be added to the loan amount when the borrower returns the loan. You are helping the borrower relieve himself from a financial crisis. Nothing extra should be expected from it; you will be rewarded for it on the Day of Judgment.

The word “*manfa‘ah*,” literally means “benefit,” “use,” “useful service,” “advantage,” “profit,” “gain,” “interest,” etc. As an Islamic legal term, it means “An accident (*‘arad*) that does not exist twice and it cannot be seen and grabbed.” However, *manfa‘ah* can be obtained through taking possession of an object. For instance, living in a house or riding a car,¹¹ which is an accident (*‘arad*) that exists only once, and the same living or the same riding cannot be repeated, and it cannot be grabbed. But it has no existence without having a house or a car. As for the benefit that a lender may receive from a borrower, it is inclusive of all that has some value, whether it is money, an object or its benefits. For instance, receiving some extra money beyond the exact amount of a loan, or it could be a gift, or any form of help such as allowing the moneylender to stay in the apartment of the borrower without paying any rent, or any work or service that will be done by the borrower for the lender, etc.¹²

The word “*ribā*” literally means “to increase,” “to grow,” “to exceed,” “usury,” “interest,” etc. As an Islamic legal term it means “An increase which is void of a compensation according to an Islamic legal measure and conditioned for one of two contracting parties in a commutative (*al-mu‘āwadah*) contract.”¹³ This increase could either be for a delayed payment, which is called *ribā’ al-nasī‘ah*, or it could be an in-

¹⁰ Hasan, *Al-Qard alladhī Jarra Manfa‘atan*, 23, 2: 417.

¹¹ Ibid., 418.

¹² Ibid., 418-419.

¹³ ‘Abd al-Ghanī al-Ghunaymī al-Dimashqī al-Maydānī al-Hanafī, *Al-lubāb fī Sharḥ al-Kitāb*, ed. Aḥmad Jādd, (Cairo: Dār al-Ḥadīth, 2008), 2: 37.

crease void of delayed payment, which is called *ribā' al-faḍl*. Both are forbidden in Islam.

Based on this discussion, it may be said that the above maxim means that if anyone lends money or any other wealth, object or thing to another person, and then the lender receives from the borrower any benefit in the form of money, a gift, service, help, etc., it is considered to be usury (*ribā'*) and therefore it is forbidden.

Proofs of the Maxim

A number of Qur'ānic verses prove that *ribā'* is forbidden in Islam. Allah says: “And Allah made trading lawful and usury forbidden”.¹⁴ He also says: “And abandon whatever is remained of usury.”¹⁵

A number of *aḥādīth* of the Prophet (*pbuh*) also prove that usury is forbidden. For example, “Jabir said: ‘The Messenger of Allah (*pbuh*) cursed the one who takes usury, who gives it, who writes it, and who witnesses it, and said that all of them are equal’”.¹⁶ There is a *hadith* with the wording of this maxim, i.e. “Every loan that brings benefit is usury”.¹⁷ The chain of narrators of this *hadith* reaches the Prophet (*pbuh*), which is called *hadith marfu'*. However, *hadith* critics say that this *hadith* is weak because one of the narrators of this *hadith* is not reliable. However, al-Bayhaqī narrated the content of this *hadith* from a group of companions of the Prophet (*pbuh*).¹⁸ Therefore, although this *hadith* is weak, its meaning is well established in Islam, hence this maxim is accepted.

There is a consensus among Muslims that usury is forbidden. Imam Nawawī said: “Muslims have a consensus (*ijmā'*) on the prohibition of usury and on that it is one of the major sins.”¹⁹ Hence, the proof of *ijmā'* is strong.

Likewise, the practice of many companions prove the soundness of the content of this maxim. For example, Sa'īd bin Burdah narrated

¹⁴ Al-Baqarah, 2: 275.

¹⁵ Al-Baqarah, 2: 278.

¹⁶ Muslim. See al-Shaykh Wali al-Din Muhammad bin `Abd Allah al-Khatib al-Tabrizi, *Mishkat al-Masabih*, (Lahore: Maktaba'i Mustafa'i), p. 244.

¹⁷ Atīyyah `Adlān `Atīyyah Ramadan, *Mawsū'at al-Qawā'id al-Fiqhiyyah al-Munazzimah lil-Mu'āmalāt al-Māliyyah al-Islāmiyyah wa Dawruhā fī Tawjīh al-Nuzum al-Mu'āṣirah*. (Alexandria: Dār al-Imān lil-Ṭab' wa al-Nashr wa al-Tawzī', 2007), 302.

¹⁸ Ibid.

