



AL-SHAJARAH

JOURNAL OF ISLAMIC THOUGHT AND CIVILIZATION
OF
THE INTERNATIONAL ISLAMIC UNIVERSITY MALAYSIA (IIUM)

SPECIAL ISSUE:
ISLAMIC BANKING AND FINANCE

2017

AL-SHAJARA

Special Issue

Contents

DEMOCRACY AND SOCIO-ECONOMIC INCLUSION IN NIGERIA: REDUCING THE MUTUAL EXCLUSIVITY THROUGH ISLAMIC MICROFINANCE <i>Abideen Adeyemi Adewale, Razali Haron</i>	1
AN INVESTMENT APPRAISAL OF INTERNATIONAL MARITIME ASSETS FOR MALAYSIAN ISLAMIC FINANCIAL INSTITUTIONS – THE CASE FOR EQUITY FINANCE <i>Adam Abdullah, Rusni Hassan, Salina Kassim</i>	27
<i>SHARI'AH</i> ISSUES IN GOLD TRADING AND GOLD RELATED SCAM SCHEMES <i>Azman Mohd Noor</i>	61
CLASSIFICATION OF DEFAULTERS IN THE PAYMENT OF DEBT IN ISLAMIC BANKING PRACTICES <i>Annan Hasan, Muhamad Nasir Haron, Mohd Faysal Mohamed, Budeeman Mana</i>	85
FUNDAMENTALS, UNIVERSE CREATION AND APPRAISAL OF MAJOR <i>SHARI'AH</i> - COMPLIANT STOCKS SCREENING METHODOLOGIES <i>Buerhan Saiti, Khaliq Ahmad</i>	105
OWNERSHIP STRUCTURE OF FAMILY-OWNED FIRMS AND DEBT FINANCING. EVIDENCE ON <i>SHARI'AH</i> -COMPLIANT FIRMS IN MALAYSIA <i>Razali Haron</i>	139
TOWARDS PROVIDING THE BEST <i>SHARĪ'AH</i> GOVERNANCE PRACTICES FOR <i>WAQF</i> BASED INSTITUTIONS <i>Rusni Hassan, Syed Musa Bin Syed Jaafar Alhabshi, Adnan Yusoff</i>	165
PUSHING THE FRONTIERS OF ISLAMIC FINANCE THROUGH SOCIALLY RESPONSIBLE INVESTMENT <i>SUKUK</i> <i>Salina Kassim, Adam Abdullah</i>	187
EXPLORING MULTI-DOMAINS OF ISLAMIC FINANCE EDUCATION CURRICULUM <i>Syed Musa Bin Syed Jaafar Alhabshi</i>	215
TOWARDS THE DEVELOPMENT OF <i>SHARĪ'AH</i> COMPLIANT HIGH QUALITY LIQUID ASSETS FOR ISLAMIC FINANCIAL INSTITUTIONS <i>Engku Rabiah Adawiah Engku Ali, Umar A. Oseni, Muhd Ramadhan Fitri Ellias, Muhamad Nasir Haron</i>	233
IMPACT ASSESSMENT OF ISLAMIC MICROFINANCE ON THE RELIGIOUS, ETHICAL AND SOCIAL WELL-BEING OF PARTICIPANTS: A CASE STUDY OF PAKISTAN <i>Khaliq Ahmad, Adewale Abideen Adeyemi, Muhammad Nauman Khan</i>	265
NOTES ON CONTRIBUTORS	297

WoS-Indexed under *Arts & Humanities Citation Index, Current Contents/Arts
and Humanities* and **Scopus**

ISSN 1394-6870



9 771394 687009



SHARĪ'AH ISSUES IN GOLD TRADING AND GOLD RELATED SCAM SCHEMES

Azman Mohd Noor

Abstract

Gold trading is very common and prestigious in most of the societies. Recently, many packages or schemes that are related to gold have appeared and developed in Malaysia, but they are subjected to questions and disputes, as most of them are not free from riba. Riba has been discussed extensively by Muslim scholars in the contemporary issues of Islamic Banking and Finance area. Although some types of riba are not explained clearly in the Quran, there are enormous compilations of hadith that detail out the occurrence of riba in the trading of the ribawi items, including gold. This paper will discuss the issues of riba, which arise from gold trading as well as gold related scam schemes. The research method used in this paper is by explaining how riba takes place in gold trading with deferment (riba al-nasi'ah), arguments to allow the deferment and refutations and some models of gold scam schemes. The major outcomes of the paper is to expose to the public the permissible way of gold trading, tricks used by gold scammers, the models of the program, riba issue and other related Shari'ah issue.

Keywords: *Riba, gold trading, gold related schemes.*

Introduction

The objectives of *Shari'ah* through its commands and prohibitions are to bring benefits the societies and avoid harms and evils. There are many permissible things to do, which are allowed by *Shari'ah* compared to the prohibitions. The Islamic legal maxim states¹:

الأصل في الأشياء الإباحة حتى يدل الدليل على منعه

“The original rule for all things is permissibility till there is evidence against it”

In Islam, *riba*, *gharar*, fraud, gambling and seizing the property of other people in unjustified ways (*batil*) are strictly prohibited. According to *Shari'ah*, Gold is regarded to be usurious (*ribawi*) because of its nature in. This paper will discuss the *Shari'ah* requirements for the sale of gold and the related pertinent issues of *riba*. *Riba* is one of the greatest sins, where Allah (s.w.t.) and Prophet Muhammad (s.a.w.s.) have declared a war against its practitioners. Most of the gold scam programs involves many forms of *riba* such as the deferment of delivery of gold, deferment of payment, a fixed extra return from the deferment of payment of purchased gold, etc.

To begin with, a brief understanding on *riba*, particularly how it takes place in the gold sale transactions is necessary. Literally, *riba* means excess or increase². Technically, it means an increase over the principal in a loan transaction, an extra charge on the debt payment or an exchange of *ribawi* items that have a similar '*illah* on different rates.

