

INTERNATIONAL BUSINESS TRANSACTION FROM THE ISLAMIC ECONOMICS PERSPECTIVE

JONI TAMKIN BORHAN¹ & MUHAMMAD RIDHWAN AB. AZIZ²

Abstract. International business transaction deals differently from the local or domestic business trading. In the international business transaction, Muslim *ummah* transacts with non-Muslims all over the world. Therefore, this article tries to explain the business relationship between Muslim and non-Muslims, the types of non-Muslims from the perspective of fiqh mu'amalāt and the views of Muslim jurists with regards of bilateral business relationship between Muslims and non-Muslims. All the views are based on evidence (*Dalīl*) from *al-Qur'ān* and *al-Hadīth* of Prophet Muḥammad (ṣ.a.w.), as well as views from four very famous schools of jurisprudences. This article also tries to clarify the principles of international business from the perspective of Islamic economics. These principles are imperative to be applied and practiced by Muslim entrepreneurs in dealing internationally.

Keywords: International business; Muslim; non-Muslim; principles of Islamic international business

Abstrak. Transaksi perniagaan antarabangsa merupakan satu transaksi perniagaan yang agak berbeza jika dibandingkan dengan transaksi perniagaan dalam negara atau domestik. Dalam transaksi ini, umat Islam berdepan dengan transaksi perniagaan dengan orang bukan Islam yang berada di serata pelusuk dunia. Artikel ini cuba menjelaskan tentang hubungan transaksi perniagaan di antara orang Islam dengan bukan Islam, jenis golongan bukan Islam dan pandangan 'ulamā' berkenaan hubungan transaksi di antara kedua-dua pihak. Pandangan ini disandarkan dengan dalil daripada al-Qur'ān dan al-Hadīth Nabi di samping pandangan 'ulamā' mazhab yang terkenal. Artikel ini juga cuba menghuraikan prinsip-prinsip perniagaan antarabangsa menurut ekonomi Islam. Prinsip ini didapati amat penting untuk dipraktikkan oleh para usahawan yang menceburi bidang perniagaan antarabangsa.

Kata kunci: Perniagaan antarabangsa; orang Islam; orang bukan Islam; prinsip perniagaan antarabangsa Islam

1.0 INTRODUCTION

Islam³ as an all-encompassing way of life has a unique system in dealing with international business relationship between two nations or two individuals from different companies or countries.

¹ Department of Syariah & Economics, Academy of Islamic Studies, University of Malaya

² Lecturer at Department of Banking and Finance, Faculty of Management and Muamalah, Selangor International Islamic University College (KUIS), Malaysia

³ Islam can be defined as "*The manifesting of humility or submission, and outward conforming with the law of God, and the taking upon oneself to do or to say as the Prophet has done or said*" see, Edward William Lane. 1863. *Arabic-English Lexicon*. Lahore: Islamic Book Centre. Book 1, Part 4. p.1413.

Although international business transaction is seen more global and wider in dimensions nevertheless, the similar concepts and principles of domestic dealing and transactions are also applied in this kind of business. This is because, all the concepts and principles for both types of transactions are derived from the same sources namely *al-Qur‘ān*, *al-Ḥadīth*, jurists consensus (*Ijmā‘*) and their *Ijtihad*.

In the beginning, this article tries to evaluate the aspect of business relationship between Muslims and Non-Muslims. Not all countries in this world are Muslim countries⁴ then, like it or not, Muslim buyer and seller must deal with other religion faiths. According to Wikipedia Free Encyclopedia, Islamic population only consists of 22% or about 1.5 billion people, whereas another 78% of world population are non-Muslims⁵.

The main problem here is, does the business transactions between Muslim and non-Muslim are legitimate and valid from the *fiqh mu‘āmalāt*⁶ perspective? To solve this issue, let me begin by introducing five types of non-Muslim categories as classified by Muslim scholars. They are as follows:

2.0 CLASSIFICATION OF NON-MUSLIM

2.1 *Al-Dhimmi*

Al-Dhimmi are non-Muslim citizens who are involved and have participated in the *dhimmah* contract (*‘aqd al-dhimmah*⁷) with the Islamic state. This contract has given them an exclusive protection and privileges to live peacefully in the Islamic nation

⁴ Muslim Countries is defined as a member nation of Organization of Islamic Countries (OIC). See Nor Mohamed Yakcop. 1996. *Teori, Amalan dan Prospek Sistem Kewangan Islam Di Malaysia*. Kuala Lumpur: Utusan Publication & Distributors Sdn. Bhd. p.161.

⁵ Wikipedia Free Encyclopedia, <http://en.wikipedia.org>, 31st January 2008; Islamic Population, <http://www.islamicpopulation.com>, 23rd May 2007.