¹⁹ Ibid., 288.

from his father who said: “I came to Madinah and met ‘Abd Allōh bin Salām who told me: ‘Will you come with me, so that I can feed you *sawīq* (a kind of mush made of wheat or barley) and dates, and you will enter my house.’ Then he said: ‘You are from a land [Iraq] where usury is well spread, if you have any dues from a man who gives you a load of straw or barley or *qatt* (a kind of grain) as a gift, it is considered usury.”²⁰ Another report was narrated by Yaḥyā bin Ishāq al-Han’ī who said: “I asked Anas bin Mālīk: ‘[What is the *Sharī‘ah* ruling for] a man from us who lends his wealth/money to his brother, then he [the borrower] gives a gift [to the lender]?’ He (Anas) replied that the Messenger of Allah (*pbuh*) said: ‘When any of you gives a loan to [someone], then he [the borrower] gives a gift to him [the lender] or he wants to carry him on his animal, then he neither should ride it, nor should accept this gift, except if this practice was in action between them prior to that.’”²¹

Therefore, the Qur’an, *ahādīth* of the Prophet (*pbuh*), *ijmā‘* and practice of the companions of the Prophet (*pbuh*) prove the soundness of the Islamic legal maxim of “Every loan that brings benefit is usury.”

***Sharī‘ah* Rulings on Benefits Received as a Condition of a Loan**

The original ruling for a benevolent loan (*al-qarḍ al-ḥasan*) is that the borrower should return the exact substitute of the loan to the lender without any condition of increase. If the lender imposes a condition of increase then this conditioned increase could either be a material benefit by increasing the amount, benefit from an object, providing a service, or returning the same borrowed thing but with a better quality.²² Therefore, this section of the paper discusses the *Sharī‘ah* rulings for these issues by dividing them into the following sub-sections: (1) imposing the condition of increasing the amount by the lender, (2) imposing the condition of obtaining benefit from an object by the lender, (3) imposing the condition of providing a service to the lender, and (4) imposing the condition of returning the substitute of the loan with better quality.

Imposing the Condition of Increasing the Amount by the Lender

²⁰Ibid., 302-303.

²¹Ibid., 303.

²² Hasan, *Al-Qarḍ alladhī Jarra Manfa‘atan*, 420.

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If the lender imposes the condition that the borrower must return his loan with an additional amount, such as if someone lends another person one thousand RM for a period of one year and imposes a condition on the borrower that he must return one thousand and one hundred RM, then the loan will be nullified according to a unanimous opinion of the jurists, and it will be considered as usury.²³ All the proofs mentioned earlier, as proofs of the maxim under discussion are considered to be the proofs for this prohibition.

Imposing the Condition of Obtaining Benefit from an Object by the Lender

If the lender imposes the condition that the borrower must allow him to use an object, such as his house for living in it, or his car to drive it for a certain period of time, then the lender will get the benefit of this house or car in addition to receiving the full amount of their loan. In addition to this, living in this house or riding this car will be without any compensation or could be with a compensation, but with a rent that is less than the current market rate. For instance, the market rate of the rent is one thousand RM, but the lender pays seven hundred RM only. Dr. Aḥmad Ḥasan has mentioned that in his country of Syria, people lend money with the condition that the borrower will return the full amount of the loan, and additionally a house of the borrower will remain as *rahn* (pawn) in the hand of the lender against the loan; where he will live for a certain period of time or as long as the loan remains unpaid, without any rent or with rent that is less than its market rate. Although Dr. Aḥmad has tried to show that there is some difference of opinion among the Hanafi jurists and majority schools of Islamic law with regards to the issue of taking a house as a pawn, ultimately there is no dispute between the preferred and well established view of the Ḥanafī School with that of the majority of other schools. According to all of them, it is forbidden to keep a house as a pawn against the loan because it is considered as receiving an increase or benefit out of giving a loan without any compensation for that increase or benefit, which is considered usury and therefore is forbidden. The same proofs mentioned above for the maxim under discussion are enough to prove this prohibition. Likewise, if the house is given for the purposes of living, without keeping it as pawn, but also without paying any rent for it or with a payment of rent that is less than

²³ Ibid., 421.

its market rate, it is also considered a benefit without compensation. Therefore, it is *ribā'* and hence it is forbidden.²⁴

Imposing the Condition of Providing a Service to the Lender

If the lender imposes a condition that the borrower must provide him a service, such as he should work in the shop of the lender or he should work as a guard for his apartment for a certain period of time, or as long as the loan remains unpaid, no salary will be given or with a salary less than the salary of the same job in the job market, in addition to returning the full amount of the loan, then this is considered to be a loan that brings benefit without any compensation for it. Therefore, it is usury; and thus it is considered to be forbidden. The proofs mentioned earlier for proving the maxim under discussion are also applicable for this prohibition.²⁵

Imposing the Condition of Returning the Substitute of The Loan with Better Quality

If the lender imposes the condition that the borrower must return his loan with a better quality, such as the lender lends RM 1000, but imposes the condition that the borrower must return 1000 British Pounds, this contract is nullified according to the unanimous opinion of the jurists. This is because it is a loan that brings benefit without any compensation for it. Therefore, it is usury and forbidden.²⁶ All proofs of the maxim discussed earlier indicate that returning the substitute of the loan with better quality is forbidden.