Riba can be divided into two categories, which are *riba al-duyun* and *riba al-buyu'*.³

Riba arising from debt (Riba al-Dyun)

A common type of *riba*, where there is an extra fee charged on the

¹ Al-Suyuti, Jalaluddin Abdul Rahman, *al-Ashbah wa al-Nazair*, (Dar al-Kutub al ilmiyyah, 1983), 60.

² Ashraf Wajdi Dusuki, *Islamic Financial System Principles and Operation*. (Kuala Lumpur: International Shari'ah Research Academy for Islamic Finance, 2012), 875.

³ Muhammad bin Ahmad Ibn Rushd, *Bidayat al-mujtahid wa nihayat al-Muqtasid*, (Beirut: Dar al-Kutub al-Ilmiyyah 1988), vol. 2, 128.

debt because the debtor has deferred in his/her payment. Allah (s.w.t.) has mentioned in the *Qur'an* that *riba* is primarily related to extra payment of debt. Thus, Allah (s.w.t.) says in the *Qur'an*:

يٰۤاَيُّهَا الَّذِيْنَ ءَامَنُوْا لَا تَاْكُلُوْا الرِّبَاۤ اَضْعَافًا مُّضَاعَفَةً
وَاتَّقُوا اللّٰهَ لَعَلَّكُمْ تُفْلِحُوْنَ ﴿١٣٠﴾

"O you who believe! Do not take riba doubled and multiplied, but fear Allah so that you may be successful"⁴ [Al-Imran: 130]

The essence of *riba* is time value of money, as well as an extra payment charged on the debt due to the deferment of payment. Thus, the original methods are زد (add) and تأجل (defer), which means an extra amount of payment in consideration of extra period given to settle the debt. Therefore, it is suggested that the common *riba* is the continuous charging of an extra value on the debt amount. A question has arisen with regards to *riba* that is not *اضيفاً مضاعفاً* (non-compounding, but with an increase on the debt amount) is permissible or not in the contract. For example, someone who owed RM 1,000 has to pay back RM 1,100 although he/she does not delay in the debt payment. The answer is it is still regarded as *riba*, whether it compounds or not as long as there is an increase in the total debt amount.

Riba al-Buyu'

Many are not so much aware about *riba* in the trading of *ribawi* items (*riba al-buyu'*). It is *riba* in a sale contract or in the exchange of *ribawi* items. It is also known as *riba al-sunnah*. This *riba* is not stated in the Quran, but has been practically mentioned in the *Sunnah*. There are many authentic hadiths that discuss the issues of *riba* that is related to the *ribawi* items. *Riba* on the *ribawi* items happens when one of the conditions in the sale contract/exchange of

⁴ Al-Qur'an, 3:130.

ribawi items is not fulfilled. There are two kinds of *riba*⁵ as far as sale transaction of *riba* is concerned, *riba al-fadl* (the exchange of the two counter values of the same genus such as gold with gold with a difference, not at par) and *riba al-nasi'ah* (the delay in the delivery, or taking possession).

Gold Trading on Deferred Payment

Gold trading of deferred payment is not permissible because it is *riba al-nasiah*. Amongst the well-known authentic hadiths of Prophet Muhammad S.A.W. that are related to *riba al-buyu'* is the one that is quoted by Ubadah bin al-Samit:⁶

قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ: «الذَّهَبُ بِالذَّهَبِ، وَالْفِضَّةُ
بِالْفِضَّةِ، وَالْبُرُّ بِالْبُرِّ، وَالشَّعِيرُ بِالشَّعِيرِ، وَالتَّمْرُ بِالتَّمْرِ، وَالْمِلْحُ
بِالْمِلْحِ، مِثْلًا بِمِثْلٍ، سَوَاءً بِسَوَاءٍ، يَدًا بِيَدٍ، فَإِذَا اخْتَلَفَتْ هَذِهِ
الْأَصْنَافُ، فَيَبِيعُوا كَيْفَ شِئْتُمْ، إِذَا كَانَ يَدًا بِيَدٍ» مسلم

The Prophet said: "Gold for gold, silver for silver, wheat for wheat, barley for barley, dates for dates, and salt for salt - like for like, equal for equal, and hand-to-hand; if these goods differ, then you may sell as you wish, provided that the exchange is hand-to-hand."

The hadith describes the ruling of sale contract/exchange of *ribawi* items. It does not put any condition for a normal sale contract, which involves non-*ribawi* items such as buying rice with money. The transaction can be made on cash, deferred payment or advance payment. If the usurious goods of the same classification of *illah* (rationale of being usurious) such as currency for gold and silver, being staple weighable and storable food for other foodstuff differ,

⁵ Ibn Rushd, *Bidayat al-Mujtahid*, vol. 2, 128.

⁶ Muslim bin Hajjaj, *Sahih Muslim*, (Beirut: Dar Ihya al-Turath al-Arabi), "*Bab al-sarfi wa bay'i al-dhahabi bi al-waraqin naqdan*"

then the requirement that the exchange should be at par is relaxed, provided that the exchange is hand-to-hand (on the spot).

***Riba al-buyu'* according to the hadith above**

The scholars have agreed that if gold is exchanged with gold, silver with silver, and wheat with wheat, two conditions must be fulfilled:

1. They must be of the same value/weight
2. The payment must be made on cash

In case if there is a difference in the types of items in the transaction, but with similar '*illah* (reason of being *ribawi*) such as being currency in exchanging gold for silver, and being weighable and staple food in exchanging wheat for barley, then the condition is that the transaction must be made on a cash basis and on the spot even though the exchange does not require to be at par of value and weight. For example, it is permissible to exchange 100 gram of gold with 2kg of silver or 1kg of dates with 2kg of wheat, but the transactions must be on a cash basis and on the spot, not by installment or deferred payment. During the time of Prophet Muhammad (s.a.w.s.) the gold currency was *dinars*, and its price fluctuates among 8, 10 or 12 *dirhams* of silver.

