Al-Hikmah Journal of Islamic Studies, UMYUK, Pp. 32-40 Vol. 8. No. 1, July, 2020 (ISSN 2277-0658)
https://alhikmahjois@umyu.edu.ng

DEPOSIT IN ISLAMIC BANKS UNDER THE PRINCIPLES OF *WADIʾAH, QARDH, MUDHARABAH* AND *WAKALAH*: CONCEPTS AND LEGAL IMPLICATIONS

Rasheed Abdulganiy
Department of Religious Studies, Gombe State University, Gombe, Nigeria
rasheedgombe@gmail.com; +234(0)8036111733

ABSTRACT

The issue of rulings governing Depositor-Bank relations is one of the most important aspects of Islamic Banking System, even though a large number of depositors in such banks may not be acquainted with those rulings. This paper aims at determining the position of money deposited in Islamic Banks under the Islamic Financial Contracts. Some of the contracts under which Depositor-Bank relations could fall are outlined and discussed. These include Wadiʾah (safe keeping), Qardh (loan), Mudharabah (speculative partnership), and Wakalah (agency). It also analysed the Islamic Legal Implications of applying any of the aforementioned contracts on building relationship between the Islamic Bank and the depositor; when would the capital deposited be guaranteed and when would it not be, how can such deposits be legally utilized for financing by the Islamic Banks. All these were discussed from the classical books of Islamic Jurisprudence. A qualitative method was used in addressing the issue. The major finding in this work is that that money deposited in the banks is not only for safe keeping which the banks are not liable for its lost, rather it could be a loan given to the banks or a beneficial contract. The paper concluded by recommending that there is a need for Islamic Banks to create more awareness, especially for their clients, on the rulings governing their deposits in these Banks.

Keywords: Bank Deposit- *Wadi'ah – Qardh – Mudharabah – Wakalah.*

Introduction

People are living to interact and cooperate with one another. Transaction is one of the most essential tools for human interaction. Therefore, Islam laid down some guiding principles to provide social security in people's financial transactions. However, the term used by the parties involved in a particular transaction determines the *shari'ah* implications on it. Banking, as of now, is a cooperate body established to source or solicit for deposit in form of exchangeable property. The bank invests this deposit to make profit which may be shared with the customer/depositor on some agreed terms or at the bank's discretion or as may be stipulated by other moderating bodies.

The issue of bank deposit is one of the issues that need to be clearly understood between the bank and the depositor. In other words, questions such as: under which *shari'ah* financial law is the bank deposit? What are the terms of this type of transaction; *Wadi'ah, Qardh, Mudharabah* or *Wakalah*? What are the legal implications as per when would the capital be guaranteed and when would it not be? would be in the minds of prospective clients always. Until these questions are properly addressed, the deposit policy in Islamic Banks will always find it difficult, in view of Islamic law, to use such deposits for financing. The followings are some of the contracts that the deposits in Islamic Banks could fall into:

Wadi'ah: Its Ruling and Application in Islamic Banks

Wadi'ah refers to the act of depositing something with someone or voluntary safe-keeping based on trust (Fawzan, 2005). *Wadi'ah* is a mere trust and therefore governed by the *shari'ah* principles of trust and entrustment (Kasani, 1998). The legality of entrustment is established by the Qur'an, *Sunnah* and *Ijma*. In the Qur'an Allah says:

> *"…then if one of you entrusts the other, let the one who is entrusted discharge his trust (faithfully), and let him be afraid of Allah, his Lord"* [Qur'an, 2:283]

The Almighty also says:

> *"Verily! Allah commands that you should render back the trust to those whom are due for it"* [Qur'an, 4:58].

Similarly, the Messenger of Allah, *sallalahu alaihi wa sallam*, commanded the believers saying: "Render trust back to whom entrusted you, and never betray who betrayed you" (Abu-Dawud, no.:3536 and Tirmizi, no.:1264). In the light of the aforementioned texts, the Muslim scholars unanimously agreed on the legality of *wadi'ah*. This is logical, considering its need in human society, for it is difficult for every individual to safe-keep his wealth and not to deputize another for its preservation, this will cause more harm in human living (Ibn-Qudamah, 1994). Hence, *Shari'ah* permits entrustment of wealth and property.

