

LEGAL ASPECT OF 'GOLD FARMING' ISLAMIC BANKING PRODUCT

Ibrahim Siregar

STAIN Padang Sidempuan
Jl. Imam Bonjol Km. 4,5, Sihitang, Tapanuli Selatan, Sumatera Utara
E-mail: sumper_mulia@yahoo.com

Abstrak. *Aspek Hukum Produk Perbankan Syariah "Berkebun Emas".* Perbankan syariah dapat berkembang dengan cepat melalui inovasi produk berbasis pasar. Inovasi produk ini harus sesuai dengan aturan yang ditetapkan dalam hukum Islam. Konsep kontrak dalam Islam harus memperhatikan tiga aspek, yaitu: hukum substansi kontrak, hukum sesuatu yang berkaitan dengan substansi kontrak, dan kejelasan kontrak. Sebuah kontrak menjadi tidak valid jika terjadi *ta'alluq* (ketergantungan antara 2 kontrak atau lebih) dan *shafqatayn fi al-shafqah* (ketidakpastian yang timbul dari kontrak ganda). Artikel ini menjelaskan bahwa produk 'berkebun emas' yang ditawarkan oleh bank syariah melanggar prinsip-prinsip kontrak dalam Islam. Produk ini harus dimodifikasi lebih lanjut agar sesuai dengan aturan kontrak dalam Islam.

Kata kunci: hukum Islam, hukum ekonomi syariah, hukum perbankan syariah

Abstract. *Legal Aspects of 'Gold Farming' Islamic Banking Product.* Islamic banking can progress quickly through market-based product innovation. This product innovation must be in accordance with the rules laid down in Islamic law. The concept of contract in Islam should pay attention to three aspects, namely: the substance of contract law, the law that is related to the substance of the contract, and contract clarity. A contract becomes invalid if *ta'alluq* (dependence between two or more contracts) and *shafqatayn fi al-shafqah* (uncertainty arising from multiple contracts) occurs. This article explains that the 'gold farming' products offered by Islamic bank violate of the principles of contract in Islam. This product should be the modified further to accord with the rules of Islamic contract.

Keywords: Islamic law, Islamic economics law, Islamic banking law

Introduction

To develop rapidly, Islamic banks need to create appealing, competitive, and profitable product innovations with the goal of making Islamic transactions easier. These products should be market-oriented to attract customers from conventional banks and to compete in the national banking market. Product innovation is not merely copying conventional or foreign banking products, but is the attempt to dig and develop creatively contemporary *fiqh al-mu'amalah* (Islamic business jurisprudence) concepts using the tools of *ushûl al-fiqh* (principles of jurisprudence), *qawâ'id fiqhiyyah* (methods of jurisprudence), *târîkh tasyrî'* (early Islamic legal formation), and its *falsafah* (philosophy), as well as *maqâshid al-syarî'ah* (objectives of Islamic law). *Ijtihâd insyâ'î* (unprecedented legal opinion) and *ijtihâd intiqa'î* (previous legal opinions selection) methods are key to these product innovations.¹ However, current demand-

driven profit-oriented product innovation seems to be problematic from the viewpoint from Islamic law. There are new products which needs a comprehensive review viewed from the concepts of *fiqh al-mu'amalah*. 'Gold farming', for example, is one such product.

Definition of 'Gold Farming'

'Gold farming' is the name of a product offered by Padangsidempuan City Syariah Mandiri Bank. Similar products are offered at other banks, all intending to attract customers to invest in gold. Bank act as intermediary, buying, or selling gold on behalf of customers. Profit is obtained from the increase in future gold price. Details are as follows:²first, bank as buyer of gold. Bank main role is to act as intermediary between capital-rich and capital-poor customers in acts of investment. In the practice of gold farming, bank is the mediator or customers who wish to purchase gold.

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¹ Agustianto and Azhari Akmal Tarigan, *Inovasi Produk Perbankan Syariah dan Aspek Pengembangan Fiqh Muamalah*, this article is

presented in Forum Riset Perbankan Syariah III in Medan on 2011, p. 421.

² This definition of 'gold farming' is obtained through interview with the Padangsidempuan Bank Syariah Mandiri Branch Head on 26 November 2011.

In practice, customers buy gold not to own it but to profit from its future higher price. Bank provides the necessary funding through *qardh* (benevolent loan) mechanism, paying 85 percent of gold total price, with the customers paying the remaining 15 percent.