There was a narration of making settlement in different currencies, i.e. between gold and silver, which involves the exchange of currencies as mentioned in the *hadith* of Abdullah ibn Umar in the credit sale transactions of his camel and the debt payment with different currency (gold *dinar* vs silver *dirham*).

Some would claim that the prohibition of deferment on gold trading is valid only on the exchange of gold with gold. However, this claim is not in line with the other *hadiths* that report the prohibition of gold, silver and currency trading on a deferred basis:

عَنْ مَالِكِ بْنِ أَوْسِ بْنِ الْحَدَثَانَ، أَنَّهُ قَالَ: أَقْبَلْتُ أَقُولُ مَنْ
يَصْطَرِفُ الدَّرَاهِمَ؟ فَقَالَ طَلْحَةُ بْنُ عُبَيْدِ اللَّهِ - وَهُوَ عِنْدَ عُمَرَ بْنِ
الْخَطَّابِ -: أَرْنَا ذَهَبَكَ، ثُمَّ اثْنَيْتَا، إِذَا جَاءَ خَادِمُنَا، نُعْطِكَ وَرَقَكَ،
فَقَالَ عُمَرُ بْنُ الْخَطَّابِ: كَلَّا، وَاللَّهِ لَتُعْطِيَنَّهُ وَرِقَهُ، أَوْ لَتَرُدَّنَّ إِلَيْهِ

ذَهَبُهُ، فَإِنَّ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ: «الْوَرَقُ بِالذَّهَبِ
رِبًّا، إِلَّا هَاءَ وَهَاءَ، وَالْبُرُّ بِالْبُرِّ رِبًّا، إِلَّا هَاءَ وَهَاءَ، وَالشَّعِيرُ بِالشَّعِيرِ
رِبًّا، إِلَّا هَاءَ وَهَاءَ، وَالتَّمْرُ بِالتَّمْرِ رِبًّا، إِلَّا هَاءَ وَهَاءَ» مسلم

Umar (r.a.) said (after he disallowed the two companions from dealing with the exchange of gold with silver, where one of them wants to delay the delivery of the silver), "the Prophet has said that a sale contract of silver and gold are riba except if it is done on the spot, one party says: "Take this" and another party says: "Take this".

حَدَّثَنَا مَالِكٌ، عَنْ نَافِعٍ، عَنْ عَبْدِ اللَّهِ بْنِ عَمْرٍو، أَنَّ عُمَرَ، قَالَ: لَا
تَبِيعُوا الذَّهَبَ بِالذَّهَبِ إِلَّا مِثْلًا بِمِثْلٍ، وَلَا تُشْفُوا بَعْضَهَا عَلَى
بَعْضٍ، وَلَا تَبِيعُوا الْوَرَقَ بِالْوَرَقِ إِلَّا مِثْلًا بِمِثْلٍ، وَلَا تُشْفُوا بَعْضَهَا
عَلَى بَعْضٍ، وَلَا تَبِيعُوا الذَّهَبَ بِالْوَرَقِ أَحَدُهُمَا غَائِبٌ، وَالْآخَرُ
نَاجِزٌ، وَإِنْ اسْتَنْظَرَكِ إِلَى أَنْ يَلْجَ إِلَى بَيْتِهِ، فَلَا تُنْظِرُهُ، إِنِّي أَخَافُ
عَلَيْكُمْ الرَّمَاءَ وَالرَّمَاءُ مِنَ الرِّبَا - الموطأ

Umar (r.a.) said:

*"Do not sell gold with silver if one of the items is not in front of you and the transaction must be made immediately. If he asks to delay the transaction process till he enters his house, then do not allow him to do so because I am afraid that riba might happen in the transaction."*⁷

Imam al-Nawawi narrates the *ijma'* of all *fuqaha* based on the

⁷ A. Malik, *Al-Muwatta'*. (Damsyik: Mustafa al-Babi al-Halabi, 1985), vol.4, 917- 920.

authentic hadiths that it is forbidden to sell gold on a deferred basis, both in term of payment and delivery of the good.⁸

وقال النووي: (وأجمع العلماء على جواز بيع الربوي بربوي لا يشاركه في العلة متفاضلاً ومؤجلاً، وذلك كبيع الذهب بالحنطة، وبيع الفضة بالشعير وغيره من المكيل، وأجمعوا على أنه لا يجوز بيع الربوي بجنسه وأحدهما مؤجل، وعلى أنه لا يجوز التفاضل إذا بيع بجنسه حالاً كالذهب بالذهب، وعلى أنه لا يجوز التفرق قبل التقابض إذا باعه بجنسه أو بغير جنسه مما يشاركه في العلة كالذهب بالفضة، والحنطة بالشعير وعلى أنه يجوز التفاضل عند اختلاف الجنس إذا كان يداً بيد، كصاع حنطة بصاع شعير، ولا خلاف بين العلماء في شيء من هذا.
(شرح صحيح مسلم ج 11 ص 9)

“The scholars have agreed on the permissibility of selling ribawi items with another ribawi items on deferred or credit basis and at different values providing that the items have different ‘illah such as the sale contract between gold and wheat, silver and barley and others. They also opine that it is forbidden to exchange the ribawi items of the same types such as the selling of gold with gold on a deferred basis and it is also forbidden to exchange the ribawi items of the same types by cash or on the spot but not at par in terms of weight/value/measure. The ribawi items also should not be separated (during aqad event) before taqabud (the

⁸ Al-Imam Muhyiddin Al-Nawawi, *Raudatu al-Talibin wa ‘Umdat al-Muftin. Al-Maktab al-Islami* 3, (1991), 379.

settlement of the trading on the spot and in cash) when the traded items have similar 'illah (eg: currency). For instance, the exchange of gold with silver and wheat with barley. They also have agreed that the exchange of items with different rates/values is permissible in the case where the traded ribawi items are not of similar types similar such as 1kg of wheat with 2kg of barley if the transaction is done on the spot basis. There is no dispute amongst the scholars regarding this issue.

