

## RESEARCH REPORT

**1. Project ID:** EDW B 14-186-1071.

**2. Project Title:** LEGAL MAXIM “EVERY LOAN THAT BRINGS BENEFIT IS USURY”: ITS RELATED ISSUES AND IMPLEMENTATION IN FINANCIAL TRANSACTIONS.

**3. Project Sponsor:** Research Management Centre, IIUM.

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**7. Abstract:**

A number of Islamic legal maxims are related to transactions (*fiqh al-mu’āmalāt*) and they could be implemented in Islamic finance and banking. One of these maxims is “Every loan that brings benefit is usury” (*Kullu qarḍ Jarra Manf’atan fahuwa Ribā’*). A normal ruling of the *Sharī’ah* is that if anyone receives loan from a person or a bank, he is supposed to return its exact amount to the moneylender without any increase in it. Any increase, whether it is in the form of money, goods or any other assistance, is considered usury (*ribā’*) and therefore it is forbidden. However, jurists have disputed over the issue: “If this increase is not mentioned at the time of giving the loan as its condition, and the borrower gives it at the time of paying the loan back to the moneylender or before it.” Some of them maintain that it is lawful, while some others consider it as forbidden. Using descriptive and analytical methods, this paper will discuss the above legal maxim, its proofs, disputes of jurists on its related issues and will try to give preference to the opinion which is stronger based on the strength of the proofs. Then it will strive to discuss implementation of this maxim on some pre-Islamic and contemporary financial transactions in Malaysia.

**8. Keywords:** *Legal maxim, loan, ribā’, lawful, implementation, financial transactions.*

**9. Introduction**

Usury (*ribā’*) was widely used in financial transactions especially for lending and borrowing cash money during pre-Islamic period. This system of *ribā’* has been being used by conventional banks for many years. The basic concept of this lending activities is that the lender will lend his/her money to a borrower with the condition that the latter will give some extra money to the former. For example, a lender will lend 100 Ringgit to a borrower with the condition that the borrower will

pay 105 Ringgit to the lender at the end of lending period. There are many other forms of this lending with interest. A number of Qur'anic verses and *aḥādīth* of the Prophet (pbuh) clearly prove that *ribā'* is forbidden. Therefore, in Islamic jurisprudence a legal maxim "Every loan that brings benefit is usury" has been existed from the beginning of Islam. This benefit sometimes is stipulated from the beginning of the lending contract. Some other times it is not stipulated from the beginning. Rather, the borrower gives the lender some extra money willingly at the time of paying the loan back to the lender. Islamic ruling for the second option is different from the first option. Since the banking system, including Islamic finance, is basically based on lending or borrowing money, it is very important to elaborate this legal maxim, discuss its related issues and highlight some examples to clarify which benefit of lending is legal and which is not in Islamic *Sharī'ah* .

## 10. Research Background and Literature Review

A number of books have been written in English on Islamic legal maxims. But as per knowledge of the researcher, no detailed discussion on the maxim of "Every loan that brings benefit is usury" has been conducted in English. Some of these books are *The Economic Relevance of the Sharī'ah Maxims* (Hasanuzzaman, 2007); *A Mini Guide to Sharī'ah & Legal Maxims* (Laldin, 2007); *Islamic Legal Maxims: Essentials and Applications* (Ismail and Rahman, 2013). Likewise, some articles have also been written in English on Islamic legal maxims, but no detailed discussion has been conducted on the maxim mentioned above. Some of these articles are: "Sharī'ah Maxims and Their Implications on Modern Financial Transactions" (Ahmed, et al, *Journal of Islamic Economics, Banking and Finance*, 6:3); "The Major Fiqh Legal Maxims and Their Effects in Financial Transactions" (Kamil, A paper prepared for a Ph. D. degree in the Faculty of Arabic and Islamic Studies, Al-Azhar University, n. d.).

