

ASSESSMENT OF THE GLOBAL FINANCIAL CRISIS: SPECIAL REMEDIES FROM THE SHARI'AH PERSPECTIVE

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ABSTRACT

The study investigates some vital courses of the global financial crisis and figured out some important remedies within the context of Shari'ah law. Shari'ah has stipulated market surveillances to ensure strict adherence to the Islamic ethics and trustworthiness in every Shari'ah compatible contractual obligations between individuals and in the public marketplaces. Library research method used to collect information related to the Islamic principles initiated to guide and protect the Islamic financial services providers and institutions from the global financial crisis. Islamic financial system prohibits interest dealings, gambling, excessive risk and sale of debt for debt among others. These are some of the possible mechanisms that used to protect the Islamic financial marketplaces against deceptive activities that actually activate mistrust and panic, which lead to a financial crisis. Islamic business ethics and the Shari'ah principles are the twin factors, which sustained the investor confidence within the Islamic financial institutions. Shari'ah stimulates trustworthiness and business ethics while doing business in an Islamic marketplace. The Islamic principles are projected to serve as shield against cheating, and any kind of deceptive activity in the Islamic business and financial markets atmosphere. In conventional economy some deceptive activities are widespread and they are consequently among the factors that triggered the contemporary financial crisis across the globe. The paper looked at the Shari'ah principles and business ethics as potential measures to averting financial crisis in Islamic finance.

Keywords: Shari'ah principles; Business ethics; Financial Crisis; Islamic Finance

INTRODUCTION

The most essential role of Shari'ah business principles is to protect the Islamic financial system from total collapse or hardship. The Shari'ah provides necessary rules and regulations and stipulates the standards and conditions of the people who are allowed or prevented to engage in Islamic business activities. To prevent deceit, Shari'ah disapproves contracting with the minor, insane and incapacitated person. It also disapproves any sale contract executed

without the consent of one of the contracting parties or contracts under duress and so on. Allah the Almighty says: “O you who have believed, do not consume one another’s wealth unjustly but only in lawful business by mutual consent.”¹ This is because the primary objective of Shari’ah is to protect the Islamic markets from deception, fraud, deceit, and injustice. Thus, Shari’ah gives choices to those who were duped to uphold, cancel or collect the excess amount of the deal.

The financial crisis is a financial epidemic which has become a feature of the conventional financial landscape for decades. It normally appears without warning. Its real causes are complex and could appear at the peak of business and financial situations. Shari’ah-compliant economic policies and rules, however, have the potential to protect the Islamic Financial system from recession or even the financial meltdown.

LITERATURE REVIEW

One of the most important mechanisms to understanding the impact of Shari’ah law in addressing financial crisis is to investigate the Shari’ah principles related to business ethics and rules that protect the contracting parties and the behavior of the supervisors of Islamic financial markets.

Previous Study

There are numerous studies conducted by many scholars on financial crisis related to conventional finance, however few researches have been done in regards to Islamic financial system. In a study conducted by Adel Ahmed, 2010,² suggests that a new business model for the banking system based on non-interest-based transactions but with profit and loss sharing concepts should replace the current practices in the global financial system. Abdou Diaw 2015,³ proposed the establishment of a strong and comprehensive regulatory body to safeguard the resilience of the system; and the integration of Zakat, Awqaf and other voluntary institutions into the financial system to cater for the financial needs of the poor. Hajer Zarrouk 2014,⁴ also emphasized on introducing the financial system based on risk sharing, the author thinks that this will link credit expansion to the growth of the real economy by allowing credit primarily for the purchase of real goods and services which the seller owns and possesses, and the buyer wishes to take delivery. Hassan Baber 2018,⁵ has also deliberated on the resistance of the Islamic banks during the recent global financial crisis, the author concludes that performance of Islamic banks during the global financial crisis is found to be supportive of their argued resilience and consistency. However, none of these

¹ Qur’an 3/29

² Adel Ahmad (2010) "Global financial crisis: an Islamic finance perspective", *International Journal of Islamic and Middle Eastern Finance and Management*, Vol. 3 No. 4, pp. 306-320, published by Emerald Group Publishing Limited.

³ Abdou Diaw (2015) "The global financial crisis and Islamic finance: a review of selected literature", *Journal of Islamic Accounting and Business Research*, Vol. 6 No. 1, pp. 94-106 Publisher, Emerald Group Publishing Limited.

