SAVING AND CURRENT ACCOUNT IN THE CONTEXT OF SHARI‘AH CONTRACT

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Abstract
Islamic banking is a new phenomenon that has taken many observers by surprise. There are three types of account which are commonly known in the Islamic Banks. These are: Current Account, Saving Account and Investment account. Moreover, this paper proposed to analysis the Savings and Current Account Deposit in the context of Shari’ah contract. The Shari’ah principles applicable to saving account are Al-Wadi‘ah, Mudarabah and Al-Qard Hassan. However, Al-Qard is commonly offered by Islamic banks in the Middle East. The Shari’ah compliant of current account based on the Al-Wadi‘ah Yad Dhamanah (safe custody) principle which refers to a contract between the owner of funds (account holder) and the bank for safe keeping purposes. This paper claims that deposits from savers are an important source of financial strength for the Islamic banks. They use it to increase their capacity for financing operations and thereby increase profit for the shareholders. In addition, it argued that gifts in wadi‘ah and qard hassan allowed because the excess or expected return is not contractual in nature and the bank is under no obligation to provide a return and return is purely in the nature of gift, whereby, gifts by definition do not constitute ribā.

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INTRODUCTION

Islamic banks offer products for current and savings accounts, structure to comply with Shari‘ah principles. There are two dominant views based on the Shari‘ah principles that applied for the current accounts. One is to treat it as ‘wadi‘ah-wad-damanah’ 1 (trust). The other

1 Savings with guarantee. Refers to goods or deposits, which have been deposited with another person, who is not the owner, for safekeeping. As wadi‘ah is a trust, the depository becomes the guarantor and therefore guarantees repayment of the whole amount of the deposits, or any part thereof, outstanding in the account of the depositors when demanded. The depositors are not entitling to any share of the profits but the depository may provide returns to the depositors as a token of appreciation.
view is to treat current accounts as ‘qard hassan’\(^2\) (interest-free loan). The system of qard hassan also adopted for savings account.

**WADI‘AH DEPOSITS**

Al-Wadi‘ah comes from the root-word wada‘a, which literally means ‘leave’. al-Wadi‘ah literally means, “the thing left with a person who is not its real owner for the purpose of safe-keeping”. The act of leaving the thing is termed as al-Ida’.\(^3\) In legal terminology, it means “the authorization of a person to keep the property of another in his safe custody by explicit or implicit terms”.\(^4\) The owner of the property who gives the property to another for safe-keeping is termed as al-Muwaddi‘ and the person who receives the property is termed as al-Muwadda’ or al-Wadi‘. Wadi‘ah is considered as a form of contract or ‘aqd. In a wadi‘ah deposits, the bank safekeeps money and pays it back to the customer on demand. Unlike a conventional deposit, a wadi‘ah account does not promise a fixed return, although the bank has the discretion to provide customer with hibah (gift). Because the bank has discretion, you may theory get no returns at all.\(^5\)

**The Basis of al-Wadi‘ah**

Al-Wadi‘ah is authorised and encouraged by the Shari‘ah. The Qur’an says:

Allah does command you to render back your trusts to those whom they are due.\(^6\)

And of one of you deposits a thing on trust with another, let the trustee (faithfully) discharge his trust, and let him fear his Lord.\(^7\)

In the Sunnah, it was reported that the Prophet (S.A.W). says:

discharge the trust to the person who entrusts it to you, and do not betray the one who betrays you.\(^8\)

It is also agreed upon by all jurists of all ages by ijma’ that the placing of deposits as wadi‘ah is permissible, especially because of the need and necessity of the people for making such deposits.\(^9\)

**The Essential Element of Wadi‘ah**

According to the Hanafis, there is only one essential element of wadi‘ah that is offer and acceptance (ijab wa qabul). However, the Jumhur view that there are four essential elements of al-wadi‘ah, which are:

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\(^2\) Benevolent loan. An interest-free loan given mainly for welfare purposes. The borrower is only required to repay the principal amount borrowed, but he may pay an extra amount at his absolute discretion as a token of appreciation.


\(^5\) ABDULLAH Daud Vicary & CHEE Keon, *Islamic Finance why it makes sense*, (Singapore: Marshall Cavendish Business, 2010), at 121

\(^6\) Qur’an 4:58.

\(^7\) Qur’an 2:283.

\(^8\) Narrated by Abu Daud and Trimizi

\(^9\) Id., 3, at 38.
1. The goods.
2. Owner of goods.
3. Custodian of goods.