Since *wadi'ah* is based on trust, the rulings governing trust (*Amanah*) are applicable to *wadi'ah*. Some of these rulings are:

i. Accepting the trust by the entrusted party is not compulsory but recommendable for someone who knows that he is honest and capable of safe-keeping the trusts (Ibn-Qudamah, 1994). This is because safe-keeping trust has a great reward for the fact that it is an act of rendering assistance to a fellow human being (Fawzan, 2005). The Prophet (S.A.W) said:

> *"... and Allah helps a person so long as the person helps his (muslim) brother" [Muslim, no.:7028]*.

Wadi'ah is a voluntary act and therefore it is not for the trustee to request for any wage from the person who entrusted him (Nasir and Sa'ad, 2007).

ii. Majority of the Muslim scholars opined that the trustee is not liable for compensation in case the trust is lost or damaged, provided he did not abuse or transgress in keeping it. This view was reported from Abubakar, Ali, Abdullahi Ibn Mas'ud, An-Nakha'i, Malik, Shafi'I, Thauri, Auza'i among others (Ibn-Qudamah, 1994). The established principle in connection to this is: "Any damage of trust in the hands of the trustee is the same as its damage in the hands of the real owner" (Yunus, 2019).

iii. It is unanimously agreed upon amongst the Muslim Jurists that the trustee would be liable for compensation of the trust if damaged or lost out of his negligence, abuse or transgression (Ibn-Rushd, 1975).

However, the jurists hold on to different views on what could be considered as an act of transgression in safe-keeping that would make the trustee liable for its damage or loss. Issues under this include unauthorized usage of trust by the trustee. If the trustee makes use of the trust and returns it before it later got lost or damaged, according to Maliki School of law, such a trustee would not be liable for compensation (Ibn-Rushd, 1975). But Shafi'i (1968) viewed that such a trustee is liable for compensation because of his breach of trust. This view of Shafi'i was seconded by Ahmad Ibn–Hambal (Ibn-Qudamah, 1994) and accepted by some modern jurists like Fawzan (2005, 2:179) said:

> Abusing a trust obligates the trustee to compensate for it in case it is damaged. For example, one may be entrusted with some money in a coin purse but takes the money out of it or unfastens the purse, in such case; the trustee is liable for compensation if the trust is damaged, as he transgresses other's property in so doing (2:179).

Another issue is the case of trustee who mixed the entrusted wealth with his own wealth or with other people's wealth under his custody, should any damage or loss befall the entire wealth such that he could not distinguish between the wealth, would he be liable for compensation? Ibn al-Qasim (nd) maintained that he is not liable for compensation because the entire wealth is missing. Some other scholars said such a

trustee is liable for compensation because he has already abused the trust by putting it where he cannot return the exact wealth given to him as trust (Ibn-Qudamah, 2005). But he would not be liable if he mixed up the trust based on the permission of the owner.

In a situation where the owner of the trust made it conditional that the trustee will be liable if the trust got lost or damaged and the trustee accepted, this agreement is null and void before the Islamic law according to the vast majority of Muslim scholars (Ibn-Rushd, 1975 & Ibn-Qudamah, 2005).

iv. The Muslim jurists differed on the status of the profit made by the trustee who used the wealth for financing a project or a profitable business without the consent of the owner, would the profit go to him or to the owner of the capital? Malik, Laith, Abu-Yusuf and some group of jurists maintained that such profit goes to the trustee provided he returned the capital. Others like Abu-Hanifah and Muhammad Ibn-Al-Hassan said such profit should be used for charity. While another opinion said the profit goes to the owner of the capital. (Ibn-Rushd, 1975).

Wadi'ah in Islamic Banking

From the above discussion, it could be deduced that the rulings governing *Wadi'ah* contract under Islamic law may not allow its practice in the modern day system of banking, even in the *shari'ah* compliant financial institutions. Some of the rulings include accepting the trust for safe-keeping must be voluntary by the custodian. Consequently, he is not allowed to make any use of it in investment, financing or otherwise. This would serve as hindrance for banks to use the money deposited with them for financing and investment which are some of the major sources used to maintain the system. In case the custodian (bank) makes use of the deposit, it is considered a breach of trust and an act of transgression.

Other rulings also include the fact that the deposit/capital is not guaranteed, the custodian [i.e. the bank] is not responsible for any damage or loss to the deposit so far as it didn't occur as a result of negligence of the bank. This ruling may not only scare those who may want to patronize the Islamic Banks, but would also make the policy makers of various countries to reject the entire idea of Islamic banking for fear of been cheated by some unpatriotic members of the society who may hide under the banner of religion to perpetrate evil.