***Sharī'ah* Rulings on Benefit/Increase Received without Any Condition of a Loan**

Any increase/benefit in the substitute of a loan without any condition for it may be divided into three types: (1) giving a gift before returning the substitute of a loan, (2) giving a gift or increase in the amount at the time of returning the loan, and (3) returning the substitute of a loan with better quality. The *Sharī'ah* rulings for these issues are as follows:

²⁴ Ibid., 423-425.

²⁵ Ibid., 429.

²⁶ Ibid., 429-430.

Giving a Gift before Returning the Substitute of a Loan

Muslim jurists disputed on the issue of giving a gift before returning the substitute of the loan to the lender without being asked for it. Hanafī and Shafīʿī Schools of Islamic law maintain that the gift is acceptable and sound, if it was not a condition of lending, or if there is no custom of giving this gift to the lender by the borrower. However, if the borrower gives a gift to the lender without any condition or without any custom of giving such a gift, and the lender assumes that the gift is given because of giving the loan, then it is better not to receive it. However, it is not considered forbidden. These jurists strived to prove their opinion through the following evidences:

Abū Rāfiʿ narrated that the Messenger of Allah (*pbuh*) borrowed a young camel from a man. Then when the camels of charity arrived to the Prophet (*pbuh*) he ordered Abu Rafīʿ to give a camel back to that person. Abū Rāfiʿ returned to the Prophet and told him, “O Messenger of Allah, I could not find except a better four year old camel.” The Prophet told him, “Give it to him, because the best among the servants of Allah is the one who gives the dues back with a better quality.” Arguing through this *hadith*, Shafīʿī jurists said that since an increase is allowed in quality, an increase of amount should also be allowed, and this increase should not be forbidden before returning the loan because the forbidden loan is the one that is imposed as a condition in the contract of the loan.

Ibn Sūrīn said that Ubayy bin Kaʿb borrowed some money — he said that I assume it was ten thousand — from ʿUmar bin al-Khaṭṭāb. Then Ubayy gave ʿUmar some dates before returning the borrowed money. The dates were of the best dates of the people of Madinah. ʿUmar returned it to Ubayy, to which Ubayy responded, “I will return your money, I don’t need a thing that prevented you from accepting the very good dates of mine.” Then ʿUmar accepted it and said, “Surely usury is for the one who wants to give an increase or wants to delay the payment.” The argument of this *hadith* for the issue under discussion is that although ʿUmar used to accept gifts, he returned the gift because he assumed that Ubayy gave him the gift because of his money, which is considered to be a benefit of the loan. But when Ubayy reassured ʿUmar that the gift was not because of his money, Umar accepted it.

Yaḥyā bin Abū Ishāq al-Hanāʿī said, “I asked Anas bin Mālīk: [what is the *Sharīʿah* ruling of the issue of] a man from us who lends money to his brother, then the borrower gives a gift to the lender? He [Anas] replied that the Messenger of Allah (*pbuh*) said, ‘When any one

of you gives a loan, and the borrower wants to give him a gift or wants to carry him on his animal, he [the lender] should neither accept this gift nor should he ride the animal, except if it used to occur between them prior to this [loan].” This *hadith* makes it clear that the gift is not allowed because of a loan. However, if it is not because of the loan, then it is allowed.²⁷

On the other hand, Mālikī and Ḥanbalī jurists maintain that if a borrower gives a gift to the lender before returning the substitute of the loan and they used to do so before the loan, then it is allowed. And if the reason for giving the gift is due to a relationship by marriage, that occurred after the loan or any other reason that has no connection with the loan, then it is also allowed. But if there is nothing of what is mentioned above and still a borrower gives a gift to a lender, then it is forbidden. However, if the lender compensates the borrower for his gift or if he considers it part of the loan, it will be lawful for him.²⁸ These jurists justify their view through the following evidences:

Anas said that the Messenger of Allah said, “When any one of you gives a loan, and the borrower wants to give him a gift or wants to carry him on his animal, he [the lender] should neither accept this gift nor should he ride the animal, except if it used to occur between them prior to this [loan].” This *hadith* makes it clear that giving a gift within the period of the loan is forbidden.