Conditions for the Essential Elements

The jurists lay down certain condition for the two contracting parties and the property that is being deposited. Concerning the two contracting parties, namely, the depositor and the depositee, the Hanafis require that both of them must be of sound mind. They do not make age of majority (al-Bulugh) as a requirement. So long as the minor is normally authorised by his guardian to into commercial transactions, he may validly enter into a contract of wadi’ah. The Jumhur require that the depositor and depositee must be of age of majority, have sound mind and attain the capacity of maturity. About the deposited property, all the jurists require that the property must be capable of being subjected to physical possession.11 There are two types of wadi’ah accounts:

i. Wadi’ah yad amanah; and
ii. Wadi’ah yad damanah.

Wadi’ah Yad Amanah (WYA)

With such an account, the bank performs a pure safekeeping function for deposits. For example, if depositor deposited RM10, 000 in cash, the bank has to keep the money in its vaults. As a safekeeper, the bank:

i. Is not allowed to utilize the funds for profit generation or any other purpose; and
ii. Does not charge any fees for safekeeping

As a result, no returns in any form can be expected. Client as depositor also face the risk that the bank does not guarantee the return of client money, in the event of a loss due to theft, fire or some unforeseen mishap. So if a gang of robbers stole money from the vault, among which is client deposit, the bank is not obligated to make it up to him, unless it was due to the bank’s negligence or fault.12 The following table will summarise the risk and return features of WAY.

<table>
<thead>
<tr>
<th>Item</th>
<th>Risk and return features of wadi’ah yad amanah accounts</th>
</tr>
</thead>
<tbody>
<tr>
<td>Risk</td>
<td>It is possible for you to get back less than what you deposited, although unlikely. While the bank promises to protect and safekeep your money, it does not offer a 100% guarantee in pay back.</td>
</tr>
</tbody>
</table>

11 Id., 9, at 39.
12 Id., 5, at 121
Return  No monetary returns are possible because the bank merely agrees to safekeep your money.

Hence, *wadi‘ah yad amanah* (trustee safe custody) is not used anymore. Contract *laman/kafalah* (guarantee) is, therefore, used to allow a bank to utilized and benefit from deposited assets.

### Wadi‘ah Yad Damanah (WYD)

The main characteristics of this contract are as follows. Firstly, the custodian is trustee and guarantor to safeguard deposited asset. Secondly, the deposited asset need not be separated or segregated. Thirdly, the deposited asset can be used for trading and other purposes. Fourthly, the custodian has the right to any income derived from utilisation of deposited asset. Lastly, the depositor can take back the asset at any time. It is like qard (loan), that is, it cannot generate any pre-agreed benefit or income to depositor, over and above principal amount of deposit (if not, it is *riba*). In this case, the bank guarantees the return of the money, even if the money is stolen. In return, the bank:

- is allowed to utilize the funds; and
- enjoys all profits and absorbs all losses.

It is with this version of *wadi‘ah* that the bank provides hibah. The following table illustrates the risk and return features of *WYD*.

<table>
<thead>
<tr>
<th>Item</th>
<th>Risk and return features of <em>wadi‘ah yad damanah</em> accounts</th>
</tr>
</thead>
<tbody>
<tr>
<td>Risk</td>
<td>Your principal is guaranteed in that you will not get back less than what you deposited.</td>
</tr>
<tr>
<td>Return</td>
<td>Non-guaranteed returns are given the bank’s discretion.</td>
</tr>
</tbody>
</table>

This *wadi‘ah yad damanah* is adopted by the Jordan Islamic Bank, which operates as “Trust Account” instead of a current account. A trust deposit is defined by the Jordan Islamic Bank as cash deposits received by the bank where the bank is authorized to use the deposits at its own risk and responsibility in respect to profit or loss and which are not subject to any conditions for

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withdrawals or depositing. Thus, depositors hand over these deposits to the bank as a Trust and the bank does not have the authority to use them without first obtaining the specific permission of the owner of the funds. The other view is to treat demand deposits as ‘qard hassan’ (interest-free loan).

**QARD HASSAN (LENDING AND BORROWING) DEPOSIT**

Lending and borrowing were highly important factors in business transactions in pre-Islamic times. Borrowing played a risky role in the general lives of pre-Islamic Arabs, due to the needs of traders or merchants and consumers or buyers in transaction of loans. In such obligations, the lenders gained a multitude of profits out of each contract of loan. During these periods, loans were highly usurious and without any proper procedure, i.e. without fixing time of payment and without written agreement and witnesses or security. In this situation, many injustices occurred which Islam endeavoured to eradicate.

