

Gold Investment Application Through Mudarabah Instruments in Malaysia: Analysis of Gold Dinar as Capital

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Abstract

Two common ways to invest gold in Malaysia, either physical gold investment or by way of opening gold saving account. Investing in physical gold can be done by means of buying and selling instrument. Meanwhile gold investment account can be done by means of buying and selling as well as mudarabah. Due to gold which is capital in mudarabah in E Qirad is in the form of dinar, while dinar is no longer considered as a currency, but dinar is a commodity. Therefore, the question arises whether dinar is valid either based on currency or commodity (*‘arud*). This study aims to determine the above mentioned position, and to study the profit of investing in E Qirad gold.

Keywords: gold investment, mudarabah instruments, gold dinar, Islamic investment, Islamic capital

1. Introduction

Gold has been mankind's obsession both female and male alike. It is one of the world's delight and attraction. Allah SWT says (al-Qur'an, Al 'Imran: 14) which means: "Love of lusts for women and children, hoarded heaps of gold and silver..."

Women have been turning gold into various types and forms of jewelry and beauty items that suit their taste and preferences or their partners' choice, keeping abreast with current development and the local *uruf*. Men on the other hand are often proud of their gold reserves as it reflects the best of savings surplus. Gold is a very special metal. Its attractive color and difficulty in obtaining it makes it valuable to mankind. Beside jewelry, gold is also the most ideal store of wealth. This is because it cannot be destroyed and will not lose value. Therefore, keeping gold as an investment is a very wise act.

According to the history of human civilization, gold is a metal that is widely used as money. The use of gold as money was first detected in 643 BC in Lydia. In times of trouble with paper money, people will look for other alternatives to substitute for money. Gold and silver are the best alternative. This is because both metals have been used as money (Louis Ng, 2009: 187). Men have been crazy over gold in the form of coins, gold bars or jewelry. History of men has also appraised gold as major currencies before the existence of fiat money. Besides, gold has also been used in the industries such as electronics. At present, gold is currently appraised as a commodity by the Muslim scholars. The nature of commodity is the upward and downward trend of price fluctuation (Louis Ng, 2009). Gold is a global tangible (physical) asset of limited supplies. Physical gold deposit or investment through purchase of physical gold has its advantages and disadvantages. Among them are (Louis Ng, 2009):

- 1) Leading store of wealth.
- 2) As investments – gold price increases from time to time.
- 3) As a wedding dowry.
- 4) As a Gift.
- 5) To pay zakat.
- 6) A valid medium of exchange in business transactions.

2. Literature Review

2.1 The Concept of Mudarabah

In Arabic, '*al-Mudarabah*' means a travel taken from the word *darb fi al-ard*. This is so due to the long journey taken by business traders in order to obtain goods, profits and the likes. Mudarabah is a lawful transaction in Islam having fulfilled the terms and conditions of *syarak* compliance. The concept of mudarabah refers to a mutual agreement between two parties, one is a financier of a capital (*sahib al-mal*) and the other, an entrepreneur or a business operator (*mudarib*), to enable the operator of a business to continue with his project based on profit sharing with ratio agreed there upon. However, in the event of a loss, it will be fully borne by the financier (Central Bank of Malaysia, 2010). In reality, mudarabah has been the practice of partnership since the days of the pagans until today.

2.2 The Pillars of Mudarabah and Its Pre-Conditions

The *fuqahas* are having inconsistencies in their opinions regarding mudarabah. The Hanafi sect states of mudarabah having only two pillars i.e. *ijab* and *qabul*. The sect of al-Shafii (al-Bujayrimi, 1951, 3:158) and the *jumhurulama* (majority of Muslim scholars) state of mudarabah of having six pillars namely:

- 1) Financier. Also known by the owner of fund that acts as a property owner investing working capital in a mudarabah business transaction. Indirectly, this transaction also involves the principle of *wakalah*. This is because the financier has entrusted to the entrepreneur his capital to effect expansion on his property. Being a Muslim is not a pre-condition for a financier. Therefore, it is legitimate to do businesses with a *kafir dhimmi* atau *kafirmusta'man*.
- 2) Entrepreneur. Entrepreneurs must know each other in a mutual contract between two parties lest the peril and probability of committing a fraud is high. An entrepreneur must be honest and skillful in administering an Islamic *muamalah* when dealing with a financier. In a misuse of capital for other purpose or the capital is destroyed due to negligence or willful destruction, it shall be the duty of the entrepreneur to fully replace the capital. BIMB has outlined rules and regulations that a capital owner must not take part in the project management but they can be monitoring and doing follow-ups on the business status (BIMB, 1984, 8).
- 3) Capital. It is one of the most important aspects of starting a business or undertaking a mudarabah investment for without capital there will not be a production. In the Islamic financial system, capital is categorized into cash and property. In an *akad* (contract), a venture capitalist (financier) and entrepreneurs must be attentive of the rate of amount and visual substance (*'ayn*). Capital involving money shall be delivered into the hands of the businessman on the spot and in cash before any transaction can take place. If the cash is delayed, thus the breach of mudarabah's *akad*. The intention of carrying out a project is likely to fail due to lack of start-up funds.
- 4) Work or projects. Covers all types of businesses allowed by *syarakat* any time.
- 5) Profit. All businesses seek for profit. Profit distribution rates are agreed at the time of *akad*. Mudarabah is not valid if the profitability of a project is determined by one party (BIMB, 1984: 92).
- 6) *Sighah* (*ijab* dan *qabul*). Agreement should be clear and in a language that is understood by both parties, written or verbal. The use of modern communication tools such as fax, computer, or internet is allowed to ensure efficiency in dealings of *ijab* and *qabul* (Shafii Antonio, 1999: 174).

This scheme is also known as *qirad* or *muqaradah*. The term mudarabah is the most often used term in Islamic banking. There are also varying translations used by many Master degree holders amongst which are the trust fund financing, trustees sharing equal profit, equal sharing of equity, and equal sharing of profit. The principle of mudarabah can be used in the Islamic banking system under two differing conditions, one between banks and capital providers and two, between banks and consumers seeking for funds (entrepreneurs). To capital providers, the bank acts as a *mudarib* and keepers of *rab al-mal*. Meanwhile, to consumers, the bank will be *rab al-mal* and entrepreneurs the *mudarib*. Although the capital investors are not exerting any effort for a return of yield on their investment, during that time they are preparing themselves for any risk of loss. If the investments bear fruit, then the investors will get back their capitals plus profits, but if there is a loss, then there will be no return on investments and most likely they will lose their initial capitals. Investment is one of the methods used by the Islamic banks to generate income. There are four categories of investments that can be undertaken by the Islamic banks i.e. to buy tradable securities such as stocks, bonds, government notes issuance and tradable certificates of deposit. Secondly, investments in subsidiary and associate companies, and last but not least, investment in real estates and others.

2.3 Gold Investment Based on Mudarabah Instruments

In view of the high gold value to mankind in general, Allah SWT has specified a special law for it in His *syariat*. Furthermore, many are taking advantage of its status through various manipulations to get quick profit and wealth in manifold. Therefore, Allah has laws that link gold to *riba* (usury). Any form of gold and silver transactions must comply with specific rules lest one might unintentionally fall into the practice of *riba*. In the Islamic financial system, the contract of *mudarabah* is normally applied in deposit takingssuch as current accounts, savings accounts and investment accounts. In addition, the *mudarabah* contract is also applied in inter-bank investments and the issuance of Islamic securities. In the *takaful* industry, the *mudarabah* contract is used as one of the model operations and investment basis for *takaful* fund. The fourth MPS meeting dated February 14, 1998 and the 59th meeting dated May 25, 2006 had decided that the *mudarabah* based current account product is *syarak*-compliance as long as it meets the requirements of *mudarabah*. (BNM, 2012)