Furthermore, the bank is not entitled to any wages or fees for safe-keeping deposit because *wadi'ah* is based on *amanah* (trust) which is charitable and divinely rewarded; it is basically a trust to keep (ISRA, 2013). Islamic Banks cannot operate on this, considering its implications on the sustainability of the system. However, some Islamic Banks may accept deposits under a safe-keeping guaranteed agreement called *Wadi'ah yad Dhimmah*, this is discussed in the next segment of the paper.

Wadi'ah Yad Dhimmah

It is important to note that, modern experts of Islamic banking do classify *Wadi'ah* into two types: *Wadi'ah Yad Amanah* (safe keeping based on trust) which is the type we earlier discussed, and *Wadi'ah Yad Dhimmah* (Guaranteed safe custody). This second type is when the custodian guarantees the refund of the property kept with him, and also ensures to refund the item upon request. This is a combination of two contracts, namely safe-keeping (*Wadi'ah*) and guarantee (*dhimmah*) (ISRA, 2013).

Since the establishment of the interest free banking system (IFBS) in 1989, participating banks modelled their operations along Bank Islam Malaysia (BIMB). As a standard procedure, participating banks offer two main products, namely current and savings accounts. Islamic deposit uses a contract called *al-Wadi'ah Yad dhammah* to replace interest-bearing demand and savings deposits. (Rosly, 2008).

Some of the features of *wadi'ah yad dhimmah* as mentioned by ISRA (2013) include:

(a) The custodian is entitled to use the deposited property for trading or any other purposes.
(b) The custodian has a right to any income derived from the utilization of

the deposited item and at the same time he is liable for any damage or loss.

(c) The Custodian owns the profit and therefore, it is under his discretion (not an obligation) to give some portion of it as a gift to the depositor. The gift cannot be in the form of a pre-agreed arrangement. This is simply because this type of *wadi'ah* is similar to a loan and therefore the pre-agreed benefit will be regarded as *riba* (interest).

(d) The custodian must return the deposited property to the owner at any time upon the request of the depositor.

This type of *wadi'ah* facilitates wider application in the Islamic banking system particularly where deposits are the sources of funds for banks. Nevertheless, a critical look at this type of *wadi'ah* reveals that the term '*wadi'ah yad dhimmah*' is rarely found in the classical books of Islamic Jurisprudence. It seems to be a type developed by modern scholars to make the *wadi'ah* contract flexible for Islamic Banks. But the features of *wadi'ah yad dhimmah* mentioned can lead to some questions and arguments under Islamic law of *Mu'amalat* (contract).

With regards to the first feature, if the custodian used the deposited money/item with the permission of the owner then the contract is no more under *wadi'ah*, it is rather *Ariya* or *Qardh*. But if the custodian was not permitted, then his act of using the money/item is considered a breach of trust which is not a character of a *Mua'min* (believer) but of a *Munafiq* (hypocrite) (Buhari and Muslim).

It is based on some of these questions and arguments that many scholars categorized this type of *wadi'ah* under *Qardh* (loan), while some do not even consider this type in Islamic law (Bello, 2014). The best way to avoid public confusion on this issue is to use the *Qardh hasan* contract instead. What it does (*Qardh hasan*) is to maintain the lending- borrowing relationship between depositors and banks but without implicating interest (Rosly, 2008).

Qardh: Its Classifications, Rulings and Applications

Qardh simply means loan. The literal meaning of *Qardh* in Arabic is to cut and therefore, loan is called *Qardh* as if the lender cuts certain part of his wealth by giving it to the borrower to benefit from and repay later. In Islamic Jurisprudence, scholars defined *Qardh* as: "giving an amount of wealth to someone who would make use of it and repay it later" (Fawzan,2005).

From the explanations of Muslim Jurists, *Qardh* can be classified into two major types namely: *Qardh ila ajal* and *Qardh haal*. *Qardh ila ajal* refers to the loan given to borrowers based on agreed period of paying back. In this case, the lender is not allowed to request for his money from the borrower before the agreed period expires. By implication, the borrower is not obliged to pay back the loan on the lender's request until the end of the agreed period. This is a permissible contract in the Islamic Law of contract.

