

GOLD INVESTMENT PRACTICES IN MALAYSIA : A SHARIAH REVIEW

Muhammad Aunurrochim Mas'ad¹, Muhammad Ezzuddeen Abdissalam bin Rozali², Wan Abdul Fattah Bin Wan Ismail³ Fuadah Johari⁴

¹(Corresponding author). Lecturer and Researcher, Faculty of Syariah and Law Universiti Sains Islam Malaysia, Bandar Baru Nilai, 71800, Nilai, Negeri Sembilan, Malaysia. aun2512@yahoo.com

² (Researcher, Faculty of Syariah and Law Universiti Sains Islam Malaysia, Bandar Baru Nilai, 71800, Nilai, Negeri Sembilan, Malaysia. <ezz.rozali@gmail.com>

³Associate Professor, Faculty of Syariah and Law Universiti Sains Islam Malaysia, Bandar Baru Nilai, 71800, Nilai, Negeri Sembilan, Malaysia. wanfattah@usim.edu.my

⁴ Associate Professor, Fakulti Ekonomi dan Muamalat, Universiti Sains Islam Malaysia, Bandar Baru Nilai, 71800, Nilai, Negeri Sembilan, Malaysia. fuadah@usim.edu.my

Article Progress

Received: 20 Oktober 2018

Revised: 10 November 2018

Accepted: 18 December 2019

Abstract

This paper reviews the concept of gold investment practice in the context of Malaysia, as well as to evaluate the application of Islamic concept in gold investment. This paper discusses the views of Islamic scholars on gold transaction and the implementation of syariah rules and regulation practices in Malaysia. The methodology adopted was document research and analysis. The study concludes that Islamic gold investment is a good tool of investment and complies with the syariah law. This research also suggests that gold investment as a good opportunity to Muslim over the world in order to generate income income to fulfill their daily needs..

Keywords: Gold, Investment, IFSA 2013.

Introduction

In the millennium era, there are various ways of investment that have been innovated by the corporates sector to be offered to the community. Among the various types of investment scheme available nowadays, there are an investment concept which known as gold investment. In Malaysia, The Central Bank of Malaysia (Bank Negara Malaysia) as a highest authorised body has function to supervise to any kind of investments and schemes in Malaysia. The Central Bank has been empowered by the Legislative bodies through Parliament Acts such as Central Bank of Malaysia Act 2009, Financial Services Act 2013, Islamic Financial Services Act 2013 (IFSA 2013). (BNM, 18 November 2017). This article aims to discuss and analyse the operation of Gold Investment account procedure from selected Islamic finance institution in Malaysia and evaluate how far these

practices comply with Syariah requirements. This research will be begun with the contract (*akad*) between the Islamic institution and the customers, as well as the *modus operandi* applied by bank.

This issue is important to the Muslims to ensure what their invest to certain company or institutions is truly comply with the Syariah regulation and free from any forbidden element in Islam. The Muslim being ordered by Allah (s.w.t) in the Holy Quran to take only which considered as Halal for them and leave which stated as Haram as follow:

Meaning: "Oo Human, eat what is halal and good for you from what available on earth, and do not follows the steps of satan because the satan is your true enemy".
(al-Quran. al-Baqarah: 168)

Gold Investment Definition

In order to gain a clear picture and further understanding regarding the topic, it is better to start discussion on the definition of gold investment as follow:

Investment Definition

Dewan Bahasa and Pustaka cited investment is to put, to give or surrender an amount of money for any effort like manufacturing items, trading, business and other for the purpose to gain profit (Dewan Bahasa dan Pustaka, 2000). Thus, investment from the perspective of conventional economy is any kind of money usage to buy any asset either the asset is in form of real asset or monetary asset with prediction and hoping that the asset will return profit as salary and the asset value considered will hiked soon and gain more profit. (Kamus Pelaburan, 1997).

Gold Definition

Gold is a yellow-coloured metal which honoured by human and held a very high and expensive value. Gold is a treasure from the underground of earth and only could be harvested by mining (Kamus Dewan, 2000). Usually, the miner will found gold in form of miniature patched together with other element such as stone and others. Gold is well-known as a solid component, easy to bend and also a very good electricity conductor.

According to Ibrahim (2012), gold is the favorable property as an investment asset for the Malaysian emerging market. As a result of the successful investment in gold, a few numbers of financial institutions in Malaysia either Islamic or conventional banks offer gold investment account as one of their products. The researchers have chosen the operation of Kuwait Finance House (M) Berhad (KFH) and Maybank Berhad as the reference on the operation of gold investment account in Malaysia.

Since the ancient ages, gold already being as a very valuable and expensive item. Gold has already being as jewelry especially for the women and had been as a symbol of wealthy for individual, organization, government and even an

empire. The structure of the gold with elegen yellowish coloured and shining and also very hard to found with very little in number has attract human attraction toward it and rise it's value becaming very expensive among human. This argument is supported by Allah (s.w.t) in the Holy Quran as follow:

"Beautified for people is the love of that which they desire – of women and sons, heaped-up sums of gold and silver, fine branded horses, and cattle and tilled land. That is the enjoyment of worldly life, but Allah has with Him the best return (Heaven)"
(al-Quran. Ali Imran: 14)

From the mining gold, the gold also being processed to be maked as a coin and became as currency as medium in human for the purpose of trading and businessing. The value of the gold also proven as the best saving value throught out the century and also as the best anti-inflacy asset. Gold also being underlying to the value of fiat money nowadays around the world.

Gold Investment Definition

Gold investment defined as any form of investment which involving gold as its main commodity in the investment operation. Gold investment occurred when buying the gold physically or enrolled with any financial gold-based product for the purpose to gain profit(Syukran Hasyim,2017). Gold investment divided into two types as follow:

1. Conventional Gold Investment

Gold investment physically has been available since long time ago even by directly or indirectly. This kind of gold investment occures when somebody bought some gold at certain value from the gold seller or previous owner who intended to sell (Louis Ng, 2009).