The concept of gold investment in banking institutions in Malaysia though similar to the concept of opening of an account, it is not very different with the investment of physical gold since both apply the concept of buying and selling of gold. With this, the profit earned is based on the difference of market gold price. If the current gold selling price is higher than the purchase price, the person selling will then gain profits. But, if it is otherwise, he would prefer not to sell for he will incur a loss. At present, there are two financial institutions in Malaysia (Kuwait Finance House (KFH) and Al-Rajhi Bank) offering Gold Investment Account products allowed by *syariah* (*syariah* compliant product). Both banks transact in gold investment account based on the contract of *Bay' Sarf* where customers can buy and own physical golds in the bank. Conceptually, gold investment in Malaysia is divided into two categories: First, physical gold investments in gold bars, gold coins and gold jewelry. Second, gold account investment in banking institutions such as Maybank, Public Bank, CIMB Bank, UOB, Citibank and Kuwait Finance House, or any of the financial institutions and registered companies. Physical gold investment is done through the instrument of buy and sell. Whilst, gold account investment usually done through buy and sell and *mudarabah*. The application of *mudarabah* as a gold investment instrument is not so popular compared to buy and sell. This can be seen when only one or two institutions or companies offering products based on this instrument.

In Indonesia, gold investment has been pactised with gold dinar and was made official in 2008 by GeraiDinar operated by Muhaimin Iqbal (GeraiDinar owner and the President of Dinar Club, Indonesia). The gold dinar investment is based on the principle of *mudarabah* between the *mudarib* (GeraiDinar) and *sohibul al-mal* (investors). In the early stage of investment program, the *mudaribs* of GeraiDinar are the dinar minting companies or *wakalas* (agents) and Logam Mulia-PT Antam. Profit sharing is 50% - 50% between the *mudarib* and *sohibul al-mal*. This investment scheme receives good response among the Indonesians particularly from the companies associated with dinar dirham who tend to have the inclination to become *mudaribs* of the scheme (Muhaimin, 2009). In Malaysia, there are some institutions that offer *mudarabah*-compliance gold investment products which includes the company of E-Qirad Co. Ltd. and Melaka Wakala Foundation.

Meanwhile, E-Qirad Co. Ltd. is a subsidiary of Islamic Mint and is responsible for minting gold dinars in Dubai. E-Qirad Co. Ltd. has appointed *wakalas* throughout the world to conduct gold dinar investment (Zuhaimy Ismail, 2003; Umar Ibrahim Vadillo, 2002). E-Qirad Co. Ltd. was transferred to IGDx Holdings Ltd. and then was sold to Wellsafe Co. Ltd. in 2008. (Financial report IGDx, 2008). Customers who open a gold dinar savings account have the opportunity to participate in an investment called Islamic Hybrid Instrument (IHI). The minimum deposit required to participate in this investment is 25 Dinar for individuals, and 100 Dinar for companies and cooperatives (KPMJ Gold Limited, 2006).

Investors are offered two investment options offering attractive investment returns. Gold dinar investment is based on the principle of *mudarabah*. Examples of gold dinar investment run by Koperasi Permodalan Melayu Johor are as follows (KPMJ Gold Co. Ltd., 2006):

Option 1:

- 1) Capital and capital gains are pegged at the price of dinar purchased at the inception of the investment. This means that the price of investor's gold dinar will not change over the investment period. Investors do not have to worry about movement of world market price of gold.
- 2) Profit rate of 8% to 9% per annum (minimum estimate).
- 3) Investment period is 24 or 36 months.
- 4) Profit is paid in Malaysian ringgit per month. Profit is paid a month after investment's inception.
- 5) Investment capital will be returned upon the completion of investment in Malaysian ringgit.

6) Investment capital is guaranteed.

Option 2:

1) Capital and gains depend on current market price. Investor's dinar price vary according to the movement of current world market price of gold.

2) Profit rate is 11% per annum (minimum estimate).