Second, bank as safekeeper of gold. Beside buying gold, bank also safekeep purchased gold in the expectation of gold price increase. Bank charge customers for this safekeeping through *wadi'ah* (deposit) mechanism. This charge, called *ujrah* (service charge) is paid for the bank's duty of monitoring gold market price. As the purchase of gold by customers is to obtain profit due to gold price future increase, bank monitors this price continuously and inform customers when there is a change in gold price. Customers would then tell them if they wish to sell or maintain the gold.

Third, profit calculation for customer and Islamic bank.³ When purchasing gold, bank uses the following formula:

$$T_{HE} = J_E \times H_{E0}$$

where:

T_{HE} = Total gold price

J_E = Gold amount

H_{E0} = Gold market price at the time of purchase

The formula of total gold price bank must pay:

$$H_B = J_E \times H_D \times P_B$$

where:

H_B = Bank purchase price

J_E = Gold amount

H_D = Base price set by bank

P_B .. = Percentage of gold price paid by bank (85 percent)

The formula of total gold price paid by customer:

$$H_N = J_E \times H_N \times P_N$$

where:

H_N = Customer purchase price

J_E = Gold amount

H_D = Base price set by bank

P_N = Percentage of gold price paid by customer (15 percent)

Customer price due to gold price increase (*floating value*) is calculated as follows:

$$K_E = (H_j \times J_E) - H_n - U_j - Adm$$

where:

K_E = Customer profit

H_j = Latest gold price

U_j = *Ujra* or the safekeeping rate of gold by gram in two weeks (Rp. 3.000/gram and Rp. 6.000/gram/month)

Adm = One time contract administration fee

To illustrate, current gold price is Rp.510.000/gram, amount of gold purchased 1000 gram, total gold price 510.000 x 1000 gram = 510.000.000. If base gold price in Islamic bank is assumed to be 485.000 and the amount of gold purchased is 1.000 gram, the amount paid by Islamic bank is 485.000 x 1000 x 0,85 = 412.250.000. The customer pay 510.000.000 – 412.50.000 = 97.750.000. If gold price increased to Rp. 520.000, total profit is 520.000.000 – 510.000.000 = 10.000.000. Customer obtain a profit of 520.000.000 – 412.250.000. = 107.750.000, with initial capital of 9.750.000, which means a profit of 107.750.000 – 9.750.000 = 10.000.000. Safekeeping fee per month is 6.000 x 1000 gram = 6.000.000, administration fee 600.000. Hence total profit is 10.000.000 – 6.000.000 - 600.000 = 3.400.000.

The Concept of 'Aqd in Islamic Economics

Aqd in Arabic means promise, association, or agreement.⁴ *Aqd* binds two parties within the boundary of Islamic law and cause rights and obligations to arise between them. A more detailed definition is an agreement or commitment in verbal, gesture, or written forms between two or more parties causing binding legal implications.⁵ A similar meaning is the occurrence of *ijâb* (offer) and *qabûl* (acceptance) within the bounds of Islamic law effecting a legal influence on contract object.⁶ Hence, it can be concluded that '*aqd* is an agreement between two or more parties which cause legal rights and obligations to arise between them. *Aqd* in Islamic economics can be differentiated into two, there are *tabarru'* (donation) and *tijârah* (trade).

'*Aqd tabarru'* (donation contract) is non profit in nature. *Tabarru'* assumes mutual help not commercial profit in business transaction. In this case, there is to be no fee, only God will provide compensation. However, the one aiding could request transaction fee paid by the one aided.⁷In this situation, there are three general

³ This conclusion is obtained from an interview on 20 November 2011 with the Marketing Department of Padangsidempuan Bank Syariah Mandiri Marketing Department with certain modification by the author.

⁴ Direktorat Perbankan Syariah, *Kamus Istilah Keuangan dan Perbankan Syariah*, (Jakarta: Bank Indonesia, 2006), p. 62.

⁵ Muhammad Salâm Madkûr, *Al-Madkhal al-Fiqh al-Islâmî*, (T.t.p.: Dâr al-Nahdhah al-'Arabiyyah, 1963), p. 506.

⁶ Mohammad Hidayat, *An Introduction to The Sharia Economic (Pengantar Ekonomi Syariah)*, (Jakarta: Zikrul Hakim, 2010), p. 322.