⁶ Literally *Mu‘āmalāt* means “the dealing together in buying and selling.” See Edward William Lane. *op.cit.* Book 1, Part 5. p.2158. From the *fiqh* perspective, *Mu‘āmalāt* is “Islamic law which govern human action pertaining to property, exchange contracts (sales, rents, hibah), partnership, loan as well as mortgage and transfer of debt (*ḥawālah*).” See Muḥammad ‘Uthmān Shabīr. 1998. *Mu‘āmalāt al-Mālīyah al-Mu‘āṣirah fi al-Fiqh al-Islāmī*. Jordan: Dār al-Nafāis. p.10.

⁷ *‘Aqd al-Dhimmah* happens with two situations. First, their willingness to adhere and obey all the Islamic Laws and regulations in the Islamic state. They are required to obey for example in the property transactions such as not involve in *riba*’ transactions. Yet, in terms of *ḥudūd* law, they must also comply with it, as Prophet Muḥammad had punished a Jew for a *zinā* intimacy. Secondly, they are required to pay for *jizyah*. See Sayyid Sābiq. 1994. *Fiqh al-Sunnah*. Beirut: Dār al-Kitāb al-‘Arabī. Vol.3. p.64-65.

after they pay the *al-Jizyah*⁸ and adhere all the Islamic rules and regulations set by Allah (s.w.t.)⁹.

From Abū Zahrah point of view, *ahl al-dhimmah* has special rights and obligations, which are quite similar to the Muslim citizens except in some aspects, which have been excluded to them for example, they are not required to pay for tithe (*zakat*)¹⁰. *Fuqahā'* agreed that '*aqd al-dhimmah* could be made with *Ahl al-kitāb* (Jew and Christian) as well as with *Mājusi*¹¹.

2.2 *Al-Musta'min*

Al-Musta'min are those who enter another country with peaceful intention whether they are Muslim or non-Muslim¹². Nonetheless, this term usually refers to non-Muslim who enters Muslim countries with good intention such as for business purposes or for traveling for a specific period of time¹³. Ibn Qayyim of the opinion that, the term means anyone who enters Muslim country and live in the country for temporarily¹⁴.

The definition given by Abū Zahrah said that, anybody who enters a Muslim nation without any intention to live permanently in that country but only for a specific period of time based on '*aqd al-aman* and usually for the purpose of doing business or travelling¹⁵.

One of the main responsibilities of *al-Musta'min* while staying in the Muslim nation is to adhere all the laws related to the Islamic Commercial Law for instance, they are prohibited to participate in *ribā* transactions¹⁶.

⁸ *Al-Jizyah* refers to a certain compulsory payment to *ahl al-dhimmah* for the protection given by Islamic state. See for instance al-Maydānī. 1992. *al-Lubāb*. Qāhirah, Maṭba'ah Subayh. Vol.4. p.43.

⁹ Ibn Qudāmah. 1992. *al-Mughnī*. Beirut: Dār al-Fikr. Vol.8. p.508; Al-Buhūtī. 1982. *Kashshāf al-Qinā'*. Beirut: Dār al-Fikr. Vol.3. p.4; 'Abd al-Karīm Zaydān. 1987. *Aḥkām al-Dhimmīyyīn wa al-Musta'manīn*. Baghdād: Jāmi'ah Baghdād. p.22.

¹⁰ Abū Zahrah. *al-'Alāqāt al-Dawliyyah*. Beirut: Dār al-Fikr al-'Arabī. p.61.

¹¹ Ibn Qudāmah. *op.cit.* p.496-497; Al-Buhūtī. *op.cit.* p.108-109; Ibn al-Ḥummām. 1995. *Faḥḥ al-Qadīr*. Beirut: Dār al-Fikr. Vol.4. p.173; Al-Sharbīnī al-Khaṭīb. 1994. *Mughnī al-Muḥtāj*. Beirut: Dār al-Kutub al-'Ilmāyyah. Vol.4. p.44; Ibn Ḥazm. 1970. *al-Muḥallā*. Beirut: Dār al-Kutub al-'Ilmāyyah. Vol.7. p.245.

¹² Ibn 'Ābidān. 1979. *Ḥāshiyah Radd al-Muḥtār*. Beirut: Dār al-Fikr. Vol.4. p.166.

¹³ Abū Zahrah. *op.cit.* p.78.

¹⁴ Ibn Qayyim al-Jawziyyah. 1961. *Aḥkām ahl al-Dhimmah*. Beirut: Dār al-'Ilm li al-Malāyīn. Vol.2. p.476.

¹⁵ Abū Zahrah. *op.cit.* p.78.

¹⁶ Sayyid Sābiq. *op.cit.* p.98.

2.3 *Al-Muwādi'*

Al-Muwādi' means a reconciliation made by *kāfir ḥarbā* (people who are against the Muslim ummah) for the purpose of ceasing fire for a certain period of time, either by paying an amount of money or without paying any amount of money to the Muslim government¹⁷. Succinctly, *al-Muwādi'* refers to the disbeliever (*kāfir*) who made a peace agreement with the Muslim for the purpose of ceasing fire through specific payment or otherwise.