On the other hand, a number of contemporary Arabic sources are found on the topic with varied degrees of their dealings with it. For examples, *Al-Qarḍ alladhī Jarra Manfa'atan* (Ḥasan, 2007); *Al-Taṭbīqāt al-Mu'āṣirah lil-Qarḍ alladhī Jarra Manfa'atan* (Ibid., 2008); *Ḥukm al-Ziyādah 'alā al-Qarḍ: Sharḥ al-Qā'idah "Kullu Qarḍ Jarra Naf'an fahuwa Ribā'"* (al-Kīlānī, n. d.). Based on these and several other classical and modern sources written in Arabic and texts of the Qur'an and *aḥādīth* of the Prophet (pbuh), the researcher will try to analytically and critically discuss the topic dividing it into following sections: explanation of the maxim "Every loan that brings benefit is usury" and its proofs; *Sharī'ah* ruling on benefit received as a condition of loan;

*Shari'ah* ruling on benefit received without any condition of loan; and implementation of the maxim “Every loan that brings benefit is usury.” This last sub-topic will highlight a number of pre-Islamic modes of financial transaction in which loan used to be given on the basis of usury and they are closely related to the maxim under discussion. Likewise, it will discuss different types of benefits that are received by the clients through current account; whether they are, according to the maxim under discussion, allowed in Islam or forbidden. This part also will discuss a number of Examples from Malaysian financial institutions that are related to this maxim.

### **11. Objectives of the Research**

This research strives to accomplish the following objectives:

1. To discuss legal basis and detailed explanation of the Islamic legal maxim: “Every loan that brings benefit is usury.”
2. To highlight important Islamic legal issues related to this maxim.
3. To provide pre-Islamic examples of financial transactions in which this maxim can be implemented.
4. To provide contemporary examples of financial transactions, including examples from Malaysian financial institutions in which this maxim can be implemented.

### **12. Methodology**

This research is based on library works. The researcher intends to collect materials on the topic from IIUM Library and different websites. Likewise, this research uses descriptive and analytical methods to give detailed explanation of the maxim, to discuss important Islamic legal issues related to I, to analyze the related verses of the Qur'an and *ahādīth* of the Prophet (pbuh), and do discuss examples of its implementation in selected pre-Islamic and contemporary financial transactions, including examples from Malaysia.

### **13. Findings and Conclusion:**

Although a *hadith* with the wording of the maxim “Every loan that brings benefit is usury” is weak, because of having many other evidences, such as some Qur'ānic verses, some *ahādīth* of the

Prophet (pbuh) with different wordings, consensus of Muslims and practices of the Companions of the Prophet (*pbuh*), this maxim is sound and well accepted.

If the lender imposes the condition that the borrower must return his loan with an additional amount, then the loan will be nullified according to unanimous opinion of the jurists and it will be usury and forbidden.

If the lender imposes the condition that the borrower must allow him to use an object, such as his house for a certain period of time, then the lender will get the benefit of this house or car in addition to receive the full amount of his loan. Then the living in this house will be without any compensation or could be with a compensation but with a rent which is less than the current market rate. According to the preferred and well established view of Hanafi School and majority of schools, it is forbidden to keep a house as pawn against the loan because it is considered to receiving an increase or benefit out of giving a loan without any compensation for that increase or benefit, which is considered usury and therefore it is forbidden.

If the lender imposes a condition that the borrower must provide him a service, such as he should work in the shop of the lender or he should work as a guard for his apartment for a certain period of time, or as long as the loan remains unpaid, without any salary for it or with a salary which is less than the salary of the same job in the job market, in addition to returning the full amount of loan, this is considered to be a loan that brought benefit without any compensation for it. Therefore, it is usury; and thus it is considered to be forbidden.

If the lender imposes the condition that the borrower must return his loan with a better quality, this contract is considered null and void according to unanimous opinion of the jurists. This is because it is a loan that brought benefit without any compensation for it. Therefore, it is usury and forbidden.

