



Samarah: Jurnal Hukum Keluarga dan Hukum Islam
Volume 8 No. 1. March 2024
ISSN: 2549 – 3132; E-ISSN: 2549 – 3167
DOI: 10.22373/sjkh.v8i1.16305

Deemed Consent in Islamic Banking from Contract Law Perspective: A Sharia Analysis

Nik Abdul Rahim Nik Abdul Ghani
Universiti Kebangsaan Malaysia
Abdul Rahman A Shukor
Shariah Advisor of Islamic Financial
Email: nikrahim@ukm.edu.my

Abstract: This paper is specifically focusing on the issue of deemed consent as applied in modern Islamic financial contracts. It has been recognized by some scholars and rejected by others. The purpose of this study is to examine the meaning of deemed consent in contract law and its recognition from the Sharia point of view. It begins with examining the meaning of *sighah* and deemed consent from civil law as well as Islamic law perspective and followed by the analysis of the effect of silence in the validity of acceptance in Islamic law of contract. The approach that is applied in this study is qualitative research in nature, with regards to documentation and secondary sources by reviewing and analyzing the *fiqhi* perspective of consent and silence in Islamic law; by taking into consideration current practice of financial industry. The findings of the study are that deemed consent in the law can be considered as an acceptance. It is understood by the buyer indicating his consent to the sale by his conduct or silence. Generally, absolute silence in banking transactions is not an acceptance, but that there must be evidences or clues indicating the consent of customers. As such the non-absolute silence can be considered as acceptance in the Islamic law by taking into consideration some Sharia parameters proposed in this study. Interestingly, this idea is also shared by the Common law. Accordingly, based on the analysis conducted in this study, tacit acceptance, or implied acceptance is one of the means of expressing contemporary consent that can be applied. This study develops Sharia parameters consisting of five items as important guidelines in applying deemed consent in the Islamic banking.

|| Submitted: December 22, 2022 || Accepted: January 12, 2024 || Published: January 13, 2024

Deemed Consent in Islamic Banking

Nik Abdul Rahim Nik Abdul Ghani

DOI: 10.22373/sjhc.v8i1.16305

Keywords: Deemed consent, implied acceptance, tacit acceptance, *ijab qabul*, *Islamic banking*

Abstrak: Artikel ini secara khusus berfokus pada masalah persetujuan tersirat (*deemed consent*) seperti yang diterapkan dalam kontrak keuangan Islam modern. Hal ini telah diakui oleh beberapa sarjana dan ditolak oleh yang lain. Tujuan dari penelitian ini adalah untuk mengkaji makna persetujuan tersirat dalam hukum kontrak dan pengakuannya dari sudut pandang Syariah. Diawali dengan mengkaji makna sifah dan persetujuan tersirat dari perspektif hukum perdata serta hukum Islam dan dilanjutkan dengan analisis pengaruh diam dalam keabsahan penerimaan dalam hukum kontrak Islam. Pendekatan yang diterapkan dalam penelitian ini adalah penelitian kualitatif yang bersifat detilatif, dengan memperhatikan dokumentasi dan sumber sekunder dengan mengkaji dan menganalisis perspektif fiqhi persetujuan dan diam dalam hukum Islam; dengan mempertimbangkan praktik industri keuangan saat ini. Temuan penelitian ini adalah bahwa persetujuan tersirat dalam hukum dapat dianggap sebagai penerimaan. Hal ini dipahami oleh pembeli yang menunjukkan persetujuannya terhadap penjualan dengan perilaku atau diamnya. Umumnya, keheningan mutlak dalam transaksi perbankan bukanlah penerimaan, tetapi harus ada bukti atau petunjuk yang menunjukkan persetujuan pelanggan. Dengan demikian diam yang tidak mutlak dapat dianggap sebagai penerimaan dalam hukum Islam dengan mempertimbangkan beberapa parameter Syariah yang diusulkan dalam penelitian ini. Menariknya, ide ini juga dipakai oleh Common law. Dengan demikian, berdasarkan analisis yang dilakukan dalam penelitian ini, penerimaan diam-diam, atau penerimaan tersirat adalah salah satu cara untuk mengekspresikan persetujuan kontemporer yang dapat diterapkan. Penelitian ini mengembangkan parameter syariah yang terdiri dari lima butir sebagai pedoman penting dalam menerapkan *deemed consent* di perbankan syariah.

Kata Kunci: Persetujuan tersirat, penerimaan tersirat, penerimaan secara diam, *ijab qabul*, bank Islam

Introduction

It is undoubtedly that the contract is one of the most important Sharia principles that Islamic banks must adhere to in all their products and transactions.¹ The contract is a unique element that distinguishes Islamic

¹ Fatimah Iskandar Putri, "Islamic Bank Productivity: Analysis of Research Path," *Review on Islamic Accounting* 2, No. 2 (2022). Rahmadi Indra Tektora, et.al., "The Act

Deemed Consent in Islamic Banking

Nik Abdul Rahim Nik Abdul Ghani

DOI: 10.22373/sjhc.v8i1.16305

banks from interest-based banks.² Contracts aim to create commitments that give rise to corresponding obligations, rights and duties, whether they are contracts creating obligations, modifying them, or transmitting their effects. That is why the Qur'an came with respect for contracts in the Qur'an: O you who believe, fulfill all contracts [QS. Al-Ma'idah: 1].

The legal basis of the contract or contract in the product has different legal implications in implementing it, so basic knowledge of the legal basis of the contract is needed. Transactions for profit can be divided into two, namely transactions that contain certainty, namely contracts with non-profit sharing principles, and transactions that contain uncertainty, so that all these products have legal bases in operating them in accordance with sharia principles.³

The forms of contract are tools for expressing the connection of two intentions to establish a legitimate legal relationship (*alaqah shar'iyah qanuniyyah*) between them, entailing reciprocal obligations between the two contracting parties with the presence of mutual consent (*al-taradi*) between them. Since Sharia considers everything that indicates the consent of the two contracting parties, it is worth to examine the practice of deemed consent in contract from Islamic law perspective. This issue should be given a serious emphasis as most of the Islamic banks are heavily practising deemed consent in transactions with the customers.

This study attempts to examine the ruling of deemed consent in Islamic transaction law as currently practiced by Islamic banks. This paper begins with a discussion on concept of deemed consent from the perspective of Sharia. Subsequently, this paper discusses whether silent can be considered as acceptance in Islamic law since deemed consent is very much related to the silent. Finally, this article presents several proposed parameters in applying deemed consent as an acceptance in the contract.

The Concept of Deemed Consent From Fiqhi Perspective

Prior to examining the recognition of deemed consent from the Shari'ah law perspective, it would be pertinent to look into discussions of the

Protection for Islamic Banks in Financing Land and Rubber Plantation Ownership," *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 4, No. 1 (2020).

² Christopher Panal Lumban Gaol, et.al., "Bank Interest in Islamic Law," *At-Tasyrih: Jurnal Pendidikan dan Hukum Islam* 9, No. 1 (2023), p. 34-43.