⁴ Hajer Zarrouk (2014), *The Impact of the International Financial Crisis on the Performance of Islamic Banks in MENA Countries, The Developing Role of Islamic Banking and Finance: From Local to Global Perspectives*, 2014 Emerald Group Publishing Limited.

⁵ Hasnan Bader (2018) "How crisis-proof is Islamic finance? ", *Qualitative Research in Financial Markets*, Vol. 10 No. 4, pp. 415-426 published by Emerald.

literatures explored the relevant Shari'ah principles and business ethics that if used properly will help safeguard the Islamic financial market from economic crisis.

FINANCIAL CRISIS AND ISLAMIC FINANCE

Financial crises are the results of the mismanagement of the modern day's capitalist economy. The Islamic financial system, however, holds the key to the solution of the oppressive economic system (capitalism). Many writers have blamed the capitalism and its players as the brain behind the world's financial crises and the consisting endemic recession. Some western scholars argue that financial crisis occurs at the peak of economic prosperity during the business cycle followed by a period of liquidation in which business, commodity, and securities prices decrease.⁶ The incessant financial crises have made many to conclude that the financial sector is unusually liable to shocks. And that small shocks which primarily affect few institutions or a particular region of the economy, spread by contagion to the rest of the financial sector and then affect larger economy.⁷

High business speculation also increases the frequency and severity of financial crises in a developed economy.⁸ Particularly in unconfident and trustless economic experiences. Though financial crises often occur in weak and weedy economic situations, its occurrence at the peak of business and financial situation, however, is an indication that the financial system is not in good hands. Thus, the Islamic financial system emphasizes trustworthiness and encourages god-fearing people to handle the Islamic marketplace to protect the financial atmosphere from cheating, wrong-doing and misconduct. In addition, every conscious Muslim businessman knows that the consequences of any wrongdoing are not only in this world but that he will also be held accountable in the hereafter.⁹ The majority of the players of the conventional financial system, however, lack such tenet, as a result, it sometimes falls into wrong hands who would see no harm in engaging in fraud and deceptive practices within the system and which causes not only a financial crisis but a recession.

Financial crises are often associated with panic in the capitalist economy. Such a panic is a sign of mistrust between the creditors and the market players. It normally occurs when depositors feel that bank's assets are insufficient to guarantee their claim to their money. Therefore, the depositors withdraw their funds,¹⁰ due to the uncertainty about the capability of the bank to produce funds, which have been lent out to unprofitable businesses through inexperience merchants and other vested interest. The characterization of the economy as both a capitalist economy with expensive capital assets and sophisticated complex financial system delineates the theoretical argument of the financial instability.¹¹

On the other hand, the theory of "veil of money", as an economic problem, is centered on whether money has special properties, or it is a commodity like other commodities such as oil, gold or food. In the classical political economy, John Stuart Mill argues that money is not important. Though it may disguise the true values in an economy, it could only do so for a limited period of time. Based on this, government intervention in the political economy is considered a misplaced priority. The advent of credit-based issuance of notes has also not helped the situation. The governments' attempt to adjust interest rates rather than maintain the

⁶ Michelle Walton (2011) "Can Financial Crisis occur under the rules of Islamic Finance?" p.3

⁷ Franklin Allen, Douglas Gale (2000) "Financial Contagion" *The Journal of Political Economy*, Volume 108, Issue 1 (Feb, 2000), 1-33. p.2

⁸ Michelle Walton (2011). p.4

⁹ The Prophet Muhammad peace be upon him said: "whoever cheats in our market is not from us" in his tour in a market arena the Prophet peace be upon him saw a

¹⁰ Michelle Walton (2011)

¹¹ Ibid

Gold standard has, however, justify the importance of money. In the modern economy, the veil of money is basically used to describe the questions of stability and the exchangeability of money for interest or commodity in a micro-economic model. In essence, as long as money is treated as a commodity, there will be no stickiness between money and interest or money and goods.