Ibn Sīrīn said that Ubayy bin Ka‘b borrowed some money — he said that I assume it was ten thousand — from ‘Umar bin al-Khaṭṭāb. Then Ubayy gave ‘Umar some date which was ahead of its time and was of the best date of the people of Madinah. ‘Umar returned it to Ubayy who said, “I will return your money, I don’t need a thing that prevented you from accepting the very good date of mine.” Then ‘Umar accepted it and said, “Surely usury is for the one who wants to give an increase or wants to delay the payment.” These jurists maintained that rejection of ‘Umar of the gift indicates that it is forbidden.

Sa‘īd bin Burdah narrated from his father who said, “I came to Madinah and met ‘Abd Allāh bin Salām who told me, ‘Will you come with me, so that I can feed you *sawīq* (a kind of mush made of wheat or barley) and dates, and enter my house.’ Then he said, ‘you are from a land [Iraq] where usury is well spread, if you have any dues from a man who gives you a load of straw or barley or *qatt* (a kind of grain) as a gift,

²⁷ Ibid., 431-432.

²⁸ Ibn Qudāmah, *Al-Mughnī*, mentioned by Ibid., 433.

it is considered usury.” The argument is that the presence of a custom of giving a gift by the borrower to the lender is considered in this *hadith* as usury. This is because the lender permits late payment of his loan because of the gift.

Discussing these evidences, Dr. Aḥmad Ḥasan prefers the view of the second group and says that acceptance of a gift during the time of a loan is forbidden.²⁹ The researcher maintains that if it is confirmed that this gift is related to the loan, then it is forbidden. But if the gift has nothing to do with the loan, rather the practice of giving a gift between the lender and borrower was there in the past, then this gift is lawful.

Giving a Gift or An Increase in the Amount at the Time of Returning the Loan

In the case where a borrower returns the substitute of the loan along with a gift or increases the amount of money that he has borrowed, such as if he borrows one thousand RM, and then he returns one thousand and one hundred without any condition for it and without having any custom for it, Muslim jurists have faced disputes. Majority of them, i.e. Ḥanafī, Shafī‘ī and Ḥanbalī schools of law and Ibn ‘Abd al-Birr of the Mālīkī School of law, say that the gift and the increase of the loan amount are lawful. These jurists strive to prove their view through the following evidences:

Allah said, “Is there any reward for good other than good?”³⁰ Sarakhsī says that if the increase is neither conditional nor a custom, then it will not be because of the loan. Rather, it is rewarding a good deed with a good deed, and [according to the above verse] reward for good should be good.

Abū Hurayrah said, “A man came to the Messenger of Allah (*pbuh*) and asked [a loan] from him. The Messenger of Allah borrowed half *wasāq* (a measure) [of either date, wheat or barley] for that man and gave it to him. Later the man came to return the loan and gave the Prophet a full *wasāq* and said that half of it is the payment of loan and other half is a gift from me for you”. This *ḥadīth* is a clear proof of legality for giving extra pay when returning a loan without any condition for it.

Abu Rafī` narrated that the Messenger of Allah (*pbuh*) borrowed a young camel from a man. Then when the camels of charity arrived to the Proph-

²⁹ Hasan, *Al-Qard alladhī Jarra Manfa‘atan*, 432-434.

³⁰ Al-Rahman, 55: 60.

et (*pbuh*), he ordered Abū Rāfi' to give a camel back to that person. Abū Rāfi' returned to the Prophet and told him, "O Messenger of Allah, I could not find except a better four year old camel." The Prophet told him, "Give it to him, because the best among the servants of Allah is the one who gives the dues back with a better quality." According to this *hadith*, the prophet borrowed a young camel, but he returned a better quality camel. Likewise, without any qualifying criterion, the Prophet declared that the best of you is the one who is the best among you to repay their dues. This unqualified statement should remain so as long as there is no proof to qualify it.

A rational argument is that the increase is neither made as a compensation for the loan, nor as a medium to delay the return of the loan. Therefore, it is like there is no loan.³¹

On the other hand, according to the Mālikī School of law and according to a narration from Imām Aḥmad, neither giving a gift, nor increasing the amount at the time of returning the substitute of a loan is allowed. These jurists strive to support their view through the following evidences:

Ali said that the Messenger of Allah said, "Every loan that brings benefit is usury." A gift or an extra amount is considered to be a benefit and an increase in the amount of a loan. Therefore, it is usury, which is forbidden.

