

## **An Analysis of Derived Benefit from Saving Account: An Islamic Perspective**

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**Abstract:** Banking industry in its attempt to attract more customers, hence capital offer various forms of benefits. These benefits basically take two forms; direct and indirect. The first type of benefits are represented by provision of dividend to depositors whereas the second type of benefits are represented by offering of insurance, sale on discount rate when using the debit card, annual gift and lucky draw. Such entitlement is dependent on having saving account in the banks. Without having saving account one would not have access to such facilities and offer. This research focuses mainly on the issue of indirect benefits and their status from Shariah perspective. Library research method is used in this research due to the nature of its subject. The hypothesis of the research revolves around the status of the indirect benefits offered by banks from Shariah perspective and the distinctive features of such benefit offered by Islamic banking. The finding of the research shows that the benefit direct or indirect received by customer in Islamic banking have various features. All these benefits are received through depositing in the bank.

**Key words:** Saving account, benefits, banks, goods, direct, indirect, Malaysia

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### **INTRODUCTION**

Basically wadi'ah saving account is a form of security. Security generally connotes honesty and safety. This connotation is manifested in the contract of saving account whereby depositors and the receiver of the funds to be saved both trust and believe each other. The concept of (amanah) trust in the the saving contract is based on the receiver of saving fund. Let say, the receiver of deposit or the fund to be saved in the bank, attain guarantee and the trust from the depositor by means of the contract of opening saving account. Therefore, he is required to appreciate the trust and honestly protect and safeguard the fund entrusted to him by depositors in an appropriate manner. Furthermore, based on the concept of trust the receiver of fund to be saved does not expect any return or benefit from the contract.

Therefore, he cannot use the deposited money for doing so will be considered as violation of the trust rendered to him by the depositor. He is also not liable to any risk that might accrue in the process of saving deposited fund unless the risk accrued is due to his negligence and irresponsible attitude. It is in view of such consideration that Muslims jurists give saving contract the appellation of (amanah) trust contract.

However, currently the concept of amanah in saving contract has been modified by banking industry to fulfill

its evergrowing need for liquidity and other asset through deposited fund by depositors. Due to this factor, the concept of trusteeship in the contract of saving account has been modified to the guarantee. With the introduction of this new concept few rulings related to the legal status of the saving contract have changed. The permission to use the saved fund and shifting of all risks, involved in the process to the bankers are among some of the changes.

With the inception of the concept of guarantee in saving contract, the banking industry has introduced different types of saving account with the aim of attracting depositor's interest in opening such accounts. To achieve this goal, the banking industry has offered various incentives and specific benefits to the customers. However, the introduction of the concept of guarantee does not change the hukum legal status of saving contract, it only change its original concept which is (amanah) trusteeship.

The adaptation of the concept of guarantee in the saving contract by the banking industry results in more good and benefits to depositors and the banking industry. As for the the depositors do not have to be worried about the lost or destruction of their deposited fund for the presumed risks are shifted to the banking industry.

**Definition of the (manfa'ah) benefits:** Literally, manfa'ah means something useful, good or what cause good (Iskandar, 1984). Based on its literal meaning, the manfa'at usefulness implies the exclusion of badness or negative element. From technical aspect, the jurists have defined manfa'at as increment which a good or thing produce or bear. The increment can basically take the two following forms:

- Increment of the same type, this type of increment is known as the increment of the exact commodity. For example, a ringgit increases into 2 ringgit
- Increment of not the same commodity, this type of increment is known as the benefit which is derived from the commodity for example the milk being derived from animal and fruits being derived benefit from trees (Al-Umrani, 2000)

