Australian Journal of Basic and Applied Sciences, 9(37) Special 2015, Pages: 163-170

ISSN:1991-8178

Australian Journal of Basic and Applied Sciences

Journal home page: www.ajbasweb.com

Currency Trading in Modern Islamic Banks in Malaysia

[1]Azwina Wati Abdull Manaf, [2]Jalilah Binti Mohd Ali, [3]Siti Marshita Binti Mahyut

[1]Faculty of Law, Multimedia University, Jalan Ayer Keroh Lama, 75450 Bukit Beruang, Malacca, Malaysia.
[2]Faculty of Law, Multimedia University, Jalan Ayer Keroh Lama, 75450 Bukit Beruang, Malacca, Malaysia.
[3]Faculty of Law, Multimedia University, Jalan Ayer Keroh Lama, 75450 Bukit Beruang, Malacca, Malaysia.

ARTICLE INFO

Article history:
Received 10 October 2015
Accepted 30 November 2015
Available online 31 December 2015

Keywords:
Copyright; Defamation; Infringement; Intellectual Property; Social Media;

ABSTRACT

Forex trading is one of the many issues that is dealt with under Islamic Banking law. Foreign exchange trading or forex at a point was known to be something that people did when they were travelling overseas. They would trade their home countries currency for another and experience the present currency exchange rate. Nowadays, traders could speculate on the varying values of currencies involving two countries. It is carried out for profit and sport. This paper is going to discuss the current practice of Malaysian Islamic Bank of the currency exchange which is in line with the principle of Shariah Law.

To Cite This Article: Azwina Wati Abdull Manaf, Jalilah Binti Mohd Ali, Siti Marshita Binti Mahyut Paper title. Currency Trading in Modern Islamic Banks in Malaysia ***Aust. J. Basic & Appl. Sci.,*** *9(37): 163-170, 2015*

INTRODUCTION

This paper analyses the current practice of Foreign Exchange (FOREX) in Malaysian Islamic Banking Institution. Forex trading is one of the many issues that is dealt with under Islamic Banking law. Therefore, it is vital for us to understand the basic definition of Islamic Banking. Islamic Banking is a banking system which offers banking activities which conforms to the Islamic *Shariah* rules. Islamic banking offers similar banking facilities as the conventional banking system except that it follows or strictly adheres to the rules of *Shariah* or *Fiqh al-Muamalat*. In modern banking, any business that offers good interest rates or services that is based on interest and biased in favour of the capitalist and rich, well-to-do people is strictly rejected as it is un-Islamic. It is important to note that our country is making efforts to construct a good banking system which is based on the *Shariah* principles.

Islam as al-Deen is not only a religion but in fact, it serves as a set of beliefs, thoughts and aspects of life and it help creates a balanced equilibrium between the worldly and spiritual elements in a person's life. Muslims belief that the country will not get the blessings from God in the world and hereafter if they do not follow the Islamic *Shariah* rules.

In Malaysia, Islamic Banking can be traced all the way back to 1963. It started with the establishment of Lembaga Urusan dan Tabung Haji (LUTH) which was the very first Islamic savings institution and it was established for the special purpose of performing hajj. Upon the establishment of Lembaga Urusan dan Tabung Haji, the government had set up the National Steering Committee in order to establish an Islamic Bank. This prompted the establishment of the first Islamic bank in Malaysia which was in the year 1983. This bank is known as Bank Islam. Subsequently, many conventional banks have offered Islamic windows which is an addition to their conventional banking system.

There are four distinctive features of Islamic Banking that can be highlighted. The first is the prohibition of *riba* regardless of it being in the form of nominal or excessive, fixed or floating. The second is the prohibition of gambling (*masyir*). The third is that Islamic banking can only deal with lawful things. In other words, Islamic bank is prohibited from dealing with things such as drugs and alcohols. The forth is the elimination of *gharar* which means uncertainty an ambiguity in any business contracts.

Generally whenever we discuss about currency, we always relate it to money. This is because money has long been the medium of exchange and it is usually a form of standard payment. In an economic point of view, money is defined as any good which is widely accepted by communities around the world for the purposes of exchange that is the payment for

Corresponding Author: Azwina Wati Binti Abdull Manaf, Ensure that Faculty of Law, Multimedia University, Jalan Ayer Keroh Lama, 75450 Malacca, Malaysia.
Phone; (+60176988385)

goods and services and is used in the repayment of debts.

In the modern world, there are four main functions of money in our daily lives. The first is that money acts as a medium of exchange. The second is that money acts as a store value. Next is that money acts as a unit of account and the last is, money acts as a form of appreciation for our authorities or founding fathers of the country. For example, in Malaysia, the picture of Tunku Abdul Rahman is seen on the Malaysian Ringgit notes because he is the first Prime Minister of Malaysia and he was the father of Independence for Malaysia. Therefore, his picture is depicted in every Malaysian Ringgit note as a form of appreciation for all the efforts taken by him to achieve Independence.