The gold which already bought then being kept at the safety keeping place. Usually, people will keep this gold on their own by keeping it in the drawer at their house, under their bed or in their safety vault for those who owned a vault. This types of keeping is too risky where it is exposed to unpredicted posiblity which will resulted loss to the owner such as theft, violation, broke and other risk such as natural disasters.

However, nowadays, in the advance era, there are a specific safe keeping for gold and other valueable item where the safety of the item is guarantied and insured by insurance company at the bank. The bank will keep our valueable item at certain cost charge by the bank as service charge. This kind of keeping is more safety and guarantied compare to the conventional types of keeping.

When the price of gold rose up higher than the buying price, the owner of this gold will sell their gold with current price in order to gain the profits from the investment they made. Some of them did not sell the gold right after the price

hike, but wait longer with hope that the price of the will boom-up higher, so they will earn much more profit (Muhammad Muslehuddin, 1988).

2. Gold Investment through Monetary Institution

Gold investment nowadays is not limited only to conventional way by buying and keeping the gold physical only, however it has been transformed and expanded as a new form investment alternative. In this kind of investment, the buyer of the gold does not need to risky himself by holding and keeping the gold himself.

Under this concept, it can be understood the gold investment is an instrument of investment based on the value current gold price to gain the return. This types of gold investment becoming so popular day by day by establishing so many company and banking institution which offered this kind of gold investment scheme and differ from one to another.

The bank institution will attract the public with some facilities through this kind of gold investment scheme. The people who got interest to invest can enroll to the investment scheme with any amount subjected to the minimum and maximum range which has been fixed by the bank. When a customer (as investor) agreed to make an investment, then he must surrend some amounts in order to acquired the aqquisition to gold (Muhammad Muslehuddin, 1988).

Under Islamic banking institution, the investor will be offered an option either they want to hold and keep the gold on their own, or just let the gold keep by the bank. The bank institution then will issue an account book for the investment account which in that book will be stated the amount or value of the gold owned by particular people as record to be keep by the investor for any transaction purpose in future.

The owner of the gold are freely allowed to sell their gold either to the bank back or to another buyer who got interest to their gold for the purpose to gain profit from their investment. In this research, the reasercher will give focus on this issue deeper and discussing regarding the rules in Islam about this gold investment (hukum), the underlying contract (akad), types of gold investment and others. This research will also highlighted some investment scheme offered by the banking institution in Malaysia (Muhammad Aidid bin Md Said, 2007).

Gold From The Islamic Perspective

Gold considered as a very valuable item in Islam. In Al-Quran, there are some verses where Allah (s.w.t) highlighted the gold in human life and also the others things related to gold and its function in human life. One of the verses is as follow:

﴿ إِنَّ الَّذِينَ كَفَرُوا وَمَاتُوا وَهُمْ كُفَّارًا فَلَنْ يُقْبَلَ مِنْ أَحَدِهِمْ مِلْءُ الْأَرْضِ حَبًّا لَوْ أُفْتَدِيَ بِهِ أُولَئِكَ لَهُمْ عَذَابٌ أَلِيمٌ وَمَا لَهُمْ مِنْ نَاصِرِينَ ﴾

Which means, “Indeed, those who disbelieve and die while they are disbeliever- never would the (whole) capacity of the earth in gold be accepted from one of them if he would (seek to) ransom himself with it. For those there will be a painful punishment, and they will have no helper”.

(al-Quran. Ali-Imran:: 91)

The verses given above is a form of recognition from Allah Taala towards gold as a very valuable thing on earth. In that verse, Allah want to tell us that non-muslim (Al-Kafirun) will never escape from the punishment which Allah has already prepared for them. Even they willing to pay with gold where the amount of the gold is full of earth, they will never can espace from the punishment from Allah.

Allah choose to use gold as comparison because the position and value of gold among the human, and did not use other commodities as comparison such as land, farm, fruit or animal because if these item compared to gold, these item will never being more or atleast at par with gold. This is one of the wisdom in the Quran in order to threat and weaken those who oppose Allah. Thus, Allah even make gold as one of the reward from variouses of reward prepared by Allah in the heaven for those obey with what Allah want. This matter can be know from the verses in Quran as follow:

أُولَئِكَ لَهُمْ جَنَّاتُ عَدْنٍ تَجْرِي مِنْ تَحْتِهِمُ الْأَنْهَارُ يُحَلَّوْنَ فِيهَا مِنْ أَسَاوِرَ مِنْ ذَهَبٍ وَيَلْبَسُونَ ثِيَابًا خُضْرًا مِنْ سُنْدُسٍ وَإِسْتَبْرَقٍ مُتَّكِينَ فِيهَا عَلَى الْأَرَائِكِ ۖ نِعْمَ الثَّوَابُ وَحَسُنَتْ مُرْتَفَقًا

Which means, “Those will have gardens of perpetual residence; beneath them rivers will flow. They will be adorned therein with bracelets of gold and will wear green garments of fine silk and brocade, reclining therein on adorned couches. Excellent is the reward, and good is the resting place”

(al-Quran. Al-Kahfi: 31)

﴿يُطَافُ عَلَيْهِمْ بِصِحَافٍ مِنْ ذَهَبٍ وَأَكْوَابٍ ۖ وَفِيهَا مَا تَشْتَهِيهِ الْأَنْفُسُ وَتَلَذُّ الْأَعْيُنُ ۗ وَأَنْتُمْ فِيهَا خَالِدُونَ﴾

Which means, “Circulated among them will be plates and vessels of gold. And therein is whatever the souls desire and (what) delights the eyes, and you will abide therein eternally”

(al-Quran. al-Zukhruf: 71)

Gold as Ribawi Item.