Based on its technical definition, benefit is not an absolute term indicating something as bad and prohibited or it is not synonymous with (riba) interest which is prohibited. There are benefits which are permitted for example increment or benefit that is derived from money by way of investment known as profit or the profit derived from the trees which is known as ghullah (Hammad, 1993). In other words, the derived profit or increment can only be considered as riba interest when it is related to the riba oriented activities. Interest also is defined by Muslim jurist as the increment of the same kind and nature in the process of exchange of goods (riba al-buyu) or increment in repayment of the debt (riba al-qurud). The example of increment that is considered as riba and accrues as a result of exchange of commodity is the exchange of 1 kg. of rice for 2 kg which is known as riba al-fadhil. Whereas, the example of increment labelled as riba of loan is the additional amount beside the original amount which has to be paid back to the lender as usually practiced in the process interest bearing loan. Therefore, the increment in riba is also a form of profit. However, this form of profit is prohibited by Shari'ah for this kind of profit is not fair and balanced as is the profit derived from the business which is permitted one. God Almighty says in the Holy Qur'an:

Those who devour usury will not stand except as stands one whom the evil one by his touch hath driven to madness. That is because they say: trade is like usury but God hath permitted trade and forbidden usury. Those who after receiving direction from their Lord, desist shall be pardoned for the past; their case is for God (to judge) but those who repeat (the offence) are companions of the fire: They will abide therein (forever)

## THE TYPES OF SAVING ACCOUNT

Basically, there are three kinds of saving account offered by banking industry for customers. They consist of saving account, current account and permanent account. These three kinds of account could be summarily related to two main objectives which are:

- For the purpose of saving as is the case with saving account and current account
- For the purpose of investment as in the case of permanent account

Each of the three types of the accounts offers special facilities and specific profits for the depositor. However, the profit gained from permanent account which is investment oriented account is not subject to difference of opinion among the Muslim jurists. Because the investment activity is a kind of sharing of profit and loss transaction which is permitted by Islam and is considered as profit and not as riba which is prohibited. What give arise to the difference of opinion among the jurist is the nature of the profit gained through saving account and current accounts, saving oriented contracts rather than investment oriented ones. The source of the difference of opinions among the Muslim jurists is the hukum or legal status of the two types of accounts whether it is considered as saving (wadi'ah) or loan (qardh).

Before attempting to answer this question, it is important to have an overview of the forms of the profits received by depositor from the banking industry based on these types of savings. Generally, it can be divided into two forms which is:

- Profit in the form of dividend given directly to the depositors based on the concept of gift (hibah)
- Profits in the form of indirect benefit such as giving specific facilities which the customers enjoy from their saving account

The first type of profit is only limited to dividend, an increment of the same nature to the deposited things in the banking industry (money). It is known by Muslim jurists as increment of commodities as delineated in the definition of benefits. Whereas, the second form of profit attract the attention of the banks managers for it is given in various forms to depositors in their attempts to attract the interest of the customers to deposit with the banking industry. This is known by Muslim jurists as the benefit derived from the corpus (thamarat al-'ayn), the increment obtained from corpus of thing involved in transaction activity whether the transaction involved is meant

basically for saving purpose as is the case with saving account and current account or it is not originally meant for saving purpose but to get excess to facilities provided for the account holder such as debit account which is attached with debit card and can be used in the premises providing such facilities. The following is the list of few examples of the forms of benefits available in the Islamic Bank in Malaysia.

### **THE BENEFITS OF SAVING ACCOUNT**

In the economic system which is based on free market theory, the banking industry competes to attract more customers and saving. Due to such motive they offer various forms of benefits and gifts to customers and depositors. Regardless of whether the benefits offered to the customers take the forms of direct dividend or indirect benefits (thamarat al-a'yan). Among the indirect benefits and gifts are:

Giving of benefits in the form of goods such as saving boxes, umbrella, t-shirt, etc. The giving of benefit in the form of things/goods is often done by the banking industry as incentives and the easiest way of attracting more customers hence saving to the banking industry. Gift in the form of accumulation of point that can be exchanged with things is an example of i-saving account. Pewani savings account i, a unique deposit product designed to help women save for their future. It is offered by Islamic Bank of Malaysia Limited. The bank will give 10 points to holder of such account provided that his or her monthly savings exceed RM1 000.