*Qard* means giving a property to a party who will benefit from it and who will subsequently return an equivalent replacement. In addition, qard terminologically means giving of property by one person to another with something subjected to the liability of the debtor in form of property with the same value (mumathil) of the property that was loaned to him. It is means to be benefited by the recipient (debtor). According to Ibn Hazm, al-qard, which also implies future obligation (al-Dayn), is a good deed, involving the lending of a fungible object, such as money, by someone to another person, on condition that the borrower is responsible to return the same object either immediately or at a specified time. It was also known as al-salaf.

**The Basis of Qard Hassan**

The scholars have unanimously agreed that qard is permissible based on Qur’an, Sunnah and Ijma*. The following Qur’anic verse is regarded as a basis for permissibility of qard:

> Who is that will grant Allah a goodly (sincere) loan so that He will repay him many times over? And (remember) it is Allah who decreases and increases (sustenance), and to Him you shall all return.

According to scholars of tafsir, the term qard hassan in the context of the above verse refers to acts of contributing for the sake of Allah (SWT). The term qard literally means loan and not infaq. Nevertheless, the scholars of tafsir stated that the term qard used in this verse in intended to dignify the status of humankind since Allah (SWT) had chosen to

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19 ABDULLAH Daud Vicary & CHEE Keon, Islamic Finance why it makes sense, 2010, at 121
20 Qur’an, 2: 282-283.
23 ABDULLAH Daud Vicary & CHEE Keon, Islamic Finance why it makes sense, 2010, at 121
24 Qur’an, 2: 245.
communicate using common and understandable vocabulary with humankind." The legality of qard was in accordance with the tradition of the Prophet, as it was recorded by Ahmad bin Hanbal in which the Prophet is reported to have said:

God will place a servant of him under His shade on the day when there will be no shade except His shade, who waits (patiently) (any debt) from a borrower who lives in straitened circumstances (poor or impoverished) or relinquishes (the debt altogether) for the debtor.25

The view that regards current deposit as qard hassan has been adopted by Iranian Islamic banks, which call the current account qard hassan.26 According to this view, money deposited in these accounts is a benevolent (or interest free) loan (qard hassan) from the depositor to the bank. The bank is free to utilize these funds at its own risk without any return to the depositor and without any authorisation because in the case of qard hassan, the debtor does not need the specific permission of the creditor to use the borrowed funds. The debtor owes the creditor only the principal amount borrowed. This condition is fulfilled as the amount deposited in these accounts is fully underwritten by the bank.27

In contrast to this, the Bahrain Islamic Bank calls these accounts “Savings Accounts with Authorisation to Invest”. Depositors provide the bank with an authorization to invest their money. Depositors have the right of withdrawal, but profits are calculated based on the minimum balance maintained for a month.28 Similarly, savings accounts at the Dubai Islamic Bank operate as follows:

i) Savings accounts are opened with the condition that depositors provide the bank with an authorization to invest.

ii) Depositors have the right to deposit and withdraw funds.

iii) The profits in savings accounts are calculated on the minimum balance maintained during the month. Depositors participate in the profits of savings accounts with effect from the beginning of the month following the month in which the deposits are made. Profits are not calculated with effect from the beginning of the month in which a withdrawal is made from the account.

iv) A minimum balance has to be maintained in order to qualify for a share in profits.29

The Iranian Islamic banks include saving accounts in “Qard Hassan Accounts” and call them “Qard Hassan” deposits. The operation of these accounts is similar to that of savings accounts in the conventional system as far as the deposit and withdrawal of money by means of a savings account passbook is concerned. Although no dividends are due in the case of qard hassan depositors, Iranian banks use different promotional methods in order to attract and mobilize deposits. These include giving the following incentives to depositors:

i) Non-fixed bonus either in cash or in kind.

ii) Exempting depositors from or granting discount thereto, in the payment of commissions and/or fees.

iii) According to priority of customers in the use of banking facilities.30

28 Bahrain Islamic Bank, Goals and Functions (Arabic).
29 Dubai Islamic Bank, A General Introduction to the Objectives and Investment, Dubai: Dubai Islamic Bank, at 6.
The Jordan Islamic Bank has adopted yet another way to operate savings accounts. It includes the savings deposits into an investment pool called joint investment accounts.\(^{31}\)