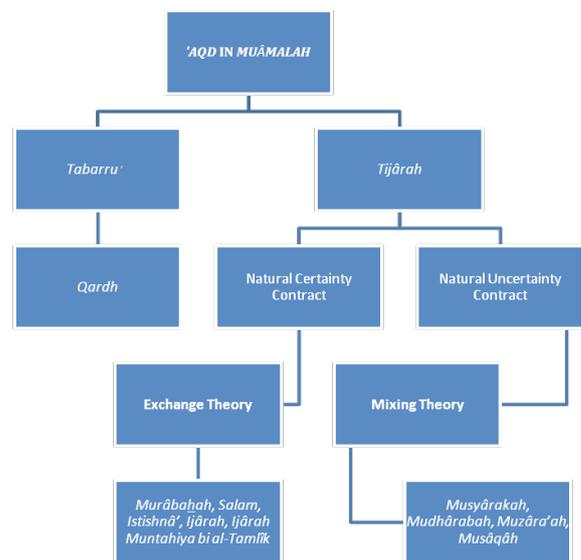
⁷ Adiwarman K. Karim, *Bank Islam Analisis Fiqh dan Keuangan*, (Jakarta: Rajawali Press, 2011), p. 68.

forms of *tabarru'*:⁸ (1) Money lending. Money lending without any condition aside from the return of the loan after a certain amount of time is called *qardh*. Money lending with security is called *rahn* (pawning). Loan take-over is called *hiwâlah* (debt-transfer). (2) Service provision. Any provision of expertise of skill for others is called *wakâlah* (power of attorney). Safekeeping services is called *wadi'ah*. Another variation of *wakâlah* is contingent *wakâlah*, when someone willing to do something on another's behalf if the condition is fulfilled, or if something else happens. (3) Gift giving. Included in this type is *hibah* (grant), *waqf* (benefaction), and *shadaqah* (alms).

Trade (*tijârah*) is for profit in nature, such as investment, buy and sell, or rent. In terms of result uncertainty, *tijârah* is divided into two, natural certainty contract and natural uncertainty contract. Natural certainty contract divided in two: (1) Buy and sell contract. A popular contract in current Islamic banking is mark-up buy and sell or cost-plus sale, such as *murâbahah* (deferred payment sale), *salam* (forward sale), and *istishnâ'* (commission to manufacture). *Murâbahah* (also called *bay' mu'ajjal*) refers to sale where the seller sells back to the buyer at a previously agreed higher price, with payment determined at a certain time, in cash or credit. The seller assumes risk of goods traded until they are handed over to the buyer. *Salam* is upfront payment of goods with predetermined time of goods exchange. *Istishnâ'* is seller (contractor) agrees to create (build) and hand over (construct) with predetermined price and date in the future. Like *salam* and *istishnâ'* is an exception of an Islamic general rule which forbids anyone from selling things they do not own. But, unlike *salam* the payment need not be upfront. Payment could be paid in installments to suit the wishes of parties involved in transaction, or part upfront and the rest upon agreement.⁹(2) Rent contract. *Ijârah* (leasing) could be used to finance vehicles such as cars, ships, and planes. *Ijarah* rents with transfer of ownership upon payment of the rest of the purchase through cash or credit (hire-purchase).

Natural uncertainty contract divide in: (1) *Musyâarakah* (partnership). *Musyâarakah* is an agreement between two or more parties. The parties contribute financially or physically, although the contribution need not be equal. *Musyâarakah* contract is similar to classical joint-venture mechanism. Both parties provide contribution

(such as asset, technical and managerial expertise, and money) and share result according to their agreement. (2) *Muzâra'ah* (crop-sharing). *Muzâra'ah* is crop sharing applied to a year of farming. According to Antonio, *muzâra'ah* is cooperation between land manager, land owner, and land laborer, where land owner hands the land to land laborer to be tended to. At the end of the year, the laborer would get a share of the harvest. In the context of Islamic financial institution, *muzâra'ah* financial assistance can be provided for customers owning plantation or agriculture businesses.¹⁰(3) *Musâqâh* (modified crop-sharing). *Musâqâh* is another simpler form of *muzâra'ah* where land laborer is only responsible for watering and maintaining the land. The return to the laborer is a share of harvest.¹¹



Prohibition in Mu'âmalah Contract

In *mu'âmalah*, a famous maxim is ‘everything is allowed except when prohibitive text exist,’ which means that all economic activities are permissible unless explicitly prohibited by Islamic law. In addition, Islam provides clear description of forbidden transaction: (1) Unlawful substance. In this case, transaction is forbidden due to the unlawfulness of the substance explicitly mentioned in Qur'an and Hadis, such as trade of alcohol and pork. (2) Unlawfulness other than the substance. The reasons for unlawfulness other than the substance: first, *tadlis* (deception). Every transaction in Islam is based on voluntary willingness of parties involved. They must possess the same information, such that no deception occur in these 4 aspects: quantity,

⁸ Adiwarmar K. Karim, *Bank Islam Analisis Fiqh dan Keuangan*, p. 68.