Muslim jurists disputed on the issue of giving a gift before returning the substitute of loan to the lender without being asked for it. Hanafī and Shafī'ī Schools of Islamic law maintain that the gift is acceptable and sound, if it was not a condition of lending, or if there is no custom of giving this gift to the lender by the borrower. However, if the borrower gives a gift to the lender without any condition or without any custom of giving such a gift, and the lender assumes that the gift is

given because of giving loan, then it is better not to receive it. However, it is not considered forbidden.

On the other hand, Mālikī and Ḥanbalī jurists maintain that if a borrower gives a gift to the lender before returning the substitute of loan and they used to do so before the loan, then it is allowed. And if the reason of giving the gift is relationship by marriage that happened after the loan or any other reason which has no connection with the loan, then it is also allowed. But if there is nothing of what is mentioned and still a borrower gives a gift to a lender, then it is forbidden. However, if the lender compensates the borrower for his gift or if he considers it part of the loan, it will be lawful for him, otherwise not.

Based on stronger evidences, the preferable view in this regard is that acceptance of gift during the time of loan is forbidden.

If the borrower returns the substitute of the loan along with a gift or increases the amount of money that he has borrowed, without any condition for it and without having any custom of it, then Muslim jurists have disputed on this issue. Majority of them, i.e. according to Ḥanafī and Shafī'ī schools of law, well establish view of Ḥanbalī school of law and according to Ibn 'Abd al-Birr of Mālikī School of law, the gift and the increase of loan amount are lawful. On the other hand, according to the famous opinion of Maliki School of law and according to a narration from Imam Ahmad, neither giving a gift, nor increasing the amount at the time of returning the substitute of loan is allowed. Based on the strength of the evidences of the first group, their view, i.e. "receiving any increase in amount or any gift at the time of paying the loan back is allowed" is preferable.

Jurists have agreement on the view that returning the substitute of loan with a better quality is lawful, if it is neither a condition of loan, nor a custom.

A number of modes of usury was in function in pre-Islamic period among the Arabs, which are closely related to the maxim under discussion. According to some contemporary researchers, all of these modes are implemented by conventional banks. All of them are forbidden.

The preferable view about the status of money deposited in the current accounts is that it is loan.

The bank is Islamically allowed to invest this money and take the profit of it. But the account holder has no right to have this profit because it falls under the prohibition of the maxim discussed

above. Likewise, the bank is allowed to receive service charges for the services given by it to the current account holders. This is applicable in Islamic banks including Islamic banks in Malaysia.

On the other hand, the holders of current accounts are allowed to receive benefits, such as check books and debit cards, if they pay charges for them. This is applicable in Islamic banks including Islamic banks in Malaysia. However, if the account holders don't pay charges for these services, then jurists have different opinions about them. The preferable view is that it falls under the prohibition of this maxim. Therefore, they are forbidden.

The researcher maintains that the products of "Overdraft" provided by Bank of China in Malaysia, "Alliance CashFirst Personal Loan" offered by Alliance Bank, "Malaysia My Second Home Program (MM2H)" promoted by Bank of China, and "Bank Rakyat Education Financing-i Falah" are some examples available in Malaysia. All of them brings some benefits through giving loans, which are considered to be usury according to the maxim of "Every loan that brings benefits is usury." Therefore, these benefits are forbidden. Likewise, these transactions also are not acceptable according to Islamic *Sharī'ah*.

However, some forbidden transactions especially the last two mentioned under no. 15 are possible to make them Islamically acceptable, if certain *Sharī'ah* principles are implemented in them.

#### **14. Output:**

- A. A paper was presented in an international conference.
- B. A Ph. D. student benefitted from the fund for one year.
- C. A paper has been submitted for publication to a SCOPUS listed journal entitled "STUDIA ISLAMIKA.

#### **15. Future Plan of the Research:**

The researcher suggests that a further detailed research should be conducted on products of Malaysian banks and other financial institutions, in order to determine whether they are acceptable in Islam or not. If they are not acceptable Islamically, then suggestions should be given to transfer them to Islamic products.

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