The birth of money is closely related to trade. In trade, there is an exchange of commodities. For example, *A* sells to *B* two cows and in return, *B* will have to provide some other form of commodity to *A*. This results in trade. Therefore, money is the commodity used as a medium of exchange in trade.

Currency In Islam:

In Islam, money cannot be treated, as a commodity and money cannot be traded for money. It is strictly prohibited in Islam because money must always work as a capital and not as a debt. In Islam, money is used as a medium of exchange. Furthermore, it is used as a store value, which is mainly for the purpose of trading. Allah (SWT) has clearly permitted trade and had prohibited usury or *riba*.

The prohibition of *riba* in trade was done gradually through four verses in the al-Quran. The forth verse signifies the total prohibition of *riba*. This verse is in Chapter al-Baqarah: 275 which states: ‘Those who devour interest will not stand except as stands one whom the Evil One by his touch has driven to madness. That is because they say: “Trade is like usury,” but Allah has permitted trade and forbidden usury. Those who, after receiving direction from their Lord, desist, shall be pardoned for the past; their case is for Allah (to judge); but those who repeat (the offence) are Companions of the Fire: they will abide therein (for ever).

This verse clearly states that *riba* is totally prohibited and that whoever consumes *riba* will burn in hellfire. In this verse, it is clear that the word *riba* and trade is used together. This is because trade under conventional system often includes usury. This is totally prohibited in Islam. Abu Hurayrah reported that the Prophet said: “Refrain from seven deadly things: The companions asked him: What are these? He said: To associate partners with Allah, sorcery; to kill a soul without valid reason in the eyes of Allah; to devour interest; to devour the property of the orphan; to flee from the battlefield; and to falsely implicate chaste, innocent, believing women of vulgarity.”

As mentioned above, in ancient times, barter system was commonly used by every traders. Barter system involves the exchange of a goods or services with other forms of goods and services. In Islam, there is something called the *ribawi* items which consist of seven items. These items are gold, silver, currency, wheat, barley, dates and salt. Any unfair exchange of the *ribawi* items will constitute to *Riba al’Fadl*, which refers to the additional quantity or any form of inequality, which arises from the exchange of goods, which are from the similar type of *ribawi* items. This is totally prohibited in Islam. As mentioned earlier, *riba* is strictly prohibited in Islam.

Nabi Muhammad s.a.w had taken many initiatives to ban the unfair trade practices of the barter system. The Prophet s.a.w tried to discourage the usage of barter system gradually and had in return suggested a better, fair and just monetary system, which uses currency as a medium of exchange. The usage of currency would certainly facilitate the proper flow of trade and it would provide an accurate market value in an economic system. This monetary system helps fight injustice due to its inability to determine the fair value for the exchange of any goods or services in the barter trading system.

The currencies used in ancient times were mostly metal coins which consist of gold and silver. There were two main currency unit used before and after the coming of Islam, which is dinar that is made of gold, and the second is dirham that is silver. Prior to the coming of Islam, dinar was used as the currency unit in the Byzantine Empire whereas dirham was used in the Persian Empire. The birth of Islam had brought significant changes to these currency units. Several decades after the Islamic conquest of these empires, the Islamic state had begun to mint their own Islamic dinar and dirham.

Roles of Money In Islam:

The wide usage of these metals had led to the problem of the measure and value of these metals. In order to overcome this problem, the state was required to seal a quantity of the metals in the form of coins and this enabled the people to use them in their exchanges. Money as we know today in the form of coins and paper note had first appeared in the form of coins which were made from metals such as gold and silver as well as other alloys. Each coins had their own value and its value is ascertained by the value of the metal content. This system ensured that it is publicly accepted.

However, there were some problems with the usage of gold and silver coins and this had scarred the economic activities involving the exchanges and the productivity in the economic system. These problems had led to the development of a new form of money. There were several difficulties faced by the people if the money is in coin form. One of them were that the government swindlers had easy access to the coins and they had deliberately changed the value and content of the coins. Furthermore, there were no regulated method of minting coins and the absence of this regulated method, the coins could take many different forms. Therefore, there is no uniformity in the minting of coins.

Apart from that, there were severe inconsistency in the weight and content of the alloys in the coins. The state had difficulties in creating an equilibrium between the quantity of coins and productivity rate in the economic system. Last but not least, the people were faced with constant problem of carrying and counting the coins that they have with them. In addition to that there were many dangers that are faced by the people especially highway robbery and this had contributed to the reduced capacity and efficiency of the transactions.