In the current context, paper money is a valid currency and takes the rule of gold as resolved by OIC International Fiqh Academy Council (*Majma al-Fiqhi al-Islāmī al-Dawlī*).⁹ Thus, it is forbidden to trade gold on a deferred basis as it involves *riba*. The postponement can occur in the following two situations:

1. The payment is made first, and the gold will be delivered later.
2. The gold is already received, but the payment is delayed, and is paid by installment or lump sum after the event of *aqad*.

Both transactions are clearly against the above hadith and it involves *riba*.

Conditions of Buying and Selling Gold

The rules pertaining to buying and selling of gold is also known as the rules of *al-sarf*. In relation to gold exchange or transactions involving gold, the term *bay' al-sarf* has been used extensively by classic Islamic jurisprudence scholars. It is associated to the issues of *riba*. This is because gold is a *ribawi* items because of its nature being a currency, the conditions for trading it are similar to exchanging the *ribawi* items prescribed in the above hadith. According to some Shafi'i scholars,¹⁰ there are three conditions:

⁹ It was resolved during Inter International Fiqh Academy Council 3rd Conference in Amman, Jordan on 8-13 Safar 1407H/11-16 October 1986. See *Majalah Majma' al-Fiqh al-Islāmī*, no. 3, vol. 3, 1650

¹⁰ Mustafā Bugha. *Al-Fiqh al-Manhaji*. Damascus, *Dar al-Qalam* (1992), vol 6, 71-72.

1. Tamathul تماثل
Must be in the same weight or value if gold is exchanged with gold or silver with silver. For currency, Ringgit with Ringgit, it should be at the same value.
2. Hulul حلول
The exchange must be immediately in cash, not in the form of credit or khiyar (cooling off period).
3. Taqabudh تقابض
The exchange and delivery of gold and price must be immediate in the aqad session.

Most of the cotemporary transactions are using currencies as the medium of exchange to buy gold. Payment in currencies is similar to using silver to buy gold. If the payment for purchasing gold is made in the forms of other *ribawi* items such as silver and currencies, it is suggested that the permissible methods of payment can be in the form of payment in cash, payment through debit card, direct transfer or direct debit and credit into the contracting parties accounts, banker's cheque, traveler's cheque, bank draft or other methods as long the requirements of *al-sarf*. AAOIFII gold standards clear stipulates the condition that the transaction of gold purchase must be immediate if the considerations are silver or currencies¹¹

3/2/1 In case of sale of gold for gold, or silver or currencies, the two counter-values must be delivered during the contracting session, physically or constructively. If gold is sold for anything other than the above, deferment of one of the counter-values is then permissible. This Shari'ah ruling invariably applies to s then permissible. This Shari'ah ruling invariably applies to gold in all states of purity, used or unused.

Exchange of Gold with Different Quality and Purity

As far as *Shari'ah* rules pertaining to gold exchange is concerned,

¹¹ AAOIFI, *Shari'ah Standards*, www.aaofii-shariah_standard_no57_english.pdf. Accessed 10th August 2017.

there are circumstances of exchanging good quality and purity gold such as 999 against 916 etc. Many question whether the rules remain the same. The answer is their rulings and rules remain the same. If gold is exchanged with gold, the rate (weight) must be the same, and the transaction cannot be on a deferred basis. Similarly, if silver is exchanged with legitimate paper notes, the transaction must be done on the spot (hand in hand). The shapes and quality of the gold and silver do not affect the value (intrinsic value).

قال الإمام النووي: "قوله صلى الله عليه وسلم: "لا تبيعوا الذهب بالذهب ولا الورق بالورق إلا سواء بسواء"، قال العلماء: هذا يتناول جميع أنواع الذهب والورق، من جيد ورديٍّ وصحيح ومكسور وحلى وتبر وغير ذلك، وسواء الخالص والمخلوط بغيره وهذا كله مجمع عليه"

*Al-Nawawi asserts, the hadith of Rasullullah (s.a.w.s.), "Do not transact gold with gold or silver with silver except at par (weight and value)", according to scholars with consensus of opinion, the rule shall be applied to all types of gold and silver whether they are of good or bad quality, perfect or broken, in the form of jewelry or raw, pure or mixed with other substance.*¹²

وقال الحافظ ابن عبد البر: "والسنة المجتمع عليها أنه لا يباع شيء من الذهب عيناً كان أو تبراً، أو مصوغاً، أو نُقْرَةً-القطعة المذابة-، أو رديئاً، بشيء من الذهب، إلا مثلاً بمثل يداً بيد، وكذلك الفضة عينها ومصوغها وتبرها والبيضاء منها والسوداء، والجيدة والرديئة سواء، لا يباع بعضها ببعض إلا مثلاً بمثل يداً

¹² Yahya bin Sharif Al-Nawawi, *Sharh al Nawawi 'ala Sahih Muslim, hadith* no.1584. (Dar al-Khair, 1996), vol.4, 195.

بيد، من زاد أو نقص في شيء من ذلك كله أو أدخله نظرة فقد
أكل الربا".

*Al-Hafiz Ibn Abd al-Bar says, "According to the Sunnah that has been agreed upon, it is forbidden to sell gold in the forms of tangible pure gold, raw or moulded, liquid or mixed (cannot be traded against gold) except at similar weight and value, hand to hand (on the spot in the trading session). The same with silver, in its normal tangible form, moulded, raw, white or black, good or bad quality, take the same rule, they cannot be traded (against silver) unless at the same at par weight and the exchange must be done on the spot in the trading session. Any contracting parties, make short or excess of the counter value or any element of postponement have actually consumed riba."*¹³

Nonetheless, according to Sheikh al-Islam Ibn Taimiyyah and his student, Ibn Qayyim¹⁴, it is permissible to trade gold jewelry with different weights (gold jewelry in exchange to gold jewelry), and on a deferred basis (gold jewelry with gold or silver) because the 'illah of *al-thaman* (money, currency or medium of exchange) does not exist anymore. It is considered as a jewelry and not currency anymore. Based on this opinion, it is suggested that that *zakat* is no longer applied to the gold jewelry because it is not considered as money.