Under Syariah regulation, gold considered as one of item and good which mention directly by Prophet Muhammad (s.a.w) as Ribawi item. This rules and regulation (*hukum*) come up from two hadith from Prophet Muhammad (s.a.w) as follow:

First Hadith:

الدَّهَبُ بِالذَّهَبِ وَالْفِضَّةُ بِالْفِضَّةِ وَالْبُرُّ بِالْبُرِّ وَالشَّعِيرُ بِالشَّعِيرِ وَالتَّمْرُ بِالتَّمْرِ وَالْمِلْحُ بِالْمِلْحِ
بِالْمِلْحِ مِثْلًا بِمِثْلٍ يَدًا بِيَدٍ فَمَنْ زَادَ أَوْ اسْتَزَادَ فَقَدْ أَرَبَى الْآخِذُ وَالْمُعْطَى فِيهِ سَوَاءٌ

Which means, “(If) gold sold with gold, silver with silver, wheat with wheat, *sya’ir* (types of wheat) with *sya’ir*, dates with dates, and salt with salt, the value (weight and value) must at par and pay cash on the spot. Whoever put addition or ask for addition, the have practiced Riba’. Whoever take the addition (from the origin value) and who paid for the addition both of them committing sin. (Imam Muslim, n.d)

Second Hadith:

الدَّهَبُ بِالذَّهَبِ وَالْفِضَّةُ بِالْفِضَّةِ وَالْبُرُّ بِالْبُرِّ وَالشَّعِيرُ بِالشَّعِيرِ وَالتَّمْرُ بِالتَّمْرِ وَالْمِلْحُ بِالْمِلْحِ مِثْلًا بِمِثْلٍ سَوَاءٌ
بِسَوَاءٍ يَدًا بِيَدٍ فَإِذَا اخْتَلَفَتْ هَذِهِ الْأَصْنَافُ فَبِعُوا كَيْفَ شِئْتُمْ إِذَا كَانَ يَدًا بِيَدٍ

Which means, “(If) gold sold with gold, silver with silver, wheat with wheat, *sya’ir* (types of wheat) with *sya’ir*, dates with dates, and salt with salt, the value (weight and value) must at par and pay cash on the spot. If the types of item (being trade), is on you to do trading but must in form of cash and on the spot”. (Imam Muslim, n.d.)

Majority of the Islamic scholar agreed that all of the six commodities which are gold, silver, wheat, *sya’ir*, dates and salt which mention in the Hadith above are listed as ribawi item. All of the six commodities can be traded with barter trading system and exchange the item directly but must comply with the rules and regulation as shown by Prophet Muhammad (s.a.w).

Among the term and condition which compulsory to be followed during trading ribawi item such as gold with gold, silver with silver and others are as follow:

First condition : The transaction of the trading and exchange the item must be done by cash in term of payment and the item must be handed on the spot during the trading event take place. The hand over of the item which is already being agreed to be traded must settle during the akad ceremony and cannot delay or postpone after the akad ceremony or after the both party have split away even for a while.

For example, the owner of the gold A agreed to change his gold with owner B gold, then the exchange of the ownership of the gold between gold A and gold B must settle on the spot and during the time when the agreement has been reach without any kind of postponation.

Second condition: the transaction and trading of the item must at par and equally in number or quantity or weight. This condition applied even to the same item but difference in quality for the both item.

For instance, the exchange or trading between gold 999 types with gold 916. As we know, gold 916 value is cheaper than the 999 one. However, if someone want to trade his or her 999 gold with the 916 gold, the quantity of the gold traded must same and cannot be added or lessed either one of them. If addition or less occur, the exchange and trading is prohibited (*Haram*) because there is *riba'* in those transaction.

Zakat for Gold

All Islamic scholars agreed that those who owned gold are compulsory and must pay zakat when the period (haul) and the quantity (nisab) have already reached. This is direct command from Allah Taala to every Muslim throught verses in the Quran as follow:

﴿وَالَّذِينَ يَكْنِزُونَ الذَّهَبَ وَالْفِضَّةَ وَلَا يُنْفِقُونَهَا فِي سَبِيلِ اللَّهِ فَبَشِّرْهُمْ بِعَذَابٍ أَلِيمٍ﴾

Which means, *“and (remembered) those who keep gold and silver but did not spent it to gain Allah path, tells to them that Allah punishment is beyond doubt”*

Even there is Hadith from Prophet Muhammad (s.a.w) supporting the verses in the Quran that also command to every Muslim to pay for Zakat for their gold saving which the period (haul) and quantity (nisab) has eligible to zakat calculation.

ما من صاحب ذهب ولا فضة لا يؤدي منها حقها إلا إذا كان يوم القيامة صفحت صفائح من نار، وأحمي عليها في نار جهنم فيكوى بها جنبه، وجبينه وظهره، كلما بردت أعيدت في يوم كان مقداره خمسين ألف سنة، حتى يقضى بين العباد، ثم يرى سبيله إما إلى الجنة وإما إلى النار.

Which means, *“for those owned gold and silver but did not execute his right will make then as slice then will be burn in the hell fire and their back bone will be stabbed. And each time the slice become cold, it will be burn again day to day which equal to fifty thousand (50,000) year until he will be punished between Allah servant and will be justify his path either to heaven or the hell”*. (Imam Muslim, n.d.)

It can be understood from the said texts of Al-Qur'an and Hadith; a command to pay Zakat for gold, both of it is a word of command which followed by threat from Allah and Rasul with torturing which cannot be imagined by us if the command did not being followed. This showed us how Islam seriously rules for those groups who are eligible for zakat portions .

a. Gold Zakat Rates.

After discussing about the rules and regulation in Islam regarding gold zakat and also about the supporting prove from verses of Quran and Hadith, the the question arise about what is the rate or percentage of gold zakat and how much is the quantity which will make the owner is compulsory to pay for the zakat.

In general, the period (haul) of gold zakat is one year in Hijriah. (Zakat Selangor, 15 November 2017). This is mean, when the ownership of the gold is perfectly one year in Hijriah, the it is compulsory for the owner to pay for the zakat for the gold which owned by him.

Regarding the quantity (nisab) of gold which will make compulsory to pay for the zakat is when the ownership of the gold is more than 85 gram. Starting from 85 gram, the owner is compulsory to pay for the zakat which value rated about 2.5% only from his total of gold ownership. The methodology of payment can be done by two ways as follow:

1. Pay by using his own gold which 2.5% from his total gold ownership.
2. Replace the payment of the zakat with something which is same value as 2.5% of the zakat such as us money (Zakat Selangor, 15 November 2017).

Reviews on Gold Investment and its application.