2.4 *Al-Muhāyid*

Those who are in the middle way and have no alliance with any sides of peoples whether with the Muslim community or Non-Muslim community, whereby their relationships with both parties are good and well off¹⁸.

2.5 *Al-Ḥarbī*

Al-Ḥarbī refers to a group of non-Muslim who joins or made an alliance with other non-Muslim countries they have no peace agreement with Muslim nations and community. Most of the Muslim jurists view that the Muslim *ummah* should cease any relationship with this group of *kāfir*, be it in the business dealing or political connection¹⁹.

3.0 SCHOLARS VIEW

Meanwhile, *fuqahā'* have different opinions with regards to business transactions between Muslim and non-Muslim community. In this respect, there are two general views with related to this matter.

3.1 First View: Prohibited To Deal

Imam Shāfi'ī of the view that, the contract of transactions between non-Muslim and Muslim are illegal or invalid, as it goes to marriage relationship between two people²⁰. This view is based on a verse of *al-Qur'ān*. Allah commands to the effect:

“And never will Allah grant to the disbelievers a way (to triumph) over the Believers.”
(An-Nisā 4: 141)

¹⁷ Al-Kāsānī. 1998. *Badā'i' al-Ṣanā'i'*. Beirut: Dār al-Kutub al-ʿIlmiyyah. Vol.7. p.108.

¹⁸ Al-Faṭānī. 1990. *Ikhtilāf al-Dārayn wa Atharuh fī Ahkām al-Munākahāt wa al-Mu'āmalāt*. Qāhirah. Dār al-Salām. p.137.

¹⁹ *Ibid*. p.141.

²⁰ Al-Sarakhsī. 1989. *al-Mabsūṭ*. Beirut: Dār al-Ma'rifah. Vol.13. p.153.

Mālikī school of jurisprudence also gave the same opinion that business transaction between Muslim and Non-Muslim is prohibited since this school basically forbid Muslim from going out of the Islamic states (*Dār al-Islām*) to the non-Muslim Countries²¹.

Muslim jurists who had banned business dealing of both parties especially between the Muslim and *Kāfir Ḥarbi* directed the Muslim *ummah* to terminate any political and trading relationship with them²².

This is based on a *dalīl* from *al-Qur‘ān* where Allah says to the effect:

“O Prophet! Strive hard against the disbelievers and the Hypocrites, and be harsh with them. Their abode will be Hell, an evil refuge (indeed).”

(At-Taḥrīm 66: 9)

3.2 Second View: Permissible To Deal

This second view gives an opportunity for the Muslim *ummah* to participate, join or deal with non-Muslim counterpart whereby this kind of connection is founded with understanding, cooperation (*ta‘āwun*) and bring benefits and justice to one another.

The transactions depended on love and affection, dealing in mutual understanding and respect, exchanging goods and interest to one another in order to achieve public interest among themselves²³.

The transaction between Muslim and non-Muslim especially with *al-Musta‘min* is valid and legitimate from the majority of *Fuqahā’* views²⁴ as Allah says to the effect:

“If one amongst the Pagans, ask thee for asylum, grant it to him, so that he may hear the word of Allah, and then escort him to where he can be secure, that is because they are men without knowledge.”

(Al-Taubah 9: 6)

Furthermore, there is a *ḥadīth* narrated by Ummu Salāmah, which clearly mentioned that Saydinā Abū Bakr (companion of Prophet Muḥammad) went to Baṣrā, a non-Muslim state in Shām to do businesses with them²⁵.

²¹ Ibn al-Hajj. 1960. *al-Madkhal*. Qāhirah: Maṭba‘ah Muṣṭaffā al-Bābī al-Ḥalabī. Vol.4. p.58. Islamic state refers to a nation under Islamic government whereby Muslim live peacefully in that particular country. See for example, Al-Sarakhsī. *op.cit.* Vol.10. p.23.

²² ‘Alī al-Ṭarīqī. *al-Isti‘ānah bi ghāiri al-Muslimīn fī al-Fiqh al-Islāmī*. Beirut: Mu‘assasah al-Risālah. p.133.

²³ Sayyid Sābiq. *op.cit.* p.13.

²⁴ Al-Sharbīnī al-Khaṭīb. *op.cit.* Vol.4. p.238; Ibn Qudāmah. *op.cit.* Vol.9. p.245.

²⁵ *Sunan Ibn Mājah*. 1952. Qāhirah: Dār Iḥyā’ al-Kutub al-‘Arabīyah. Ḥadīth No.:3764. p.269.

These two *dalīls* gave us a clear understanding that Islam does not forbid the Muslim ummah from trading and dealing with non-Muslim as long as they always respect and have good and sincere intention to deal with Muslim.