The Permissible Methods of Buying and Selling Gold to Avoid Riba

Riba in gold trading can happen in two situations. Firstly, the deferment in the delivery. Secondly, the deferment in the payment.

¹³ Ibn 'Abdil Bar. "*Al-Kafi fi Fiqh Ahli Madinah*", (Riyadh, Maktabah al-Riyadh al-Hadithah, 1980), vol.2, 634.

¹⁴ Ibn Qayyim al-Jauziyyah, "*A 'lam al-Muwaqqi'in 'an Rab al- 'Alamin*", (Beirut, Dar al-Kutub al-Ilmiyyah, 1991).

Therefore, to avoid *riba*, the transaction must be on the spot. These are some suggestions to avoid *riba*:

1. The payment can be made through cash, banker's cheque, debit or credit account, and *Shari'ah*-compliant credit card. The buyer can borrow money from the third parties to make a cash payment.
2. The delivery of gold must be on the spot and cash by the buyer or the agent.
3. Execution of sale and purchase of gold by *wakalah* (agency). By appointing an agent either with fees or without fees can facilitate the gold trading transactions. The buyer can appoint any person to make the sale contract and *qabad*. For example, an Islamic banks that deal with the gold trading, companies, or individuals, who are actively participate in the gold trading can be appointed as the agent on behalf of their customers. Besides, the *wakalah* contract offers some flexibility, because the buyer does not have to do *aqad* of sale contract by himself, but it can be done by the agent instead. Since immediate taking possession (*qabad*) should take place in gold purchase transaction, the act of *wakil* (agent) is sufficient. It also can resolve the issues of online gold trading. This is permissible as long as the agent does not do the transaction on a deferred payment basis.

The seller, who acts as an agent, can charge fees in each transaction. The fees must be known and agreed by both parties. The agent may request that if he or she can buy the gold with a lower price, then the excess money will become his or her commission or incentive. Similarly, if he or she wants to resell the gold for the purpose of getting a profit when the price of gold is higher at the market price, then the profit will be regarded as a commission to the agent. This is based on the principle:

"بع بكذا فما زاد فهو لك" ونظيره "اشتر بكذا فما نقص فهو لك"

"Sell it at this price, the difference of the price is yours", "Purchase it at any price, and in case if you get the cheaper price, the balance from it is yours."

This is according to Ibn Abbas, Al-Zuhri, Qatadah, Ayub

al-Sakhtiyani, Ibn Sirin, Al-Sya'bi, Hassan al-Basri, Ishaq Ibn Rahawaih, Ahmad bin Hanbal and it is the opinion of Hanbali school.¹⁵

4. Consignment.

Consignment is the extension of *wakalah* arrangement. In contemporary practice, some gold supplier would prefer this kind of arrangement where the vendor does not sell his own gold but rather on behalf of the supplier with a commission. The vendor will act as an agent to sell gold to the supplier. As a representative, the consignee can sell the gold directly to the buyer or his/her agent. Under this concept, the existing gold can be considered as *wadiyah* or loan (*'ariyah* not *qard*). The consignee can determine the price and the profit that he or she will get. Alternatively, the price for the retail customers and the price to the consignees should be determined and agreeable upfront. The *Shari'ah* concept for the sale commission payable to the consignee is the same sale incentive concept mention above.

Buying and Selling of Gold on ETA

This is the common substantial pillar of gold scam program. It is the deferment of the delivery and taking possession of gold. Buying and selling gold on ETA (expected time of arrival) is a sale contract in which the payment is made first, and the gold will be delivered later. It is also known as *bay' al-salam*. The scholars have agreed that gold cannot be sold on a deferred payment basis. The deferment incurred only in two situations. First, the payment of gold by installment. Second, the postponement in the delivery of the gold. *Bay' al-salam* is a permissible contract, which includes the transaction of goods such as rice, sugar and others that are not gold, silver and currency. The transaction that involves gold, silver and currency must fulfill certain requirements such as no deferment in the payment and delivery. However, if the subject matter of *bay' al-salam* is not gold, silver or currencies, gold can be used as the price to be advanced upfront.

¹⁵ Al-Maqdasi, Ibn Qudamah, *al-Kafi fi Fiqh al-Imam Ahmad bin Hanbal*, (Cairo: Dar al-Kutub al-Ilmiyyah), vol 2, 252.

Some Arguments to Allow Trading Gold by ETA and Refutations

As selling and buying gold on credit is the essence for gold-based scam, the scammers are trying their best to justify that their business model is not against *Shari'ah*. The following are their arguments.

1. Fiat Money is not a real currency

Some would argue since fiat money is not similar to gold, hence it does not take the role of gold as a real medium of exchange. Some would also argue that according to Shafi'i school any money other than gold and silver is not regarded as a *ribawi* item. By using this assumption, they argue that gold can be bought on deferment basis using fiat money. The prohibition for the deferment is only applied to gold against gold and gold against silver only.¹⁶

Actually, money or currency (*al-thaman*) is a medium of exchange, measurement of values, tool of storage and source of wealth. The scholars have made *ijtihad* in determining the 'illah of gold and silver being a *ribawi* item. According to the majority of the scholars,¹⁷ except for Shafi'i schools, both of the two items reflect *al-thaman*, currency, or money. The purpose of determining the 'illah of gold and silver which is being currency, medium of exchange is to relate and extend them to other monetary items that have the same roles and effects.

Imam al-Nawawi asserts¹⁸ :

وأما الذهب والفضة، فقليل: يثبت الربا فيهما لعينهما، لا لعلّة.
وقال الجمهور: العلة فيهما صلاحية الثمنية الغالبة. وإن شئت
قلت: جوهرية الأثمان غالباً. والعبارتان تشملان التبر،

¹⁶ <http://drazman.net/2014/12/adakah-matawang-kertas-sama-nilai-dengan-emas/>.