Before we proceed further discussion on “Gold Investment Scheme in Malaysia”, it is better to discuss about the beginning of the topic. As we know, nowadays there are many banking institution who offered gold investment to the public which known as Gold Investment Account in general. Some of the bank who offered this kind of investment are Maybank Berhad through Maybank Gold Investment Account (MGIA) (Maybank, 20 November 2017), Kuwait Finances House’s through KFH Gold Account-I (Kuwait Finance House Malaysia, 20 Novemver 2017), CIMB Bank with Gold Investment Account (GIA) (CIMB, 20 November 2017) and others.

However, there are some gold investment scheme which still practices through conventional system which is the system is based on *riba’*. This kind of gold investment scheme is automatically rejected and prohibited under syariah regulation because this kind of scheme is not syariah compliance and did not comply with the halal principle.

This argument is parallel with the Parameter of Gold Investment by Muzakarah Fatwa Kebangsaan, 2011 which as follow:

(23. *Transaksi jual beli hendaklah bebas daripada unsur-unsur riba, perjudian, gharar yang berlebihan, dan kezaliman. Jika sekiranya terdapat unsur-unsur tersebut, transaksi jual beli adalah dikira tidak memenuhi kriteria syarak*) (Muzakarah Fatwa Kebangsaan kali ke 96, 2011).

The transaction of buying and selling must free from any element of *riba'*, too much *gharar* and cruelty. If the transaction detected these kinds of element, the transaction considered as not comply with the *syarak* criteria.

For the gold investment account with Syariah compliance status, the offerer party which is the bank must confirmed that every aspect of transaction and operation must followed and parallel with th Syariah principle. All type of transaction and trading begin with a clearly contract (*akad*) between the bank and the customer of the gold investment and ensure the contract is comply with syariah need.

Akad (Sighah)

The (*sighah*) of the contarct is known as Ijab or offering and Qabul or acceptance. Both of these Ijab and Qabul are importants in any contract and transaction because this thing will justify either the contarct is acceptable or void from the syariat perspective. From this activity, they can meet an agreement clearly wheather the contarct is through cash, loan, postponed and other else. The example of ijab word is "I sell", thus for Qabul is "I buy". The word of Ijab and Qabul can be use in various ways as long as it is bring the meaning of buying and selling, where the word of Qabul must followed the word of Ijab without any postponing (Al-Sharbayni, 1997).

These Ijab and Qabul need some conditions to be followed:

1. Do not put between the Ijab and Qabul another word which is not have relation with the buying and selling transaction.
2. Between the Ijab and Qabul, cannot stay shut for a long time. This means, right after the seller says the Ijab word, then the buyer must continues with word of Qabul on the spot. However, if the shut occurred due to the buyer cough or inhale after the seller says Ijab, there is no problem.
3. The Ijab and Qabul must same from the meaning even different from the word. For instance, the seller says "I sell this item to you for ten Ringgit Malaysia", after that the buyer says "I buy this item with the price of one thousand cent". From this example, we can see that even physically, the word is different, however the meaning is just the same (Al-Sharbayni, 1997).
4. The transaction cannot deal just to certain limited time, where the seller puts on condition such as the item is only sells for 2 year period only.
5. The contract of buy and sell cannot be binded with others element. For example, the seller said Ijab "I sell to you this orchid with the price of RM 70 thousand if my wife died while preganant".
6. The word and pronouncation of the Ijab and Qabul must be says by a normal speaking sound and can be heard by the people near them. If the Ijab and Qabul done by whispering or with too weak speaking sound until

people nearby them cannot hear the akad, so the akad will considered void (Abdul Razak Haji Muhammad, 2012).

7. It is prohibited to put two contract in a transaction. This kind of contract also prohibited by Prophet Muhammad (s.a.w) because this types of contract will be considered as *Gharar* (Uncertainty) because there will cause misunderstanding due to have to contract in a transaction (Mustafa Al-Khin et al., 2013).

Gold Investment Scheme from the Islamic Perspective.

In the discussion of the gold investment scheme in Malaysia, there are two types of gold investment scheme available, one with the conventional system while another system is based on Syariah Muamalat system. There are huge gaps between these two system where the conventional system is easily to be operated which based on riba' system while the Islamic one totally free from any element of riba and gharar.

Riba' is addition occurred in any transaction of ribawi items or occurred in debt business activity (Sayyid Sabiq,1999). Riba' is totally prohibited and banned by Allah through verse in Quran as Follow:

وَأَحَلَّ اللَّهُ الْبَيْعَ وَحَرَّمَ الرِّبَا ۚ

(*Surah Al Baqarah. 2: 275*)

Which means: "But Allah has permitted trade and has forbidden riba'

Riba' can be categorized in two types namely Riba' Al- Fadl and Riba' An-Nasi'ah. Riba' Al-Fadl occurred when there is an addition to one sided item in transaction which engaging ribawi item. For example, Ahmad sell one kilogram of salt to Azrul with exchanging with two kilograms of salt.

While Riba' An-Nasi'ah is a late or postponing to hand over one of the item in the transaction which include ribawi item or an addition or interest which included in debt activity due to the insurance payment. For example, Abu owes Ali RM 20 but Ali put the condition that when Abu want to pay back, he need to pay RM 20 with interest RM 5 makes the total of the payment is RM 25. The RM 5 will considered as Riba' An-Nasi'ah.

While gharar means uncertainty, danger or bet. al-Qaradawi in his book defined Gharar as a transaction or trading which contain uncertainty and does not clarify clearly regarding the item being traded. He gives some example of *Gharar* in trading such as buying a camel babies before the camel's mom give birth, or sell the bird on the air and sell fish in the sea (Al-Qaradawi, 1999).

While al-Zuhayli defined *gharar* as a betting, and the availability of uncertainty regarding the trading item and does not stated clearly of did not concrete, the item is unknown wheater it is available or not, or did not have

confidence the capability of the seller whether he can deliver the item or not (Al-Zuhayli, 2008).

Based on the arguments and ideas which being thrown by both Islamic Scholar, *Gharar* can be concluded as uncertainty in any kind of trading and transaction of buying and selling, and the buyer did not know the characteristic and the condition of the item and the effect of the buying and selling contract also remain unknown.