With regards to *Qardh haal*, it means a loan given to the borrower without any agreed period of paying back. This is also permissible in *Shari'ah* because stipulating a period for paying back loan is not necessary for the validity of the contract (Kasani, 1998). Under this type of *Qardh*, the lender may request for his money at any time and the borrower must pay it back without delay as soon as he is able to do so. Some scholars opined that the lender is not to request for his money except after a period in which the borrower could have benefited from it. This opinion was strongly rejected by other scholars who said that the lender can request for his money even immediately after the contract (Ibn-Hazm, 1997).

Some of the rulings governing the contract of *Qardh* include the following:

a. The borrower is granted an unconditional permission to make use of the money as his own personal wealth. He can use it to finance a project or invest in any *halal* business for the purpose of profit.

b. Any profit made from the money absolutely belongs to the borrower and

the lender has no right to claim any part of it.

c. The capital is guaranteed. In case any damage or loss befalls the wealth, the borrower is liable to pay back the loan.
d. It is prohibited upon the lender to stipulate any increase on his loan. Scholars unanimously agreed that if the lender stipulates any increase and takes it, it is considered an act of *riba* (Fawzan, 2005).

From the discussion so far, it could be deduced that Depositor-Bank relationship is better placed under the *Qardh* contract (Qardhawiy, 2008). The depositor is considered the lender while the bank is the borrower. This provides guarantee to the depositor and allows the bank to use the deposited money for investment and financing.

It is worth mentioning that the better and easier type of *Qardh* to be applied here is the *Qardh haal* contract. It gives the depositor/customer free access to withdraw from his deposit at any point in time. Moreover, it may not be feasible to apply the *Qardh ila ajal* type in the Islamic banking system considering the fact that it is difficult for people to put their money in fix deposit for a specific period of time without any profit.

Al-Qardh Al-Hasan

As *Qardh* simply means loan, *hasan* implies good or benevolent. In Islamic law of contract, *Al-Qardh Al-Hasan*, good loan, refers to the loan repaid by the borrower with an extra amount. This type of loan is not only permissible by Islamic law but it was also practiced and encouraged by the Prophet of Islam, provided that the addition is not pre-agreed or stipulated in the contract (Tuwaijiry, 2014).

This is evident in some prophetic traditions. On the authority of Jabir Ibn Abdullahi who said:

> I went to the Prophet (SAW) while he was in the masjid. After the prophet told me to pray two raka'at, he repaid me the debt he owned me and gave me an extra amount.

On another occasion, after approving for a companion to repay a loan by giving an extra amount, the Prophet (SAW) said:

> *"The best among you is he who repays his debts in the most handsome manner" (Bukhari and Muslim).*

In the case of depositing in Islamic bank, the depositor is the creditor while the bank is the debtor. It is therefore encouraged that the bank as the debtor gives the depositor/creditor an extra amount as gift. Rosely: 2008 observes that a debtor is expected to give the creditor a *hibah* (gift) for the following reasons:

1. The debtor is thankful for the loan given by the creditor.
2. The debtor is concerned that inflation may cut real value of principal loan.
3. The debtor understands that the creditor suffers loss of opportunity to earn alternative income if monies are invested elsewhere.
4. The debtor is an individual with *iman* and *taqwa*.

However, some Muslim Jurists disapprove any extra benefit that is given to the lender by the borrower. They based their argument on the *Hadith* of Ali Ibn Abi-Talib that the Prophet (SAW) said: "Any loan that brings a profit is a kind of *riba*" (Al-Baihaqi, 1994). The view is also supported with some reported *ahadith* clearly prohibiting a creditor to collect any gift from the debtor (Ibn- Dhawyan, 1989). In addition, Abu- Bardah ibn abi-Musa said:

> I came to Madinah and met Abdullahi Ibn salam and he said to me: you stay in a land where riba is so common, therefore, if someone who is indebted to you gives you a load of hay as a gift, do not accept it, for it is riba" (Bukhari).