3) Investment period is 12 months, 24 or 36 months.

4) Profit is paid in gold dinars per month and credited to the investor's dinar account with KPMJ Gold.

5) Investment capital will be returned upon the completion of investment in gold dinars.

6) Investment capital is guaranteed (value in Malaysian ringgit depending on the current market price of gold dinars)

2.4 Gold Investment in Singgahsana Emas Company Limited/ Melaka Wakala Foundation

Formerly known as the Malacca Energy Co. Ltd., established on July 27, 1995. Later, the company changed its name to Singgahsana Emas Co. Ltd. on May 6, 2004. Singgahsana Emas Co. Ltd. is a wholly owned subsidiary of Melaka Foundation with address at G-09, Plaza Usahawan, Jalan Hang Tuah, 75300 Melaka. Singgahsana Emas Co. Ltd. is also known as Melaka Wakala (WYM). Its office was inaugurated by the Chief Minister of Melaka, Y.A.B Datuk Seri Mohd. Ali bin Mohd. Rustam on July 23, 2004. Currently, the company has four employees, a manager, two Executives of Marketing and Administration, and one Executive of Accounting and Administration. (<http://www.yayasanmelaka.gov.my/malayversion/sysinggahsana.html>).

Melaka Wakala Foundation has been awarded the franchise from IGD Practice Co. Ltd. (604177-D), to promote and distribute Gold Dinar and Silver Dirham particularly in Melaka. The company's main goal is to promote and appraise the use of gold dinar in the international trade arena. It is not only limited to the business community, but is also open to individuals in particular, for zakat payment and wedding dowry. The company's vision in achieving its target for economic Dinar is as follows: -

1) Promote the use of Gold Dinar and Silver Dirham.

2) Sell physical Gold Dinar and Silver Dirham.

3) Recover and buy back of Gold Dinar.

4) Promote asset reserves in the form of Gold Dinar.

5) Promote Qirad (Mudarabah)

6) Manage opening of Dinar account

7) Manage Qirad participation.

The latest Qirad products offered by the Melaka Wakala Foundation is very similar to that of E-Qirad Co. Ltd. but with modification i.e. an Islamic Hybrid Instrument. Islamic Hybrid Instrument (IHI) is the latest product introduced by E-Qirad Co. Ltd. The IHI product launch is a substitute to the Qirad investment 3 and 4 which is now closed on May 18, 2005. The introduction of Islamic Hybrid Instrument (IHI) is a way forward by the management of E-Qirad in diversifying its gold-based products. IHI products are more geared toward diversity-based selection of gold such as necklaces, bracelets, earrings, brooches, rings and other forms of jewelry, special for women. (<http://www.carigold.com/portal/forums/archive/index.php/t-7782.html>).

Gold investment through an opening of gold account such as practised in Malaysia is based on mudarabah instruments. It is a very unique instrument as it clashes with the usual conventional form. It has been applied by the companies or cooperatives, such as Johor Malay Co-operative Societies (Koperasi Permodalan Melayu Johor) via E-Qirad Co. Ltd. The type of gold investment handled by the co-operative is gold dinar.

Having gold dinar as mudarabah capital may not raise syariah legal issues if the dinar is considered as a currency. However, it becomes an issue if it is otherwise i.e. the dinar is treated as a commodity or goods. Commodities or goods according to most *ulamas* (Muslim scholars) are other than dinar and dirham (al-Zayla'i, 1313H; Ayman, 2009). According to Hambali sect, goods are other than something of a price (money) whether animals, lands, clothes and all property (Ibn Qudamah, 1968).