Gift (hadiah) in the form of insurance coverage (takaful). Some banks like Islamic Bank of Malaysia offer family insurance coverage free to the holders of saving account-i, Wadi gift Wadi, Saving account-i Ijraa and saving account-i Pewani. As an example, saving account-i, the banking industry offers insurance coverage under the name Hawa amounting to RM25,000 free provided the holder of such account save  $\geq 50000$  on monthly basis.

Gift (hadiah) in the form of specific special privileges that a depositor can enjoy. Such as chance of participation in contest because of opening such account in the bank or get the facilities provided by the banking industry to them as a member of the saving club.

### **THE BENEFITS OF DEBIT CARDS**

Debit card also use wadi'ah contract for it stipulate that its holder should save an amount of money in debit account in the bank to enable him or her make transaction in any premise offering such facilities without bringing

along cash money. Some banks along with debit cards offer other facilities and benefits to their account holders. Among the benefits usually received by the holders of this type of account is rebate of the price of certain goods bought by the holder of these cards. Getting insurance coverage free of charge is another benefit that debit card holder is entitled to. This is practiced by May Bank Limited. Through the debit cards which give 1 point for each 3 RM spent by it holder.

The point gained can be accumulated by customers and exchanged with product or certain services offered by the issuer of the debit cards. However, the holder of this card will be charged a certain fee when withdrawing cash using debit cards according to the prior stipulated conditions. Some other banks such as Bank Simpanan Nasional (National Savings Bank) and Affin Bank Limited offer cash rebit  $>0.5\%$  of the price of the goods purchased using debit cards. However, such rebit will be accumulated from the very early stage for the period of 12 months and will be given afterwards to the holder of the account.

Examples of gift and benefits provided by banking industry to the depositors as discussed before is something normally practiced by banking industry including Islamic banking. It generally depicts a form of indirect benefit received by depositors when they open saving account in relevant banks. It is not given out as free gift to any body without the prior stipulation of opening account in the relevant banks. Inversely, the said benefit can only be obtained after they have opened the accounts offered by banking industry.

### **THE STATUS OF DERIVED BENEFITS FROM SAVING ACCOUNT**

Muslim Jurists' opinions differ as regard to the legal status of the benefits received by depositor through opening saving account as became clear from above mentioned examples. The source of the difference among the Muslim jurists is their different stand with regard to the legal status of saving money in bank. Generally, there are three different views offered by Jurists regarding the issue. They can be summarized as:

- The first view considers the money saved in bank as loan (qardh)
- The second view considers saving money in bank as trust (wadi'ah)
- The third view considers such saving as (wadi'ah) with rent (ujrah)

**The proof of the first view:** As explained before, this group is of the view that the legal status of the saving in

the bank is as same as that of (qardh) loan. According to Mawlawi (1990) who contributes to the first view as a matter of principle when a saving (wadi'ah) is allowed to be used than its status automatically changes to borrowing (ariyah) if the said saving is in the form of things/goods but if it is in the form of liquidity, money it become loan (qardh). Therefore, the money saved in the bank if used with the permission of the depositor by bank is no more called as (wadi'ah) but rather as loan (qardh). This is based on the principle that what is taken into consideration in a contract is its meaning and purposes not its wording and form (Al-Suyuti, 1983). This principle clearly shows that when a person deposits his money with someone with permission of its use by him, it automatically becomes loan. Therefore, it is related to borrowing and loan taking which is approved by Shari'ah. Consequently, from the preceding overview of the banking industry and its rule it becomes clear that banking industry undertake the responsibility (dhaman) when it receive saving deposit from a large number of people. The undertaking of such responsibility by banking industry means that it become borrower or indebted with the money of the depositor and not only as the receivers of their deposit. This arguement has the support of the legal maxim something known as customary is the same as the thing stipulated. This legal maxim can serve as a strong evidence for the support of the view that the status of the saving money in the bank is as same as the loan and not saving only.