Another basis for this view is the principle that says: "Abstinence from the real *riba* and the doubtful one is compulsory" (Kasani, 1998). These arguments may look strong but a critical assessment of the aforementioned points proved them abortive due to the following facts:

i. The first *Hadith* mentioned (Hadith of Ali) is weak as confirmed by the great scholars of *Hadith* past and present (Ibn Hajar, 1989 and Albany, 1985).
ii. All other *Marfu ahadith* (sayings attributed to the Prophet) prohibiting the collection of gift from the debtor by the creditor are not authentic. In fact, a scholar said: "there is no any genuine *Hadith* in this regard" (Ibn-Hajar, 1989).
iii. With regard to the *Mauquf Hadith* (sayings attributed to the companions) reported from Abdullahi Ibn Salam, it is considered his own personal view based on *Ijtihad* and therefore, not binding upon others especially when it contradicts an established practice of the Prophet (SAW).
iv. The practices of some other companions also went in line with the practice of the Prophet (SAW). For example, a man came to Al-Hassan Ibn Ali to repay him a loan. When Al-Hassan repaid him back, he added to the principal loan sixty or seventy Dirham. Thereupon the man said: "this is more than my right". Al-Hassan said: "collect it" (Ibn-Abi Shaibah, 1989).
v. The principle that says real and doubtful *riba* should be avoided is not applicable here, for no course for doubting a practice established by the Prophet and his companions.
vi. Even if the *ahadith* of prohibition are authentic, they should not be seen as contradictory to those permitting the gift. This is because the ahadith of prohibition are to be applied only on cases where there is pre-agreement (San'any, 1997).

Another critical issue that is appealing here is the issue of a creditor giving loan to the debtor with the intention of receiving an extra amount at the time of repaying back. Some Muslim Jurists stated among the conditions of *al-Qardh al-Hasan* that the creditor should not give the loan to the borrower with the intention of having extra amount when repaying. Hence they said it is forbidden that the lender intends or anticipates taking an increase even if he does not stipulate such an increase (Shawkany, 1994 and Fawzan, 2005).

This anticipation may be because the borrower is known to have the habit of giving extra amount when repaying back a loan. The legal implication of this on depositor-bank relationship is that the depositor is not allowed to deposit in the bank with the intention of having extra amount due to the fact that the Islamic Banks that operate on *al-Qardh al-Hasan* are known with it as a matter of policy and therefore, it is unavoidable to anticipate such a kind gesture.

Interestingly, Muslim scholars have refuted this opinion long ago. Ibn-Abi-Shaibah (1989) reported that Ash'ath Al-Humdani asked Hasan al-Basry saying: "I have some generous female neighbours who used to come to me for loan and my intention of giving them the loan is to anticipate the extra amount they used to add". Hasan al-Basry replied: "there is no problem with that".

Besides, the Prophet (SAW) was well known with his kind attitude of repaying loans with increase; this could facilitate the interests of those who give him loans. None would ever claim that for this known attitude of the Prophet (SAW), giving him loan is prohibited or detestable (Ibn-Qudamah, 1994). To add to this, since giving extra amount in repaying loan is considered a good act, then repeating it will never be detestable under the Islamic Law (Ibn-Hazm, 1997). Therefore, there is nothing wrong with depositing in Islamic Banks in anticipation of benefiting from their *al-Qardh al-Hasan* packages.

Mudharabah: Its Rulings, Conditions and Applications

The word '*Mudharabah*' is literally derived from the phrase '*al-dharb fi al-ardh*' which means to make a journey. This literal meaning is related to business part-

nership because normally it requires, particularly in the past, travelling to do business (ISRA, 2012).

Juristically, *Mudharabah* is a speculative partnership which means giving a certain amount of money to others in order to trade with it in return for a share in the profit (Fawzan, 2005). The term '*Mudharabah* is used by the Iraqi school of Jurisprudence while the Hijaz school uses *Qiradh* or *Muqaradhah* to mean the same thing with the above defined contract (Ibn Abdil-Barr, 2000).

Mudharabah (speculative partnership) is one of the business contracts that have been in existence amongst the Arabs before the advent of the Prophet (S.A.W). The Quraish, being people of strong dependence on trading for livelihood, took into cognisance the conditions of some members of their society who may have the wealth but could not travel for business. These members of the society include the aged, under aged, women and orphans that may lose the investment opportunities due to their inabilities to bear the burden of travelling for business purposes.

In order to rescue the situation, the people in question do give the wealth on trust to others who will travel with it for trading based on agreed patterns of sharing the profit between the two contracting parties: the provider of the capital (*rabb al-Mal*) and the provider of the labour (*mudharib*). This type of business transaction is said to have been the type of contract established between the Prophet (S.A.W) and Khadijah prior to his prophethood. After the dawn of Islam, this type of contract was approved by the Qur'an, Sunnah and consensus of Muslim scholars (Ibn Hazm, 1997).