Accessed on 15th August 2017.

¹⁷ Malik bin Anas, *Al-Mudawwanah*, (Beirut: Dar al-Kutub al-ilmiah, 1994), vol.3, 90; al-Kasani, Ala' al-Din Abu Bakar bin Mas'ud, *Badai' al-Sanai'*, (Dar al-Kutub al 'ilmiyyah), vol.5, 208; Al-Bahuti, Mansur bin Yunus, *Kasshaf al-Qina*, vol.3, 252.

¹⁸ al-Nawawi, *Raudatu al-Talibin wa 'Umdat al-Muftiyyin*, (1991), vol.3, 379.

والمضروب، والحلى، والأواني منهما. وفي تعدي الحكم إلى
 الفلوس إذا راجت وجه، والصحيح: أنه لا ربا فيهما لانتفاء
 الثمنية الغالبة

“Some scholars believe that gold and silver involve riba because of their intrinsic value (corpus), not because of ‘illah which is transferrable to other medium of exchange. According to the majority of jurists, the ‘illah of these two items is the fact that they are widely recognized as legal tender, or currency, you can also call them the core currency in most circumstances. This includes all forms of gold or silver whether they are raw, minted, jewelry. As to extending the ruling on fulus (currencies made from metal other than gold and silver) when they are widely traded, there is an opinion in favour of it, but the right opinion is that there is no occurrence of riba because they are fulus is not al-thamaniyyah al-ghalibah (major prevailing currency).”

Imam al-Nawawi and some of the past scholars gave this *fatwa* regarding to their situations. However, currently, paper notes are accepted worldwide as legal money. The opinion of Imam al-Nawawi clearly explains why the ‘illah of being currency is not recognized on *fulus* (metal money). This is because during that time, *fulus* is not acceptable extensively as legitimate money, and only gold and silver are recognized globally as a genuine currency.

In the current context, this research asserts that paper money is acting as a main currency and it is acceptable all around the world. Thus, paper money is “*al-thamaniyyah al-ghalibah*” (major prevailing currency). This can also be supported by current custom (*urf*), which is not against *Shari’ah*. There is a legal maxim “*al-adah muhakkamah*”, which means *urf* is to be considered in determining a *hukm*.

Sheikh Muhammad Ali Ba Atiyyah, a contemporary scholar of the Shafi’i school suggests that paper money is categorized as a

ribawi item like gold and silver.¹⁹ In addition, imposing *zakat* on it is compulsory. This view is in line with the views of all Shafi'i scholars in the past. This is because paper money is a legitimate currency and is recognized in the whole world as the dominant currency (*al-thaman al-ghalib*). In the past, gold is the main currency, and now, paper money is the main currency, a legitimate one and accepted by all societies. He also states that *qiyas* on paper notes with *fulus* is *qiyas ma'al al-fariq* (invalid *qiyas*).²⁰

To conclude, according to the Shafi'i schools, paper money is not limited to gold and silver only. All types of medium of exchange that are acceptable, and recognized as the main currency will be imposed a *hukm* of gold and silver on them, especially in terms of *riba*. The paper money is also valid for *mudharabah* capital, advance payment for *bay' al-salam*, and it is also subject to obligation of *zakat*. Therefore, it is inappropriate to equate paper money with *fulus* or other types of currencies that are not widely recognized.

The International Islamic Fiqh Academy OIC (Majma al-Fiqh al-Islami al Dawli) on 3rd Conference in Amman, Jordan, 8-13 Safar 1470H (11-16th October 1986) has made the following resolution.²¹

“Paper money is nuqud (money) constructively, it is considered as a valid legal currency (al-thamaniyyah), and its ruling must be based on the rulings of gold and silver in terms of riba, zakat, salam and others.”

2. Fiat Money is not Backed by Gold

The gold-scammers also argued that current paper money is not backed by gold, therefore, it is permissible to trade gold using this paper money on a deferment basis.²²

To refute this argument, as a matter of fact, in reality, there is

¹⁹ Muhammad bin Ali Ba Atiyyah. <http://mabaatiyah.com/AddIns/Fatawa/?CODE=184> , assessed on 14 August 2017

²⁰ <http://mabaatiyah.com/AddIns/Fatawa/?CODE=184>, accessed on 15th August 2017.

²¹ *Majallah Majma' al-Fiqh al-Islami*, 3, 1650.

²² <http://drazman.net/2014/10/duit-kertas-perlu-kepada-sandaran-emas/>. Accessed on 15th August 2017.

no evidence (*dalil*) that requires money (*thaman*) notes to be backed by gold. Even during the time of Prophet Muhammad (s.a.w.s.), silver was used as a medium of exchange. So, why is there no claim that paper money has to be backed by silver? In one occasion, the companions complained to Prophet Muhammad (s.a.w.s.) that they suffered from the situation to purchase water from the Jew who owned a well with dates. In the story, the dates are not backed by gold.

In the past, other things were also used as a medium of exchange. Imam Malik said, "If many people use leather of a camel as a medium of exchange, I will not agree if the leather is used to purchase gold on a deferred basis".²³

From a *fiqh* perspective, there is no evidence, which restricts gold as the medium of exchange.

3. Following Fatwa of Shariah Council of Indonesia (DSN)

Those promoting sale of gold on deferment basis in particular gold-based scammers also support their stance by taking a *fatwa* from Shari'ah Council of Indonesia (DSN) as evidence (*dalil*). DSN states that it is valid to purchase gold by installment (with a condition that the gold must not be considered as *al-thaman/currency*). However, this *fatwa* is not in line with the *fatwa* of Majma Fiqh, AAOIFI, National Fatwa Council Malaysia and other International Fatwa Councils.

