INTERNATIONAL BUSINESS TRANSACTION FROM THE ISLAMIC ECONOMICS PERSPECTIVE

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Abstract. International business transaction deals in differently from the local or domestic business trading. In the international business transaction, Muslim ummah transacts with non-Muslims all over the world. Therefore, this article tries to explain the business relationship between Muslim and non-Muslims, the types of non-Muslims from the perspective of fiqh mu'amala–t and the views of Muslim jurists with regards of bilateral business relationship between Muslims and non-Muslims. All the views are based on evidence (Dalil) from al-Qur'a–n and al-Hadith of Prophet Muhammad (s.a.w.), as well as views from four very famous schools of jurisprudences. This article also tries to clarify the principles of international business from the perspective of Islamic economics. These principles are imperative to be applied and practiced by Muslim entrepreneurs in dealing internationally.

Keywords: International business; Muslim; non-Muslim; principles of Islamic international business

1.0 INTRODUCTION

Islam³ as an all-encompassing way of life has a unique system in dealing with international business relationship between two nations or two individuals from different companies or countries.

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³ Islam can be defined as “The manifesting of humility or submission, and outward conforming with the law of God, and the taking upon oneself to do or to say as the Prophet has done or said” see, Edward William Lane. 1863. Arabic-English Lexicon. Lahore: Islamic Book Centre. Book 1, Part 4. p.1413.
Although international business transaction is seen more global and wider in dimensions nevertheless, the similar concepts and principles of domestic dealing and transactions are also applied in this kind of business. This is because, all the concepts and principles for both types of transactions are derived from the same sources namely al-Qur‘ān, al-Hadith, jurists consensus (Ijmā‘) and their Ijtihad.

In the beginning, this article tries to evaluate the aspect of business relationship between Muslims and Non-Muslims. Not all countries in this world are Muslim countries then, like it or not, Muslim buyer and seller must deal with other religion faiths. According to Wikipedia Free Encyclopedia, Islamic population only consists of 22% or about 1.5 billion people, whereas another 78% of world population are non-Muslims.

The main problem here is, does the business transactions between Muslim and non-Muslim are legitimate and valid from the fiqh mu‘āmalāt perspective? To solve this issue, let me begin by introducing five types of non-Muslim categories as classified by Muslim scholars. They are as follows:

2.0 CLASSIFICATION OF NON-MUSLIM

2.1 Al-Dhimmi

Al-Dhimmi are non-Muslim citizens who are involved and have participated in the dhimmah contract (‘aqd al-dhimmah) with the Islamic state. This contract has given them an exclusive protection and privileges to live peacefully in the Islamic nation

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7 ‘Aqd al-Dhimmah happens with two situations. First, their willingness to adhere and obey all the Islamic Laws and regulations in the Islamic state. They are required to obey for example in the property transactions such as not involve in riba’ transactions. Yet, in terms of hudūd law, they must also comply with it, as Prophet Muhammad had punished a Jew for a zinā intimacy. Secondly, they are required to pay for jizyah. See Sayyid Sibiq. 1994. Fiqh al-Sunnah. Beirut: Dār al-Kitāb al-‘Arabī. Vol.3. p.64-65.
after they pay the *al-Jizyah*\(^8\) and adhere all the Islamic rules and regulations set by Allah (s.w.t.)\(^9\).

From Abū Zahrah point of view, *ahl al-dhimmah* has special rights and obligations, which are quite similar to the Muslim citizens except in some aspects, which have been excluded to them for example, they are not required to pay for tithe (*zakat*)\(^10\).

Fuqahā’\(^1\) agreed that ‘*aqd al-dhimmah* could be made with *Ahl al-kūtāb* (Jew and Christian) as well as with *Mājusi*\(^11\).

### 2.2 *Al-Musta’min*

*Al-Musta’min* are those who enter another country with peaceful intention whether they are Muslim or non-Muslim\(^12\). Nonetheless, this term usually refers to non-Muslim who enters Muslim countries with good intention such as for business purposes or for traveling for a specific period of time\(^13\). Ibn Qayyim of the opinion that, the term means anyone who enters Muslim country and live in the country for temporarily\(^14\).