There are three pillars of *Mudharabah* contract as follows:

i. Terms/form of the contract. This refers to the rule of offer and acceptance by uttering the terms of *mudharabah*, *qiradh* or any other words that give the same meaning. The offer and acceptance can be expressed verbally, in writing or through any other means of communication that is acceptable by both contracting parties. However, it would be preferable for all *mudharabah* agreements to be in written and with proper witnesses to avoid any future dispute and misunderstanding (ISRA, 2012).
ii. The contracting parties. These are the *rabb al-Mal*; the owner of the capital and the *mudharib*; the labour provider. Both parties must be qualified persons to embark on such contract under the Islamic law of contract. In addition, the *mudharib* must be someone reliable who will not put the capital in any unlawful transactions.
iii. The subject matter: This includes the capital, labour and profit. With regards to the capital, majority of the Muslim jurists opined that it must be in form of cash money (Ibn Rushd, 1975). Among these scholars is Ibn Hazm (1997) who insisted that the capital in *mudharabah* must be in form of *Dinar* and *Dirham* and not otherwise. But some view it permissible when certain conditions are fulfilled (Samadani, 2007).

As for the labour, it is permissible to set a certain period for the speculative partnership after which the partnership is terminated (Fawzan, 2005). The *rabb al-Mal* may also restrict the *mudarib* to a particular place or business he wants based on agreement of both parties.

Concerning the profit, it is a requirement that the mechanism for sharing the profit must be clearly known in a manner that eliminates uncertainty and any possibility of dispute. The distribution of profit must be on the basis of an agreed percentage of the profit and not on the basis of a lump sum or percentage of the capital. The parties should agree from the beginning on the ratio of profit distribution when the contract is concluded (ISRA, 2012). It is not allowed to pre-fix an amount of profit by both or any of the parties. Ibn al-Munzir, 1993 said:

> Scholars unanimously agreed that the *mudharib* has the right to stipulate a certain percentage of the profit from beginning of

> the contract, such as one-third of half of the profit, or whatever is agreed upon by the two parties. The scholars also agreed that if any of the parties or both of them fixed a certain amount of money from the beginning as profit, then their partnership becomes invalid.

On the other hand, if the invested capital ran at loss, without a deliberate negligence from the *mudharib*, then the *rabb al-Mal* suffers the financial losses and the *mudharib's* real loss will be his opportunity cost he has forgone, that is, the income he could have earned if he chose to work elsewhere. The main feature of *mudharabah* is, therefore, trust (*amanah*), which means that the *rabb al-Mal* stands to lose his capital in the event of losses (Rosly, 2008).

Furthermore, if the *rabb al-Mal* made it a condition at the beginning of the contract that the *mudharib* alone would be liable for losses, then such condition is regarded null and void before the Islamic law of contract (Ibn Abdil-Barr, 2000). However, since the *mudharib* is a trustee, he has to fear Allah regarding what he is entrusted with, and should be believed regarding any claim about loss or damage of property (Fawzan, 2005).

In the Islamic Banking System, the depositor can build his relationship with the bank on the basis of *mudharabah* contract. In this case, he allows the bank to invest his money based on loss and profit sharing. The depositor will be the *rabb al-Mal* while the bank is the *mudharib*. Both parties will be bounded with the principles governing the contract. The depositor brings the wealth in form of cash and deposits it with the bank in a clear term of *mudharabah*. What would be his own share of the total profit, if any, must be made known to him on percentage based on the policy of the bank. Consequently, he should prepare his mind to bear the loss in case there is any.

As the *mudharib*, the banks are expected to make their policies known and clear to their customers. The depositors have made them trustees and therefore, they are to be God-fearing in all their transactions and declarations of profits.

Wakalah (Agency): Its Rulings and Applications

Wakalah literally means doing something on behalf of others. In technical terms, according to ISRA (2012), *wakalah* refers to authorizing another person to undertake any dealings on one's behalf. Some jurists stated four pillars for *wakalah* contract namely; offer and acceptance (*sighah*), principal (*muwakkil*), agent (*wakil*) and object of the agency contract (*muwakkal bih*).

In the *mudharabah* contract, the *mudharib* serves as an agent for *rabb al-Mal* (owner of the capital) with a specified ratio of profit sharing based on percentage and not pre-fix amount of profit. But in the real *Wakalah* contract, the agent may negotiate and agree on a particular amount as his agency fee. Issue of loss and profit sharing may not arise here.