3.3 Principles of Islamic International Business

The second section of this article tries to explore the Islamic principles of International Business that should be a main guideline for the Muslim community when dealing and trading internationally. These principles are divided into four and will be discussed in detail as follow:

(1) Islamic International Business Should Only Involved Lawful (*Ḥalāl*) Goods. What I mean by lawful (*ḥalāl*) goods is that the goods per se have value in nature from the *sharī‘ah*'s perspective, and the *sharī‘ah* law recognizes the ownership of the goods by the seller²⁶. The trading of unvalued goods are prohibited in *fiqh* unless in the necessity period (*darūrah*)²⁷.

Examples of products or items, which are forbidden in the Islamic law, are alcohol like wine, the flesh of dead animals, swine and idols as stated by a *ḥadīth*, narrated by Jābir Bin ‘Abd Allāh:²⁸

“The holy Prophet (s.a.w.) said: Surely Allah (s.w.t.) and His Messenger have prohibited the sale of wine, the flesh of dead animals, swine and idols.”

Nonetheless, from the Ḥanafī school of Islamic law, sales of wild animals such as dogs, tigers, leopards, lions, wolves and cats are valid since these animals are considered valuable and able to provide benefits for the man in the guardian jobs as well as for hunting²⁹. This is based on a verse in the *al-Qur‘ān* when Allah says to the effect:

“It is He who hath created for you all things that are on earth.”

(Al-Baqarah 2: 29)

²⁶ Ibn ‘Abidīn. 1966. *Hāshiyah Radd al-Muḥtār*. Miṣr: Muṣṭaffā al-Bābī al-Ḥalabī. Vol.4. p.111.

²⁷ ‘Abd al-Karīm Zaydān. 2001. *al-Madkhal Li Dirāsah al-Sharī‘ah al-Islāmiyyah*, Beirut: Mu‘assasah al-Risālah. p.216-225; al-Shāfi‘ī. 1993. *al-Umm*. Beirut: Dār al-Kutub al-‘Ilmiyyah. Vol.3. p.14-15.

²⁸ *Ṣaḥīḥ Muslim*. 1977. *Mukhtaṣar Ṣaḥīḥ Muslim*. Maktabah al-Islāmi. Beirut: Dār al-‘Arabīyyah. Ḥadīth No.:931. p.249.

²⁹ Al-Kāsānī. 1998. *Badā‘i‘ al-Ṣanā‘i‘*. Beirut: Dār al-Iḥyā’ al-Turāth al-‘Arabī. Vol.5. p.142; Ibn al-Hummām. 1995. *Fath al-Qadīr*. Qāhirah: Muṣṭaffā al-Bābī al-Ḥalabī. Vol.5. p.188; ‘Abd al-Raḥman al-Jazirī. 1990. *Kitāb al-Fiqh ‘alā al-Madhāhib al-Arba‘ah*. Beirut: Dār al-Kutub al-‘Ilmiyyah, Vol.2, p.221.

(2) Islamic International Business Should Not Involve With Any Uncertainty (*Gharar*) Elements in the Transaction.

*Gharar*³⁰ transactions can be referred as dealings, which contain the element of fraud or uncertainty. *Fuqahā'* has agreed that *gharar* transaction is invalid such as selling of bird which are still in the air or fishes which are still in the sea, as long as the seller has no legal ownership towards the things and the delivery (*qabd*) of the items is still unclear. For example, the sale of animal sperm (*madāmin*), sales on touch (*mulāmasah*) and sales of throwing (*munābadhah*)³¹.

A *ḥadīth* narrated by 'Amr Ibn Shu'aib virtually express this situation³²:

"It is not permissible to combine salam with a sale, nor two transactions in the same sale, nor to gain a profit over something which is not guaranteed (in terms of liability for loss), nor a sale of what is not with you."

Nevertheless, this *ḥadīth* is strengthened by another *ḥadīth*, which was narrated by Abū Sa'īd al-Khudrī. Prophet Muḥammad said³³:

"Prophet Muḥammad (s.a.w.) prohibited two kinds of transactions with two kinds of misinterpretations. He (s.a.w.) has forbidden sales of Mulāmasah and Munā badhah."

Furthermore, according to Ibn al-Qayyim and Ibn al-Taimiyyah, the selling of goods which is not present during the contract is permissible if the said goods is expected to exist in the future based on normal calculation. This is because there is no prohibition for the sale of such goods in the *al-Qur'ān*, *al-Sunnah* and the words of *Ṣaḥābah* but the prohibition is only imposed for the undelivered goods whether the item is truly exist or not³⁴.

³⁰ *Gharar* literally means danger; therefore *gharar* sale can be interpreted as cheating sale. See Al-Ṣiddīq al-Darīr. 1990. *Al-Gharar wa Athāruhu fī al-'Uqūd*. Beirut: Dār al-Jil. p.62. The *gharar* transaction in other words involves speculative risks in contract. See 'Abdur Raḥmān I. Doi. 1984. *Sharī'ah: The Islamic Law*. London: Ta-Ha Publishers Ltd. p.359.