The definition given by Abū Zahrah said that, anybody who enters a Muslim nation without any intention to live permanently in that country but only for a specific period of time based on ‘*aqd al-aman* and usually for the purpose of doing business or travelling\(^15\).

One of the main responsibilities of *al-Musta’min* while staying in the Muslim nation is to adhere all the laws related to the Islamic Commercial Law for instance, they are prohibited to participate in *ribā* transactions\(^16\).

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\(^13\) Abū Zahrah. *op.cit*. p.78.


\(^15\) Abū Zahrah. *op.cit*. p.78.

\(^16\) Sayyid Sa‘ībīq. *op.cit*. p.98.
2.3 Al-Muwādī

*Al-Muwādī* means a reconciliation made by *kāfir ḥarba* (people who are against the Muslim ummah) for the purpose of ceasing fire for a certain period of time, either by paying an amount of money or without paying any amount of money to the Muslim government. Succinctly, *al-Muwādī* refers to the disbeliever (*kāfir*) who made a peace agreement with the Muslim for the purpose of ceasing fire through specific payment or otherwise.

2.4 Al-Muḥāyid

Those who are in the middle way and have no alliance with any sides of peoples whether with the Muslim community or Non-Muslim community, whereby their relationships with both parties are good and well off.

2.5 Al-Ḥarbi

*Al-Ḥarbi* refers to a group of non-Muslim who joins or made an alliance with other non-Muslim countries they have no peace agreement with Muslim nations and community. Most of the Muslim jurists view that the Muslim ummah should cease any relationship with this group of *kāfir*, be it in the business dealing or political connection.

3.0 SCHOLARS VIEW

Meanwhile, *fuqaha* have different opinions with regards to business transactions between Muslim and non-Muslim community. In this respect, there are two general views with related to this matter.

3.1 First View: Prohibited To Deal

Imam Shafi'i of the view that, the contract of transactions between non-Muslim and Muslim are illegal or invalid, as it goes to marriage relationship between two people. This view is based on a verse of *al-Qurān*. Allah commands to the effect:

“And never will Allah grant to the disbelievers a way (to triumph) over the Believers.”

(An-Nisā’ 4: 141)

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Ma’liki school of jurisprudence also gave the same opinion that business transaction between Muslim and Non-Muslim is prohibited since this school basically forbid Muslim from going out of the Islamic states (Dar al-Islam) to the non-Muslim Countries\(^{21}\).

Muslim jurists who had banned business dealing of both parties especially between the Muslim and Kafir Harbi directed the Muslim ummah to terminate any political and trading relationship with them\(^{22}\).

This is based on a *dalil* from al-Qur’an where Allah says to the effect:

"O Prophet! Strive hard against the disbelievers and the Hypocrites, and be harsh with them. Their abode will be Hell, an evil refuge (indeed)."

(At-Tahrîm 66: 9)

### 3.2 Second View: Permissible To Deal

This second view gives an opportunity for the Muslim ummah to participate, join or deal with non-Muslim counterpart whereby this kind of connection is founded with understanding, cooperation (*ta’awun*) and bring benefits and justice to one another.

The transactions depended on love and affection, dealing in mutual understanding and respect, exchanging goods and interest to one another in order to achieve public interest among themselves\(^{23}\).

The transaction between Muslim and non-Muslim especially with *al-Musta’min* is valid and legitimate from the majority of *fuqaha’* views\(^{24}\) as Allah says to the effect:

“If one amongst the Pagans, ask thee for asylum, grant it to him, so that he may hear the word of Allah, and then escort him to where he can be secure, that is because they are men without knowledge.”

(Al-Taubah 9: 6)

Furthermore, there is a *hadith* narrated by Ummu Salāmah, which clearly mentioned that Saydina Ābu Bakr (companion of Prophet Muḥammad) went to Baṣra, a non-Muslim state in Shām to do businesses with them\(^{25}\).

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These two dalīls gave us a clear understanding that Islam does not forbid the Muslim ummah from trading and dealing with non-Muslim as long as they always respect and have good and sincere intention to deal with Muslim.