Muamalat Instrument in the Gold Investment Account

Basically, Islamic banking institution will execute contract (*akad*) which has been recommended by Islamic scholar for their banking product in order to avoid non-compliance element. Among the instrument used in the Islamic banking institution are *Bay'al-Murabahah*, *al-Ijarah Thumma al-Bay'*, *Bay' Salam*, *Ujrah*, *Bay Dayn*, *Bay inah*, *Bay'al-Sarf*, *Wakalah*, *Wadi'ah*, *Rahnu*, *Qard hasan*, *Mudarabah*, *Sharikah/Musharikah*, *Hibah* (Kasri Noor Suhaida, n.d.).

There are two types of Muamalat instrument involve in the operation of Islamic banking institution for the purpose of the operation of gold investment account in Malaysia. The two types instruments for the underlying contract are *Bay' Al-Sarf* and *Qard Hassan* (Imran Tahir & Mark Brimble, 2011).

Bay' al-Sarf

Bay' Al-Sarf can be defined as trading of currency with the same types or difference by selling gold with gold, or gold with silver or by trading money currency such Dollar with Dolar or Rupiah with Ringgit (Shamser Mohamad et. al.,2002).

The operation procedure for *Bay' Al-Sarf* in gold investment account at the Islamic bank in Malaysia occurs when the customer agrees to buy a certain amount of gold for the purpose of investment from any Islamic bank branches which offered this product. When the customer agrees to the term and condition, the customer must pay the value of the gold by cash, or by transferring from his saving or current account to the bank account, or by using cheque which received by the bank (Kuwait Finance house Malaysia Berhad, 20 November 2017).

After the payment settled, the bank must hand over and transfer the ownership of the physically to the new owner of the gold physically on the spot without any postponing to avoid from the element of *Riba' An-Nasi'ah* occurs in the transaction from the postponing act. There are four main rules and conditions which must be followed in the principal of *Bay' Al-Sarf*:

1. Majority of the Islamic scholar agreed that trading between gold with gold must same and at par in the aspect of quantity, weight and cannot be added the quantity of gold to one of the party even the gold are different types, design and beautiful. This is to ensure that this transaction is free from the element of *riba' al-nasi'ah*.

2. In the *Bay' al-Sarf* contract, the acceptance (al-qabd) of the item should be done in the akad ceremony before the buyer and the seller split away from the akad ceremony. All Islamic scholars agree that if the buyer and the seller split before the acceptance of the good being done, the akad is considered as broken (*fasid*) (Ibn Qudamah, 1999). The splitting happened when one of them has gone toward one way from the akad ceremony while another one has gone to other way or in easy word, they are physically splitting away from each other.
3. The contract must be in form of cash without any postponed by any party. The buyer must pay the price of the gold either with cash money, bank transfer or cheque. When the payment had been done, the seller which is the bank must handed over the gold which had been bought by the customer on the spot. If there are any postponing element in this *Bay' al-Sarf* contract, then the akad will be broken (*Fasid*) (Ibn Hajar al-Asqalani, n.d.).
4. There is no such option that the contract could be terminated by any special clause (*khiyar syarat*). If in the agreement have this kind of clause, the contract is consider broke (*fasid*) because the acceptance of the item is not 100% because any party could terminate the transaction due to this *khiyar syarat*. (Al-Zuhaili,2008), While in Islam, *bay' al-sarf* means the buyer is totally owned the gold which he has bought previously. However, it is considered as okay if *khiyar majlis* being practiced in *bay' al-sarf* which means when the transaction have been done, one of the party want to terminate the deal before they split away.

Qard Hasan.

The Islamic bank also uses Qard Hasan contract to perform their gold investment account together with the *Bay' Al-Sarf* as we discussed previously. According to majority of Islamic scholar, Qard Hasan is an activity of transferring an ownership of any item from the owner of the item to other party as a debt with condition the item must be returned to the first owner in some period without any addition from the origin value (Al-Shaibaniy, 1983).

The three principal pillars of qard hasan must be there in the akad (*Ijab and Qabul*); the party involve, debtor and debtee and last one is the item which taken into the transaction as the debt (*qard*). The akad must clearly clarify about the debt, about the period of the debt, value of the and other. While the party involved both of them must sound in mind, not underage (*baligh*) and not someone who considered as dumb who cannot managed their own properties. The last principal, regarding the item. The item must an item which can be countable with value, and must be something considered as valueable among human and not something which is not permitted in Islam (Al-Khin Mustafa, et al., 1992)

In the practice of gold investment account offered by certain Islamic Banking Institution, the concept of Qard Hasan occurred when the customers who join the gold investment account but did not want to keep their gold on their own after they have already acquired the right of the gold through buying with *Bay' al-sarf* concept. The bank will keep the gold on behalf of the customers as the good debt (*qard hasan*).

The bank will issuing an account book, stating the number of gold which the customers agreed to give as a debt to the bank. Then, when the gold price rose-up, and the customers decide to sell their gold in order to gain profit from the hiking of gold price, the bank must handover back the gold to their customer without any addition as interest or others.

Under this kind of underlying contract, it will benefits the customer where they did not have to bother and risky themselves to save their gold on their own. The gold will be kept by the bank safely. The customers can take back their gold anytime when they want from the bank. Through this kind of muamalat instrument, the bank operation will not contradict to the syariah regulation and their investment scheme considered as syariah compliance (Kuwait Finance house Malaysia Berhad, 20 November 2017).

The Operation of Gold Investment Account Scheme in Malaysia

Gold investment account offered in Malaysia by the Islamic banking institution has several scenarios of operation procedure and it is difference from one to another. There are three types or scenarios of operation procedure in gold investment account in Malaysia as mentioned in the table below:

Table A: Operational Procedure in Gold Investment Account

Scenario	Minimum buying	Minimum Selling	Payment Method	Selling Method
A	1 gram	1 gram	Cash Debit from current or saving account Local cheque	Cash Credit to current or saving account
B	5 gram	5 gram	Cash Debit from current or saving account	Credit to current or saving account The physical of the gold can be claimed minimum 100 gram.
C	5 gram 10 gram or 50 gram	1 gram	Cash Debit from current or saving account Local cheque	Credit to current or saving account The physical of the gold can be

claimed with
value 1,5,10,20,50
or 100 gram.