⁹ Zamir Iqbal dan M. Umer Chapra, *Pengharaman Bunga Bank; Rasionalkah?*, (Jakarta: SEBI, 2002), p. 1-18.

¹⁰ Syafi'i Antonio, *Bank Syariah Teori dan Praktek*, (Jakarta: Gema Insani Press, 2001), p. 9.

¹¹ Syafi'i Antonio, *Bank Syariah Teori dan Praktek*, p. 9.

quality, price, and delivery time.¹² *Tadlis* in essence is deception caused mainly by asymmetric information, where one or more party lack the information known to the other parties.

Second, *taghrîr* (uncertainty). Ibn Taymiyyah stated that *gharar* means *al-majhûl al-âqibatuh*¹³ (cause unknown). *Taghrîr* (*gharar*) occurs when there is incomplete information due to uncertainty from both parties involved in the transaction. *Gharar* occurs when something certain changes to something uncertain. *Taghrîr* is a condition where parties involved in the transaction are uncertain about their rights and obligations. *Taghrîr* comes from the Arabic root word *gharar*, which means effect, risk, and uncertainty. In *fiqh al-mu'âmalah*, *taghrîr* means performing actions blindly without adequate knowledge, or performing actions blindly without understanding the risk involved. According to Ibn Taimiyyah, *gharar* occurs when an involved party do not know in advance the end result of trade performed. Like *tadlis*, *taghrîr* or *gharar* occurs due to incomplete information. The difference is in *tadlis* only one party suffers incomplete information), whereas in *taghrîr*, all parties suffer incomplete information.

Third, *ribâ*. *Fiqh* text states that any addition to initial capital is *ribâ*. Muslims are forbidden to take *ribâ* in all its form. This prohibition is found both in Qur'an and Hadis. In chapter Âli 'Imrân [3]: 130 mentioned, "O you faithful, do not consume *ribâ* multiply and obey God for your own fortune". In chapter al-Baqarah [2]: 278-279 mentioned:

يَأْتِيهَا الَّذِينَ ءَامَنُوا اتَّقُوا اللَّهَ وَذَرُوا مَا بَقِيَ مِنَ
الرِّبَا إِن كُنْتُمْ مُؤْمِنِينَ ﴿٢٧٨﴾ فَإِن لَّمْ تَفْعَلُوا فَأْذَنُوا
بِحَرْبٍ مِّنَ اللَّهِ وَرَسُولِهِ ۗ وَإِن تُبْتَمِرُوا فَلََكُمْ رُدُّوهُ
أَمْوَالِكُمْ لَا تَظْلِمُونَ وَلَا تُظْلَمُونَ ﴿٢٧٩﴾

Fourth, *bay' najasy*. *Bay' najasy* or engineering market demand occurs when a producer generate false demand increase price of a product. Several hadis contains prohibition of *najasy* such as the one narrated by 'Umar R.a., that The Prophet has forbidden *najasy*". In addition, Ibn Aû Awf narrated that *najasy* fabricators commit *ribâ* and treason, *najasy* is deceptive and unlawful and fabricators rot in hell.

Fifth, *ihtikâr* (hoarding). Many translates *ihtikâr* as monopoly or hoarding, two very different concepts. In

Islam, natural monopoly is allowed, that is monopoly by a party who is the sole producer of a particular product. Also, not all hoarding are forbidden, for example, government-sanctioned hoarding to maintain price and supply stability. What forbidden is engineering supply to obtain above-normal profit, otherwise known as *ihtikâr*. In a hadis Imâm Ahmad and al-Thabranî as recorded by Ma'qal ibn Yasâr it is said that "Whosoever meddles with demand to increase commodity price will be set on bones of hellfire by God". *Ihtikâr* is performed by reducing supply and as such, according to economic law, its price will increase. Thus, *ihtikâr* is also known as supply/offer engineering. In economic theory, this is known as monopoly's rent.