The reality now is that dinars and dirhams at present have now become tradable commodities. This may be due to the gold content, which is no longer pure. Furthermore, gold and silver are also available in other forms and used in various transactions thus *khilaf* of the *ulamas* is on the originating laws of gold and silver (Mat Noor,

2009; Yaacob, 2014). With this, what is the law that makes mudarabah capital of gold dinar to be categorized as a commodity? Whilst *khilaf* of the *ulamas* disagreeing with it (Ayman, 2009). Therefore, Khalid Noorshah (2009, 172) states: "the *qirad* practiced was not in accordance to the *qirad* practiced in its pure form in the Islamic trading practices as defined by Shariah law." Therefore, the issue is appropriate to be discussed in order to identify its status which may clarify the *muamalah* of the societies.

3. Method

This is a qualitative study using the approach of library research approach and historical studies. Content analysis was used for data collection process. Meanwhile, the process of data analysis is carried out through the textual analysis method, evaluation of the law of resources and fiqh.

4. Results and Discussion

Investment made by E-Qirad Co. Ltd is based on mudarabah instruments. It is a capital investment from one party and an effort or business trade of another party. It is not a mutual capital sharing system. The project funder is called financier or *rabb al-mal* whilst the entrepreneur is called trader or participating agent manager (*amil* atau *mudarib*). Normally, *amil* is E-Qirad Co. Ltd. and *rabb al-mal* is the financier. Capital in mudarabah is the gold dinar or silver dirham.

The investment of E-Qirad is based on mudarabah in both its products. The consumers/investors assume gold dinar as capital in both products. This is allowed by the *mutakhir* (contemporary) *ulamas*, which is in tandem with the originating laws of *muamalah*. The Central Bank of Malaysia also chose this view. In terms of capital position of E-Qirad, product 1 meets the syariah requirements with not much disputes from the *ulamas*. According to *fiqh*, out of *khilaf* is highly recommended. However, in product 2, there are some things that involve *khilaf* of the *ulamas* on it. There are some features or basis of valuation of capital i.e. method of capital assessment, status of capital during investment, return of capital, capital guarantee, risk-based capital, and goodness-based capital.

From the way capital is assessed, product 1 meets the concept of mudarabah because capital and gains are pegged at the purchase price of dinar at the start of investment while for product 2, capital and gains depend on current gold price. Meanwhile, the status of capital during the investment period of product 1 is unchanged while for product 2, investor's gold dinar price changes according to the movement of current world market price of gold. The risk is high thus it is not unreasonable to expect high return of profits, but if the price of gold goes down then the damage is severe. In terms of return of capital, in product 1, capital investment will be returned after the completion of investment, in Malaysian ringgit, in the value of the Malaysian ringgit at the end of the investment period. This is in accordance with the basic concepts and principles of mudarabah, while product 2, Capital investment will be returned in the form of gold dinar after the end of the investment period when in fact the capital was diluted during the formation of the contract. At the same time, the two products have similarities in terms of capital properties and guarantee on return of capital. Similarities and differences of these two products of E-Qirad can be seen in the table below.

Table 1. Similarities and differences of E-Qirad products

| Basis of Assessment | Product 1 | Product 2 |
|-------------------------------------|--|---|
| Forms of capital | Gold dinar | Gold dinar |
| Valuation of capital | Capital and gains pegged at purchase price at the start of investment | Capital and gains depend on current gold price. |
| Status of capital during investment | Investor's gold dinar price unchanged during investment duration period | Investor's gold dinar price changes according to the movement of current world market price of gold. |
| Return of capital | Investment capital will be returned after the completion of investment in Malaysian ringgit. | Investment capital will be returned after the completion of investment in gold dinar. |
| Capital guarantee | Investment capital is guaranteed. | Investment capital is guaranteed (value of Malaysian ringgit depends on current market price of gold dinar) |
| Capital-based risks | Movement in world market price of gold has no effects on profit. | Movement in market price of gold reduce profit. |
| Capital-based benefits | Low profit. | High profit. |