There are some observations pertaining to the contradictions to the understanding of DSN fatwa as follows:

3. The *fatwa* of DSN identifies gold as commodity, not as *al-thaman* medium of exchange. However, ETA gold traders recognize gold as a currency and support the campaign to revert to gold as currency.
4. The *fatwa* of DSN encourages the purchase gold by installment because most of the people do not have cash unlike the ETA gold traders, who have enough cash.

²³ Anas Malik. *Al-Mudawwanah*, (*Dar al-Kutub al-'Ilmiyyah*, 1994), vol.3, 5.

5. The buyer has already received the gold that is purchased by installment, however, in ETA transaction, an advance payment has been made, but the gold is still not delivered.
6. ETA transaction involves *bay' al-salam*, and there is no dispute amongst the scholars on the prohibition of gold to be the subject matter of *bay' al-salam* contract if it is bought against gold, silver or currencies.
7. The purpose of purchasing gold by installment is to own the gold, but in ETA gold and buy back program, the purpose of the transaction is to gain profit from the difference of the price in buy back policy which is with a higher price. A genuine gold buyer would want to get the gold on the spot after making a full payment. It is a clear trick to get a fixed guaranteed income through a buyback transaction at the higher price or through *hibah* or other mechanisms.

On the seller's side, if there are many stocks of gold, where they can offer a lower price to their customers compared to the other shops, why do they need to postpone the delivery of gold? For what purpose do they claim to have a lot of stocks? If the stocks are actually not in existence, they cannot sell something that is not in existence. A full advance payment as practiced in the ETA transaction is different from purchase order and booking fee. A booking fee is a small amount paid earlier, but can be refunded back if the sale contract is cancelled.

Common Models and Flaws in Gold Trading Scam Schemes

Among the common business operation models and common flaws are as follows:

1. Unclear *Aqad*, Whether it is Loan, *Wakalah* or Others²⁴

The package goes for example: "Give us your 100g pamp Suisse gold, and we will pay you RM3200 x 3 months. You will get back your pamp after the fourth month"

In such arrangement, the *aqad* is not clearly specified. If it is a

²⁴ <http://drazman.net/page/2/?s=tidak+jelas+aqad>. Accessed on 15th August 2017.

rental agreement, then it must follow the rules of renting, where gold cannot be sold to another parties. The purpose of rental must be mutually agreed and compliant with *Shari'ah*. If the gold is sold to others, the contract will change into a loan agreement. It is clearly an interest-bearing loan.

2. Gold investment that promises a float return with minimum guaranteed return²⁵

Some of the scammers are aware that in *mudharabah* or *wakalah* based investment, a fixed return on investment is not permissible. Some came up with a new structure, which is floating rate of return, for example, the profit rates shall be around 4% to 10% per month? The investor will get at least 4%.

Before answering this question, we need to understand the principles of a sale contract. Generally, the contract must be transparent and mutually agreed especially in terms of the price of the good and the types of the good. Ignorance on these rules causes the sale contract to be invalid. In addition, when someone stipulates that the sale price of the goods may fluctuate, such as around 4% to 10% or RM 2k to RM 3k, the transaction will be invalid, because of uncertainty in the price. The income generated from such sale transaction is tainted and cannot be recognized as income.

If it is based on *mudharabah* or *wakalah* contract, whether it involves gold trading or other business, the contract amounts to *riba*, if there is a promise to give a fixed return and capital guarantee. If they promise fluctuate profit rates at 4% to 10%, this will still be regarded as *riba* because they are guaranteeing the profit of at least 4% per month.

3. Multiple Sale Contracts²⁶

Some scammer came up with a multiple sale contracts containing outright sale, buy back with higher price at the end of the tenor, or

²⁵ <http://drazman.net/page/2/?s=keuntungan+berubah>. Accessed on 15th August 2017.

²⁶ <http://drazman.net/page/2/?s=jual+emas+beli+balik>. Accessed on 15th August 2017.

from the very beginning. The promotion goes, “We sell you 100g gold at RM 13k, and we will buy back from you that 100g gold on a deferred payment basis at RM 20k, and the payment is made by installment at RM 2k per month for 10 months or by paying RM 20k lump sum after 10 months”.

The scammers would claim that there is no *Shari’ah* issue in the structure since it does not involve investment, but rather involves multiple sale transactions.

Actually, such a transaction is not *Shari’ah*-compliant even though the word investment was not used. Both parties are mutually agreeable to conclude such kind of two in one contract. The reasons for the prohibition are as follows:

1. Buyback condition that reflects *bay’ inah* that is prohibited by the *Shari’ah*. It is like giving a debt of RM 13k and getting back the total amount of RM 20k. Any extra amount over debt principal is *riba*.

It is submitted that buyback transaction is permissible, but it cannot be made as a condition in a contract. The contracting parties should not have the arrangement of buyback with a guaranteed higher price, as such kind of arrangement aims at covering up *riba*.

2. Gold and silver cannot be transacted on deferment basis in the first place since it amounts to *riba al-nasi’ah* (delay of delivery).

As a conclusion, this transaction involves *riba* twice, firstly *riba* in the interest bearing loans with a trick through *bay’ inah*. Secondly, *riba* exists in selling and buying of gold on a deferred payment basis.

4. Lease of Gold²⁷

Majority of the scholars allow the rental of gold when it is used as women’s jewelry or other permissible purposes.²⁸ In this spirit one

²⁷ <http://drazman.net/2014/09/hukum-sewa-emas/> accessed on 15th August 2017.