³Tentiyo Suharto and Sri Sudiarti, "Analisis Jenis-Jenis Kontrak Dalam Fiqh Muamalah," *Mumtaz: Jurnal Ekonomi dan Bisnis Islam* 1 No. 2 (2022), p. 93-104. Abdul Rachman, "Dasar Hukum Kontrak (Akad) dan Implementasinya Pada Perbankan Syariah di Indonesia," *Jurnal Ilmiah Ekonomi Islam* 8, No. 1 (2022), p. 47.

Deemed Consent in Islamic Banking

Nik Abdul Rahim Nik Abdul Ghani

DOI: 10.22373/sjhc.v8i1.16305

very objective that need to be established in contract from Islamic legal perspective, i.e. the objective of mutual consent. Consent (*rida*) or mutual consent (*taradi*) is an important condition in the contract, as the Lawgiver made it a basis for establishing contracts. Allah SWT said: O you who have believed, do not devour your wealth among you unjustly, unless it is a trade by mutual consent (al-Nisa' 29). The prophet PBUH said: Verily, sale contract is by mutual consent.⁴ Therefore, it is a condition in Islamic law that will (*iradah*) of contracting parties must be free from defects of consent such as ignorance, deception and coercion, and the presence of a defect of consent may invalidate the contract or give the right of cancelling it the parties to the contract.⁵

In view of the importance of consent in the contract, al-bay or sale is defined by some Islamic jurists by stating the condition of consent. For instance, al-Zaila'i, one of the prominent Hanafis defines sale as the exchange of money for money by mutual consent (*mubadalat al-mal bi al-mal bi al-taradi*).⁶ In fact, the word al-bay etymologically requires that it must be based on mutual consent (*taradi*), as Ibn al-Humam said: "Apparently, the consent is also etymologically inevitable, for it is could not be perceived someone sell or buy something unless that must be by mutual consent, and taking or giving something else without consent does not tantamount to sale from etymological point of view."⁷

Thus, consent is a very important prerequisite in the contract, and this is unanimously agreed by all Muslim jurists of the four schools of thought. Apart from Hanafis as stated earlier, other schools have stated in their fiqh literature on the importance of consent in contract. For example, it is clearly stated by the author of *al-Taj wa al-Iklil* in Malikiyah while explaining the sale contract. He said: "sale contract is considered concluded in a way that indicates consent"⁸. As for Shafi'is school, Zakariyya al-Ansari explained in *Asna al-Matalib*:

⁴ Abu Abdillah Muhammad al-Qazwini Ibn Majah, *Sunan Ibn Majah*, Beirut: Dar Ihya' al-Kutub al-Arabiyyah, n.d, v. 2, p. 737. Ahmad bin al-Husayn bin Ali Al-Bayhaqi, *al-Sunan al-Kubra*, Beirut: Dar al-Kutub al-Ilmiyyah, 2003 v. 6, p. 29.

⁵ Abd al-Sattar Abu Ghuddah, *al-Majmu'ah al-Fiqhiyyah al-Masrafiyyah (2) al-Iltizam wa al-Uqud wa al-Khiyarat*, Qatar: Arwiqah, 2020, v. 3, p. 23.

⁶ Al-Zayla'i, *Tabyin al-Haqaiq Sharh Kanz al-Daqa'iq*, Cairo: al-Matba'ah al-Kubra al-Amiriyyah, n.d, v. 4, p. 2

⁷ Ibn al-Humam, al-Kamal, *Fath al-Qadir*, Beirut: Dar al-Fikr, n.d, v. 6, p. 247

⁸ Al-Gharnati, *al-Taj wa al-Iklil*, Beirut: Dar al-Kutub al-Ilmiyyah, 1994, v. 6, p. 12

Deemed Consent in Islamic Banking

Nik Abdul Rahim Nik Abdul Ghani

DOI: 10.22373/sjhc.v8i1.16305

ويعتبر في صحته ثلاثة أمور الأول الصيغة لأن البيع منوط بالرضا لما مر

Meaning: “Three things are conditions for its validity (sale’s validity). The first thing is *sighah* (form of contract) because sale contract is subject to consent for what has been discussed earlier”.⁹

The same goes to Hanbali jurists as al-Buhuti clearly expressed in *Sharh Muntaha al-Iradat* that the first condition of sale (*bay*) is consent (*rida*). In this regard, he said:

(فصل وشروطه) أي البيع (سبعة) أحدها (الرضا) بأن يتبايعا اختيارا فلا يصح إن أكرها أو أحدهما، لحديث " { إنما البيع عن تراض }

Meaning: “(A section: And its conditions) i.e. sale (are seven). One of them (is consent) whereby two contracting parties transact by their choice (without coercion). It is not valid if both or one of them are forced to do so as the hadith says " {Verily, sale contract is by mutual consent}”¹⁰

It is clear from the above classical *fiqhi* texts that consent is a prerequisite that must be achieved in any contract. Nevertheless, it is well known that consent is a hidden matter in the heart that does not appear, so that no one can see what is in the human heart. As such, the Islamic law put a special emphasis on *sighah* (i. e., way of expression), where it reflects the consent of the parties. al-Ramli, one of great Shafi’is jurists stressed in his book *Nihayat al-Muhtaj*:

والرضا أمر خفي لا اطلاع لنا عليه، فجعلت الصيغة دليلا على الرضا

Meaning: “Consent is a hidden matter that we are not aware of, so the *sighah* is set as a proof of the consent”.¹¹

Thus, it could be concluded that the *sighah* in the sale contract is everything that indicates the consent of both contracting parties, i.e., seller and buyer.

Meaning of *Sighah* in Sale Contract

⁹ Zakariyya al-Ansari, *Asna al-Matalib Sharh al-Rawd*, Beirut: Dar al-Kitab al-Islami, n.d, v. 2, p. 3

¹⁰ Al-Buhuti, *Daqa’iq Uli al-Nuha li Sharh al-Muntaha*, Beirut: A’lam al-Kitab, 1993, v. 2, p. 7.

¹¹ Al-Ramli, *Nihayat al-Muhtaj Sharh al-Minhaj*, Beirut: Dar al-Fikr, 1984, v. 3, p. 375.

Deemed Consent in Islamic Banking

Nik Abdul Rahim Nik Abdul Ghani

DOI: 10.22373/sjhc.v8i1.16305

The jurists unanimously agreed that the *sighah* is considered a pillar of the contract in Islamic law. However, in detail discussion of *fiqh*, there is a well-known disagreement among jurists in determining the pillars of the sale and other contracts, whether they are the *sighah* only (i.e., offer and acceptance) or they are three pillars which consist of the *sighah*, contracting parties (seller and buyer) and the subject matter of the contract (goods and price).