Regarding the depositor-bank relationship, the bank could serve as the agent while the depositor would be the principal. This is to say he may deposit his money in the bank with an arrangement that they purchase certain item for him. Here the bank may charge him some amount of money as agency fee, this may fall under labour (*Ijarah*) contract. If thereafter, the principal made profit elsewhere as a result of the transaction he made with the bank, the entire profit belongs to him.

Conclusion

In conclusion, it is clear that the depositor-bank relationship is not mainly for safe-keeping (*wadi'ah*) but it could be a loan given to the bank by the depositor whereby the capital is guaranteed and the bank, at its own discretion, may give an extra amount under the principle of *al-Qardh al-Hasan*. Even though some Islamic banks use the term "wadi'ah" as one of their products under current account, in reality deposits under such accounts take the form of loan from depositors to the banks (Abdus-Samad and Chowdhury,

2017). The depositor may also wish to go into speculative partnership (*mudharabah*) with the bank on the basis of profit-sharing between the two parties. But under the *mudharabah* contract, the depositor must bear in mind that the capital is not guaranteed. Still, the bank can also serve as an agent to the depositor whereby the latter may be charged for an agency fee. The bottom line here is that every depositor in Islamic bank should be very clear about his relationship with the bank and the legal implications of such affiliation.

References

Abdus Samad, Chowdhury, M.A., (2017), Islamic Banks' Return on Depositors and Conventional Banks' Deposit Interest: Is there Causality? Evidence of Causality from Bangladesh. *International Journal of Economics and Financial Issues*. 7(5), 432-439.

Fawzan, S.F. (2005). *A Summary of Islamic Jurisprudence*. Riyadh: Al-Maiman Publishing House.

Ibn-AbdilBar, Y.A. (2000). *Al-Istizkaar*. Beirut: Daar al-Kutub al-Ilmiyah.

Ibn-Abi-Shaibah, A.M. (1989). *Al-Musannaf*. Beirut: Daarul Fikr.

Ibn-Hajar, A.A. (1989). *Al-Talkhis al-Habir*. Beirut: Daar al-Kutub al-Ilmiyah.

Ibn-Hazm, A.A. (1997). *Al-Muhalla sharh al-Mujalla*. Beirut: Daar Ihya al-Turath al-Arabiy.

Ibn-Qudamah, A.A. (1994). *Al-Mughny*. Beirut: Daar al-Fikr.

Ibn-Rushd, M.A. (1975). *Bidayat al-Mujtahid wa nihayat al-Muqtasid*. Egypt: Mustapha al-Babi Publishing House.

ISRA. (2012). *Islamic Financial System; Principles and Operations*. Kuala Lumpur: International Shari'ah Research Academy for Islamic Finance.

Kasani, A.M. (1998). *Bada'i al-Sana'i fi tartib al-Shara'i*. Beirut: Daar Ihya al-Turath al-Arabiy.

Qardhawiy, Y. (2008) *Fawāid al-Bunook Hiya al-Riba al-Harām*. Cairo: Maktabat Wahbah.

Rosly, S.A. (2008). *Critical Issues on Islamic Banking and Financial Markets*. Kuala Lumpur: Dinamas Publishing.

Samadi, E.A. (2007). *Islamic Banking and Uncertainty*. Karachi: Darul-Ihaat.

San'any, M.I. (1997). *Subul al-Salaam Sharh Bulugh al-Maraam*. Makkah: Maktabat Nazaar Mustapha Baaz.

Shawkany, M.A. (1994). *Nail al-Awtar Sharh Muntaqa al-Akhbaar*. Beirut: Daar al-Fikr.

Sulaiman N. and Sat'hee S. (2007). *Fiqh al-Mu'amalaat al-Maliyyah wa Adillatuhu inda al-Malikiyyah*. Beirut: Daar Ibn-Katheer.

Tuwajiry, M.I. (2014) Mukhtasar al-Fiqh al-Islamiy fi Dhau al-Katāb wa al-Sunnah. Al-Qaseem: Daar Asdār al-Mujtama.

Yunus, I.K. (2019). *Al-Qawa^{c}id wa al-Dhawabit al-Hakimah al-Khassah fi Uqood al-Sharikāt fi al-Fiqh al-Islamiy*. Amman: Daar al-Nafa'is.