4.1 Gold Dinar as Capital in Mudarabah

Capital in Mudarabah contract as practiced by gold companies in Malaysia are in the forms of gold dinar. Malaysia's first gold dinar was issued by the Royal Mint of Malaysia. (Utusan Malaysia January 22, 2008). Royal Mint Gold Dinar was launched on July 27, 2003 in Shah Alam. In addition, there is also the Kelantan Gold Dinar (DEK) inaugurated its application on May 21, 2006. ([Http://www.dinarkel.com/](http://www.dinarkel.com/)) DEK is managed by the Kelantan government under the Kelantan Golden Trade. The latest is Dinar Emas Public Goldin in November 2008 by Public Fine Gold International Co. Ltd. (Yaacob & Hailani, 2009; Yaacob, 2012). One dinar refers to 24 Karat gold coins (916 gold) weighing 4.25 grams. There are two types of gold dinar sold in Malaysia, Dinar Emas Public Dinar Co. Ltd. (a subsidiary of Public Gold), and Kelantan Gold Dinar. Gold dinar is sold at the international market gold price. Thus, price will vary. (Syukor Hashim 2010). This is based on the standards established by the Gold Dinar Council. One gold dinar is weighs 4.25gram while one dirham weighs 3 grams. Weight ratio between the two must be 10 dirhams equivalent to 7 dinars. Kelantan's dinars are offered in forms, laminated and non-laminated. According to Zeno Dahinden, the value of dinar and dirham is backed by 100% by physical gold and silver values (Yaacob & Ahmad, 2012). With this, dinars and dirhams at present are pure gold and silver. However, is it also considered as currency? It is true that during the time of Prophet Muhammad s.a.w. (peace be upon him), the currency is dinar and dirham but at the same time there is no clear authority from the Quran and Hadith that limits currency to only dinar and dirham. This has led to conflicts of issue between the old and modern scholars. Some are with the opinion that currency is only for gold and silver and there are some with the opinion that currency is not limited to gold and silver (Suzardi Maulan, 2012). Thus, the question arises of making gold dinar as an *akad* subject in a mudarabah contract, because capital in mudarabah as agreed by the *ulamas* is currency.

Dinar and dirham currency in Islam began during the era of Abdul Malik bin Marwan of the Umayyads empire by removing the image of Roman/Persian emperors and replaced with picture of the caliph, name and few Arab inscriptions to symbolize Islam. The use of currency continued to be used until the rule of the Ottoman empire.

In fact, Islamic dinar and dirham used since the rule of Abdul Malik bin Marwan is actually a modification of the dinar and dirham of the Romans/Persians. The outer physical form is different from the ones used during the time of Prophet Muhammad s.a.w. (peace be upon him). During the ruling of Salahudin al-Ayubi, there was a crisis of gold supply due to war, and only dirhams were used. Consequently, the Empire of al-Mamalik used *fulus* and this was followed by the Ottoman empire with the use of paper *fulus* based on gold standard. During the economic downturn of 1880, the Government of Ottoman Turks issued gold-based fiat Lira currency.

Subsequently, in 1914 the Turks declared their acceptance of the new financial system based on paper money (*umlaḥwaraqīyyah*) as used in other country in other parts of the world. Thus ended the era of dinar and dirham from any transaction in the world (Sanep, 2010). The gold dinar and silver dirham in existence at present is an effort to re-establish gold and silver as currency. But whether that can change the situation.

Most today's scholar and experts of gold dinar say that gold dinar is not yet a currency and neither it is a backed currency. In 1971, Richard Nixon changed the system of the American currency and beginning that, gold no longer have a direct role in currency policies (Suzardi Maulan, 2012). Thus, it is a commodity traded in the world market (Syukor Hashim, 2012). It is a commodity assumed as an alternative currency as having a guaranteed and stable intrinsic value in doing business compared to the contemporary currency. (Cari Gold Forum, 2006; See Louis Ng, 2009). Umar Azmon (2002) also acknowledges that it is a valuable and strong commodity and has the potential to increase in value.