According to majority of jurists, the pillars of contract are three consisting *sighah*, contracting parties and subject matter of contract. Meanwhile, Hanafis are of the view that the pillar is only one, i.e., *sighah*. They said that this *sighah* necessitates the presence of contracting parties and subject matter of the contract. Some contemporary scholars tend to call all the three pillars as *muqawimmat al-aqd* (elements of contract) since the contract would not be able to establish without them.¹²

Essentially, a sale contract could not be concluded except with the *sighah*. The *sighah* consists of an offer and an acceptance. The *sighah* literally means a body on which something was built. Technically, the *sighah* refers to what indicates the consent of the seller and buyer, whether by means of words or conducts. The *sighah* comprises of offer (*ijab*) and acceptance (*qabul*). *Ijab* refers to a way of expression that indicates the consent of the seller, while *qabul* refers to what indicates the consent of the buyer.¹³

Based on the aforesaid, it can be safely said that the importance of *sighah* in a contract is manifested in the definition of a contract itself whereby it is defined as a connection between two contracting parties via offer (*ijab*) and acceptance (*qabul*).¹⁴ In fact, some jurists defined sale contract as an offer and acceptance when it includes two things or monies for giving ownership.¹⁵

According to majority of jurists, offer is issued by the seller who is the owner of the subject matter and acceptance is issued by the buyer who is going to own the subject matter. This offer and acceptance are called a *sighah*. However, the *sighah* in sale contract is not limited to special words and furthermore it does not require that the contract of sale must be in the word's

¹² Wizarat al-Awqaf a al-Shu'un al-Islamiyyah, *al-Mawsu'ah al-Fiqhiyyah al-Kuwaitiyyah*, Kuwait: Dar al-Salasil, 1404, v. 9, p. 10.

¹³ Al-Hattab, *Mawahib al-Jalil fi Sharh Mukhtasar al-Khalil*, Beirut: Dar al-Fikr, 1992, v. 4, p. 228.

¹⁴ Walid bin Hadi, *Khasa'is al-Uqud al-Maliyyah wa Ilal Manahiha*, Beirut: Dar al-Salihyyah, 2021, p. 15.

¹⁵ Al-Mardawi, *Al-Insaf Fi Ma'rifat Al-Rajih Min Al-Khilaf*, Beirut: Dar Ihya' al-Turath al-Arabi, n.d, v. 4, p. 259.

Deemed Consent in Islamic Banking

Nik Abdul Rahim Nik Abdul Ghani

DOI: 10.22373/sjhc.v8i1.16305

"sale" or "purchase" only. Rather, it may be in other words or in a non-verbal form of the conclusion of the contract, provided that the objective of consent is fulfilled.

Ibn al-Qayyim has articulated an important legal maxim, namely "*if the intention and connotation of the word or conduct are combined, the ruling shall be established*", which indicates that the expression of consent has several methods either through verbal forms or non-verbal forms.¹⁶ In this regard, the Encyclopedia of Jurisprudence (*al-Mawsu'ah al-Fiqhiyyah*) describes the means of expressing consent as follows:¹⁷

1. Explicit method by means of words. This is the first method to express human consent. Jurists are unanimously agreed on this.
2. Implicit method by means of acts. It can occur when a person exhibits an object and other person takes it by making a payment (without any voice or communication). This is what is known in Islamic law as sale of *mu'atah*. It refers to a contract of sale in which the buyer picks up the goods and pays the price to the seller who accepts it without both parties sitting down to express their consent explicitly. There is a dispute among scholars on its permissibility between majority of jurists and Shafiis.

From the foregoing, it can be safely said that consent or mutual consent is the primary purpose pursued by the contracting parties to a contract. Since consent is a hidden matter in the human heart, the Sharia law has made the *sighah* as a sign of mutual consent between the contracting parties for the formation of the contract. Accordingly, it is also clear that the *sighah* consisting of an offer and an acceptance is the method by which the consent of the contracting parties and their intention to conclude the contract are disclosed and expressed. The method could be in the form of verbal means or non-verbal means.¹⁸

Moreover, the method of expression is originally can be done through word or utterance due to its indication on the intention of a person is obvious and clear. Unlike other methods such as a sign (signing language) and a conduct. These methods of expression might be possibly indicating something

¹⁶ Ibn al-Qayyim, *I'lam al-Muwaqqi'in an Rabb al-Alamin*, Kingdom of Saudi Arabia: Dar Ibn al-Jawzi li al-Nashr wa al-Tawzi', 1423H, v. 4, p. 515.

¹⁷ Wizarat al-Awqaf a al-Shu'un al-Islamiyyah, *al-Mawsu'ah al-Fiqhiyyah al-Kuwaitiyyah*, v. 22, p. 236.

¹⁸ Al-Sharnabasi, *al-Sukut wa Dilalatuhu fi al-Ahkam al-Shar'iyyah*, Beirut: Dar al-Fikr al-Arabi, n.d, p. 151.

Deemed Consent in Islamic Banking

Nik Abdul Rahim Nik Abdul Ghani

DOI: 10.22373/sjhc.v8i1.16305

else which is not intended by contracting parties. Due to these possibilities, the method of expression by word is the first preferred method by which a contract is concluded.¹⁹ Based on this basic principle, a question arises how about deemed consent? Is it permissible to only rely on the silence of contracting parties as a sign of acceptance from the Sharia perspective?

To have better understanding on the meaning of deemed consent, it is worth to define two words separately first, i.e., deemed and consent.

1. Deemed: This word is derived from the root word deem. It is defined as to consider or judge something in a particular way²⁰
2. Consent: It refers to permission or agreement.²¹ According to the free dictionary website, consent can be defined as 1) Acceptance or approval of what is planned or done by another; or 2) Agreement as to opinion or a course of action²². In the legal dictionary website, it is found that consent 1) n. a voluntary agreement to another's proposition. 2) v. to voluntarily agree to an act or proposal of another, which may range from contracts to sexual relations.²³

Based on the above mentioned, the combination of both words deemed, and consent give a special meaning, i.e., a consent or agreement that is considered by someone impliedly as regard to a particular matter. It seems that this consideration should be based on something else such as action or sign. In other words, the consent is usually understood impliedly from actions or signs or conditions or indications.

However, in the banking practices, deemed consent is usually used for seeking approval from customer by which the customer's acceptance is considered received. In actual practice, a bank will send a letter to a customer and if the bank does not receive any response within certain period (such as 14 days) from the customer, the transaction is considered executed by applying the concept of deemed consent.

In the application of Islamic banking industry, where the Islamic contract (*aqad*) is applied, deemed consent can be usually seen in the context of customer's acceptance. Acceptance in the theory of *aqad* is called *qabul*,

¹⁹ Al-Sharnabasi, *al-Sukut wa Dilalatuhi fi al-Ahkam al-Shar'iyyah*, p. 151.

²⁰See Cambridge Dictionary, <https://dictionary.cambridge.org/dictionary/english/deemed>

²¹See Cambridge Dictionary, <https://dictionary.cambridge.org/dictionary/english/consent>

²² See thefreedictionary, <https://www.thefreedictionary.com/consent>

²³See legal dictionary of thefreedictionary, <https://legal-dictionary.thefreedictionary.com/consent>

Deemed Consent in Islamic Banking

Nik Abdul Rahim Nik Abdul Ghani

DOI: 10.22373/sjhc.v8i1.16305

which is part of *sighah* elements. When it comes to the literatures, most of the discussions on this issue are deliberated under the concept of implied acceptance (*qabul dimniy*) and the effect of silence (*sukut*) on the contract in Sharia.