³¹ Abū Bakr al-Jazā'irī. 1979. *Minhāj al-Muslim*. Beirut: Dār al-Jil. p.385; Ibn Rushd. 1995. *Bidāyah al-Mujtahid wa Nihāyah al-Muqtaṣid*. Beirut: Dār al-Fikr. Vol.2. p.111; Imām Ḥāfiz Abī 'Amīr Yūsuf. 2001. *Tamhīd Limā fī al-Muwatṭā' min al-Ma'ānī wa Asānīd*. Qāhīrah: al-Fārūq al-Ḥadī thah, p.176 and 207.

³² *Jāmi' al-Tirmidhī*. 1999. Riyāḍ: Dār al-Salām. 'Abwāb al-Buyū'. Ḥadīth No.1234. p.300. This *ḥadīth* was recorded by al-Tirmidhī however, the validity of this *ḥadīth* has been questioned by some scholars.

³³ *Ṣaḥīḥ Muslim*. 1977. *Mukhtaṣar Ṣaḥīḥ Muslim*. Ḥadīth No.:938. p.250.

³⁴ Al-Ṣiddīq al-Darīr. *op.cit.* p.356.

Conversely, *sharī'ah* law permits the sale of fruits when it is suitable for plucking although the fruits are still up the tree³⁵. Yet, Ḥanafī school of Islamic jurisprudence of the opinion that the contract of goods which cannot be delivered within the time of contract is invalid even though the goods is own by someone. For instance, the sale of escaped bird from one's hand is invalid since there is the element of *gharar*³⁶.

In addition to the element of *gharar*, there is another element in the trading of international business that should be avoided, namely *al-Ghabn*. *Al-Ghabn* literally means shortage (*al-Naqṣ*). From *fiqh* perspective, *al-Ghabn* happens when there is inequality of goods exchange with one and another³⁷.

Al-Ghabn also can be interpreted as a loss whereby payment received by one party is not equal to the payment given by another party³⁸. Take for instance, an exporter sold flour to the importer for RM 2 million when the actual value or price of the flour is RM 1.5 million. The importer is considered the loss party. Therefore, the element of *al-Ghabn* should be eluded in any transaction in order to ascertain the dealing is truly valid and acceptable from the Islamic commercial law.³⁹

(3) Islamic International Business Must Satisfy with All The Terms and Conditions Set by *Fiqh Mu'āmalāt*.

In the *fiqh mu'āmalāt*, the offer or proposal (*ījāb*) and acceptance (*qabūl*) are the two stipulations, which must be satisfied in any contract. According to the Ḥanafī school of Islamic law, other elements of contract such as subject matter (*mahal al-'aqd*) and parties in the contract are not necessarily required in the contract. This is because the relationship between two parties in the contract will not success without element of goods or matter of contract⁴⁰.

The appearance of offer and acceptance by itself exhibits all other elements exist in the transactions. Proposal and acceptance are contract expression, which exhibit agreement of both parties. Proposal is certain action shows the first approval in the form of utterance from one party in the contract. Hence, the first approval is assumed to be a proposal regardless whether it comes from the seller or buyer. Whilst the acceptance is the second expression which demonstrated the agreement to the proposal⁴¹.

For every sale, there must be four elements of contract, as follow:

³⁵ *Ibid*.

³⁶ Al-Shirāzī. 1976. *Al-Muhadhdhab*. Miṣr: Muṣṭaffā al-Bābī al-Ḥalabī. Vol.1. p.263; Ibn Qudāmah. *op.cit.* Vol.4. p.200.

³⁷ Al-Kāsānī. *op.cit.* Vol.6. p.30; Ibn 'Ābidīn. *op.cit.* Vol.4. p.166; Ibn Rushd. *op.cit.* Vol.2. p.165.

³⁸ Wahbah al-Zuhāilī. 1984. *Al-Fiqh al-Islāmī wa Adillatuh*, Damshiq: Dār al-Fikr. Vol.4. p.221.

³⁹ Al-Kāsānī. *op.cit.* Vol.6. p.30; Ibn Rushd. *op.cit.* Vol.2. p.165.

⁴⁰ Ibn al-Hummām. *op.cit.* Vol.5. p.74; Al-Kāsānī. *op.cit.* Vol.5. p.133; Ibn 'Ābidīn. *op.cit.* Vol.4. p.5.

⁴¹ This opinion was stated by Ḥanafī scholars. See Ibn 'Ābidīn. *op.cit.* Vol.4. p.6.

(a) Contract Utterance/Pronunciation.