Money And Its Chatacteristics In Islam:

In Arabic language, the term money is referred to as *Naqd*. There are three differing opinions by scholars on *Naqd* in the jurisprudence literature. The first opinion is that the term *Zarr* or money can only refer to metals such as silver and old regardless of whether it is in the form of minted coins namely dirham or dinar or whether it is in the form of gold bars. The second opinion is that only minted coins, which are dirham or dinar, can be classified as money. Other forms of gold and silver including gold bars cannot be accepted as money.

The third opinion is that although gold and silver are the accepted forms of money, other items, for instance *Fuloos* (coins which are made with bronze and copper instead of gold and silver), may be accepted as the medium of exchange. However, this item can only be classified as money only if it satisfies the primary conditions of money.

Islamic experts and scholars all around the world have different views on this matter. Mufti Taqi Usmani (Hanafi Islamic scholar from Pakistan) is of the view that anything that is used as a medium of exchange and that it can store value can be classified as *Zarr.* According to Dr Khalid Adnan Turkamani, any object regardless of its forms, can be termed as *Zarr,* as long as it acts as a medium of exchange and that it could be used as a benchmark to determine prices.

In Islam, money has several major characteristics that is worthy to be noted. The first is that money acts as a medium of exchange. It is a norm for man to have certain needs of an item and that item may be in the possession of others. In order for him to obtain that item, he would have to exchange something in return for the item he wishes to possess. Therefore, a generally accepted medium of exchange was highly necessary in societies. Allah SWT had created gold and silver to serve as a medium of exchange. Today, gold and silver exchange had evolved into paper money, credit cards and cheques. As a result, the concept of *Zarr* has been widened.

The next characteristic of money is the wide acceptability. As the society grew, a uniform medium of exchange was required which was widely accepted by the people in order for it to be fully functional and effective. The third characteristic is that it serves as a measure of value. There should be a uniform and standard measure of exchange in order for it to serve as a yardstick for the society and in comparison with the values of the commodities.

Lastly, money is a mean to store value. It is a norm that the values of commodities depreciate with time and therefore it is impossible to exchange these commodities for the same value. However, monetary units is a more secure means to store value, thus, the usage of money would ensure a security of value and it can be used to acquire any commodity.

Forex Trading In Modern World:

Foreign exchange trading or forex at a point was known to be something that people did when they were travelling overseas. They would trade their home countries currency for another and experience the present currency exchange rate. Nowadays, when one hears someone referring to forex, it is making reference to a kind of investment trading that currently has become ordinary. Traders now could speculate on the varying values of currencies involving two countries. It is carried out for profit and sport.

Besides that, such a trade may seem like something, which majority would find simple. However, in this specific industry, there is a high percentage of failure that is faced by new traders. Forex trading is not a fraudulent scheme; it is simply a sector that is primarily formed for insiders who understand it. The aim for new traders should be to pull through long enough to comprehend the internal working of forex as well as to turn into one of those insiders.

The primary reason, which hangs majority traders out to dry would have to be the ability to utilise forex-trading leverage. The application of this leverage would enable traders to trade on the market with higher amounts of money than what is available in their account. For instance, if one were to trade 2:1, a deposit of $1000 could be utilised to control $2000 of the currency of the market. Majority of brokers put forward as much as 50:1 leverage. In most cases, new traders tend to come in and initiate the trade with 50:1 leverage instantly without being ready for the outcome.

Furthermore, trading with leverage may seem like an extremely great opportunity, as it is true that it could increase the probability of one making profit, however, the topic that is less spoken of is that it also increases the risk of one facing losses. For example, if a trader with $1000 in their account is trading 50:1 and is putting forward $50,000 on the market, each pip is worth about $5. Hence, if the average daily moves is 70 to 100, then in a day one's average loss is likely to reach $350. Therefore, if one has made an extremely bad trade, an entire account could be lost in a period of 3 days and certainly that is presuming that conditions are normal. It must be noted that obtaining success at forex is an achievable aim if one is to get educated and if they were to keep their head together in the process of learning. It is always advised to initiate with a small sum of money.

In addition, the forex is also said to exist as the world's largest financial market that puts forward unequalled advantages and benefits to the prospective investor. With superior leverage as well as liquidity in contrast to future markets and stocks, the forex market is probably the finest financial investment one could find. The question that rises is what makes the forex market an exceptional financial market? The few features that make the forex market a great one are excellent transparency, very strong market trends, lower trading costs and superior liquidity.

The first characteristic is lower trading costs. In relation to those who are dealing in stocks, they would have to shell thousands of dollars to commence. However, in the forex market, just with a few hundred dollars (usually $250 or lesser), one could open a small-scale forex account and begin trading. Such a feature has enabled even minor, individual investors to obtain satisfactory profits from forex trading. With lower costs like this, the potential losses are hence much lower. One would also find that forex trading commonly has no commission fees unlike other investments. Besides that, the costs of forex trading are restricted to the spread or the contrast between the buying and selling costs for a specific currency pair.