Qabul dimniy in Sharia is a combination of two words, i.e., *qabul* and *dimniy*. *Qabul* means acceptance, while *dimniy* means implicit. It is worth to define both words. *Qabul* is derived from the word *qabila yaqbala qabulan* and is technically issued by those who want to own the goods in the sale contract.²⁴ Meanwhile, *dimniy* is a derivative word attributed to the word *dimn*. This word that comprises three letters *dad*, *mim* and *nun* refers to making the thing into something that contains it.²⁵

It seems that *qabul dimniy* is a special term that refers to an implied acceptance. This kind of acceptance is contained in something else which is nonverbal in nature. In other words, this type of acceptance is understood from the circumstances or indications by which making this implied acceptance a means of expressing consent which is the primary purpose to be realised and achieved in the contract of sale.

Nevertheless, it is known that acceptance as discussed earlier is issued by the buyer. It replaces the very objective of consent that is hidden in nature. As such acceptance comes into the picture and if the acceptance is verbal, there is no concern on its usage. However, this type of implied acceptance is not clear to what extent it can be recognised in Islamic law of transaction?

It is worth to note that acceptance in law perspective is defined as an express act or implication by conduct that manifests assent to the terms of an offer in a manner invited or required by the offer so that a binding contract is formed.²⁶ It is clear from this legal definition of acceptance that there is a so-called tacit acceptance or implied acceptance. This type of acceptance acts as the consent and agreement of the buyer in the contract. Therefore, acceptance legally is divided into three types:

1. Express Acceptance: an express acceptance occurs when a person clearly and explicitly agrees to an offer or agrees to pay a draft that is presented for payment

²⁴ Wizarat al-Awqaf a al-Shu'un al-Islamiyyah, *al-Mawsu'ah al-Fiqhiyyah al-Kuwaitiyyah*, v. 32, p. 305.

²⁵ Ibn Faris, *Mu'jam Maqayis al-Lughah*, Beirut: Dar al-Fikr, 1979, v. 3, p. 372.

²⁶ See legal dictionary of thefreedictionary, <https://legaldictionary.thefreedictionary.com/Types+of+Acceptance>

Deemed Consent in Islamic Banking

Nik Abdul Rahim Nik Abdul Ghani

DOI: 10.22373/sjhc.v8i1.16305

2. **Conditional Acceptance:** a conditional acceptance, sometimes called a qualified acceptance, occurs when a person to whom an offer has been made tells the offeror that he or she is willing to agree to the offer provided that some changes are made in its terms or that some condition or event occurs. This type of acceptance operates as a counteroffer. A counteroffer must be accepted by the original offeror before a contract can be established between the parties.
3. **Implied Acceptance:** an implied acceptance is one that is not directly stated but is demonstrated by any acts indicating a person's assent to the proposed bargain. An implied acceptance occurs when a shopper selects an item in a supermarket and pays the cashier for it. The shopper's conduct indicates that he or she has agreed to the supermarket owner's offer to sell the item for the price stated on it.

From the preceding discussion, it is known that an implied acceptance in the law is an acceptance that is understood by the buyer indicating his consent to the sale by his conduct or act. In fact, this is known to Islamic jurists as the *bay al-mu'atah* as allowed by majority of scholars. It is a contract that is executed based on physical action such as grabbing of an item, payment of price by the buyer and receipt by the seller rather than verbal offer and acceptance.²⁷

Consent on is achieved in the sale of *mu'atah* and is implicitly understood as soon as the seller and the buyer are silent with implications by conduct (*dalalah fi liyyah*) which is the act of giving and take) from both seller and buyer. Moreover, there is no communication or voice among them. As such, al-Zarqa' considered *bay mua'atah* one of the examples of the applications of a well-known Islamic legal maxim "*wa lakin al-sukut fi ma'rid al-hajah bayan*" (Silence in the situation of need to communicate is a statement). This maxim is applied if there is an indication of the speaker's situation in the sense that silence in what needs to be spoken is an endorsement and a statement.²⁸

However, al-Sharnabasi pointed out that there is a clear difference between contract via *bay mua'tah* and contract via *dalalah al-hal* (implication by situations) where there is no taking and giving from both sides. For example, if a person left his belongings in the hands of another person and

²⁷ Al-Zuhayli, *al-Fiqh al-Islami wa Adillatuhu*, Damshiq: Dar al-Fikr, n.d, v. 5, p. 313

²⁸ Al-Zarqa', *Sharh al-Qawa'id al-Fiqhiyyah*, Damshiq: Dar al-Qalam, 1989, p. 338

Deemed Consent in Islamic Banking

Nik Abdul Rahim Nik Abdul Ghani

DOI: 10.22373/sjhc.v8i1.16305

went, and the other remains silent and did not say anything, and did not disavow keeping it, the *wadi'ah* or *ida'* contract is considered impliedly executed between them by their situations or conditions.²⁹

Nonetheless, the previous discussion is only applicable to the the ordinary sale that was known in the ancient time where the sale takes place with the presence of the seller and the buyer in the sense that they are conduction the transaction face to face in the one place. Unlike the current situation where some of the forms of dealing between banks and customers is sometimes concluded by e-mail or sending letters. For example, an Islamic bank sends the letter to the customer on the condition that the sale is considered concluded if the customer does not respond with any answer after seven days. This means that the customer's silence is considered an acceptance in this case. To what extent this implied acceptance is valid from fiqh perspective? If so, are there any Sharia parameters that can be devised to apply it in Islamic banks?

The Effect of Silence in the Validity of Acceptance

Apparently, the general rule established by jurists (*fuqaha*) is that the expression of an offer and acceptance in financial contracts is valid in all forms that indicate the consent of the contracting parties to conclude the contract, whatever instrument or form of expression used.

Nevertheless, it happens in some cases where Islamic banks need to conclude the contract by e-mail in the form that the bank sends the letter via email to the customer with information related to the contract and specifies the period, for example, seven days where if the response or answer from the customer is not received through within the period, this is considered an implicit acceptance. This is also called "deemed consent". It is as this consent is considered by the offeror through the situations and circumstances.

Realizing that this type of implied acceptance occurs and is understood from the silence of the contracting parties, a question arises on its validity from Islamic law perspective. This paper will address the discussion on the issue of silence in Sharia and law perspective.

²⁹ Al-Sharnabasi, *al-Sukut wa Dilalatuhu fi al-Ahkam al-Shar'iyah*, p. 151.

Deemed Consent in Islamic Banking

Nik Abdul Rahim Nik Abdul Ghani

DOI: 10.22373/sjhc.v8i1.16305

Definition of Silence

Silence is defined as a period without any sound; complete quiet.³⁰ In Arabic term, it is known as *sukut*, which is literally derived from the root word *sakata* consisting of three letters *sin*, *kaf* and *ta*. A combination of these letters etymologically means apposite of speaking.³¹ As such silence (*sukut*) is the absence of sound.