Zarr bin Hubaysh said, "I told Ubayy bin Ka'b: 'O Abū al-Mundhir, surely I want to do *jihād*. I shall go to Iraq and give a loan.' Ubayy replied, "Surely you are in a land where usury is well spread. If you give a loan to a man, then he offers you a gift, you should receive your loan and return his gift." According to this narration, Ubayy bin Ka'b prohibited the acceptance of a gift at the time of receiving the loan back, which proves that accepting a gift at the time of receiving the loan back is forbidden. Discussing the evidences of both groups, Ahmad has preferred the first view, i.e. receiving any increase in amount or any gift at the time of paying the loan back is allowed.³² Based on the strength of the arguments, the researcher also supports this view.

Returning the Substitute of a Loan with a Better Quality

Jurists are in agreement on the view that returning the substitute of a loan with something of better quality is lawful, if it is neither a condition of the loan, nor a custom. For instance, returning a good currency

³¹ Hasan, 434-436.

³² Ibid., 436.

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against a defective one is lawful. Likewise, if someone borrows an amount of rice, then returns the same amount, but with better quality, it is lawful. The following are some evidences that prove this rule:

Abu Rafi` narrated that the Messenger of Allah (*pbuh*) borrowed a young camel from a man. Then when the camels of charity arrived to the Prophet (*pbuh*) he ordered Abu Rafi` to give a camel back to that person. Abu Rafi` returned to the Prophet and told him, “O Messenger of Allah, I could not find except a better four year old camel.” The Prophet told him, “Give it to him, because the best among the servants of Allah is the one who gives the dues back with a better quality.” This *hadith* clearly proves that returning the substitute of a loan with a better quality is allowed in Islam.

Mujāhid said that ‘Abd Allāh bin ‘Umar borrowed some dirhams from a man, then he returned dirhams of better quality to that man. Then the man said, “O ‘Abd al-Rahmān, these *darāhim* are better than what I gave you.” ‘Abd Allāh bin ‘Umar replied, “I know that, but I am satisfied with it.” This narration clearly proves that ‘Abd Allāh bin ‘Umar returned the loan with a better quality.³³

Implementation of the Maxim “Every Loan that Brings Benefit is Usury”

This section is divided into two sub-sections: pre-Islamic implementation of the maxim, and contemporary implementation of the maxim, including its implementation in Malaysia.

Pre-Islamic Implementation of the Maxim

Different modes of usury were in function during the pre-Islamic period, which are closely related to the maxim under discussion.

A person lends money and when the time of payment comes, he says to the borrower, “Either you pay the loan back to me, or you have to pay an extra amount for late payment till another deadline.”³⁴ This financial transaction is considered usury as this loan includes an extra payment, which is a condition for a delayed payment of the loan. Al-Qurtubī says that the Arabs were familiar only with this mode of usury.³⁵ This

³³ Ibid., 437-438.

³⁴ Ramadan, *Mawsū‘at al-Qawā‘id al-Fiqhiyyah al-Munazzimah lil-Mu‘āmalāt al-Māliyyah al-Islāmiyyah wa Dawruhā fī Tawjīh al-Nuzum al-Mu‘āṣirah*, 290.

³⁵ Ramadan, *Mawsū‘at al-Qawā‘id al-Fiqhiyyah al-Munazzimah lil-Mu‘āmalāt al-Māliyyah al-Islāmiyyah wa Dawruhā fī Tawjīh al-Nuzum al-Mu‘āṣirah*, 290.

statement of al-Qurṭubī misled some contemporary people to maintain that the usury of the *Jāhili* period was confined to this mode. Criticizing this view, a contemporary scholar ‘Aṭīyah ‘Adlān ‘Aṭīyah Ramaḍān says that this view is not acceptable as interpreters of the Qur’ān mention many other modes of usury that were present during the *Jāhili* period.³⁶

Another mode, as indicated by Al-Jaṣṣāṣ,³⁷ is that the lender from the beginning of lending the money imposes a condition of receiving extra pay. This mode is different from the first in that the first one, there was no condition of extra pay from the beginning, rather, it was imposed at the time of the deadline for not paying the loan on time. On the other hand, in the second mode the condition of extra pay is imposed from the beginning. In this mode, the loan clearly brings an extra amount of money, which is, according to the maxim, considered to be usury and therefore, is also forbidden.

A third mode is that from the beginning, the lender imposes the condition that the borrower has to pay an extra amount but not at the end of the deadline. Rather, he has to pay the extra amount as monthly installments over a period of time, while the capital or original loan remains to be paid. Discussing this type of usury, Imām Rāzī said that the usury of *nasī’ah* (delayed payment), which was well known during the *jāhili* period, entailed the lending of money with the condition that every month the lender would receive a fixed amount [not part of the loan] while the capital remained unpaid. Then when the deadline of returning the capital arrived they would ask the borrower to pay it. If the borrower was unable to pay it, then the lender would increase his dues and the deadline for the payment of capital.³⁸ Since the loan brings extra pay to the lender, this mode is clearly an example of the maxim. This extra pay is usury and is therefore forbidden. Ramadan observes that this third mode proves that usury during the *jāhili* period evolved from a simple mode to a complex one. The monthly installments were a simple mode, but at the end of the deadline when the borrower was unable to pay the loan back, it evolved into a complex mode by multiplying the extra pay. However, the researcher maintains that there is another evolution, i.e. the first mode was the simplest one, the second one was slightly more complex, with the third being even more complex.