Under the theory of “veil of money,” the issues have always been about the trading exchanges in commodity markets such as money for goods and goods for money. Therefore, the exchanges have always been about good for goods. The veil theory thus implies that time is the main connecting factor between money and financing. The financing of the economy can also be structured as dated payment commitments wherein banks are the central players. The money flows have always been, first, from depositors to banks and then from banks to firms. And later at sometimes, from firms to banks and then from banks to their depositors. The initial exchanges are for the financing of investment, and then, the exchanges fulfill the prior commitments which have been stated in the financing contract. However, in a capitalist economy, all of the past, present and future are linked by the characteristics of the capital assets, the labor force as well as the financial relations and changes in this structure. The expectations of business profits solely determine both the flow of financing contracts to business as well as the market price of existing financing contracts. Similarly, the profit realizations determine the level of fulfillment of the commitments in financial contracts as well as the performance of financial assets as indicated in the negotiations.¹²

According to Minsky, Western capitalist economies are unstable because the internal works of the economy’s financial structures are prone to inflation and depression. It is thus incumbent on policymakers to realize the flaws of the economy and make judicious use of the institutions and policy to assuage an economy’s inherent instability.¹³ Furthermore, a country’s central bank should play the role of the lender of last resort to contend with an economy’s inherent instability. The role of the lender of last resort is mainly to stabilize the asset values as well as financial markets. For instance, any unmarketable collateral financial assets should be accepted, acquired or bought by the Federal Reserve. The creation of such as lender of last resort or a country’s central banking system is essential to prevent the occurrence of the financial crisis in a Western capitalist financial system.¹⁴

During the 2008 financial crises, Islamic banks were more stable than conventional banks. For instance, Bank Al Rajhi was one of the most stable Islamic Banks that performed very well during the recession period of 2008.¹⁵ The sustainability of Al Rajhi Bank relied on the bank’s strong Islamic business franchise being the third largest bank with 12% share of the total banking in Saudi Arabia. The bank’s strict adherence to the Shari’ah as well as other mechanisms such Islamic risk management, have collectively contributed to this important accomplishment.

INVESTMENT AND GAMBLING FOR CAPITAL MARKET

Though investing is good while gambling is bad.¹⁶ Investing is regarded as a great driver of the economic system such that people who are the most promising and with potential productive uses for money are provided with money to gradually drive the economy upward.

¹² Hyman P. Minsky (1992) p.4

¹³ Hyman P. Minsky (1992) p.10

¹⁴ Michelle Walton (2011) p.5

¹⁵ Abdulmonem Alzalabani & Reji D. Nair (2013) p.25

¹⁶ <http://www.investorguide.com/article/12525/what-is-the-difference-between-gambling-and-investing/> viewed at 11/38pm on 3/9/2015

In other words, investors do not bet on the potential of companies to succeed but rather provide the required capital for the companies for goals' accomplishment. On the other hand, gambling does not clearly contribute positively to any economy. Though it does tend to help local economies and some advantageous people in the society, it mostly brings well documented unpleasant side effects to the economy.¹⁷

The Islamic economic system prohibits gambling and encourages business-wise investment in the economy. Furthermore, it provides its capital to those companies with good and anticipated successful portfolios. Allah the Almighty said: "O you who have believed, indeed intoxicants, gambling, sacrificing on stone altars to other than Allah and driving arrows are but defilement from the work of Satan, so avoid it that you may be successful. Satan only wants to cause between you animosity and hatred through intoxicants and gambling and to avert you from the remembrance of Allah and from prayers so will you not desist? ".¹⁸ Allah the Almighty also said: "O you who believed, do not consume one another's wealth unjustly, but only in lawful business by mutual consent. And do not kill yourselves or one another indeed Allah is to you ever Merciful."¹⁹

SHARI'AH PRINCIPLES ON CONTRACTS

Shari'ah principles related contractual obligations are part of the micro aspect of Islamic economic system, and this micro aspect of the economy is an integral part of the whole economic system. Any defect in micro if not addressed properly will gradually affect the macroeconomic system. To address this matter efficiently, Shari'ah has stipulated rules from the beginning to the end of an Islamic contract for a more lasting and sustainable business and economic development. For instance, starting with the party to a contract, Shari'ah addresses the human factor decisively and asks guardians not to allow the minor and unsound individuals to contract or be in charge of any financial activity. These laws are there to protect the collective Muslims wealth and the wealth of inexperienced people who may put their wealth in jeopardy and suggests that these types of people should only be given what they need in terms of food, clothing and so on. Allah the Almighty said: "And do not give the weak-minded your property, which Allah has made a means of sustenance for you, but provide for them and speak to them words of appropriate kindness."²⁰

However, this restriction is not a permanent one; it could be disregarded once the unsounded individual becomes capable of dealing or handling his own business like an adult in an Islamic society. Or for an orphan who reaches wedding age, or a child that has grown to adulthood and so on. In addressing orphans related issues, Allah the Almighty said: "And test the orphans in their abilities until they reach marriageable age. Then if you perceive in them sound judgment, release their property to them. And do not consume it excessively quickly, anticipating that they will grow up, and whoever while acting as guardian is self-sufficient should refrain from taking a fee, and whoever is poor let him take according to what is acceptable, then when you release their property to them, bring witnesses upon them. And sufficient Allah is an accountant"²¹