The second feature that makes forex market a good one is its excellent transparency. Transparency here gives a definition of free admission or access to trading details or information. It is a transparent procedure due to the fact that the trader has full admission to market data and information, which are crucial to carry out flourishing transactions. In addition, the excellent transparency of the forex market would mean that the forex traders have extra authority over their investments and could make decisions as what to do based on the information accessible at hand.

The third characteristic is on superior liquidity. In a forex market, traders are allowed to sell and buy currencies of their own preference. This feature of the forex market permits traders to simply exchange currencies without upsetting or jeopardising the values of the currencies that are being traded. Therefore, when one decides to trade a few thousand dollars or even several millions, one can be certain of the identical currency values during the period an order was placed and then performed. Furthermore, such superior liquidity of the forex market enables one to obtain profits they expect at the period the trade was made.

The fourth feature is involving strong market trends. In relation to this, the forex traders generate money by obtaining precise market data and then evaluating the route the market is taking. In order to do this, forex traders depend densely on trends in to foresee the route of the forex market. In most cases, traders tend to utilise technical evaluation to examine past as well as present forex market data and then seek for trends. Besides that, it is known that other financial markets utilise trends and trending but such a characteristic is way rigid in the forex market. As a consequence of rigid trending, forex markets are much vulnerable to evaluate and spot probable entry and exit positions throughout trading.

Forex Trading In Islam:

The forex market is known to rather be a varied trading sector. This is because there are numerous different brokers, separate platforms as well as a great deal of school of thought when it relates to forex trading. A good example on how varied the forex market is can be seen on the Islamic forex trading accounts. The question that rises is that if any individual could sign up with Islamic forex brokers, what constitutes them to be Islamic accounts? The answer is that Islamic forex account is said to be like any other ordinary trading accounts excluding the interest payments, which goes with most forex trading accounts. Based on Islamic law, the payment or collection of interest (*riba*) is severely prohibited. In addition, Sharia law believes and imposes that Muslims should be giving in the name of giving and not to obtain something in exchange.

Permissibility of Forex:

The era of gold and silver was one the peak of Islamic banking system. However, in a modern context, the emergence of paper money of varying value according to different areas necessitates a practical system in the management of currency flow in within the scope of *syariah* context. Thus, in Resolution no. 9 of the OIC Resolution Conference of *Fiqh Ulama* held in January 2002, the rules which applies to metallic money i.e. gold and silver shall be applicable to paper money due to its inherent value known as *i'tibariy* money. This is especially so in terms of rules governing *zakat*, *riba* and *salam*.

Al-Quran:

There are no specific ruling within the Al-Quran in terms of the application of *Bay' al-Sarf* in business transactions. The provisos describe general trade practices that are deemed permissible by Allah. In Surah Al-Baqarah verse 275, what is deemed permissible are transactions which are free of *riba*. The verse permits the occurrence of business transactions except those in which *riba* was included based on the general mentioning of *al-Bay'* via the word *al-Riba* within said verse.

However, the permissibility of trade transaction must adhere to the conditions by which the concept of *al-Sarf* operates. The elaboration and guidance offered under *al-Sarf* is further indulged via numerous Hadiths of the Prophet Muhammad s.a.w to supplement the less than detailed *(mujmal)* provisions given in the Holy verse itself.

Hadiths:

In regards to how one should approach *al-Sarf* in a legal context, a well-known Hadith provides the much needed clarifications of how Forex could be *Syariah* compliant under the concept of *Bay' al-Sarf*. The rule of *al-Sarf* is predominantly derived from the following Hadith, which eventually shapes the concept of *al-Sarf* in modern context.

1. **“ لاَ تَبِيعُوا الذَّهَبَ بِالذَّهَبِ إِلاَّ مِثْلاً بِمِثْلٍ وَلاَ تُشِفُّوا بَعْضَهَا**
عَلَى بَعْضٍ وَلاَ تَبِيعُوا الْوَرِقَ بِالْوَرِقِ إِلاَّ مِثْلاً بِمِثْلٍ وَلاَ تَبِيعُوا مِنْهَا
شَيْئًا غَا□بًا بِنَاجِزٍ ”.

It was narrated from **Abu Said Al-Khudri (r.a)** that the Messenger of Allah said:

“*Do not sell gold for gold except like for like and do not differentiate. Do not sell silver for silver except like for like, and do not sell it in return for something to be paid later.*”

2. **“ الذَّهَبُ بِالْوَرِقِ رِبًا إِلاَّ هَاءَ وَهَاءَ وَالتَّمْرُ بِالتَّمْرِ رِبًا إِلاَّ**
هَاءَ وَهَاءَ وَالْبُرُّ بِالْبُرِّ رِبًا إِلاَّ هَاءَ وَهَاءَ وَالشَّعِيرُ بِالشَّعِيرِ رِبًا إِلاَّ هَاءَ
وَ هَاءَ ”.