Technically, silence in Islamic law perspective can be divided into two types, i.e., absolute silence (*sukut mujarrad*) and non-absolute silence (*sukut mulabas*). The position of both silences from Sharia perspective is elaborated as follows:

1. Absolute Silence (*sukut mujarrad*)

It is defined as a commitment to a negative position that is not accompanied by any word, writing, reference, or action that carries the meaning of the expression of will.³² This kind of silence is meant by the legal maxim “non statement is attributable to a silent person” (*la yunsab li sakit qawl*) from which it is understood that the original ruling in Islamic law is absolute silence does not reflect any rule or judgement.

2. Non-Absolute Silence (*sukut mulabas*)

It is also known as *sukut ma'a al-qarinah* which means silence with a clue or evidence. It is a silence in explicit manner, but it seems to create legal effect implicitly. It can be defined as a commitment to a negative position that is not accompanied by words or deeds, but is surrounded by legitimate clues or descriptions manifesting the connotation of the expression of will by rejecting or accepting a particular matter and the like.³³

Based on the above discussion, it can be said that the original ruling is that absolute silence could not be relied upon in implying consent. Nonetheless, the exception to this silence is non-absolute silence (*sukut mulabas*), which is incidental silence that has been accompanied by clues or surrounded by circumstances that make its indication of consent stronger than

³⁰See Cambridge Dictionary
<https://dictionary.cambridge.org/dictionary/english/silence>

³¹ Ibn Faris, *Mu'jam Maqayis al-Lughah*, v. 3, p. 89.

³² Al-Sarrah, *Qa'idah La Yunsab ila Sakit Qawl wa Tatbiqatuha al-Fiqhiyyah*, research paper, p. 15.

³³ Al-Sarrah, *Qa'idah La Yunsab ila Sakit Qawl wa Tatbiqatuha al-Fiqhiyyah*, p. 19

Deemed Consent in Islamic Banking

Nik Abdul Rahim Nik Abdul Ghani

DOI: 10.22373/sjhc.v8i1.16305

its indication of nothing.³⁴ Such silence, depending on the accompanying circumstances, may signify acceptance or rejection.

Silence from Islamic Law Perspective

Silence is defined by leaving speech and silence about the matter is the absence of denial.³⁵ As discussed earlier, there is a well-known legal maxim “no statement is attributable to a silent person”, however, this legal maxim cannot be applied totally unless with some exceptions. There are many issues in which silence was considered a decision, agreement, or approval, including the silence of a virgin girl when asking her permission for marriage. Accepting congratulations on the new-born and being silent about it is considered an acknowledgment of his lineage.³⁶

From the foregoing, silence in Islamic law generally does not relegate the status of speaking except in certain circumstances and conditions. It means that absolute silence does not constitute a method of expression, and this is the original ruling in the transactions as clearly articulated by Islamic jurist in the famous legal maxim:

لا ينسب لساكت قول

Meaning: “No statement is attributable to a man who keeps silence.”

However, as elaborated earlier, there is a legal maxim, which is an exception of the above one, which says:

ولكن السكوت في معرض الحاجة بيان

Meaning: “But silence is tantamount to a statement where there is an absolute necessity for speech”.

This silence is essentially a *sukut mulabas* or non-absolute silence. This legal maxim signifies that silence sometimes can be regarded as a statement and all its ruling are applicable when the silence occurs at the time of a need for speech and communication. In other words, a silence is considered a proof of consent if it occurs in the state of need for speech. At the same time, there are circumstances and situations indicating the consent. In this regard, al-Zarqa’ said while explaining the legal maxim:

³⁴ Al-Sharnabasi, *al-Sukut wa Dilalatuhu fi al-Ahkam al-Shar’iyyah*, p. 18.

³⁵ Wizarat al-Awqaf al-Shu’un al-Islamiyyah, *al-Mawsu’ah al-Fiqhiyyah al-Kuwaitiyyah*, v. 13, p. 140.

³⁶ Al-Zarkashi, *al-Manthur fi al-Qawa’id al-Fiqhiyyah*, Kuwait: Wizarat al-Awqaf al-Kuwaitiyyah, 1985, v. 2, p. 205-206.

Deemed Consent in Islamic Banking

Nik Abdul Rahim Nik Abdul Ghani

DOI: 10.22373/sjhc.v8i1.16305

(ولكن السكوت) من القادر على التكلم (في معرض الحاجة) إلى البيان (بيان) بشرط أن يكون هناك دلالة من حال المتكلم أو يكون هناك ضرورة لدفع الغرر والضرر. يعني أن السكوت فيما يلزم التكلم به إقرار وبيان

Meaning: “(But silence) from who is able to speak (where there is a need) for statement (speech) is considered a (statement) provided that there is a connotation of the speaker's condition or there is a need to remove uncertainty and harm. It means that silence in what needs to be spoken is an acknowledgment and a statement.³⁷

There are few *fiqhi* issues mentioned by al-Zarqa’ as examples of the application of the legal maxim. Among them are the silence of a virgin girl when her guardian asking her before marriage. Her silence is considered as good as explicit statement because of her condition (which is her shame to show desire for men rather than to show her denial of it) indicates that her silence with the possibility of her statement of reply as a consent.

After all the above, it can be summarized that Islamic law does not totally reject silence as a consent.³⁸ Rather, Islamic law tends to recognise silence as a consent if someone is used to remain silent if the act is accompanied by circumstances that would indicate his or her consent. Thus, silence, if it is absolute and not surrounded by clues or circumstances, then it is not considered a sign of consent, as decided in the legal maxim “no statement is attributable to a man who remains silent”. Nonetheless, silence that is surrounded with clues and circumstances, such as silence of the one who is able to speak in every place where the statement is most needed, which are places where there is a fear of harm to one of the general *maqāshid al-sharī'ah*, namely religion, soul, mind, wealth and offspring, is considered in this case as evidence of and manifestation of the will, as an exception to preserve those general *maqāshid al-sharī'ah*.³⁹

³⁷ Al-Zarqa’, *Sharh al-Qawa'id al-Fiqhiyyah*, p. 338.

³⁸ Wahid al-Din Siwar, *al-Ta'bir an al-Iradah fi al-Fiqh al-Islami Dirasah Muqaranah bi al-Fiqh al-Gharbi*, p. 265.

³⁹ Al-Sharrah, *Qa'idah La Yunsab ila Sakit Qawl wa Tatbiqatuha al-Fiqhiyyah*, p. 63-64. Siti Nur Mahmudah, et.al., “Implementation of Sharia Maqashid on Sukuk Based on Fatwa DSN-MUI/Ix/2020,” *Jurnal Ilmiah Islam Futura* 22, No. 2 (2022).