¹⁷ Ibid

¹⁸ Qur'an 5/90-91

¹⁹ Qur'an 4/29

²⁰ Qur'an 3/5

²¹ Qur'an 3/6

SHARI'AH ETHICAL FACTOR

Shari'ah has provided comprehensive laws to protecting wealth from harm and exploitation. This helps to prevent the entire economy from crisis. Therefore, wealth or property should be handled by mentally sound and experienced merchants for its development and circulations. Shari'ah has also regulated debt transactions between the parties so as to protect people's wealth. For example, the debt must be written and paid on the date stipulated. And it is mandatory for the debtor who is capable of paying his debt on time to do so immediately without delaying or procrastination. Otherwise, it is regarded as an oppressive act.²² Shari'ah allows more time for a debtor to pay up his debt after missing the deadline; bankruptcy could only be filed when the second chance is due. The Prophet peace be upon him has said: "for the one who intentionally refused to redeem his debt should be punished"²³ The Prophet peace be upon him also said: "whoever collects people's wealth with the intention to refund Allah will pay for him, and whoever collects people's wealth with the intention to destroy it, Allah will destroy him too"²⁴ It was reported by Abdul Rahman Ibn ka'b bin Malik, who said: "Mu'az bin Jabal was a young bounteous, who never retains anything. He started to acquire debt until he finishes his wealth on debt, he comes to the Prophet peace be upon him and asked him to talk to his debtors, the Prophet sold his remaining properties and distributes it to the debtors, and Mu'az ends without anything."²⁵

One of the ethical parts of Islamic law of contract is a soft dealing with a debtor who has no capacity to repay his debt at the stipulated time. A debtor could only be declared bankrupt by the request of the debt owners; this is the opinion of *Hanafi*, *Shafii* and *Hanbali* schools of jurisprudence. This view relied on the *Hadith* of Abdul Rahman bin ka'ab mentioned earlier, it is an injunction that authorized the leader to take over the wealth of a person to pay for his debt. Umar - peace be upon him - has done similar things and none of the companions repudiates his actions. Scholars of Islamic jurisprudence have consensus that a bankrupt wealth should be distributed to his debtors if they insist on that. However, debtors should only collect what has remained from his wealth even if it did not accomplish their debt. It was reported by Abu Saeed may Allah be pleased with them said: "A man was bankrupted at the time of the Prophet peace be upon him, the Prophet commands his companions to help him with charity but still not sufficient for his debt, the Prophet Peace be upon him said to debtors" "take what you found with him, and you have no more than that"²⁶

Shari'ah has positioned the fundamental nature of contracts under the umbrella of fairness and satisfaction of the parties. This is why it prohibits gambling. Allah the Almighty said: "O you who believed do not consume one another's wealth unjustly, but only in lawful business by mutual consent, and do not kill yourselves or one another. Indeed, Allah is to you ever merciful."²⁷ Shari'ah emphasizes on wealth development and circulation, it also discourages hoarding and illegal savings without zakat payment obligation. Allah the Almighty said: "And those who hoard gold and silver and spent it not in the way of Allah give them tidings of a painful punishment."²⁸ With these numerous injunctions and laws, Shari'ah has protected wealth and protected it from corruption so that it will preserve the needful value

²² Mustakhraj Abi Uwanah hadith 4265, at 6/29

²³ Narrated by the five

²⁴ Narrated by Bukhary

²⁵ Qawa'idul buyu' wa Qawaidul furu'

²⁶ Hadith narrated by Ja'ma' except Bukhary

²⁷ Qur'an 3/29

²⁸ Qur'an 9/34

of protecting human life, and actualize its missions for development and humanitarian purposes.

Scholars of Islamic Jurisprudence have made it clear that it is unlawful to sell a subject matter without the consent of the owner or his legal agent. This, however, is to protect people's property from being squandered. Prophet Muhammad Peace be upon him said: "Indeed your blood, your wealth, your lineage are prohibited among you, as it is prohibited for you this day, in this month, and in this holy city of Mecca"²⁹ The Prophet in this Hadith made the prohibition of taking other people's wealth as equal as taking a life or lineage destruction. Therefore, only the owner has the right to use his wealth or his agent or any other legally authorized person.