As Narrated by **Umar bin Al-Khattab (r.a):**

“The Messenger of Allah said: '*(Exchanging) gold for silver is Riba unless it is done on the spot. (Exchanging) dates for dates is Riba unless it is done on the spot. (Exchanging) wheat for wheat is Riba unless it is done on the spot. (Exchanging) barley is Riba unless it is done on the spot.'*”

3. **“ لاَ تَبِيعُوا الذَّهَبَ بِالذَّهَبِ إِلاَّ سَوَاءً بِسَوَاءٍ، وَالْفِضَّةَ**
بِالْفِضَّةِ إِلاَّ سَوَاءً بِسَوَاءٍ، وَبِيعُوا الذَّهَبَ بِالْفِضَّةِ وَالْفِضَّةَ بِالذَّهَبِ كَيْفَ
شِئْتُمْ ”.

From the narration of **Abu Bakra (r.a):**

Allah's Messenger said, “*Don't sell gold for gold unless equal in weight, nor silver for silver unless equal in weight, but you could sell gold for silver or silver for gold as you like*.”

4. “ نَّ رَسُولَ اللَّهِ صـــلى الله عليـــه وســـلم قَالَ " لاَ
تَبِيعُوا الدِّينَارَ بِالدِّينَارَيْنِ وَلاَ الدِّرْهَمَ بِالدِّرْهَمَيْنِ ”

Uthman al-Affan (r.a) reported that the Prophet Muhammad s.a.w said: “*Do not sell a dinar for two dinars and one dirham for two dirhams.*”

There are basically several interpretations that are apparent in the Hadiths in the dealings of *Bay' al-Surf*. Firstly, the exchange of goods or currency must be of a similar value. Secondly, *riba* and *gharar* must not be an issue i.e. the exchange between the contracting parties must be done on the spot. Suspension of a pecuniary return from another party during the exchange must be avoided at all cost as seen in the narration of Abu Minhal (r.a) on money exchange. The hadith prohibits the application of credit which poses as a major issue on the practice of forex under an Islamic law compliant environment.

Ijma Ulama And Conditions Under Bay' Al-Sarf:
(A) Pillars of Bay' al-Sarf:

Bay' al-Sarf is considered as a trade where foreign currency is involved. Thus, there are several pillars to which *al-Sarf* is based upon in order to fulfil the requirements of the mechanism of Islamic currency exchange. Contracts, which fail to fulfil these pillars, are considered *fasid* thus rendering the contract null and void according to the *Ijma Fuqaha* comprising of Hanafi, Maliki, Shafi'e and Hanbali schools of thought.

Therefore, the pillars under *Bay' al-Sarf* are as follows:

I. There must be seller and buyer (*aqidayn*) where both parties enter into the contract without duress or coercion and under voluntary terms.

II. *Sighah* in which both parties expresses their willingness to enter into the contract which forms the agreement itself. This indicates that there must be offer and acceptance (*ijab wa qubul*) from both parties. According to the Hanfi school of thought, offer and acceptance can be expressed in a manner where the first to express the agreement is accepted as *ijab* and the following conferment is acknowledged as *qabul*.

On the other hand, the Hambali school of thought approaches the issue in a more lenient manner as *ijab and qabul* is deemed to constitute *sighah* so long as it is indicated that a transaction of sale and purchase had occurred between the parties. Voluntariness is mandatory as expressed in Surah An-Nisa: 29, without which renders the contract void.

III. There must be the merchandise, i.e. the price and goods of the item involved in the transaction (*Ma'qudun Alaihi*). In the context of *Bay' al-Sarf*, the item must be in existence, have a value and parties have ownership to the item and the nature i.e. the value is known.

(B) Conditions of Bay' al-Sarf:

As such, the *Fuqaha* had devised several conditions in which to allow Bay' Al-Surf to flourish without the setback brought on by civil forex practice. There are specific conditions under Bay' Al Sarf in regards of currency exchange as listed in the following:

1. The occurrence of mutual assignment (*Taqabudh*).
2. Exchange must be done on the spot and deferment is not permissible.
3. The offer and acceptance is free of *Khiyar al-Syart̂*.

Firstly, there must be a mutual assignment *(taqabbudh)* occurs between the contracting parties. *Taqabudh* is an exchange, which occurs on the spot for both contracting parties without delay. Thus, in order for a transaction to be valid under *bay' al-sarf*, there must be a spot exchange in which *taqabudh* had occurred in the process before the contracting parties part ways.