According to this point of view, any benefit derived from debt is considered as riba interest regardless of whether it is in the form 'ain of commodity or its benefit thamarat al-a'yan as described before. The prohibition of any benefits related to debt is clear from the following hadith of the Prophet (PBUH): it is narrated from Ali R.A that the Prophet (PBUH) said:

Any debt leading to benefit is considered riba

**The proof of the second view:** In addition to the first view there is another view which considers saving in the bank as practiced currently as wadi'ah and not qardh loan. Among those who hold this view is Abu Jayb (1994) a contemporary expert in legislation and banking. According to him saving in the bank means (wadi'ah) therefore it is the responsibility of the bank to return the saving back to their owner regardless of whether it is in the same amount or in different amount as agreed upon by both parties with certain contions. Meanwile, the bank is legitimately entitled to the benefits derived from the saving. However, entitlement to the benefit is not the same as the entitlement to the commodity/thing (raqabah) saved. Entitlement to benefit here means that banking party is given the permission by the depositors to use

their saving during the period it is saved in the bank. Whereas, entitlement to the commodity/goods (raqabah) indicate possession of the corpus ('ain) of the exact commodity which is the amount of money saved in the bank. Such possession, possession of the 'ain or raqabah does not take place between bank and the deposited money or saving for the depositor can withdraw it whenever he wish to do so without being bound by any specific condition.

Similarly, the depositors' permission to the bank to use their deposited fund does not turn it into a contract of (qardh) loan it rather becomes as a contract of dayn. It is therefore important to bear in mind that there is a difference between the contract of qardh and dayn both from legal and literal aspects. From literal aspect, qardh or loan is a term which is specific whereas dayn or responsibility is a term which connotation is general. Qardh implies reduction/cutting of a part of one's property and its submission to some one free of charge to be used and returned to his owner within a specific period of time. On the other hand, dayn implies the responsibility born by the receiver of the deposite to return it back to its owner whenever needed. Thus, the concept of dayn is portrayed by Muslim Jurists as (dhaman) guarantee whereas from the aspect of its legal status (hukum) it is different due to the fact that the contract of qardh is obligatory (lazim) on debtor while saving contract represents an unobligatory contract. In other words, it represents a permissible contract with no implication of obligatory nature. Consequently, those viewing saving deposite in the banks as wadi'ah, hold that whatever benefit received by depositors from their saving in the banks is permissible. This is due to the fact of saving contract being as same as that of contract of (amanah) trust which is not prone to riba. The concept of contract of amanah is a form of tabarru where the banking party receives savings voluntarily without being subjected to any sort of payment for the purpose of saving. Based on tabarru concept the depositors allow the receivers of the deposit to benefit from their saving. Meanwile, the receiver of the deposit which has benefited from the saving of the depositors can give a little bit of extra benefit to the depositors.

**The proof of the third point of view:** Beside the two view points as described before, there is another point of view which views saving in bank without charge as a form of amanah. However if such saving incur charge for its safekeeping in the bank its status automatically changes to ijarah rental. Ijarah is different from wadi'ah, saving. For, ijarah is a kind of contract which resemble to dhamanah guarantee whereas wadi'ah represent a form of

amanah contract. This point of view is not in accordance with real practice in banking industry where no charge is required for depositing with the banks. However, a question arise as to the right of the use of deposited fund by the banking industry whether it can be considered as an indirect charge payable to the banking party by depositor for safekeeping of their asset? Muslim jurists are not unanimously agreed upon regarding its legal status whether the derived benefit can be considered as the charge or rental for its usage. This is because of the condition that rent should be suitable with the specification of the asset among which is its purity, usefulness and possessibility. Jurists are not of the same view as regards to the assumption of the benefit as property or asset. Majority of the Jurists assume that property consists of goods/things ('ain) and the derived benefits whereas Jurists of the Hanafi school confine property to goods/thing ('ain) only. Therefore, based on Hanafiyyah, view point the benefit of the bank which is the usage of the deposited money can not be considered as a rent or the payment received from the customers. Furthermore, no contract of rent has taken place in savings of banks so far.