The foregoing discussion makes it clear that Islamic banks adopt one of the following practices in operating savings accounts:

a) Accepting savings deposits on the principle of *al wadi’ah* (trust) requesting depositors to give permission to the bank to use these funds at its own risk, but guaranteeing full return of deposits and sharing any profits voluntarily.

b) Accepting savings deposits with an authorization to invest and share profits in an agreed manner for the period in which a required balance is maintained.

c) Treating savings deposits as *qard hassan* from depositors to the bank and granting pecuniary or non-pecuniary benefits to depositors.

d) Accepting savings deposits as part of an investment pool and treating them as investment deposits.\(^{32}\)

In the early stages of Islamic finance in Malaysia. Several products based on *qard* were introduced, for example, Government Investment Certificates (currently known as Government Investment Issue) and benevolent loans. Nowadays, it application has been expanded to others. It has also become the underlying concept for liquidity management instruments for Islamic finance institution.\(^{33}\)

**Gifts in Wadi’ah and Qard**

*Wadi’ah* is a contract (*’aqad*) between the owner of goods and custodian of the goods to protect the goods from being stolen destroyed etc. In other words, the custodian is to ensure the safe custody of the goods. There are two types of *wadi’ah* which are *wadi’ah yad amanah* (trustee safe custody) and *wadi’ah yad damanah* (guarantee custody). If the funds that are pooled together, being utilised and being charged for the service, the *shari’ah* contract of *wadi’ah yad damanah* is applied.\(^{34}\) When deposit products are modeled after *wadi’ah* or *qard hassan*, the customer does not participate in any way in risk. The nominal value of deposits is not allowed to decline if the bank incurs losses instead of profits. As discussed above, banks invariably provide gifts or bonus – in cash and in kind and various other benefits to the depositor. However, is such a reward Islamically admissible given that the depositor is not exposed to any risk? The answer to this question is somehow tricky. On the one hand, the excess or expected return is not contractual in nature. The bank is under no obligation to provide a return and return is purely in the nature of gift, whereby, gifts by definition do not constitute *ribā*.

At the same time, the classical scholars have generally frowned upon gifts that accompany such deposits or loans. Even while the returns in the form of gifts are not part of the agreement, these may be recurring in nature. When the bank provides such gifts at a certain rate on deposits without fail, the customer would now have a clear expectation of returns. He/she would expect returns without bearing any risk. This comes dangerously close to devouring


\(^{32}\) Id., 29, at 8

\(^{33}\) Bank Negara Malaysia, *Shari’ah Resolutions in Islamic Finance*, (2nd edn.,) (Malaysia: CBNM, 2010), at 47.

Nevertheless, as mentioned in chapter three, if a borrower returns the borrowed object in higher quality, quantity or value of his own free will, such an act is commendable (mustahab). Likewise, if the lender is willing to take back the loaned object in lesser or lower quality, quantity or value of his free wills, this act be also regarded as commendable conduct.\(^{36}\) In relation to this, the Prophet (s.a.w) is reported to have said:

……and the property of a Muslim is not permitted to be consumed except what is granted good-heartedly.\(^{37}\)

Such acts were exhort by Jabir bin ŲAbd Allah who said that the Prophet repaid him the debt he owed him and gave him an extra amount.\(^{38}\) According to Abu Hurayrah, the Prophet is reported to have said:

The most admirable among you is the most beneficent or charitable one among you in his payment of his loan or debt.\(^{39}\)

The Prophet is also reported to have said:

The best of people are those who discharge their debts in best manner.\(^{40}\)

CONCLUSION

It can be concluded that only two products accepted for the saving and current accounts under Islamic bank, which are wadi’ah and qard hassan. The wadi’ah is a contract between the owner of a property and the person responsible to safeguard the said product. The contract is established order to safeguard the owner’s property from being stolen, destroyed or any other reasons by imposing certain terms and conditions. The qard hassan is the contract based on loan in developing economy, having to secure loan is very important for existence or growing a business.

Islamic bank acknowledges the need to borrow but the debtor needs to pay back the same amount of the similar property that he/she has borrowed. Any additional amount imposed on the debtor that is predetermined in the contract is considered ribā. Islam prohibits the lending and borrowing based on ribā or interest as against the principle of Shari’ah. On the other hand, the borrower may compensate the lender hibah (gift) as appreciation in its own discretion.

REFERENCE


\(^{35}\) Mohammed, Obaidullah, *Islamic Financial Services*, (2005), at 54-55.
\(^{39}\) Id., 35, at 77.


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