³⁶ Ibid., 291.

³⁷ Ibid.

³⁸ Ibid.

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A fourth mode is multiplied usury, i.e. if a borrower cannot pay the loan back at the end of the deadline, then the lender doubles the capital and the deadline of payment. Then at the end of this deadline, if the borrower cannot return the capital, then again the lender doubles the capital and its deadline.³⁹ Thus, whenever the payment of the loan is delayed, the amount of usury increases. This was the worst type of usury of the *jāhili* period, which was forbidden by Allah through a verse of *Sūrat Al ‘Imrān*, which says, “O you who believe do not take usury by multiplying it or increasing it many times.”⁴⁰

Contemporary Implementation of the Maxim Including Its Implementation in Malaysia

According to Ramaḍān, all these modes of usury of the *jāhili* period are now implemented by conventional banks.⁴¹ In the following paragraphs, some examples of contemporary implementation of the maxim both in normal life and banks are discussed.

1. In a normal life situation, a tricky way to obtain benefit from lending money is to sell something with the condition that whenever the seller will return its price to the purchaser, the latter will return the sold thing to the seller. Some examples of this trick are as follows:
 - A. A seller tells a purchaser, “I sold this house to you with the condition that whenever I will return its price to you, you will return it to me.” This is a trick by the lender — who is apparently the purchaser — to obtain benefit from giving the loan. This is because the purchaser — who is in reality the lender — paid the price, then took it back after a period during which he obtained benefit from the sold house by renting it to someone or by living in it. This benefit is considered an increase that is drawn by giving the loan. Therefore, according to the maxim, this increase or benefit is considered to be usury, which is forbidden.⁴² This example is applicable in many countries of the world including Malaysia.

³⁹ Ibid., 292.

⁴⁰ Al ‘Imrān, 130.

⁴¹ Ramadan, *Mawsū‘at al-Qawā‘id al-Fiqhiyyah al-Munazzimah lil-Mu‘āmalāt al-Māliyyah al-Islāmiyyah wa Dawruhā fī Tawjīh al-Nuzum al-Mu‘āṣirah*, 292.

⁴² Al-‘Umrānī, ‘Abd Allāh bin Muḥammad. *Al-Manfa‘ah fī al-Qarḍ*: *Dirāsah Ta‘shīliyyah Taḥtīqiyah*, www.saaidd.net/bahoth/69.htm, retrieved on 20-04-2014, p. 8.

- B. Another example is that a seller tells a purchaser, “I sold this piece of land to you with the condition that whenever I will return its price to you, you will return it to me.” This is also a trick by the lender — who is apparently the purchaser — to obtain benefit from giving the loan. This is because the purchaser — who is in reality the lender — paid the price, then took it back after a period during which he obtained benefit from the sold land by leasing it to someone or by cultivating it. This benefit is considered an increase that is drawn by giving the loan. Therefore, according to the maxim, this increase or benefit is considered to be usury, which is forbidden. This example is also applicable in many countries of the world including Malaysia. Both examples with some variations are utilized by pawn houses, or some banks as collateral or even by individuals.
2. An example of receiving benefit out of a loan through contemporary banking is the benefits that are given by the banks through a current account. Before discussing these benefits it is appropriate to discuss the status of money deposited into this account. Contemporary researchers have two different opinions about this: first, it is a kind of deposit/trust that is entrusted to the custody of the bank; second, it is a loan. The second view is preferable because in the contracts, words or terms are not considered; rather, reality and meanings are considered. If a thinker contemplates the relationship between a bank and a client who deposits money into his current account, then it will be clear to him that this relationship is the relationship of a loan, not the relationship of custody and safekeeping. Additionally, the bank owns the money deposited into a current account. Therefore, it has the right to handle this money, and at the time of asking for it the bank has to return it. This is the meaning of a loan, i.e. money will be given to someone who will get benefit from it through its use for personal purposes, but they must return its substitute. This is the opposite of a trust (*wadī'ah*), which is according to *fiqhī* terminology, the money or property that is given to a man for safekeeping, so that he will not use it and return it exactly to its owner. Likewise, because of the bank's negligence, any hostile action or through some other means, if this money is destroyed, then the bank will
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be responsible for it and obliged to return it. These aspects are requirements of a loan, not the requirements of *wadī‘ah* because the latter is a trust (*amānah*) for which the entrusted person will be responsible if it is destroyed, because of their negligence or any hostile action. But if there is nothing like that, they will not be responsible for it.⁴³ Therefore, it has been proved that the money deposited in the current accounts is a loan.