### 3.3 Principles of Islamic International Business

The second section of this article tries to explore the Islamic principles of International Business that should be a main guideline for the Muslim community when dealing and trading internationally. These principles are divided into four and will be discussed in detail as follow:

1. **Islamic International Business Should Only Involved Lawful (ḥalāl) Goods.**

   What I mean by lawful (ḥalāl) goods is that the goods per se have value in nature from the shari‘ah’s perspective, and the shari‘ah law recognizes the ownership of the goods by the seller. The trading of unvalued goods are prohibited in fiqh unless in the necessity period (darūrah).

   Examples of products or items, which are forbidden in the Islamic law, are alcohol like wine, the flesh of dead animals, swine and idols as stated by a hadith, narrated by Jābir Bin ‘Abd Allāh.

   “The holy Prophet (s.a.w.) said: Surely Allah (s.w.t.) and His Messenger have prohibited the sale of wine, the flesh of dead animals, swine and idols.”

   Nonetheless, from the Hānafī school of Islamic law, sales of wild animals such as dogs, tigers, leopards, lions, wolves and cats are valid since these animals are considered valuable and able to provide benefits for the man in the guardian jobs as well as for hunting. This is based on a verse in the al-Qur‘ān when Allah says to the effect:

   “It is He who hath created for you all things that are on earth.”

   (Al-Baqarah 2: 29)
(2) Islamic International Business Should Not Involve With Any Uncertainty (Gharar) Elements in the Transaction.

Gharar transactions can be referred as dealings, which contain the element of fraud or uncertainty. Fuqaha has agreed that gharar transaction is invalid such as selling of bird which are still in the air or fishes which are still in the sea, as long as the seller has no legal ownership towards the things and the delivery (qabd) of the items is still unclear. For example, the sale of animal sperm (madāmin), sales on touch (mulāmasah) and sales of throwing (munābadhah).

A hadith narrated by ‘Amr Ibn Shu‘aib virtually express this situation:

“It is not permissible to combine salam with a sale, nor two transactions in the same sale, nor to gain a profit over something which is not guaranteed (in terms of liability for loss), nor a sale of what is not with you.”

Nevertheless, this hadith is strengthen by another hadith, which was narrated by Abū Sa‘īd al-Khudri. Prophet Muḥammad said:

“Prophet Muḥammad (s.a.w.) prohibited two kinds of transactions with two kinds of misinterpretations. He (s.a.w.) has forbidden sales of Mulāmasah and Munābadhah.”

Furthermore, according to Ibn al-Qayyim and Ibn al-Taimiyah, the selling of goods which is not present during the contract is permissible if the said goods is expected to exist in the future based on normal calculation. This is because there is no prohibition for the sale of such goods in the al-Qurān, al-Sunnah and the words of Ṣaḥābah but the prohibition is only imposed for the undelivered goods whether the item is truly exist or not.

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32 Ja‘mī al-Tirmidhī. 1999. Riyād: Dar al-Salām. ‘Abwäb al-Buyū‘. Hadith No.1234. p.300. This hadith was recorded by al-Tirmidhī however, the validity of this hadith has been questioned by some scholars.


34 Al-Ṣiddiq al-Darīr. op.cit. p.356.
Conversely, *shari‘ah* law permits the sale of fruits when it is suitable for plucking although the fruits are still up the tree\(^{35}\). Yet, Hanafi school of Islamic jurisprudence of the opinion that the contract of goods which cannot be delivered within the time of contract is invalid even though the goods is own by someone. For instance, the sale of escaped bird from one’s hand is invalid since there is the element of *gharar*\(^{36}\).

In addition to the element of *gharar*, there is another element in the trading of international business that should be avoided, namely *al-Ghabn*. *Al-Ghabn* literally means shortage (*al-Naqṣ*). From *fiqh* perspective, *al-Ghabn* happens when there is inequality of goods exchange with one and another\(^{37}\).

*Al-Ghabn* also can be interpreted as a loss whereby payment received by one party is not equal to the payment given by another party\(^{38}\). Take for instance, an exporter sold flour to the importer for RM 2 million when the actual value or price of the flour is RM 1.5 million. The importer is considered the loss party. Therefore, the element of *al-Ghabn* should be eluded in any transaction in order to ascertain the dealing is truly valid and acceptable from the Islamic commercial law.\(^{39}\)

(3) Islamic International Business Must Satisfy with All The Terms and Conditions

Set by *Fiqh Mu‘āmalāt*.