With this gold has changed its function from being a currency to a commodity traded for profit. When it becomes a commodity, investment principle is applied like in other commodities such as sugar, palm oil and petroleum in an instance is equal to gold investment (Suzardi Maulan, 2012). There are two schools of thought related to 'gold'. One group that fights for gold as a currency. The other sees gold as a commodity that can be traded and invested. For those who say that regardless of whether the dinar or gold bars is a currency, the ruling is clear that is to have gold dinar as *mudarabah* capital. This is based on the originating law of *mudarabah* capital that is mainly of the currency, i.e. the dinar and dirham. However, the ruling position is not in line with today's reality as most gold investment experts say that gold dinar is a commodity. Most *ulamas* do not require it to be the *akad* of *mudarabah* contract due to *gharar*, thus huge changes in the price value. However, that position is not absolute because the *ulamas* are still with *khilaf* on the legal aspect of gold for *mudarabah*. The opposing *ulamas* are the ones claiming that *mudarabah* capital should be only in the form of currency (*naqdan*) that can be of price, thus it cannot be in the form of goods or in-kinds. It is the view of the *jumhur ulamas* of definitive view of the Hanafi sect (al-Kasani, 1982; Ayman, 2009)

According to a number of *ulamas*, *mudarabah* capital may either be in the forms of currency and in-kinds. It is the choice of Abu Bakr and Abu al-hattab of the Hambali sect. Ibn Taymiyyah and Ibn Qudamah both having this opinion. This is the view of al-Awza'i, Hammad bin Abi Sulayman, Ibn Abi Layla and Tawus. This opinion originated from Ibn Sirin, al-Thawri, Ishaq, and Abu Thawr (Ibn Qudamah, 1968; al-Sarakhsi, 1989). The reason to oppose is due to the aspect of *gharar* causing market price to change. Rising in price of goods will exceed capital and reduce profits, causing *mudarabah* operators to work in vain. If prices fall then the operators will consume capital. (Al-Mawaq, al-Taj wa al-Iklil)

The enabling *dalil* (evidence) is - that the goal of the company is imperative for both sides to effect transactions on the company assets and any gain divided between them. This can also effect goods as how it effects the currency being capitalized. On expiration of contract, both parties will refer back to the contract and the value of goods during the inception of *akad*. It is the same position as in the case of effecting *nisab* for zakat on business products based on its valuation. (Ibn Qudamah, 1968). Given the originating principle of actions and transactions are lawful according to the *jumhur ulamas*, one should not go further in looking for *dalil* that permits it, but instead to concentrate looking for *dalil* that forbids it. Given that there is no authentic *nas* (texts) to forbid *mudarabah* with goods or in-kinds thus it supports the original principle (Ayman, 2009).

Whilst *dalil* of the first group opposing is answered by saying that consideration would be on the price of goods during contract formation. Therefore, the rise and fall in price after that will be considered as profit or loss and are bound by the same laws, (Ayman, 2009) thus it cannot be said that the operator's work is in vain because it is normal that there'll be profit or loss in *mudarabah*. Similarly, it cannot be said that operators are consuming capital when price goes up because that would be a profit.

In the context of *gharar*, both parties agree that can be excused because both parties know the likely rise or fall in market prices. It coincides with the concept of acquisition which is in line with the concept of risk incurred. With this, there is no barrier in making the dinar as *mudarabah* as was done by E-Qirad in both of its products. This stance has also been adopted by the Central Bank of Malaysia as specified in the 'Shariah Standard on *Mudarabah*' which reads:

11.4 *Mudarabah* capital may be in the form of cash or in-kind which may include intangible assets.