Contract utterance comes from both parties in the contract that reflect the desire from each of them to form a contract. Succinctly, conditions for the contract utterance are clear prove of desire to do a contract, there is a consistency between proposal and acceptance, the proposal and acceptance should occur at the session of contract (*majlis al-'aqd*) if both parties are present or in a session whereby there is a connection between them⁴².

(b) Person in the Contract.

People in the contract represent the most important aspect in any contract. But, not all peoples are qualified to do a contract. In Mālikī and Ḥanafī school of Islamic jurisprudence, person who involves in a contract must has sound mind so, any contract made by children (below 7 years old) or an insane person are invalid⁴³.

(c) Subject in the Contract.

The subject matter of a contract may consist of belongings or property such as selling goods, mortgaging goods or giving goods (*hibah*). It may also compose of beneficial form such as in the form of renting house or land. *Fuqahā'* have stipulated that the subject matter of a contract must present in the time of contract, the subject matter must a permissible item from the *sharī'ah* perspective, the goods is able to be delivered at the time of contract and the both parties fully known and understood with regard of the goods⁴⁴.

(d) Purpose for Contract.

The purpose of a contract is one of the four elements in a contract. It is a main reason why the contract should be formed. From the *fiqh* point of view, reason is an origin objective and outcome (effect) from a contract. If the outcome of that contract is flawless then the contract is considered as valid⁴⁵.

4.0 ISLAMIC CURRENCY EXCHANGE WHICH FREE FROM RIBĀ (USURY)

Most of the Muslim jurists have decided that *ribā* can be categorized into two kinds namely *Ribā al-Faḍl* and *Ribā al-Nasi'ah*⁴⁶. *Ribā al-Faḍl* alludes to the selling of

⁴² Al-Kāsānī. *op.cit.* Vol.5. p.136; Ibn al-Hummām. *op.cit.* Vol.4. p.80; Al-Sharbīnī al-Khaṭīb. *op.cit.* Vol.2. p.5; Al-Dusūqī. *op.cit.* Vol.2. p.5.

⁴³ Ibn 'Abidīn. *op.cit.* Vol.4. p.5; Al-Dardīr. *op.cit.* Vol.3. p.5.

⁴⁴ See Al-Kāsānī. *op.cit.* Vol.5. p.138; Al-Sarakhsī. *op.cit.* Vol.12. p.194; Ibn al-Hummām. *op.cit.* Vol. 5. p.192; Al-Sharbīnī al-Khaṭīb. *op.cit.* Vol.2. p.30; Al-Shīrāzī. *op.cit.* Vol.1. p.262.

⁴⁵ Ibid.

⁴⁶ See for example, al-Kāsānī. *op.cit.* Vol.5. p.183; Ibn Rushd. *op.cit.* Vol.1. p.96; Ibn Qudāmah. *op.cit.* Vol.4. p.123.

currency for currency or food for food with little or some additional amount of value⁴⁷. This kind of *ribā* also means the selling of *ribāwī*⁴⁸ items for *ribāwī* items with supplementary⁴⁹.

The ban on *Ribā al-Faḍl* is clearly stated in various *ḥadīth*, among them is a *ḥadīth* narrated by ‘Ubādah Bin Ṣāmit. Prophet Muḥammad (ṣ.a.w.) said⁵⁰:

“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 for hand, if the commodities differ, then you may sell as you wish, provided that the exchange is hand to hand.”

From this *ḥadīth*, we can infer that all the currencies must be exchanged equally and hand to hand. Any increase or additional value in any one of the commodities or currencies are considered as *ribā* and the transaction is unlawful (*ḥarām*).

On the other hand, *Ribā al-Nasi’ah*, is defines as the exchanging of *ribāwī* items with deferment⁵¹. Islamic jurists consented that the exchanging of gold for gold or any currency for another currency must be in same quantity and equally in value at the Session of Contract (*Majlis al-‘Aqd*) without postponement. They also agreed that this kind of *ribā* (with postponement) is unlawful from the Islamic point of view⁵².

This is based on a *ḥadīth* narrated by Usāmah Bin Zaid.⁵³

“Truly ribā only happens when there is a postponement.”

In the currency exchange (*al-Ṣarf*)⁵⁴, there are actually four principles to be obeyed by both parties in order to avoid *ribā* transactions namely:

⁴⁷ Sayyid Sēbiq. *op.cit.* p.178.

⁴⁸ *Ribāwī* items are gold, silver, wheat, barley, dates and salt. See Muṣṭaffā al-Khinn. *et al.* 1998. *Fiqh Manhāji*. Damshiq: Dār al-Qalam. Vol.3. p.66. The discussion of *ribāwī* items in this part is converged to gold and silver since both items are currencies exchange in the sale.

⁴⁹ Abū Bakr Jābir al-Jazā’irī. 1979. *Minhāj al-Muslim*. Qāhirah: Maktabah al-Kulīyyāt al-Azhariyyah. p.389; Muṣṭaffā al-Khinn. *et al. op.cit.* p.68.