Now let us discuss some benefits of money deposited into the current accounts:

- A. **Investment of money deposited into current accounts:** If the investment itself is lawful, then investment of this money by the bank is lawful. This is because investment is a fundamental benefit of a loan for the borrower, which is the main goal of the loan and cannot be separate from it. Consequently the profit of this investment will be lawful for the bank. However, the depositor or the account holder will have no right over this profit. Giving any profit to the account holder by the bank as compensation against his/her money will fall under the category of benefit that is drawn by the loan. It is considered usury and therefore, it is forbidden.⁴⁴
- B. **Receiving service charges for current accounts:** Receiving service charges by the bank for maintaining current accounts is lawful because it deserves these charges for the services that it performs to help the depositor. This point is implemented in Islamic banks including Islamic banks of Malaysia.
- C. Some benefits of the current accounts are also received by their holders, such as getting chequebooks or debit cards. If these services are given to the account holders with service charges, then there is no dispute that it is lawful for them to get them. This will not be considered as a benefit that is drawn by a loan because it is not free; rather, compensation is given for it. This is also implemented in Islamic banks including Islamic banks in Malaysia. However, if this benefit is given free, then there is dispute among researchers. Some assert that it is allowed, however others posit that it is not. Al-‘Umrānī has preferred the view that it is lawful.⁴⁵ The re-

⁴³ Ibid., 9.

⁴⁴ Ibid., 9-10.

⁴⁵ Ibid., 10.

searcher does not support his view. Rather, the researcher maintains that without service charges, acceptance of these services fall under obtaining benefit out of a loan before giving it back to the lender, which should be forbidden as there was no such practice between the bank and the client before this. Rather, these services are given due to having current accounts with the bank. This is in line with our previous discussion on the issue of giving a gift before returning the substitute of the loan, where we have preferred the view that any gift given before the payment of a loan is forbidden unless it was a practice of the borrower to do so with the lender before getting the loan. This type of practice is not found between the bank and its client. An example of obtaining benefit through the current account is the overdraft facility. Conventional banks in Malaysia, such as Bank of China provide this facility under its product “Overdraft.” A current account holder — whether he/she is a Malaysian citizen, permanent resident or foreigner — with this bank is entitled to receive this facility for personal usage or investment purposes.⁴⁶

3. Another example is receiving a personal loan from the banks. A Malaysian bank named “Alliance Bank” provides personal loans under its product “Alliance CashFirst Personal Loan.” Under this loan facility, Alliance Bank gives loans for personal usage or business use with interest rates as low as 7.68% per annum. This is considered to be obtaining benefit out of giving a loan, which is considered to be usury according to the maxim under discussion. Therefore, this transaction is forbidden in Islam. However, there is Alliance Islamic Bank, which strives to implement *Sharī‘ah* rules in its loan transactions.⁴⁷
4. The Malaysian Government has promoted a program to allow foreigners, who fulfill certain criteria, to stay in Malaysia called ‘Malaysia My Second Home Program (MM2H)’. Under this program, an eligible foreigner can have a social visit pass with multiple entry, which is initially valid for ten years, and is renewable. Bank of China (Malaysia) Berhad has been working since 8th No-

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(http://www.bankofchina.com/my/en/pbservice/pb2/201205/t20120517_2134458.html, retrieved on 16th April 2017.

⁴⁷(<http://www.alliancebank.com.my/AllianceCashFirstPersonalLoan>, retrieved on 16th April 2017.

vember 2012 with the Ministry of Tourism Malaysia to promote this program to its eligible bank customers. Among the benefits provided by this bank under this program is that an eligible customer is allowed to receive interest from the money that he/she deposits with this bank as Fixed Deposits. This customer is also entitled to receive bank loans with attractive interest rates and higher loan margins.

The money deposited under Fixed Deposits is considered to be a kind of loan. If this money is invested, then the profit can be shared between the bank and the customer. Since this bank does not follow Islamic rules, the interest earned out of it, is considered to be a benefit earned through giving a loan, which, according to the maxim discussed, is usury. Therefore, this transaction is forbidden. Likewise, obtaining other benefits, such as bank loans with attractive interest rates and higher loan margins, is also considered to be a benefit received through giving an earlier loan. This benefit is also considered to be usury, according to the above maxim and is therefore forbidden.⁴⁸ However, it is possible to make this transaction acceptable if certain *Shari'ah* rules are followed by this bank and all other Malaysian and foreign banks doing business here, who want to promote this program for their eligible bank customers.