The Prophet peace be upon him said: "It is forbidding to contract with debt and sale at the same time and you should not sell what you don't have"³⁰ That means that whatever it is not in one's possession or capacity should not be sold until one possesses or acquires it. Owners of properties or subject matter should also have the capacity to deliver the subject matter to the potential buyers before contracting in a sale contract. However, the scholars of Islamic Jurisprudence have debated the issue of a person who has sold a subject matter that he did not own and without the consent of the owner (*Bay al-Fudhuli*). The *Hanafi* and *Maliki* Schools of Jurisprudence are of the opinion that if the owner authorizes the contract later on, then it is legal and acceptable. But *Shafii* and *Hanbali* Schools are of the opinion that the contract is void despite the later authorization. The opinion of *Maliki* and *Hanafi* is the preferred opinion due the Hadith of Urwah bin al-ja'ad said: "The prophet peace be upon him gave him a Dinar to buy him a goat, he bought two goats instead and sold one for a Dinar, he said I bought a Dinar and a goat to the Prophet Peace be upon him. The Prophet said: "May Allah bless your future businesses"³¹ The *Hadith* shows that the Prophet peace is upon upholding the fudhuli's deal.³²

SALE OF DEBT FOR A DEFERRED DEBT (*BAY' KALI BIL KALI*)

The scholars of Islamic Jurisprudence have anonymously banned the sale of debt with another differed debt before taking possession. The prohibition was based on the Hadith recorded that the Prophet peace be upon him was reported to have prohibit *bay' Alkali' bil kali*"³³ The *Hadith* reported on this matter is exclusively on *bay' kali' bi kali'*. According to Ibn Qayyim, *bay kali bil kali* is to sell a deferred *dayn* (*debt*) which is not being received, and both the *dayn* and their equivalent are deferred, such as to contract in *Salam* with a deferred debt which is not in your custody. Meaning that to use the *Salam* liability in exchange with another debt liability, this type of debt selling is prohibited according to all Islamic scholars.³⁴

Malik ibn Anas has narrated that: *Sukuk* papers were given to the armed forces at the period of Marwan Ibn Hakam to benefit from foodstuff. Then people started selling such *Sukuk* to third parties ahead of its custody. Zayd Ibn Thabit along with another companion went to Marwan bin Hakam and said, "Oh Marwan, are you legalizing *riba* trading? He said, no I seek refuge to Allah from that, what is happening? They said people brought these *Sukuk* papers and started trading them before taking possession of the subject matter. Marwan took

²⁹ The Hadith narrated by the five, Imam Tirmithi authenticated the Hadith.

³⁰ Narrated by Tirmizy

³¹ Reported by Imam Ahmad and Athram

³² Wahba alzuhaili, *Alfiqhil Islami wa'adillatuhu* at 4/520)

³³ Sunan Dar-Qutni, Hadith Ibn Umar reported by Abdullahi bin Dinar, Hadith No. 3060, at 4/40

³⁴ Ibn Qayyim al-Jawziyyah, "*Iñlam al-muwaqqiñin Ñan rabbi al-Ñalamin*" (Dar al-Jil Bayrut Lubnan, vol.2 1973), at 9.

the *Sukuk* from the third parties and returned them back to their original owners.³⁵ Abu Umar said that this is exactly the *Madhhab* of Imam *Malik* the first *Sukuk* issuance were based on the *Fay'* (military bonus)³⁶ which is given to them as their portion of *fay'* (Army compensation).³⁷ The first owners of *Sukuk* were not to be blamed for selling the *Sukuk* to second parties before possession, because their *Sukuk* was originated from *fay'* and not from a sale contract, so there is no Shari'ah issue if the sale the *sukuk* to the second party.³⁸ However, the second owners of the *Sukuk* were blamed by the companion *Zayd bin Thabit* because they were selling the *Sukuk* to third parties before possession.³⁹ Here there is a sale contract involve in the ownership of the *sukuk* and that is why they are to be blamed. The Hadith as highlighted contrary to the *hadith* "whosoever bought a foodstuff shouldn't sell it ahead of his custody."⁴⁰