Source: Elemen Gharar Dalam Akaun Pelaburan Emas Menurut Hadith

The operational procedures above are the underlying contract for gold investment account offered by banking institution in Malaysia.

Scenario A:

The question arises under this scenario of the operational procedure is that there is no surrender or handed the bought gold to the buyer even the record of the transaction being recorded in the book of the gold investment account. This kind of trading known as Bay' Ma'dum which means selling and buying with the item which the seller did not have and could not handed the item to the buyer (Al-Sharbini,1997). *Bay' Ma'dum* is considered as one of Gharar (uncertain) that prohibited just like buy the flying bird on the air.

This argument is based on Hadith from Prophet Muhammad (s.a.w) as follow:

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ يُوسُفَ أَخْبَرَنَا مَالِكٌ عَنْ نَافِعٍ عَنْ عَبْدِ اللَّهِ بْنِ عُمَرَ رَضِيَ اللَّهُ عَنْهُمَا أَنَّ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ نَهَى عَنْ بَيْعِ حَبْلِ الْحَبَلَةِ وَكَانَ بَيْعًا يَتَّبِعُهُ أَهْلُ الْجَاهِلِيَّةِ كَانَ الرَّجُلُ يَتَّبِعُ الْجُرُورَ إِلَى أَنْ تُنْتَجِجَ النَّاقَةُ الَّتِي فِي بَطْنِهَا

Which means, 'Abdullah bin Yusuf said, Malik told us from Nafi' from 'Abdullah bin 'Umar (r.a): "Prophet Muhammad (s.a.w) has forbidden from sell and buy habal al-habalah. This is one kind of trading which is practiced by Jahiliyyah community. A man trade a baby camel before the camel give birth, then until the camel kid give birth(Imam Bukhari, 1400H).

The issue is that there is no *al-Qabd* after the transaction of the gold done. The exchange between the money and the gold listed under ribawi item regulation and must be exchanged on the spot without delayed during the akad of the trading occurred. The missing of *Al-Qabd* will cause the transaction involve in to *Riba' al-nasi'ah* (Al-Zuhayli, 2008).

This also contradict with the Parameter of Gold Investment no. 13 from Muzakarah Fatwa Kebangsaan, 2011 which are:

Penyerahan barang belian (emas) hendaklah berlaku secara penyerahan hakiki ataupun kaedah muktabar yang boleh menggantikan penyerahan hakiki. Penyerahan barang belian yang muktabar akan membawa kesan sama seperti penyerahan hakiki, iaitu:

- a. *Berpindah dhaman (tanggungjawab jaminan) daripada penjual kepada pembeli.*
- b. *Kemampuan pembeli untuk mendapatkan barang beliannya pada bila-bila masa tanpa ada halangan. (Muzakarah Jawatankuasa Fatwa Majlis Kebangsaan, 2011)*

Other issue is that when the buyers of the gold want to sell back, they buy before during the gold price arise to gain profit. This kind of trading includes under the category of *gharar* due to the trading occurs before the buyers owned the gold they previously bought, before the buyers owned the gold as physical. This kind of trading will become *bay' al-ma'dum* because the buyers do not own their gold which not exist.

This argument supported by Hadith from Prophet (s.a.w) as follow:

حَدَّثَنَا أَزْهَرُ بْنُ مَرْوَانَ قَالَ حَدَّثَنَا حَمَّادُ بْنُ زَيْدٍ حَدَّثَنَا أَبُو كُرَيْبٍ حَدَّثَنَا إِسْعِيلُ بْنُ عُكَيْبَةَ قَالَ حَدَّثَنَا أَيُّوبُ عَنْ عَمْرِو بْنِ شُعَيْبٍ عَنْ أَبِيهِ عَنْ جَدِّهِ قَالَ قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ لَا يَحِلُّ بَيْعُ مَا لَيْسَ عِنْدَكَ وَلَا رَيْحُ مَا لَمْ يُضْمَنْ

Which means, 'Azhar bin Marwan said, Hammad bin Zayd said, Abu Kurayb said, Isma'il bin 'Ulayyah said Ayyub from 'Amr bin Shu'ayb from his father and his grandfather, Rasulullah (s.a.w) said, It is not permitted any kind of trading which you did not owned and the profit you gained from the trade is not halal". (Abu Dawud,1999)

Other issue is that there are two akad involved in a trade. First is *Bay' al-salaf*, then when the bank institution does not hand over the physical of the gold, the bought gold will be recorded as debt by the bank. To easy understand this issue, the buyers bought the gold and at the same time gave the gold as loan to the bank.

This is supported by Hadith from Prophet Muhammad (s.a.w) as follow:

عن عبد الله بن عمر رضي الله عنهما أن النبي صلى الله عليه وسلم قال: لا يحل سلف وبيع، ولا شرطان في بيع، ولا ربح ما لم يضمن، ولا بيع ما ليس عندك.

Which means, "From Abd Allah ibn Umar (r.a) that Nabi (s.a.w) said: It is not allowed (to transact) debt and sell together, and involve two conditions in selling (trading) and profit gained without any risk, and sell what you do not have. (Al-Bayhaqi, 2003)

Scenario B:

This scenario is much better compared to scenario A because it allows the buyers to own the physical gold and keep it by themselves. However, the allowed amount is not comprehensive to all levels of buyers. This is due to the bank only allowed the investor to get their physical gold minimum to 100 gram. This will cause the buyers of the gold which is below 100 gram cannot gain the right to owned the physical gold. This modus operandi considered as non syariah

compliant due to there is no *al-qabd* for the buyers who buy the gold under 100 gram.

Scenario C:

This scenario is better and comply with the syariah need, and also free from any element of *riba'* and *gharar* due to the buyers have the option either to keep the gold itself or continuously kept by the bank under the contract of Qard Hassan. The option of the gold also comprehensive where each of the buyers can withdraw their gold even the buyers owned only 1 gram of gold. This will ensure the acceptance of the gold (*Al-Qabd*) occurred and complied with the Syariah requirements.