Invalid Contract

A transaction not in *li dzâtihi* (prohibited because of the thing itself) and *li ghayrihi* (prohibited because of others factors) unlawful category does not make it lawful. A contract deemed incomplete or invalid can nullify a transaction, making it unlawful. A transaction is incomplete/invalid when the following elements exist: first, unfulfilled principles and requirements. A contract is deemed valid when principles and requirements are fulfilled. Principles are things that must be present in a transaction such as the existence of buyer and seller. Without buyer and seller there is no trade. In general there are 3 economics *mu'âmalah* principles:¹⁴(1) Actors could be buyer and seller (in buy and sell contract), lessor-lessee (in rent contract), or employer-employee (in work contract) and others. Without actors there are no transaction. (2) Transaction objects of the above contracts could be goods or services. For example, in car and house transaction, the objects of transaction are car and house respectively. Without transaction object, a contract is impossible. (3) Consent. Consent is vital in a contract. In *fiqh* terminology, consent is known as mutual agreement. All parties agree independently to come to an agreement. However, a contract could be voided if there are false objects, coercion, and deception.

Second, *ta'alluq*. *Ta'alluq* occurs when there are inter-related contracts, such as when the validity of contract A depends on contract B. For example, when A sells good X valued at Rp 120 million in credit to B, requiring B to sell the good X back to A cash for about Rp 100 million. The above transaction is unlawful, as there is a requirement of A selling good X to B on the condition that B sells the good back to A. In this case, the first

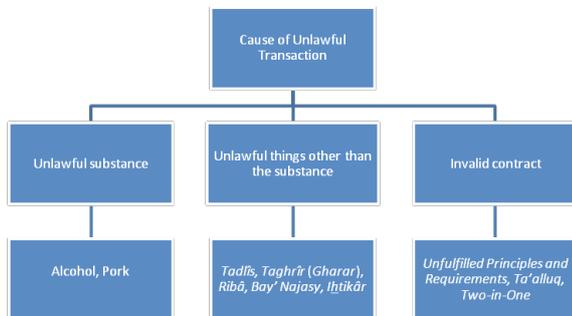
¹² Wiroso, *Jual Beli Murabahah*, (Jakarta: Universitas Islam Indonesia, 2005), p. 16.

¹³ Ibn Taymiyyah, *Al-Fatawâ al-Kubrâ*, (Beirut: Dâr al-Kutub al-'Ilmiyyah, 1987), Vol. V, p. 16.

¹⁴ Adiwarmân K. Karim, *Bank Islam Analisis Fiqh dan Keuangan*, p. 68.

contract is deemed valid when the second contract is agreed. The application of this requirement violates Islamic principles. In *fiqh* terminology, the above case is called *bay' al-'inah* (sale and buy-back agreement).

Third, "two-in-one". Two-in-one is a condition where a transaction is based on two contracts, such as there is uncertainty (*gharar*) to which contract is used. In *fiqh*, this condition is called *shafqatayn fi al-shafqah*. Abû Hurayrah and 'Amr ibn Syu'ayb reported that the Prophet had forbidden two separate transactions combined in an offer. The Prophet said that "A loan based on a trade transaction requirement is forbidden, nor can a loan be based on two related requirements in a transaction..." (H.r. Tirmidzî, Abû Dâwud and al-Nasâ'î).



Hybrid Contract

Hybrid contract or *al-'uqud al-murakkabah* (contract combination design) is necessary to accommodate current financial transactions as single contract would be unable to fulfill contemporary financial transaction.¹⁵ Eventhough Islamic law forbids two contracts in a transaction, this prohibition is not general and only specific for three problems: *bay'* and *salaf* prohibition, *bay'atayn fi bay'atayn* and *shafqatayn fi shafqatayn* prohibition. The first forbidden case is the combination of *qardh* and trade. This is based on the Hadis "Abû Hurayrah said that the Prophet forbids the combination of *qardh* and trade". (H.r. Ahmad).¹⁶ The second case, *bay' al-'inah*. The third case is the offer of two prices by one seller to one buyer. For example, good price is X, when paid cash Rp. 10 million, and when paid credit Rp. 12 million. The buyer accept (voice out *qabûl*) without first choosing the price. This kind of trade is forbidden due to price uncertainty (*gharar*).