**The preferred view:** From the three points of views, the second view which considers saving in banks not as debt is a stronger point of view, hence according to this point of view, the benefit obtained by depositors is not riba. The strength of this point of view can be seen from various aspects. Saving account is a form of a permissible contract where both parties have the equal right of its cancellation at any time they desire whereas debt contract is a form of contract where only the indebted party is bound by its implication.

In other words, the loan providing party cannot cancel the contract before its maturity period with the debtor except with the agreement of the debtor. Otherwise, the loan providing party can cancel loan contract with loan receiving party with the condition that he settle all its debt even before its maturity period.

From the aspect of its intention and objective, the aim of most of the depositors is to facilitate the management of their financial affair such as receiving monthly salary, current expenditure and other precautionary measure. All these objectives indicate that it is a saving account and not loan. The fact that the depositors give permission to the banks to use their money temporarily does not mean lending to the bank. From the aspect of original contract, it is initiated based on saving contract and not on the basis of loan contract. This is clearly observable from the conditions and agreement between bank and its customers when opening saving account or current

account. This saving contract does not transfer the ownership of the money to the banking party. The ownership of the deposited money in the saving account still belong to the depositors and they can claim or withdraw the money whenever they wish. This is different from the saving account that is practiced by conventional banking where its aim is lending of money. It is evident from the fact that when the banking party receive the money as saving from its customers, they agree on return of specific amount to them provided they keep their saving for a certain period of time in the bank. In fact, this act tantamounts to taking loan with the promise of a fixed amount of profit and return to the depositors. This situation is similar to the meaning and implication of the legal maxim which goes: something understood or known as customary is like something stipulated. Therefore, saving in conventional banking system which promises clearly a fixed amount of profit or return is a form of loan.

Similarly, the owner of the saving in the conventional banks cannot be called as depositors but lenders because when someone promises a fixed amount as a return for depositor it mean nothing other than lending money with the purpose of riba. It is also in line with the condition that (ijab) offer must correspond with (qabul) acceptance. Therefore when (ijab) offer connote interest bearing loan (qabul) acceptance should also have the same connotation. This is clear from the saying of the Prophet (PBUH) which states: God curse those who give riba or receives it hence, the existence of interest giver is not possible without the existence of its receiver. Definitely both groups will be cursed by God. Therefore, the legal status of the depositing money under saving account in conventional banking system cannot be called as saving contract but loan contract. Thus, lending money with fixed amount of return to the depositors is considered as riba which is prohibited in Islam.

## CONCLUSION

It can be said that the legal status of saving and loan is different from Islamic perspective. Even though, there are some similarities between saving in both Islamic and conventional banking systems, there is a clear difference between them regards their evaluation and on their own discretion and choice for the depositors as a token of appreciation. On the contrary, the profit received from conventional banking system is interest legal status. The profit received from Islamic banking system is free from interest riba for the received profit is a form of tabarru welfare provided by the bankers based riba. This is because of the promise of a certain profit that is made by the banking party to the depositor. This is the

main factor which changes the status of saving to that of loan. The Islamic legal principle related to the loan dictate that any loan that generates benefit is considered riba, thus therefore is prohibited. Based on the different status of the saving in Islamic and conventional banking systems, it can be said that any benefit received by depositor from Islamic banking system whether directly or indirectly is permitted. For, it is based on the concept of tabarru. On the contrary, the derived benefit from saving in conventional banking system is riba interest for being based on loan and hence prohibited.

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