From this three scenarios or *modus operandi*, concept A and B contain the element of *Gharar* and *riba' al-nasi'ah* which prohibited by Syariah. Meanwhile, the scenario C only totally complies with the Syariah requirement and regulation in term of gold investment account product. If the scenario is different, it will cause the different implication from the aspect of Syariah compliance.

Gold Investment Account Operation – Kuwait Finance House

There are a lot of banking systems which offered Gold Investment Account to the public. However, from the five bank which offered this Gold Investment Scheme, only Kuwait Finance House which operated with Islamic system. The others banks which practiced with conventional system are Maybank, CIMB Bank, Public Bank dan United Overseas Bank (UOB).

Kuwait Finance House (KFH) is a finance institution that originated from Kuwait. KFH is ranked as one of the most influencer international bank from the Middle East along with Al-Rajhi Bank, Naseer Social Bank and Islamic Development Bank (IDB). Since from establishment, KFH has received numerous of award which significant the strength of the bank from financially aspect and also the parameter of the syariah compliance which is practiced by the bank.

KFH has begun its operation in Malaysia on 2005. KFH main intention when they decided to invest in Malaysia is just to offer to the Muslim a Syariah-based banking product free from any prohibited element in Islam. KFH is focusing to the countries that have majority Muslim community such as Bangladesh, Indonesia, Singapore, Pakistan, Saudi Arabia, Jordan and United Arab Emirates (Kuwait Finance House Malaysia Berhad, 1 December 2017). There are a lot of products offered by KFH through his branches around the world. Some of the products are as follow:

1. Deposit Account.
2. Investment Account.
3. Wealth Management.
4. Financing Services.
5. Others. (Money Transfer, Priority Banking, Securities)

KFH also offered Gold Investment Account to the public which is the only one gold investment scheme which is totally comply with the Syariah rules and regulation. The investment account is known as KFHMB Gold Account-i. This investment account use *Bay' Al-Sarf and Qard Hasan* as the main underlying contract. There are certain procedure which is practices by the bank in operating their investment account which will be discussed in this topic.

First of all, when the customer interested to invest in the KFHMB Gold Account-i, the customer are compulsory to have either saving account or current account with KFH. If the customer still did not have, they must sign up atleast saving account for RM 250 cost. As information, the saving account in KFHMB is a bookless account types which mean the customer will not be given account book, but they will be recoreded by using ic numbers.

One the customer has already have a saving account with the KFH, the customer now can buy the gold offered by the bank which is minimum 5 gram for minor, 10 gram for individual and 50 gram for non-individual or institution. This buying will used *Bay' Al-Sarf* contract. When the customer has buy the gold, the transaction will be recorded in a slip which will be handover to the customer as a proof.

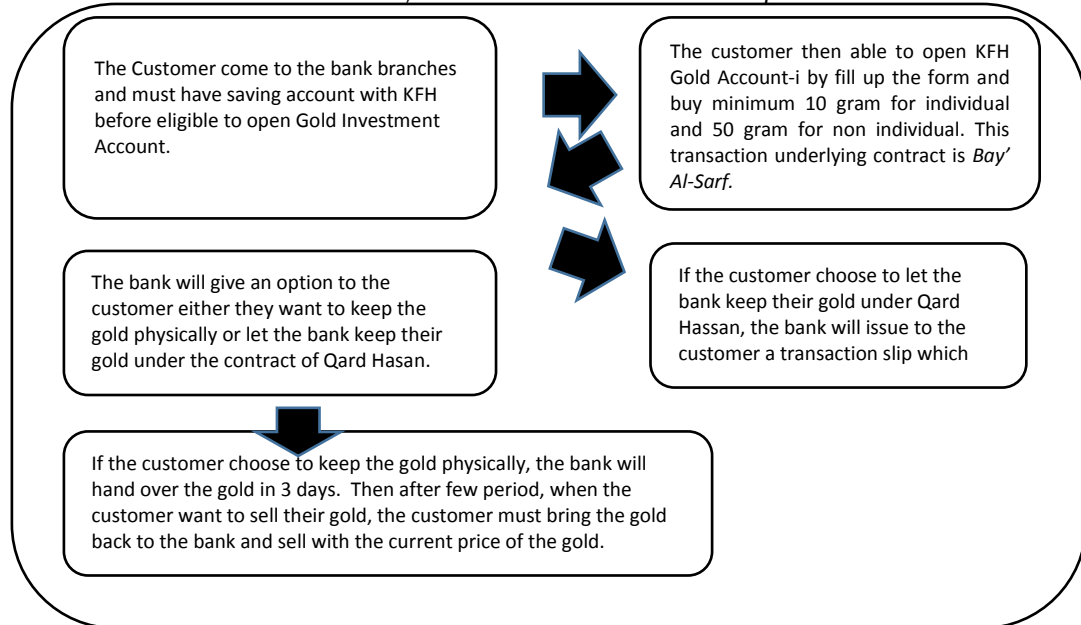
In this step, the customer will be given an option either they want the bank keep the gold for them or they want the gold physically to be kept by themselves. If the customer want to collect the physical gold, the bank will arranged for them the collection day. This is because the bank needs times to transport the gold from their saving vault to the branches. The procedure usually takes around 2-3 days along with the Bank Negara Resolution that gold transaction only allowed up to 3 days for operation procedure. The gold can be collected in 1, 5, 10 and 50 gram coin.

However, if the customers chooses to let the bank keep the gold, the bank will determine it as a debt under *qard hasan* contract and will return it back to the customers anytime they want without any charges involved. This is to ensure that there is no prohibited element occurred in the *qard hasan* contract..

The customer can top-up their gold from time to time in scale 1, 5, 10 and 50 gram. This ordered can be done by filling Gold Buying Form at their branches. When the bank has received order from the customer, the bank will immediately recored the top-up gold to the customer gold investment account.