In the *fiqh mu‘āmalāt*, the offer or proposal (*i-jāb*) and acceptance (*qabūl*) are the two stipulations, which must be satisfied in any contract. According to the Hanafi school of Islamic law, other elements of contract such as subject matter (*mahal al-‘aqd*) and parties in the contract are not necessarily required in the contract. This is because the relationship between two parties in the contract will not success without element of goods or matter of contract\(^{40}\).

The appearance of offer and acceptance by itself exhibits all other elements exist in the transactions. Proposal and acceptance are contract expression, which exhibit agreement of both parties. Proposal is certain action shows the first approval in the form of utterance from one party in the contract. Hence, the first approval is assumed to be a proposal regardless whether it comes from the seller or buyer. Whilst the acceptance is the second expression which demonstrated the agreement to the proposal\(^{41}\).

For every sale, there must be four elements of contract, as follow:

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\(^{35}\) *Ibid.*


\(^{41}\) This opinion was stated by Hanafi scholars. See Ibn ‘Abīdīn. *op.cit.* Vol.4. p.6.
(a) Contract Utterance/Pronunciation.
Contract utterance comes from both parties in the contract that reflect the desire from each of them to form a contract. Succinctly, conditions for the contract utterance are clear proof of desire to do a contract, there is a consistency between proposal and acceptance, the proposal and acceptance should occur at the session of contract (majlis al-‘aqd) if both parties are present or in a session whereby there is a connection between them.\(^{42}\)

(b) Person in the Contract.
People in the contract represent the most important aspect in any contract. But, not all peoples are qualified to do a contract. In Māliki- and Ḥanafī school of Islamic jurisprudence, person who involves in a contract must have sound mind so, any contract made by children (below 7 years old) or an insane person are invalid.\(^{43}\)

(c) Subject in the Contract.
The subject matter of a contract may consist of belongings or property such as selling goods, mortgaging goods or giving goods (hibaḥ). It may also compose of beneficial form such as in the form of renting house or land. Fuqaha’ have stipulated that the subject matter of a contract must present in the time of contract, the subject matter must a permissible item from the shari‘ah perspective, the goods is able to be delivered at the time of contract and the both parties fully known and understood with regard of the goods.\(^{44}\)

(d) Purpose for Contract.
The purpose of a contract is one of the four elements in a contract. It is a main reason why the contract should be formed. From the fiqh point of view, reason is an origin objective and outcome (effect) from a contract. If the outcome of that contract is flawless then the contract is considered as valid.\(^{45}\)

4.0 ISLAMIC CURRENCY EXCHANGE WHICH FREE FROM RIBĀ (USURY)
Most of the Muslim jurists have decided that ribā can be categorized into two kinds namely Ribā al-Fadl and Ribā al-Nasi’ah.\(^{46}\) Ribā al-Fadl alludes to the selling of


\(^{45}\) Ibid.

currency for currency or food for food with little or some additional amount of value. This kind of ribā also means the selling of ribāwi items for ribāwi items with supplementary.

The ban on Ribā al-Fadl is clearly stated in various hadith, among them is a hadith narrated by ‘Ubadah Bin Sāmit. Prophet Muhammad (s.a.w.) said:

“Gold for gold, silver for silver, wheat for wheat, barley for barley, dates for dates and salt for salt, like for like, equal for equal, and hand for hand, if the commodities differ, then you may sell as you wish, provided that the exchange is hand to hand.”

From this hadith, we can infer that all the currencies must be exchanged equally and hand to hand. Any increase or additional value in any one of the commodities or currencies is considered as ribā and the transaction is unlawful (harām).

On the other hand, Ribā al-Nasi‘ah, is defined as the exchanging of ribāwi items with deferment. Islamic jurists consented that the exchanging of gold for gold or any currency for another currency must be in same quantity and equally in value at the Session of Contract (Majlis al-‘Aqd) without postponement. They also agreed that this kind of ribā (with postponement) is unlawful from the Islamic point of view.

This is based on a hadith narrated by Usāmah Bin Zaid:

“Truly ribā only happens when there is a postponement.”