⁵⁰ *Ṣaḥīḥ Muslim*. 1977. *Mukhtaṣar Ṣaḥīḥ Muslim*. Ḥadīth No.:949. p.252.

⁵¹ Muṣṭaffā al-Khinn. *et al. op.cit.* p.69; Abū Bakr Jābir al-Jazā’irī. *op.cit.* p.389.

⁵² ‘Abd al-Raḥmān al-Jazirī. 1990. *Kūāb al-Fiqh ‘alā al-Madhāhib al-Arba’ah*. Miṣr: Dār al-Irshād. Vol.2. p.219.

⁵³ *Ṣaḥīḥ Muslim*. 1977. *Mukhtaṣar Ṣaḥīḥ Muslim*. Kitab al-Buyū’. Ḥadīth No.:953. p.253.

⁵⁴ Currency exchange means the sale of currency for currency in the same class or in different class namely sale of gold for gold or silver for silver or gold for silver whether in the form of gold or in other forms. See Al-Kāsānī. *op.cit.* Vol.5. p.215.

4.1 The Exchange of Currency Must Happen Before Both Parties are Separated

The exchanging of currency before separation is a compulsory stipulation in this transaction⁵⁵. Once two parties in the contract are split before currency exchange takes place thus, this contract is void because one of its stipulations has removed. It also voids in order to avoid this transaction becomes sale of debt for debt, which consequently bring to *ribā* transaction⁵⁶.

4.2 The Exchange of Currency in the Same Class

The exchange of currency in the same class such as gold for gold or silver for silver must has equal (*tamāthul*) in quantity and rate. The excess rate or quantity if happens is consider as *ribā al-faḍl* which has been forbidden in the *shari'ah*⁵⁷.

Furthermore, the exchange of currency in the same group such as silver for silver or Ringgit Malaysia for Ringgit Malaysia must have similar weight and value although it has a difference in fineness, grind, old or new for paper note. In other word, the exchanging of currency should have the same value and rate but not in terms of its characteristic⁵⁸.

Muslim jurists have agreed that the sale of exchanging gold with gold or silver with silver either in the form of currency or jewellery or in other forms should be similar in value and weight. In terms of currency exchange between one nation to other nation, the rate and value must be equal and if there is a difference between two of these currencies hence, this transaction is regarded as unlawful⁵⁹.

Meanwhile, for the exchange of different currencies for example, between Ringgit Malaysia and American Dollar thus, if there is an extra value between the two of these currencies, it is permissible from the sight of *shari'ah* law but the transaction must occur without deferment⁶⁰.

4.3 The Exchange of Currency Without Any Option (*Khiyār*)

What I mean by without any option here is that no opportunity given for option of condition (*khiyār al-shart*) from one or both parties in the contract since the acceptance of currency is a stipulation in this kind of transaction. When there is an option, it will deform the acceptance and this contract will be void⁶¹.

⁵⁵ Ibn Qudāmah. *op.cit.* Vol.6. p.53; Al-Buhūṭī. *op.cit.* Vol.3. p.266.

⁵⁶ Ibn al-Ḥummām. *op.cit.* Vol.5. p.369.

⁵⁷ Ibn 'Abidīn. *op.cit.* Vol.5. p.257; Ibn Qudāmah. *op.cit.* Vol.6. p.52; Al-Buhūṭī. *op.cit.* Vol.3. p.254.

⁵⁸ Ibn al-Ḥummām. *op.cit.* Vol.5. p.369; Al-Kāsānī. *op.cit.* Vol.5. p.216.

⁵⁹ Muḥammad Salāmah Jābir. *op.cit.* p.17-21.

⁶⁰ *Ibid.*

⁶¹ Ibn al-Ḥummām. *op.cit.* Vol.5. p.369; Paizah Hj. Ismail. 2006. *Asas-Asas Muamalat Dalam Islam*. Kuala Lumpur: Dewan Bahasa Dan Pustaka. p.142.

For example, the seller say to the buyer, “I would like to change this Ringgit Malaysia to Rupiah and the exchange will happened in three days.” Here, the option of three days will make the contract of *al-Ṣarf* null because there is a postponement of three days⁶².

Khiyār al-shart is not allowed in the contract of currency exchange because cause the seller and buyer to be separated before the subject matter can be surrendered (*taqābud*)⁶³.

4.4 The Exchanging of Currency Without Any Postponement

It is stipulated in the contract of *al-Ṣarf* that the contract happens without any postponement by both parties in the transaction. This is because the acceptance of currency exchange should take place before both parties are split. If the person who makes the deferment removes it before separation, then they split after they had accepted the currency thus, this contract is permissible to be done⁶⁴.