Otherwise, the transaction itself is void in the eyes of *Syariah* law. According to Ibn Al-Mundhir (1999), the *fuqaha* had reached a consensus whereby an exchange without a spot assignment i.e. both parties part ways without going through *taqadbudh* shall render the contract *fasid*. This is emphasised by Imam Nawawi (1392H) whom incorporated the words of Prophet Muhammad s.a.w i.e. '*yadan bi yadin*', which make spot exchange a mandatory requirement despite the different nature of items exchanged.

In forex context, the rationale is to avoid *riba*, which would occur if deferment is allowed due to the volatile fluctuation of a currency's value triggering a loss on one party against the other. According to the Hanafi, Hanbali and Syafi'e sect, the *taqadbudh* period is as long as both the buyer and seller do not part ways and is physically involved in the transaction (*iftiraq bi abdan*).

Secondly, the main condition which is essentially the core of *Bay' al-Sarf* is that where paper money or *fuloos* is involved, the exchange must be done on the spot and deferment is prohibited. Majority of the *fuqaha* had agreed that exchanging items of the same genus, i.e. currency for currency may take place on a spot basis. However, the rules to which applies to gold and silver as in the Hadith narrated by Abu Bakra (r.a.) should be applied.

Majority *fuqaha* had agreed that the rules applied to gold and silver should also be applicable to currency in accordance with the conclusion from Academic Resolution of the *Fiqh* Conference OIC Resolution No.9 in 2002. In the context of Islamic forex exchange, credit purchase in prohibited under the Hadith narrated by Abu Al-Minhal (r.a) on money exchange.

Forward Exchange and Wa'd Mulzim:

Conversely, forward exchange or '*hedging*' is an essential instrument where both parties agree to exchange two chosen currencies at a precise time in the future. The instrument is vital in order to protect buyers from currency price fluctuation. However, the uncertain nature of the practice is obviously breaching the pillars under *Bay' al-Sarf*. Thus, majority *fuqaha* agrees that forward exchange should not be permissible under *Bay' al-Sarf*. Nonetheless, the Syariah Advisory Council of Bank Negara had devised a scheme known as *Wa'd Mulzim* to enable forward exchange to be *syariah* compliant under *Bay' Al-Sarf*. *Wa'd Mulzim* essentially binds the promisor to make a statement to the other party on his voluntariness to bear the risk of breach of promise in the future.

Wa'd Mulzim limits the loss suffered by parties due to inequality of currency value and is an alternative of sorts to allow *hedging* without breaching the pillars of *Bay' Al-Sarf*. The practice of *Wa'd Mulzim* under *Bay' Al-Sarf* has is currently a requirement imposed by Bank Negara subsequently allowing a more efficient and innovative Islamic forex trading in Malaysia. It must be noted, however, that *Wa'd Mulzim* is only permissible under situations where it is used as a 'shield' to protect the interest of contracting parties.

It must not be misunderstood as a gateway to allow abuse of forward exchange under *Bay' al-Sarf*, which is prone to the exposure of *riba* thus cancelling the instrument of *al-Sarf* as a whole. Unfortunately, *wa'd* is an approach which is more practical at a corporate level. There is still much amendments to be necessitated in order to incorporate the mechanism under *Bay' al-Sarf*. As such, it is almost as though the incorporation of such an approach may give rise to a new age hybrid system Islamic banking product of *wa'd* and *aqd*.

Contract Free of Khir al-Syart:

Khir al-Syart is an option stipulated in a contract conferring parties to a right whether to proceed with the contract or to forgo it within a pre-agreed time. *Khir al-Syart* is detrimental in a contract of currency exchange as it corrupts the acceptance*(qabul)* which is the main pillar of *Bay' al-Sarf*. A contract becomes mandatory once *sighah* has been fulfilled.

The occurrence of *Khir al-Syart* impedes the performance of *taqabudh* in a contract, thus rupturing the conditions stipulated under the principles of *Bay' al-Sarf*. According to Imam Al-Kasani of the Hanafi school of thought, a contract with *Khir al-Syart* is rendered void no matter how nominal the term is. However, only the Hanafi school of thought expressly imposes the condition of prohibition of *Khir Al-Syart* under *bay' al-Sarf*. Majority of the *fuqaha* are of the opinion that the condition itself is optional as the first and second condition to application of *Bay' al-Sarf*, i.e. *taqabudh* and spot exchange is an implied condition of the prohibition of *Khir al-Syart* in contracts.

In short, majority of the *fuqaha* are in agreement that mutual assignment (*taqabudh*) and spot exchange forms the basis of requirement for *Bay' al-Sarf*. The prohibition of *Khir al-Syart* in a contract, though emphasised by the Hanafi School of thought, is also conferred by the rest of the *fuqaha* in a more subtle manner.