In the currency exchange (al-Ṣarf), there are actually four principles to be obeyed by both parties in order to avoid ribā transactions namely:

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47 Sayyid Sebiq. op.cit. p.178.
48 Ribāwi items are gold, silver, wheat, barley, dates and salt. See Muṣṭafā al-Khinn. et al. 1998. Fiqh Manhaṭ ji. Damshiq: Dār al-Qalam. Vol.3. p.66. The discussion of ribāwi in this part is converged to gold and silver since both items are currencies exchange in the sale.
54 Currency exchange means the sale of currency for currency in the same class or in different class namely sale of gold for gold or silver for silver or gold for silver whether in the form of gold or in other forms. See Al-Kāsānī. op.cit. Vol.5. p.215.
4.1 The Exchange of Currency Must Happen Before Both Parties are Separated

The exchanging of currency before separation is a compulsory stipulation in this transaction. Once two parties in the contract are split before currency exchange takes place thus, this contract is void because one of its stipulations has removed. It also voids in order to avoid this transaction becomes sale of debt for debt, which consequently bring to ribā transaction.

4.2 The Exchange of Currency in the Same Class

The exchange of currency in the same class such as gold for gold or silver for silver must has equal (tamaţhul) in quantity and rate. The excess rate or quantity if happens is consider as ribā al-fadl which has been forbidden in the shari‘ah.

Furthermore, the exchange of currency in the same group such as silver for silver or Ringgit Malaysia for Ringgit Malaysia must have similar weight and value although it has a difference in fineness, grind, old or new for paper note. In other word, the exchanging of currency should have the same value and rate but not in terms of its characteristic.

Muslim jurists have agreed that the sale of exchanging gold with gold or silver with silver either in the form of currency or jewellery or in other forms should be similar in value and weight. In terms of currency exchange between one nation to other nation, the rate and value must be equal and if there is a difference between two of these currencies hence, this transaction is regarded as unlawful.

Meanwhile, for the exchange of different currencies for example, between Ringgit Malaysia and American Dollar thus, if there is an extra value between the two of these currencies, it is permissible from the sight of shari‘ah law but the transaction must occur without deferment.

4.3 The Exchange of Currency Without Any Option (Khiyār)

What I mean by without any option here is that no opportunity given for option of condition (khiyār al-shart) from one or both parties in the contract since the acceptance of currency is a stipulation in this kind of transaction. When there is an option, it will deform the acceptance and this contract will be void.

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For example, the seller says to the buyer, “I would like to change this Ringgit Malaysia to Rupiah and the exchange will happen in three days.” Here, the option of three days will make the contract of al-Ṣarf null because there is a postponement of three days.\(^\text{62}\)

*Khiyār al-shart* is not allowed in the contract of currency exchange because cause the seller and buyer to be separated before the subject matter can be surrendered (*taqābud*).\(^\text{63}\)

### 4.4 The Exchanging of Currency Without Any Postponement

It is stipulated in the contract of al-Ṣarf that the contract happens without any postponement by both parties in the transaction. This is because the acceptance of currency exchange should take place before both parties are split. If the person who makes the deferment removes it before separation, then they split after they had accepted the currency thus, this contract is permissible to be done.\(^\text{64}\)

### CONCLUSION

In conclusion, Islamic commercial law has its own principles and rules that need to be adhered by all Muslim buyers and sellers when dealing and trading globally. Although these principles and regulations may seem quite complicated to be followed by certain quarters nonetheless, if all these requirements are abided closely then the ultimate benefits, satisfaction and good consequences may be guaranteed for all parties in the transactions. The reason behind it is somewhat easy to understand, since all these principles and regulations are provided by Allah, the Most Glorious and Full of Wisdom God.

Islamic banks in Malaysia has offered various kind of Islamic instruments that can be used by Muslim entrepreneurs in trading globally such as Letter of Credit, under the principle of al-Wakālah and al-Mushārakah as well as Letter of Guarantee, under the principle of al-Kafālah, to name a few. Obviously, these instruments are shari‘ah compliant products and can be a good alternative for them in order to transact internationally.

\(^\text{62}\) *Ibid*.


REFERENCES