Deemed Consent in Islamic Banking

Nik Abdul Rahim Nik Abdul Ghani

DOI: 10.22373/sjhk.v8i1.16305

Silence from Contract Law Perspective

Acceptance in Contract Act 1950 is defined as the exercise of the power by the person to whom the offer has been made, to enter into a contract by manifesting assent in return.⁴⁰ According to the general rule and original ruling in English law, silence cannot be considered as a method of expressing an acceptance. This is clearly understood from leading English contract law cases, i.e., *Fraser v Everetts* [1889] and *Felthouse v Bindley* (1862). The application of this rule under common law can be seen in the following cases: *Tinn v Hoffmann & Co*, *Manchester Diocesan Council for Education v Commercial & General Investments Ltd*, *Yates Building Co Ltd v RJ Pulleyn & Sons (York) Ltd*.

Although the general rule is that the offeror cannot compel the person to whom the offer is addressed to say that if he does not do anything he will be bound by the contract, there may be exceptions to this rule depending on English legal judicial facts. For example, if the person, i.e., the offeree (to whom the offer is directed) binds himself that his silence constitutes acceptance, or in the case of the corresponding offer, there is a note that silence is considered acceptance of the corresponding offer, such acceptance may be valid.

Therefore, when the person to whom the offer is addressed indicates that the offer will be accepted if he does not indicate otherwise at a specified time, he undertakes to speak and communicate if he does not wish to conclude the contract. This is, in principle, considered to be an exceptional situation so that the offer can be accepted by silence.

On the other hand, silence may be considered acceptance if there are other clues such as the conduct of the offeree (to whom the offer was directed) that indicate acceptance. For example, in the *Weatherby v Banham* case, receiving and reading a periodical magazine after the subscription expires was considered as acceptance.⁴¹

The same goes to some civil laws in Arab countries, such as Egyptian, Syrian, Jordanian and Kuwaiti laws, whereby silence from replying any response is considered as acceptance in some exceptional cases, especially if there has been a previous interaction between the contracting parties, or if the offer is purely for the benefit of the person to whom it is addressed. Similarly,

⁴⁰ Sinnadurai, Visu, *Contracts Act A Commentary*, Petaling Jaya: Lexis Nexis, p. 81.

⁴¹ Sinnadurai, Visu, *Law of Contract* 4th Edition. Petaling Jaya: Lexis Nexis, 2011, p. 56-57. Sakina Shaik Ahmad Yusoff and Azimon Abdul Aziz, *Mengenal Undang-undang Kontrak Malaysia*, Petaling Jaya: International Law Book Services, 2003, p. 47-48.

Deemed Consent in Islamic Banking

Nik Abdul Rahim Nik Abdul Ghani

DOI: 10.22373/sjhc.v8i1.16305

if the nature of the transaction or commercial custom indicates that the offeror was not awaiting a declaration of acceptance, the contract is deemed to have been concluded if the offer is not rejected in a timely manner.⁴²

The bottom line is that acceptance may be occurred by conduct, however, the conduct must be clearly and unequivocally indicative of the acceptance. From the foregoing, it can be concluded that the general rule of law is that absolute silence will not be sufficient to signify consent, but silence accompanied by conduct or evidence may contribute to the conclusion that the agreement has arisen.

Can Silence be Considered an Acceptance in the Transactions of Islamic Banks?

Based on the previous discussion on silence, it is known that silence may be considered as a manifestation of the expression of will. Nevertheless, it is different from all other manifestations of the will because it is a negative position. This is called absolute silence (*sukut mujarrad*). As such, the original ruling in Islamic law of sale contract is that the mere silence of a person to whom the offer is addressed is not considered acceptance. In this regard, Shaykh Muhammad Taqi al-Uthmani said: “It is a must that acceptance of the offer should be by means of verbal form or by conduct where the buyer must accept the sale, or the seller accepts the price. As for the only silence, it is not considered acceptance”.⁴³

This is a well-established rule in Islamic law that no statement can be attributed to a person who remains silent. This silence is an absolute silence as thoroughly explained earlier. However, there are certain exceptional cases for this general rule. Although scholars accept that there are certain exceptional cases and issues, Shaykh Muhammad Taqi al-Uthmani clearly opines that sale contract does not fall under the exceptional cases. It means that sale contract must be executed with a clear acceptance verbally or by conduct. He said:

⁴² Al-Biraqidar, *al-Ta'amulat al-Maliyyah bi al-Internet in Dirasat al-Ma'ayir al-Shar'iyah*, Riyadh: Dar al-Maiman li al-Nashr wa al-Tawzi', p. 2568.

⁴³ Al-Uthmani, *Fiqh Al-Buyu' Ala Al-Madhahib Al-Arba'ah Ma'a Tatbiqatihi Al-Mu'asirah Muqarinah bi Al-Qawanin Al-Wad'iyah*, Karachi: Maktabat al-Quran, 2015, v. 1, p. 33.

Deemed Consent in Islamic Banking

Nik Abdul Rahim Nik Abdul Ghani

DOI: 10.22373/sjkh.v8i1.16305

وإن لهذه القاعدة مستثنيات مثل كون سكوت البكر يدل على رضاها بالنكاح ولكن ليس البيع من جملة المستثنيات. وعلى هذا لو أوجب البائع إلى المشتري بكتاب وكتب في آخره "إن لم أتسلم أي جواب منك إلى مدة أسبوع فأني أعتبر ذلك قبولا منك ويتحتم البيع" ولم يعث المكتوب إليه جوابا في هذه المدة لم يصح البيع لأن مجرد السكوت لا يكفي للقبول وإنه لا يجوز للكاتب أن يلزم المكتوب إليه بما لا يلزمه

“This rule has exceptions, such as the silence of a virgin indicates her consent with the marriage, nevertheless, sale contract does not fall under the exceptions. Thus, if the seller offers the buyer by sending a letter and writes at the end of it, “If I do not receive any answer from you for a period of one week, I consider this to be your acceptance and the sale is considered concluded” and the offeree did not reply within this period, the sale was not valid, because mere silence is not enough for acceptance and the offeror is not allowed to bind the offeree with something that is not his obligation”.⁴⁴

In contrast, the above view can be argued that this silence is only applicable if there are no clues and indications showing the consent, such as prior understanding or prior interaction between contracting parties regarding the said method of acceptance (silence from the customer after a specified period). If there is prior understanding, the ruling may be valid true pursuant to the original ruling in stipulation is permissibility, provided that there is no harm to the contracting parties.

It has already been stated earlier that civil laws in many countries are of the view to consider silence from any response as acceptance in some exceptional cases, such as in the situation where there has been a previous transaction between contracting parties, or if the offer is made for the benefit of the addressee. Similarly, if the nature of the transaction or commercial custom indicates that the offeror was not awaiting a declaration of acceptance, the contract is deemed to have been concluded if the offer is not rejected in a timely manner. However, it is worth to note that these exceptional cases must be carefully applied between banks and customers with great caution especially regarding online acceptance.

Therefore, it can be said that it is not permissible to say that absolute silence in banking transactions is totally an acceptance, but that there must be evidences or clues indicating the consent of customers. Furthermore, there

⁴⁴ Al-Uthmani, *Fiqh al-Buyu'*, v. 1, p. 33-34.