Consequently, *Bay' al-Sarf* threads the thin line between *riba* and trade of currency in a modern context. The wisdom of scholars in devising ingenious principles to adhere to *Syariah* compliant environment in forex exchange is a field, which is constantly in need of further innovative approaches. The pillars and conditions of *Bay' al-Sarf* is hence formulated to allow an exchange of currency without the involvement of *riba*, while making the product itself permissible under *Hukm Syariah*.

Fatwa For Forex:

It is well known that *ijma*, i.e. consensus of jurists, is a secondary source of Islamic law. In modern governance, *fatwa* committee is set up to collect opinions of a group of scholars learned in Islamic law and make rulings for contemporary issues. In Malaysia, each state has its own *fatwa* committee and the National *Fatwa* Committee is at the federal level.

It must be noted that the authoritative opinions of the Organisation of the Islamic Conference International Islamic *Fiqh* Academy will usually be followed by the Malaysian *fatwa* committees. Thus, the rulings of the Academy on currency trading shall also be scrutinised under this section in order to study *Shariah*-compliance issue of such trading in this country.

Fatwa of OIC Islamic Fiqh Academy:

The dispute on paper money is settled during the third session of the OIC Islamic *Fiqh* Academy in October 1986. In Resolution No. 21, paper money has the same effect as gold and silver, and thus all rulings for gold and silver shall be applicable on the paper money. This in effect makes paper money a *ribawi* item, whereby currency exchange can only be done on the spot. However, the discussion on *Bay' al-Sarf*, i.e. contract of exchange of money for money, had been delayed due to lack of detailed study.

During the sixth session in March 1990, in Resolution No. 53/4/6, currency trading was briefly discussed in the context of possession. Traditionally, possession of something means that it must be physically tangible. However, a sum of money in a saving account of a bank does not fit in literally into this interpretation. It was in this Resolution that possession was interpreted to include constructive possession. As such, a person may make a currency exchange standing in his own account because he possesses the money even though he does not physically having it. One point in this Resolution is that if the transaction has to take some time to be completed, such delay is acceptable.

During the seventh session in May 1992, in Resolution No. 63/1/7, two modes of transaction had been agreed to be permissible for currency trading. The first mode involves a contract where one seller who validly possesses the sold merchandise performs immediate delivery of it to the buyer and the later makes immediate payment of its price to the former. The second mode involves a contract where the immediate delivery of goods and immediate payment are made with the guarantee of the market authority.

During the eleventh session in November 1998, in Resolution No. 102 (5/11), all rulings above were reaffirmed. Moreover, deferred sale of currency and predetermined date for exchanging currency are ruled to be prohibited. The Academy recommended that the government should regulate trading currency so that it is in conform to *Shariah* principles in order to avoid financial crises and economic fluctuations.

Fatwa of Malaysian National Fatwa Committee:

The Malaysian National *Fatwa* Committee has addressed the issue of currency trading in its 98th Discourse of the Fatwa Committee. In this ruling, it was affirmed that currency is a *ribawi* item. As such, *Bay' al-Sarf* should fulfil the general conditions of sales and purchase as follow:

(1) The contracting parties must be qualified to perform the contract;

(2) The purchase price must be made known to the contracting party;

(3) The goods must be in existence, owned by the selling party, and transferrable; and

(4) The offer and acceptance must be valid (*sighah*).

The Committee laid down three additional conditions for *Bay' al-Sarf* as follow:

(1) The two contracting parties must possess the items exchanged before they separate;

(2) The exchange must take place on the spot and cannot be deferred; and

(3) The offer and acceptance must not involve any optional condition.

Naturally, such contract must also be free of *riba* (usury), credit term, gambling, *gharar fahish* (excessive uncertainty), oppression or exploitation.

The Committee went on find that individual spot foreign exchange electronic transactions involve *riba* as they charge rollover interest, credit term by way of leverage, gambling as the parties do not possess the currency, and *gharar fahish* as the terms are ambiguous. Therefore, such transactions were ruled to be prohibited.

Nonetheless, *fatwa* rulings in Malaysia have no direct legal effect even though they are well respected by the Muslim community. As such, the government will have no authority to punish any Muslim who has gone against any fatwa ruling unless it has been enacted into written law. Hence, it is necessary to look into the Malaysian written law to see how foreign exchange is regulated for *Shariah* compliance.

Conclusion:

There are divergent perspectives by different scholars on the permissibility of the currency exchange trading. Some scholars strongly oppose to it. More conservative ones even reject the use of paper money. Nevertheless, it is of great public interest (*maslahah mursalah*) that such practice should be permissible, as otherwise it will pose great difficulties for the modern business to take place. Taking into account of rapid globalisation and economic growth, currency trading is almost inevitable. Therefore, currency trading should be permissible under the Islamic law.