²⁸ Al-Maqdasi, Ibn Qudamah, *al-Mughni*, (Cairo, Maktabah al Kaherah, 1968), vol.5, 546; Abu Zakaria Al-Nawawi, *al Majmu’ Sharh al-Muhazzab*, (Dar al-Fikr), vol.6, 46.

may suggest that it is permissible to lease out pure gold in the forms of coins or bullions if the purpose of the lease is permissible such as for tools of weight measurement, as an exhibition, etc. but with a condition that they must remain intact in their original forms (not melted or sold). The latest AAOIFI standards on gold has issued a parameter on gold rental as follows:

5/3/1 It is permissible to lease gold whether in the form of jewelry or ingots provided the corpus of the leased asset is not consumed during the lease. The rent may be payable in advance or in arrears, and whether the lease contract is for an identified asset or it is Ijarah Mawsufah Fi Zhimmah.²⁹

Lease as defined in Islamic jurisprudence is “*tamlik al-manfaah bi 'iwad*”³⁰ means giving the right to use the usufruct with a known consideration which is the rental payment. Therefore, *ijarah* is not the transfer of ownership as in a sale contract. If the gold is sold to other parties, the lessee has committed a fraud and he/she has to guarantee to pay back the gold at the same value. Thus, it becomes a debt for the lessee. The extra payment definitely amounts to *riba*.

Nevertheless, if the gold is rented based on the currency basis to be utilized by the lessee, the *hukm* is *haram* (prohibited), because it turns into a loan. This is similar to renting currencies, which is to replace a loan with interest.

As a matter of fact, the gold scam schemes do not do the real lease of gold. They either sell the gold or melt it and turn it into jewelry.

First scenario: The scheme operator sells a piece of gold to different investors and promises them to rent back the gold. In reality, the gold is rented back to sell it to the new investors. This is an attractive scheme, in terms of maximizing the profits from the rentals. Yet it is against the *Shari'ah*.

²⁹ Downloads/aaofi_shariah_standard_no57_english.pdf, downloaded 10th August 2017.

³⁰ Shamsudin bin Ahmad Al-Sharbini, *Mughni al-Muhtaj*, (Dar al-Kutub al-Ilmiyyah, 1996), vol.3, 438.

Second scenario: 'A' rents out his 100gram 999.9 gold bar to a trader for business purposes. The trader melts the gold, and processes it into jewelries. He pays 'A' rentals by installment. At the end of the tenure he will return the same weight and quality of gold to 'A'.

In this scenario, the arrangement violates the requirement of rental contract. Rental contract entails the preservation of the corpus of the leased subject matter. The compensation is only for the permissible usage and utilization of the usufruct and at the same time maintaining its original form. If the gold is melted down, then it is no longer a rental contract, but turns into a loan (*qard*), where the amount or value of the gold should be guaranteed and compensated. In the context of *qard*, there is a transfer of ownership between the lender and borrower, where the borrower needs to pay back with the same items or values. In this case, 100g 999.9 gold pamp should be paid equally and the lender should not take any extra payment because it amounts to *riba*. Therefore, it is concluded that the rental payment by installment is a disguise to cover up the fixed return, which is *riba*.

5. Offering the Lease of Car With Gold, Then the Gold is Returned³¹

This is another business model used by the scammers. The *hukm* of car rental is permissible when all principles and rules in the contract are fulfilled. Furthermore, gold can be used as a payment of the rent. It is an attractive package. However, questions arise when there is a promise that the gold will be given back in the future. It will be the loan of gold, which is similar to the loan of money. The lessee will get back the gold, and it will not be regarded as *ijarah*. Its contract has changed into loan agreement. What about the usage of the car for a year for instance. Its usufruct that is in consideration to the gold lent, which is actually a loan, is clearly *riba*. This is according to the *fiqh maxim*:³²

كل قرض جر نفعا فهو ربا

³¹ <http://drazman.net/2015/01/pairing-sewa-kereta-dengan-emas-dan-boleh-berubah-kepada-jual-beli/>, accessed on 15th Augut 2017.

³² Al Syirazy, *Al Muhazzab*, vol.1, 304; Ibn Qudamah, *Al Mughni*, vol.4, 211, 213.

“Every debt that yields benefits (to the lender) is a usury.”

6. Gold transaction without deferment in the payment and delivery of the gold, but on the basis of an extraordinary *hibah*³³

The scammers come up with a highly marked up price of gold bar and will incentive the buyers with monthly fixed *hibah*. They would argue that there is no element of *riba*, such as if we sell a bicycle with 20 increased prices, then award the buyer with gold monetary *hibah* for every month.

The original rules of *hibah* are permissible and encouraged (*mandub*). However, one should be aware that that not only *riba* is prohibited in Islam, even the elements of fraud (*taghrir*), gambling (*gharar*), seizing the property of others is *batil* and etc. are also prohibited. Of what is considered unlawful (*haram*) can be divided into two, the first of which is *haram lizati (ab initio)* means prohibited in itself such as alcohol, pork, *riba*. Secondly, *haram lighairihi* (external factor) in which the act is not prohibited initially, but is prohibited due to the external factors such as planting grapes on the purpose to sell and supply it to the wine factory, etc.

Actually this kind of *hibah* is a trick and camouflage to attract investors to invest in this scheme. The original *hukm* of *hibah* is *mandub*, but if there is element of fraud, the *hukm* is *haram*. As far as money game is concerned, *hibah* could be used to replace an attractive fixed return even though *riba* is not obvious, where someone will be a victim of fraud at the end of the game, as a matter of fact it is not a real business, but fictitious and fraud.

Conclusion

Riba is strictly prohibited in Islam whether it is extra payment of debt, late payment charges, or *riba* in the delay of exchange in the sale contract of usurious items. The essence of *riba* is delay and to pay extra according to the time value of money. Most of the gold

³³ <http://drazman.net/2014/11/beri-emas-murah-dapat-saguhati-tetap-bulanan-lepas-setahun-dapat-emas/>. Accessed 15th August 2017.

trading scams involve delay and deferment of delivery and taking possession, (*riba al-nasi'ah*). If this is prohibited, then it is impossible for them to offer such scam schemes. In addition to the deferment of gold delivery, there are other prohibitions such as *bay' al-'Inah*, fake *ijarah*, *hibah* and other instruments, which end up providing a fixed guaranteed high return with capital guarantee similar to interest bearing loans. It is concluded that all gold trading scam schemes are not free from *riba*, *shubhah riba*, or fraud and fictitious sale transactions.