Deemed Consent in Islamic Banking

Nik Abdul Rahim Nik Abdul Ghani

DOI: 10.22373/sjhc.v8i1.16305

should be some guidelines or parameters that regulate and control its application in Islamic banks.

Sharia Parameters for the Application of Deemed Consent or Implied Acceptance in the Islamic Banking

First, it is worth emphasizing that the form of implied acceptance intended here is the one that is frequently practiced within the banking industry where the Islamic bank sends the letter to the customer, with a statement that the sale is considered to be concluded if the customer does not reply with any answer after a specified period. In other words, the customer's silence is considered acceptance in this case.

Due to the differing views among the scholars on this issue, it is very important to develop some Sharia parameters to guide the practice of deemed consent or implied acceptance in the Islamic banking. In this paper, some Sharia parameters are proposed for the purpose of regulating the use of deemed consent.

- 1) The application of implied acceptance (deemed consent) does not cause harm to the contracting parties

This parameter is very important because Islamic law among the fundamental principles of Islamic law is the removal of harm. This has been worded in a variety of ways across a variety of books and fields of study. This is based on the hadith '*lā darar wa lā ḍḍar*' (there should be no harm or return of harm).⁴⁵ This parameter is also based on some Islamic legal maxims such as *al-darar yuzāl* (harm must be eliminated).

Therefore, while applying this implied acceptance, precautionary steps must be taken so as not to result in harm to contracting parties either the bank or the customer. If the application leads to harm, the sharia forbids it. In this regard, al-Shatibi said:

النظر في مآلات الأفعال معتبر مقصود شرعا

Meaning: "Considering the consequences of the acts is considered to be the very objective of Sharia."

- 2) There must be prior understanding or prior interaction between the contracting parties and there must be a period agreed between the parties before the contract is executed, including tacit acceptance.

⁴⁵ Ibn Majah, *Sunan Ibn Majah*, v. 2, p. 784.

Deemed Consent in Islamic Banking

Nik Abdul Rahim Nik Abdul Ghani

DOI: 10.22373/sjhc.v8i1.16305

In the previous discussion, it is clearly known that in some exceptional cases there is a prior understanding between the bank and the customer regarding the terms and conditions related to the contract, and then they agreed that the customer's silence should be considered acceptance after a specified period. The customer to whom the offer is addressed binds himself to respond with the answer within a specified period of time if he wishes to refuse the offer. The duration must be reasonable and known to Islamic banks.

Furthermore, it has been established in Islamic law that the original ruling in contracts is permissibility and validity. It is well known that contracts and conditions are considered the customary acts, and the original ruling of which is non-prohibition, so that the non-prohibition in that matter is accompanied until evidence of prohibition. This is called in Sharia as *istishab* to denote the principle of the presumption of continuity. As such the ruling of stipulating any condition including silence as acceptance is permissible and valid from Sharia point of view.

3) There should be a certain and reasonable period of time recognized by Islamic banks

If banks are going to apply this type of tacit acceptance, there must be a customarily reasonable fixed period. This can be relied upon any customary practices of business among Islamic banks in a country. In this regard, Ibn Taymiyyah referred to customary practice in contracts by saying: "And the contracts of the people who obligated the words and used the offer and acceptance and so on and the people of the Madinah made the reference in the contracts to the custom of the people and their habit, as such what the people counted as a sale is a sale and what they considered a lease is a lease and what they considered a gift is a gift".⁴⁶

4) In case of no prior understanding, there must be special permission from the Central Bank to apply

This can sometimes happen due to special circumstances or unusual circumstances such as Covid or an international legal problem. In fact, permission from the Central Bank is an act of the State in order to maintain stable financial conditions. This in fact falls under the legal maxim: "The action of the government depends on the *maslahah* (public benefit)."

A real example in Malaysia is the case where Islamic banks need to adopt risk-free rate (RFR) as an alternative benchmark rate to LIBOR or as a fallback

⁴⁶ Ibn Taymiyyah, *Majmu' al-Fatawa...*, v. 20, p. 345.

Deemed Consent in Islamic Banking

Nik Abdul Rahim Nik Abdul Ghani

DOI: 10.22373/sjhc.v8i1.16305

benchmark replacement rate after the permanent cessation of LIBOR. In transitioning to the alternative RFR, Shariah Committee of each IFI needs to determine the appropriateness of invoking the deemed consent mechanism to signify customers' consent on the incorporation of the fallback provision in the contract's terms and conditions.⁴⁷

5) If there is presence of for refusal after a reasonable period, it must be enforced

This is because it is generally accepted in Sharia that the explicit is stronger than the implicit (*al-sarih aqwa min al-dalalah*). It means that by having this parameter, if there is conflict between explicit and implicit methods, then the explicit form of expression prevails. There is a legal maxim "There is no rule for implicit method, if explicit method takes place" (*la ibrah li al-dalalah fi muqabalat al-tasrih*).⁴⁸

Therefore, if the customer comes after a reasonable period recognized by law or banks, and declares the refusal, the bank must cancel or terminate the contract as agreed by the bank and the customer.

Conclusion

In conclusion, based on analysis conducted on this issue, it can be said that the original purpose that must be achieved when executing a contract is the consent of the contracting parties. Since the consent is a hidden thing in the human heart, the Lawgiver has made the form of contract (*sighah*) consisting of offer and acceptance as a proof of that consent. If the offer and acceptance coincide, the contract establishes and becomes valid, whether the acceptance is by word, telephone, fax or e-mail. The objective of the Sharia is consent, so any indication of the objective of the Sharia is considered valid. Tacit acceptance or implied acceptance (also known as deemed consent) is one of the means of expressing contemporary consent that can be applied in Islamic banking industry with some Sharia parameters. This study shows that the silence as practiced by Islamic banks can be recognised as implied acceptance provided that the clues and circumstances indicating the consent. It can be safely said that the key point of the matter is to know the customer's

⁴⁷ Bank Negara Malaysia, <https://www.bnm.gov.my/-/sac-bnm-210th-meeting>

⁴⁸ Muhammad Sidqi bin Ahmad Burnu, *al-Wajiz fi Idah Qawa'id al-Fiqh al-Kulliyah*, Beirut: Muassasat al-Risalah, 1998, v. 1, p. 201.

Deemed Consent in Islamic Banking

Nik Abdul Rahim Nik Abdul Ghani

DOI: 10.22373/sjhc.v8i1.16305

will or intention and to verify his consent. Everything that signifies the consent can be considered as a valid method of expression.

References

Journals and Books

Al-Qur'an al-Karim.

Abu Ghuddah, Abd al-Sattar, *al-Majmu'ah al-Fiqhiyyah al-Masrafiyyah* (2) al-Iltizam wa al-Uqud wa al-Khiyarat, Qatar: Arwiqah, 2020.

Al-Bayhaqi, Ahmad bin al-Husayn bin Ali, *al-Sunan al-Kubra*. Beirut: Dar al-Kutub al-Ilmiyyah. 2003.