Provision of *zhawâbith* (hybrid) contract are: first,

¹⁵ Agustianto and Azhari Akmal Tarigan, *Inovasi Produk Perbankan Syariah dan Aspek Pengembangan Fiqh Muamalah*, p. 438-440.

¹⁶ Imâm Abû 'Abd Allâh Ahmad ibn Hanab, *Musnad Ahmad*, (Beirut: Dâr al-Ihyâ al-Turâts al-'Arabî, 1414 H), Vol. II, p. 178 and Agustianto and Azhari Akmal Tarigan, *Inovasi Produk Perbankan Syariah dan Aspek Pengembangan Fiqh Muamalah*, p. 438-440.

forbidden due to religious text. The prohibition of combination of two trade contracts into one. This prohibition is due to a Hadis narrated by Mâlik that Abû Hurayrah said that The Prophet forbid two trades combined into one and from a Hadis narrated by Ahmad from Abû Hurayrah that The Prophet forbid trade and benevolent loan executed together.

Second, forbidden due to *hîlah* to *ribâ*. Trade in this category is *al-'inah*, forbidden due to its *hîlah* to *ribâ*.

Third, multi-contract causing *ribâ*. Every multi-contract causing unlawfulness, such as *ribâ*, is unlawful, even if the underlying contracts are allowed, such as combining *qardh* with gift promise. The combination of several contracts initially allowed but later was found to trigger forbidden actions will be deemed unlawful. An example is a *salaf* and trade multi-contract. A combination of *qardh* and gift/other benefit forbidden by Islam. Ulama agree to forbid *qardh* combined with a promise of more return, such as gift. For example, Ahmad lent money to Andi, requiring Andi to rent his house to Ahmad. This is forbidden.

Fourth, multi contract which causes *gharar* to arise. For example, a multifinance company sells a car to customer at a certain price such as Rp. 250 million paid in credit for 24 months with no initial downpayment. However, the company offers several downpayment alternatives. If the downpayment is paid in the sixth month, the total car price will be cheaper, then if it is paid in the thirteenth month, and so on. Hence there is no certainty in the total car price, which causes *gharar* to arise.

Problem Analysis

The practice of 'gold farming' raises several questions, there are: (1) Transaction speculative in nature such as depending on the increase or decrease of gold price allowed. (2) Can third-party fund from *qardh* be used for business purposes, as *qardh* is usually intended for the poor with no fee for their loan. *Qardh* usually comes from customer *zakât* (compulsory alms), *infâq* (giving), and *shadaqah* (alms) they paid as a requirement of worship, such as *hajj* (pilgrimage) fund. (3) Related to the excessive safekeeping fee when gold price decrease but customer must still pay a fee of 3000/gram per two weeks and 6000/gram every month. In this case, bank is never at a loss while customers do so. The principle of profit-and-loss sharing is violated.

Legal Aspect of 'Gold Farming'

Based on the above principles, the practice of 'gold

farming' at Islamic banks can be concluded as follows: first, qard fund is used for business purposes. It is found through discussion that the fund used to purchase customer gold was taken from *qardh* fund. A *fatwâ* by Islamic Law National Board (DSN-Dewan Syariah Nasional MUI) Number 19/DSN-MUI/IV/2001 on *al-qardh* stated that *al-qardh* fund could come from LKS capital share, leftover LKS profit, and fund from other institution or individual who trust their *infâq* funds to LKS. One of the sources of *qardh* fund (point c) is *infâq*. So, it should be distributed to *tabarru'* business. This is supported by Ibn al-Qayyim who stated that the Prophet prohibit multi-contract between *salaf* (loan/*qardh*) and trade to avoid being involved in *ribâ*. However, if the two contracts are separated (independent, *mu'allaq*) it is permissible. This opinion emphasise that *qardh* cannot be connected to any other contract as *qardh tabarru'* not business in nature.

Second, *ta'alluq* between *musyarakah* and *wadi'ah* contract. In 'gold farming' practice, customer and Islamic bank are involved in partnership to provide funding to buy gold. The capital proportion is 15 percent from customer and 85 persen from Islamic bank. Customer obtain profit according to gold price increase, while according to Islamic law it should be obtained proportional to the share between bank and customer.

On one hand, Islamic bank does not profit from gold selling price but on the other hand it require customers to pay a fee to safekeep the gold (*ujrah*) through *wadi'ah* contract while customer wait for the gold price to increase. The *ujrah* fee here depends on the selling period. If in two weeks the *ujrah* fee amounts to 3000/gram and between two weeks to a month the *ujrah* fee is 6.000,- /gram every month. Beyond one month the fee is multiplied by 6000/gram every month till the gold is sold.