However, that does not mean that all conventional practices of currency trading are permissible under the Islamic law. Currency trading in the context of Islamic banking must be conforming to the *Shariah* principles. In Malaysia, this is currently managed by the SAC of the Central Bank of Malaysia. Various products of currency trading in nature had been proposed by various Islamic financial institutions and being approved to be *Shariah* compliant. It is foreseeable that there will be more *Shariah* compliant products in currency trading as a result of the creativity and innovation of the product engineers in the Malaysian Islamic banking industry.

REFERENCES

‘Abdullah Yūsuf ‘Ali, 2007. *The Holy Qur’ān: Text and Translation*. Kuala Lumpur: Islamic Book Trust.

‘Amir ‘Abd al-‘Aziz, 1999. *Fiqh al-Kitab wa al-Sunnah*, j.2, Kaherah: Dar al-Salam.

Asmatullah, 2013. *Money and its Usage: An Analysis in the Light of Shariah*. (E. Surfraz, Ed., & O. Javaid, Trans.) Karachi: Darul-Ishaat.

Azlina Ahmad, Hailani. M. Tahir, Shofian Ahmad and Mat Noor Mat Zain, 2012. Kontrak Hadapan Mata Wang Asing Menurut Islam Sebagai Mekanisme Lindung Nilai: Analisis Penggunaan Wa’d. Islamiyyat, pp: 33-43.

Bank Negara Malaysia, 2010. *Shariah Resolutions in Islamic Finance* (2nd ed.). Retrieved from http://www.bnm.gov.my/microsites/financial/pdf/resolutions/ shariah_resolutions_2nd_edition_ EN.pdf 137.

Al-Buhuti, 1982. *Kasyf al-Qina’ ’an Matn alIqna’*, j. 3, Lubnan: Dar al-Fikr.

Hasan, Z., 2006. The Effectiveness of the Legal Framework of the Islamic Banking System in Malaysia, National Seminar In Islamic Banking and Finance, Islamic Science University of Malaysia.

Ibn Humam, 1970. *Fath al Qadir*. Kaherah: al Halabi.

Islamic *Fiqh* Academy, 2000. *Resolutions and Recommendations of the Council of the Islamic Fiqh Academy 1985-2000*. Jeddah: Islamic Development Bank.

Al-Kasani, 1998. *Bada’i al-Sana’i Fi Tartip al Syara’i’*, j. 2, Beirut: Dar Ihya’ al-Turath al-‘Arabi.

M. Zarra Nezhad, 2004. A Brief History of Money in Islam and Estimating the Value of Dirham and Dinar. Review of Islamic Economics, 8(2): 51-65.

Muhammad Ibn Ahmad al-Ansari al-Qurtubi, 1993. *al-Jami’ li al-Ahkam al-Qur’an*, j. 3, Beirut: Darul Kutub al-‘Ilmiyah.

Muhammad Ibn Ahmad al-Qurtubi, 1998. *Bidayah al-Mujtahid wa Nihayah al-Muqtasid*, j. 3, c. 2, Beirut: Dar al-Ma’rifah..

Ibn al-Mundhir al-Naysaburi and Ibn Muhammad Hanif, 1999. *Al-Ijma’*, 2nd edn., Ajman: Maktabat al-Furqan.

National Fatwa Committee, 2012. Hukum Perdagangan Pertukaran Matawang Asing oleh Individu Secara Lani (Individual Spot Forex) Melalui Platfom Elektronik. Retrieved from http://www.e-fatwa.gov.my/fatwa-kebangsaan/hukum-perdagangan-pertukaran-matawang-asing-oleh-individu-secara-lani-individual-sp.

Nuarrual Hilal, & Sharifah Zubaidah, 2010. *Shariah* and Legal Issues in the *Bay’ Bithaman-al-Ajil* (BBA): A Viewpoint. Malayan Law Journal, 6, lxxv

Nurdianawati Irwani Abdullah, 2010. Status and Implications of Promise (*wa’d*) in Contemporary Islamic Banking. *Humanomics*, 2: 84-98.

Sahih Al-Bukhari, Sales and Trade, 3: 34.

Sahih Muslim, *The Book of Musaqah*, Book 10.

Sanep Ahmad and Mat Noor Mat Zain, 2012. *Bay’ Al-Sarf* Menurut Pandangan Ibn Taymiyyah dan Implikasinya ke Atas Urus Niaga Barangan Kemas dan E-Gold. Ulum Islamiyyah Journal, 8: 17-39.

Sunan an-Nasa’i, *The Book of Financial Transactions*, 5: 44.

Syed Adam Alhabshi, 2010. The Role Of Money In Islamic Banking And Finance. *Current Law Journal (Syariah Reports)*, 1, liii.

Wahbah al-Zuhayli, 1995. *Usul al-Fiqh al-Islamiy*, juz 1, Damsyik: Dar al-Fikr.

Wan Arfah Hamzah, 2009. *A First Look at the Malaysian Legal System*. Shah Alam: Oxford Fajar.