However, goods or other things made into a capital shall be evaluated based on the current valuation in local currency or currencies both mutually agreed. This position is consistent with the choice of product 1 offered by E-Qirad Co. Ltd., i.e. the capital and profits are pegged at the dinar price acquired in the initial investment (E-Qirad Co. Ltd., 2006). Meanwhile, in product 2, the dependence of capital and profits on the current market

price invites some confusion. This is because in *mudarabah*, valuation of the price of goods shall be made at the contract formation stage, whereas in this case the valuation is done from time to time, but the contract is done only once. Investor's *dinar* prices vary according to the world current market price. The answer to this problem may be because profit is paid in Malaysian *ringgit* on monthly basis (E-Qirad Co. Ltd., 2006). This means that every month *mudarabah* contract will be reevaluated and adjusted according to movements of the current gold price. Perhaps also it can be analogous to first time rental contract whilst rentals are paid monthly. In other words, *akad* will be renewed each time it expires based on local practice. The needs for assessments is also mentioned in the 'Shariah Standard on *Mudarabah*' by the Central Bank of Malaysia but it is also stated that the assessment should be done by a third party:

11.5 Capital in-kind shall be valued based on the valuation determined by a third party which may include experts, valuers or as agreed upon by the contracting parties at the inception of the contract.

Capital will be returned to the financier plus profit (if any) upon completion of the investment. In the event of a loss, then it is deducted from the capital. This is the basic principle of *mudarabah*. In this context, the amount of capital returned to investors after deducting the losses are in the form of currency, neither gold *dinar* nor in-kinds. Referring to the case of E-Qirad, it may be appropriate in the first product where the investment capital will be returned in the value of the Malaysian *ringgit* at the end of the investment period. But in the second product, it is stated that upon completion of the investment, capital will be returned in the form of gold *dinar* at the end of the investment period (E-Qirad Co. Ltd., 2006). This is contrary to the original principles of *mudarabah*. The return of investment in *dinars* can occur if it is in the requirement and if there is a mutual consent. This stance is based on the *hadith*: "المسلمون على شروطهم" which means, "The Muslims are bound by mutually agreed terms."

However, the returned *dinar* should be reduced in the event of a loss. But what is promised by E-Qirad is different because what is returned is of the same amount as the initial investment. This stance can occur if there is a guarantee in the contract. This stance can occur in both of E-Qirad products. *Ulamas* are with *khilafon* the capital guarantee in *mudarabah*. Nevertheless, most *ulamas* agree if the guarantee is effected by a third party who has no association with the entrepreneur. Therefore, capital guarantee in both E-Qirad Co. Ltd. products is subject to the mentioned resolution even though the company is not bound by the standard.

Gold is one of many valuable assets. It is sought after and kept as a reserve to be used when necessary. In addition to affecting a normal transaction, gold can also be invested through the banking institutions and companies that offer sales of gold products. Gold investment instruments are aplenty in Islam such as in buy and sell, mortgage, *mudarabah* and the likes. Along with this, Islam has laid down specific rules and laws for gold and silver transactions they must adhere to. The E-Qirad company is no exception in this regard though transactions involved are of gold *dinar* investment. Although in general, the investment of E-Qirad meets *mudarabah* requirements in Islam in its capital stance, i.e. gold *dinar*, but there are still some confusions not understood by the public, especially in terms of how capital is managed for the products offered. Similarly, the position of gains realized set to be in the form of a certain percentage of capital ratios. This is because if viewed at a glance, it seems to be not in line with the principle of *mudarabah*. Other studies should be done to ensure all aspects of *sharia* are adhered to by the companies or cooperatives. Apart from transparency in the state of its products, ethics and values of Islam must be highlighted by all the companies by each product. Options given to consumers are all well and commendable. It is better if more options can be given to consumers thus will encourage more to invest. But if given a lot more options in investment, it is better for it can encourage many investors or consumers to invest, and company will grow and prosper. The willingness of companies and cooperatives in offering products based on *mudarabah* instruments is greatly appreciated and commendable. This is because the Islamic banking institutions in Malaysia do not follow the practice of the co-operative societies. Possibly, the huge risk of *mudarabah* investment may be the reason why this is so. s quite large, so not many institutions that are willing to accept. Willingness of the companies to bear risks, go through hardships and difficulties in implementing this concept, both in terms of management and documentation, is highly praised for it benefits many and empower the system of the Islamic financing.

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