In the case of *ta'alluq* in a contract indirectly the Islamic bank require gold to be safekept with it. Through the safekeeping the Islamic bank obtain profit from the fixed fee paid by customers for the time the gold safekept with the bank. In this case, there is a *hîlah* (pretext) towards *gharar*.

Third, *zhulm* (injustice) element in the case of profit and loss sharing. In the profit taking of gold selling price there exist an element of *zhulm* to customer. The gold price paid by Islamic bank is 85 percent of price fixed by Islamic bank, while the customer pay 15 percent. The price fixed by Islamic bank is usually under market price. This means that the Islamic bank has obtained a profit from the beginning, while the customer has not

obtained any profit.

Furthermore, if the gold price decrease the customer will suffer a loss. The Islamic bank does not suffer any loss and even obtain profit from administrative and safekeeping fee (*ujrah*). In this case, there no loss sharing as the bank is guaranteed a profit. According to Islamic law, profit and loss should be borne by both customer and Islamic bank.

The principle of *musyarakah* is business sharing profit and loss. When the price of gold increase, the profit seemed to be given only to the customer with the Islamic bank obtaining no profit. However, the bank do profit from the fixed *wadi'ah* based *ujrah* fee. This fixed fee will reduce customer profit sometimes even to a degree of loss, while the bank remain profitable through the *ujrah* fee. Ideally, the *ujrah* fee should be in line with the profit obtained from the result of gold sale. This means, the higher the profit the higher the *ujrah* fee obtained and vice-versa. The principle of profit and loss sharing is violated as the bank stay in profit while the customer make a loss when gold price decrease.

Fourth, speculative or *gharar* element. There exist a speculative element in the future sale of gold. The price of gold may not increase in a sudden, while if the price decrease the customer will definitely suffer a loss. In this case, both Islamic bank and the customer are involved in *taghrîr*, which is acting blindly without adequate knowledge, or taking risk or performing risky action without knowing its exact outcome or consequence. As Ibn Taymiyyah stated, *gharar* occurs when there is no knowledge of outcome in the end of a trade or business or trade activity.

The idea of justice in Islamic economics consider any uncertainty in quantity, quality, cancellation ability, or goods status in a contract as *gharar*.¹⁷ The rationally calculated game of chance in finance is often called speculation. Speculation even when calculated rationally will always contain uncertainty.

Fifth, hindering the growth of the real sector. 'Gold farming' encourages speculative transactions. These transactions are often done through the Internet. The high gold demand in these transactions does not contribute positively to the real sector. Instead it encourages gold accumulation which burden the economy.¹⁸ Gold is merely an investment to maintain value so our hard-earned income would not be devalued

¹⁷ Zamir Iqbal and Abbas Mirakhor, *Pengantar Keuangan Islam, Teori dan Praktek*. (Jakarta: Prenada Media Group, 2008), p. 88.

¹⁸ Saparuddin Siregar, *Mengembalikan Rahan Emas Sebagai Produk Tabarru'*, this article is presented in Forum Riset Perbankan Syariah III in Medan on 2011, p. 488.

by inflation. An ideal investment is cash investment in the real which could provide greater return than 'gold farming.' The accumulation resulting from gold farming reduces cash available to invest in productive sector and many assets of an economy will remain idle.

Closing Remarks

In the case of *ta'alluq* in a contract indirectly the Islamic bank require gold safekeeping with it. The safekeeping enables the Islamic bank to obtain profit through a fixed safekeeping fee.

Ideally, the *musyâraakah* principle requires profit and loss sharing. However, the in case of gold price increase profit is given to customer and Islamic bank seems to obtain no profit. However, the bank does profit through the fixed *wadi'ah* based *ujrah* fee. This fee may reduce the customer profit and sometimes put customer at a loss. The profit and loss sharing is ignored. Bank profits no matter what while customer suffer a loss when gold price decrease.

Speculation occurs in the wait of gold price increase, which is uncertain anyway. If the gold price decrease, the customer would suffer a loss, while the bank does not. Both Islamic bank and customer are involved in *taghrîr*, which is acting blindly without adequate knowledge, or taking risk or performing risky action without knowing its exact outcome or consequence. □

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