Al-Biraqidar, Muhammad Yunus. al-Ta'amulat al-Maliyyah bi al-Internet in *Dirasat al- Ma'ayir al-Shar'iyyah*. Riyadh: Dar al-Maiman li al-Nashr wa al-Tawzi'.

Al-Buhuti, *Daqa'iq Uli al-Nuha li Sharh al-Muntaha*, Beirut: A'lam al-Kitab, 1993, v. 2.

Al-Gharnati, *al-Taj wa al-Iklil*, Beirut: Dar al-Kutub al-Ilmiyyah, 1994, v. 6

Al-Hattab, *Mawahib al-Jalil fi Sharh Mukhtasar al-Khalil*, Beirut: Dar al-Fikr, 1992, v. 4.

Al-Jauziyah, Ibn al-Qayyim, *I'lam al-Muwaqqi'in an Rabb al-Alamin*, Kingdom of Saudi Arabia: Dar Ibn al-Jawzi li al-Nashr wa al-Tawzi', 1423H, v. 4.

Al-Mardawi, *al-Insaf fi Ma'rifat Al-Rajih min Al-Khilaf*, Beirut: Dar Ihya' al-Turath al-Arabi, n.d, v. 4.

Al-Ramli, *Nihayat al-Muhtaj Sharh al-Minhaj*, Beirut: Dar al-Fikr, 1984, v. 3.

Al-Sarrah, *Qa'idah La Yunsab ila Sakit Qawl wa Tatbiqatuha al-Fiqhiyyah*, research paper.

Al-Sharnabasi, Ramadan Ali. *al-Sukut wa Dilalatuhu fi al-Ahkam al-Shar'iyyah*. Beirut: Dar al-Fikr al-Arabi. n.d.

Al-Uthmani, *Fiqh al-Buyu' ala Al-Madhahib Al-Arba'ah ma'a Tatbiqatihi Al-Mu'asirah Muqarinah bi Al-Qawanin Al-Wad'iyyah*, Karachi: Maktabat al-Quran, 2015, v. 1.

Al-Zarkashi, *al-Manthur fi al-Qawa'id al-Fiqhiyyah*, Kuwait: Wizarat al-Awqaf al-Kuwaitiyyah, 1985, v. 2,

Al-Zarqa', Mustafa, *Sharh al-Qawa'id al-Fiqhiyyah*, Damshiq: Dar al-Qalam, 1989.

Deemed Consent in Islamic Banking

Nik Abdul Rahim Nik Abdul Ghani

DOI: 10.22373/sjhc.v8i1.16305

- Al-Zayla'i, Uthman bin Ali Fakhr al-Din. *Tabyin al-Haqa'iq Sharh Kanz al-Daqa'iq*. Cairo: al-Matba'ah al-Kubra al-Amiriyah. n.d.
- Al-Zuhayli, Wahbah, *al-Fiqh al-Islami wa Adillatuhu*, Damshiq: Dar al-Fikr, n.d, v. 5.
- Burnu, Muhammad Sidqi bin Ahmad, *al-Wajiz fi Idah Qawa'id al-Fiqh al-Kulliyah*, Beirut: Muassasat al-Risalah, 1998.
- Gaol, Christopher Panal Lumban, et.al., "Bank Interest in Islamic Law," *At-Tasyrih: Jurnal Pendidikan dan Hukum Islam* 9, No. 1 (2023). DOI:10.55849/attasyrih.v9i1.149.
- Ibn al-Humam, Kamaluddin Muhammad bin Abd al-Wahid, *Fath al-Qadir*, Beirut: Dar al-Fikr. n.d.
- Ibn Faris, *Mu'jam Maqayis al-Lughah*, Beirut: Dar al-Fikr, 1979 v. 3.
- Ibn Majah, Abu Abdillah Muhammad al-Qazwini, *Sunan Ibn Majah*. Beirut: Dar Ihya' al-Kutub al-Arabiyyah. n.d.
- Ibn Taymiyyah, Taqi al-Din Abu al-Abbas Ahmad bin Abd al-Halim. *Majmu' al-Fatawa*, Kingdom of Saudi Arabia: Majma' al-Malik Fahd. 1995.
- Mahmudah, Siti Nur, et.al., "Implementation of Sharia Maqashid on Sukuk Based on Fatwa DSN-MUI/IX/2020," *Jurnal Ilmiah Islam Futura* 22, No. 2 (2022). DOI: <http://dx.doi.org/10.22373/jiif.v22i2.12296>.
- Putri, Fatimah Iskandar, "Islamic Bank Productivity: Analysis of Research Path," *Review on Islamic Accounting* 2, No. 2 (2022). DOI:10.58968/ria.v2i2.148.
- Rachman, Abdul, "Dasar Hukum Kontrak (Akad) dan Implementasinya Pada Perbankan Syariah di Indonesia," *Jurnal Ilmiah Ekonomi Islam* 8, No. 1 (2022). DOI:10.29040/jiei.v8i1.3616.
- Sinnadurai, Visu, *Contracts Act A Commentary*. Petaling Jaya: Lexis Nexis, 2015.
- Sinnadurai, Visu, *Law of Contract*, 4th Edition. Petaling Jaya: Lexis Nexis, 2011.
- Suharto, Tentiyo and Sri Sudiarti, "Analisis Jenis-Jenis Kontrak Dalam Fiqh Muamalah," *Mumtaz: Jurnal Ekonomi dan Bisnis Islam* 1 No. 2 (2022). DOI:10.55537/mumtaz.v1i2.184.
- Tektona, Rahmadi Indra, et.al., "The Act Protection for Islamic Banks in Financing Land and Rubber Plantation Ownership," *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 4, No. 1 (2020). DOI: <http://dx.doi.org/10.22373/sjhc.v4i1.6880>.
- Wahid al-Din Siwar, *al-Ta'bir an al-Iradah fi al-Fiqh al-Islami Dirasah Muqaranah bi al-Fiqh al-Gharbi*.

Deemed Consent in Islamic Banking

Nik Abdul Rahim Nik Abdul Ghani

DOI: 10.22373/sjhc.v8i1.16305

Walid bin Hadi, *Khasa'is al-Uqud al-Maliyyah wa Ilal Manahiha*, Beirut: Dar al-Salihyyah, 2021.

Wizarat al-Awqaf a al-Shu'un al-Islamiyyah. *al-Mawsu'ah al-Fiqhiyyah al-Kuwaitiyyah*. Kuwait: Dar al-Salasil, 1404.

Yusoff, Sakina Shaik Ahmad and Azimon Abdul Aziz, *Mengenali Undang-undang Kontrak Malaysia*, Petaling Jaya: International Law Book Services, 2003.

Zakariyya al-Ansari, *Asna al-Matalib Sharh al-Rawd*, Beirut: Dar al-Kitab al-Islami, n.d, v. 2.

Internet Data

Bank Negara Malaysia, <https://www.bnm.gov.my/-/sac-bnm-210th-meeting>
<https://legaldictionary.thefreedictionary.com/Types+of+Acceptance>
 Cambridge Dictionary
<https://dictionary.cambridge.org/dictionary/english/silence>.