5. Financing for education is well known in Malaysia. Bank Rakyat has a financing product for education called ‘Bank Rakyat Education Financing-i Falah’. Under this financing scheme, an eligible Malaysian citizen aged 18 and above and does not exceeding 65 years of age at the end of the period of financing, can receive a maximum financing amount of RM 200,000 for a maximum of 15 years. He/she or his/her parents or any legal guardian can pay this loan back within 5 to 10 years with an addition of 7.6% interest per annum; or within 10-15 years with an addition of 8.1% interest per annum. Additionally, there should be a collateral of landed property or Bank Rakyat’s Investment Certificates. This loan brings two types of benefits for this bank: very high interest and also collateral. Therefore, according to the above maxim, these benefits are usury and therefore forbidden. Asking such a high rate of interest from a student indicates that this bank’s intentions

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(http://www.bankofchina.com/my/en/pbservice/pb2/201211/t20121109_2133225.html, retrieved on 16th April 2017.

are to engage in good business deals with students, rather than providing welfare services to the citizens of this country.⁴⁹

Conclusion

This paper discussed the legal maxim “Every loan that brings benefit is usury”, its related issues as well as its implementation in pre-Islamic times and in Malaysia.

Many concrete evidences from the sources of Islam prove the soundness and acceptance of this legal maxim. There are several types of loans in which usury can or cannot occur. This paper has discussed all of them and has stated the opinions of Muslim jurists as well as the opinion of the researcher.

There are two main modes of a loan under which all types fall under: (1) benefit received as a condition of the loan, and (2) benefit/increase received without it being a condition of the loan.

Under the first mode, there are four types of loans. The first is: imposing the condition of increasing the amount by the lender. This is usury, as the increase the lender receives is not being compensated. The second is: imposing the condition of obtaining benefit from an object by the lender. This is also usury, as the benefit the lender receives from the object is not being compensated. The third is: imposing the condition of providing a service to the lender. This is also usury, as the benefit of the service is not being compensated. Fourth: imposing the condition of returning the substitute of the loan in a better quality. This is also usury, as the better quality of the returned substitute is not being compensated.

The second mode has three types of loans. The first one is: giving a gift before returning the substitute of the loan. If the gift is given by the borrower by his own will, without any relation to the loan, it is allowed. The second is: giving a gift or increase in the amount at the time of returning the loan. The gift or increase is allowed if it was given by the borrower’s own will. Third: returning the substitute of the loan with a better quality. This is allowed if the borrower, by his own will, returns the substitute with better quality.

The paper then discussed several implementations of the maxim in pre-Islamic times as well as in Malaysia. During pre-Islamic times, extensive usury was taking place. If the borrower did not return the loan on time, then the lender would impose the borrower to pay an extra

⁴⁹ (<https://www.studymalaysia.com/education/top-stories/student-loans-offered-by-banks-and-other-organisations-in-malaysia>, retrieved on 16-04-2017.

amount at the time of returning it. Alternatively, from the beginning of the loan, an extra amount would be imposed by the lender, or from the beginning of the loan, an extra amount would be imposed by the lender and the borrower would then need to pay it in monthly installments until the original amount was paid. If at the time of the deadline, the borrower failed to pay the loan back, the lender would increase the dues of the borrower. Similarly, there was also multiplied usury: if the borrower could not pay the loan back at the time of the deadline, the lender would double the amount and the deadline. If at the next deadline, the borrower still could not pay, then again the loan and the deadline were doubled. It was only after Islam came that all these terrible forms of usury were abolished and the correct, usury-free way of lending and returning loans came into practice.

However, in today’s world, although it may sound surprising, many forms of usury that were practiced during pre-Islamic times have returned, especially in non-Muslim conventional banks. For instance, in Malaysia there are some systems and products of banks and other financial institutions available that are implementing this maxim. These systems and products are forbidden from the Islamic perspective as they are dealing with usury. However, if certain Shariah laws are implemented, then these systems and products can be transformed and allowed in Islam.

The researcher suggests that further detailed research be conducted on products of banks and financial institutions in Malaysia to determine whether they are Islamically acceptable or not. If they are not, then suggestions could be given to transform them to Islamic products.

From this discussion of the legal maxim “Every loan that brings benefit is usury”, the researcher hopes that it will assist the public, especially Muslims, to understand better and become more aware of the different ways in which usury can occur. This can facilitate caution in the day-to-day dealings of Muslims, and prevent them from engaging in transactions that involve usury, therefore saving themselves from angering Allah (SWT).

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