CONCLUSION

In conclusion, Islamic commercial law has it's own principles and rules that need to be adhered by all Muslim buyers and sellers when dealing and trading globally. Although these principles and regulations may seen quite complicated to be follow by certain quarters nonetheless, if all these requirements are abided closely then the ultimate benefits, satisfaction and good consequences may be guaranteed for all parties in the transactions. The reason behind it is somewhat easy to understand, since all these principles and regulations are provided by Allah, the Most Glorious and Full of Wisdom God.

Islamic banks in Malaysia has offered various kind of Islamic instruments that can be used by Muslim entrepreneurs in trading globally such as Letter of Credit, under the principle of *al-Wakālah* and *al-Mushārah* as well as Letter of Guarantee, under the principle of *al-Kafālah*, to name a few. Obviously, these instruments are *sharī'ah* compliant products and can be a good alternative for them in order to transact internationally.

⁶² *Ibid.*

⁶³ Ibn al-Ḥummām. *op.cit.* Vol.5. p.138; Al-Kāsānī. *op.cit.* Vol.4. p.459; Ibn 'Ābidīn. *op.cit.* Vol.5. p.259; Al-Sharbīnī al-Khaṭīb. *op.cit.* Vol.2. p.65.

⁶⁴ The exchanging of currency with deferment will cause this contract null because of *Ribā al-Nasī'ah*. See Ibn 'Ābidīn. *op.cit.* Vol.5. p.259; Ibn Rushd. *op.cit.* Vol.2. p.253.

REFERENCES

- ‘Abd al-Karīm, Zaydān. 2001. *al-Madkhal li Dirāsah al-Shari‘ah al-Islāmiyyah*. Beirut: Mu‘assasah al-Risālah. 216-225.
- ‘Abd al-Rahman al-Jaziri. 1990. *Kutāb al-Fiqh ‘ala al-Madhābib al-Arba‘ah*. Miṣr: Dār al-Irshād. Vol.2:219.
- Al-Buhūti. 1974. *Kashshāf al-Qinā‘*. Makkah: Maṭba‘ah al-Ḥukūmah. Vol.4:205.
- Al-Dusuqi. 1970. *Ḥāshiyah al-Dusuqi ‘alā al-Sharh al-Kabir*. Qāhirah: ‘Isā al-Bābī al-Ḥalabī. Vol.4:66.
- Al-Kāsānī. 1998. *Bad‘ā‘ al-Ṣanā‘i‘*. Beirut: Dār Iḥyā‘ al-Turāth al-‘Arabī.
- Al-Maydānī. 1998. *al-Lubāb fī sharḥ al-Kitāb*. Beirut: Dār Iḥyā‘ al-Turāth al-‘Arabī. Vol.1:218.
- Al-Ṣan‘ānī. 1960. *Subūl al-Salām*. Qāhirah. Dār Iḥyā‘ al-Turāth al-‘Arabī. Vol.3:82.
- Al-Sharbīnī al-Khaṭīb. 1958. *Mughnī al-Muḥtāj*. Qāhirah: Maṭba‘ah Muṣṭafā al-Bābī al-Ḥalabī. Vol.2:361.
- Al-Shirāzī. 1992. *al-Muhadhdhab fī Fiqh al-Imām al-Shāfi‘i*, Damshiq: Dār al-Qalam. Vol.1:423.
- Al-Qurṭubī. 1995. *Jāmi‘ al-Aḥkām al-Qur‘ān*. Beirut: Dār Iḥyā‘ al-Turāth al-‘Arabī. Vol.3:305-306.
- Faizah Hj. Ismail. 2006. *Asas-asas Muamalat dalam Islam*. Kuala Lumpur: Dewan Bahasa dan Pustaka. 142.
- Ibn al-Hummām. 1995. *Fath al-Qadīr*. Riyāḍ: Dār ‘Ālim al-Kutub. Vol.3:405.
- Ibn Juzay. 1976. *al-Qawānīn al-Fiqhiyyah*. Beirut: Dār al-Qalam. 339.
- Ibn Kathīr. 2004. *Tafsīr al-Qur‘ān al-‘Azīm*. Riyāḍ: Dār ‘Ālim al-Kutub. Vol.7:351-352.
- Ibn ‘Abidīn. 1979. *Ḥāshiyah Radd al-Muḥtār*, Beirut: Dār al-Fikr. Vol.5:307.
- Ibn Qudāmah. 1992. *al-Mughnī*. Qāhirah: Hijr. Vol.8:145.
- Ibn Rushd. 1995. *Bidāyah al-Mujtahid wa Nihāyah al-Muqtaḥid*, Beirut: Dār al-Fikr. Vol.2:111.
- Sunan Ibn Mājah*. 1952. Qāhirah: Dār Iḥyā‘ al-Kutub al-‘Arabīyyah.
- Wahbah al-Zuhaylī. 1984. *al-Fiqh al-Islāmi wa Adillatuh*. Damshiq: Dār al-Fikr. Vol. 4:221.