When the customers want to sell their gold, the customer can fill the form known as Order KFH Form. The selling can be done in any branches of KFH. The customer need to come to the branches by himself for the purpose of selling. This procedure is to avoid from any risky probability. The operation of KFH can be understand easily on these chart:

Table B: Flow chart of the KFH Gold Account-i operation.



This bank operation procedure is undoubtedly purely comply with the syariah requirement in the issues of gold investment and transaction. From the starting, the banks are strictly to follow to method of 'Hand to Hand' for the transaction of the gold that instructed by the Bank Negara Resolution. This is to ensure that there is no any element of *riba' al-nasiah* due to the late of the gold exchange.

Then, the bank also offered to the customer the physical gold as low as 1 gram. This is the main difference with the KFH and the others conventional bank which no physical gold offered. There is no such gold transaction without the physical gold available in Islam. If occurred, the transaction will be recognized as *bay' al-ma'dum* that strictly forbidden by the syariah.

The customers also able to top-up their gold anytimes they want, and also allowed to sell their gold anytime without any constraints. The price of the gold either for top-up or for selling purpose will be determined by the current market price which is set globally. The transaction also clearly stated in the book account and bank slip in order to prevent from any *gharar* element involves.

This gold investment account can be another chance for Muslim in order to invent and expand their wealthy by investing in gold market. This is important for Muslim where the Muslim are ordered by Allah to seek for Halal and evade any instrument of investment which is contain prohibited element.

Conclusion.

Gold Investment Account is an instrument for the people in order to invest to increase their wealth due the gold price is more stable and also popular as an item with anti inflacy characteristic.

Gold Investment Account with which fulfilled the syariah requirement is suitable for Muslim to invest. This is because this type of investment is safe and

low risky due to the gold itself as a good investment instrument. However, the society especially among Muslim knowledge regarding the gold investment is still unsatisfied. Most of the people prefer to keep their money in their saving account rather than to invest in the form of gold investment scheme.

The bank itself should take an initiative to promoting their gold investment product widely in order to gain more customer and people enroll this product. This will be a win-win solution where the bank can run a smooth business while the people can gain extra income through their investment activity.

References

Al-Quran.

Abdul Hadi Awang. (2016). *Elemen Gharar Dalam Akaun Pelaburan Emas Menurut Hadith*. Bangi: Kolej Universiti Islam Antarabangsa Selangor.

Abu Dawud Sulaiman. (t.t). *Sunan Abi Dawud*. Beirut : Mu'assasat Abd al-Hafiz al-Basat

Al-Sharbini. (1997). *Mughni al-Muhtaj*. Beyrut : Dar al-Ma'rifah.

Al-Bukhari. (1400H). *Al-Jami' al-Sahih al-Bukhari*. Kaherah: al-Matba'ah al-Salafiyyah.

Al-Shaibani. (1983). *Nail al-Marib*. Beirut : Maktabah al-Falah.

Dewan Bahasa dan Pustaka. (2000). *Kamus Dewan*. Edisi 4. Ampang: Percetakan Dewan Bahasa dan Pustaka

Al-Khin. Mustafa. et al. (2013). *Al-Fiqh Al-Manhajiy ala Mazhab al-Imam Al-Syafi'e*. Damsyik: Dar al-Qalam.

Haji Abdul Razak Haji Muhammad. (2012). *Fiqh Islami*. Selangor: Pustaka Haji Abdul Majid.

Ibn Qudamah. (1999). *Al-Mughni*. Arab Saudi : Dar Alam al-Kutub.

Ibn Hajar al-Asqalani. (t.t)Fath al-Bari. Kaherah : Maktabah al-Salafiah.

Ibrahim, M. H. (2012). *Financial Market Risk and Gold Investment in an Emerging Market: The Case of Malaysia*. International Journal of Islamic and Middle Eastern Finance and Management, 5 (1): 25 – 34.

Imran Tahir dan Mark Brimble. (2011). *"Islamic Investment Behavior"*. International Journal of Islamic and Middle Eastern Finance and Management.

Kamus Pelaburan. 1997. Kuala Lumpur: Dewan Bahasa dan Pustaka.

Kasri. Noor Suhaida. ISRA International Journal of Islamic Finance; Kuala Lumpur
Louis Ng. (2009). *Public Gold: Kelebihan Pelaburan Emas Fizikal"*. *Prosiding Seminar Antarabangsa Penjanaaan Ekonomi Melalui Transaksi Wang Dinar*. Bangi.

Mohammad Muslehuddin. (1988). *Urusan Bank dan Hukum Islam*. Kuala Lumpur :Dewan Bahasa dan Pustaka.

Mohd Aidid Bin Md Said. (2007). *"Emas sebagai Satu Alternatif Pelaburan : Kajian Terhadap Syiling Kijang Emas di SMI-Q Resources Sdn Bhd"*. (Latihan Ilmiah Ijazah Sarjana Muda, Jabatan Syariah dan Pengurusan, Akademi Pengajian Islam, Universiti Malaya, Kuala Lumpur).

- Parameter Pelaburan Emas*. Keputusan Muzakarah Jawatankuasa Fatwa Majlis Kebangsaan Bagi Hal Ehwal Ugama Islam Malaysia Kali Ke-96. 13-15 Oktober 2011.
- Al-Qaradawi Yusuf. (1999). *Al-Halal wa al-Haram fi Al-Islam*. Chicago: American Trust Publication.
- Sayyid Sabiq. (1999). *Fiqh Al-Sunnah*. Kaherah : Dar al-Fath li al-Ilm al-Arabi.
- Shamser Mohamad et. al. (2002). *Analisis Pelaburan*. Selangor : Universiti Putra Malaysia
- Syukor Hashim. (2017). *Analisis Fundamental Harga Emas*. Kuala Lumpur: One Publisher
- al-Zuhayli, Wahbah. (2008). *Al-Muamalat al-Maliyah al-Muassarah*. Beirut : Dar al-Fikr.

Disclaimer

Opinions expressed in this article are the opinions of the author(s). Journal of Fatwa Management and Research shall not be responsible or answerable for any loss, damage or liability etc. caused in relation to arising out of the use of the content.