These noble principles are in place to restrict and protect the Islamic financial system from sudden and unprecedented crisis. It was notable that in conventional financial system the issue of debt and interest is one of the most crucial issues which implicate conventional banking and financial system into crisis and recession. It was highlighted that reckless practices in lending, lack of risk management, high liquidity and faulty regularity supervision are responsible for the financial crisis worldwide which badly affect the conventional banking and financial institutions. The Islamic financial system has immunity from such crises because of its unique interest-free system and the stipulated guidance of the noble Shari'ah. Islamic financial system is regarded as a reliable alternative to the conventional system, in particular, during global financial crisis. Islamic finance remains positive and safe after the global financial crisis. Many scholars and thinkers have, thus, suggested that the global financial crisis could be averted if the conventional system follows the Islamic financial principles and Shari'ah guidance.⁴¹

Shari'ah prohibits interest on loans. It explicitly encourages trade and making profits in trading. Given that lenders in the most cases do not require liquidity for and of itself, rather require it to acquire raw materials, merchandise, machines, and other objects, or to pay for services. It is possible to substitute the bank loan with an alternative system whereby the bank only acts as an intermediary and acquires the objects needed on the client's behalf, pays the supplier directly, and sells these objects on to the client for a fixed markup on the purchase price (or, by analogy, commissions services). The client will then pay the purchase price and the profit markup at a later date by lump sum or in installments to the bank. The bank's profit markup is analogous to economic interest; however, legally-speaking it is a trading profit and is thus not affected by the prohibition of *riba*. Trading operations (known as *murabaha*) also differ in other aspects (particularly with regards to liability and transfer of risk) from loan transactions, meaning that the boundaries between permissible trade profits and prohibited interest are quite obvious.⁴²

Another related issue debated by the scholars of Islamic Jurisprudence was the sale of the Muslims lands, which was conquered by the use of force but was not distributed to the combatants, such as the land of Iraq, Egypt, and Syria. Two different opinions were recorded,

³⁵ Ibn Abd al-Barr, "*al-Istidhkar al-jami li madhahib Fuqaha' al-amsar*" vol.6 at 331.

³⁶ Ibid at 333.

³⁷ Ibid.

³⁸ Ibn Abd al-Barr, "*al-Istidhkar al-jami li madhahib Fuqah' al-amsar*" Vol.6 at 334.

³⁹ Ibid.

⁴⁰ *Muwatta' Ibn Malik Hadith* 1311 reported by Yahya ibn Layth.

⁴¹ Azam Shafiq, Muhammad Asim Faheem & Iqra Abdullah (2008) "Liquidity and Risk Analysis of Islamic Banking System during Global Financial Crises" *Kuwait Chapter of Arabian Journal of Business and Management Review* Vol. 1, No.8; April 2012 at 89

⁴² Azam Shafiq, Muhammad Asim Faheem & Iqra Abdullah (2008) at 89

the first opinion was that the land should not be divided and will be regarded as an undivided property of Muslims compare to endowment; this is the opinion of Umar, Ali, Ibn Abbas and others. The second opinion was that the land should be divided; this is the opinion of Sheikh al-Islam Ibn Taimiyyah, and the second opinion of Imam Shafii, it is also the opinion of Sheikh Ibn Sa'adi and Ibn Uthaimen. This is the selected opinion and practiced by Muslims for a long time. Those who banned the sale of the land argued that the people who stayed on the land have no legal ownership of the land and that they should not sell the land because of the hadith “do not sell what you did not own” (Narrated by Tirmidhi). Those who oppose the idea legalized the sale of the land argued that those who stayed on the land are the owners of the usufruct and therefore could be regarded as owners of the land as well.⁴³

It must be emphasized that Shari'ah is concerned with the Islamic law. Thus, any judgments about the legitimacy of transactions are based on legal and not on economic criteria. If Islamic economists were to be searching for an economic (material) rather than a legal (formal) alternative to interest, it would lead to a neglect of the (debt) financing techniques based on intermediary trading. For the practical operations of Islamic banks, however, the situation is considerably different, particularly in countries lacking regulatory provisions and with poor business ethics, low levels of transparency, close links between the political and economic elites as well as a legal system with little or no power of enforcement. In general, bank has a great risk in financing based on profit and loss sharing. For entrepreneurs who are more interested in the bottom line of their balance sheet than the Islamic values, finding a partner who will share losses of a risky business (if the actual risks are cleverly concealed) is an attractive proposition, while sharing expected profits is less appealing. There is much to indicate that participation in financing systematically attracts above-average levels of risk without guaranteeing above-average profits.⁴⁴

Therefore, in practice, Islamic banks mainly focuses on (debt) financing on the basis of trade agreements (*murabaha*) as well as other permissible leasing (*ijara*) or rental transactions. Islamic financial practice has not limited itself to only these rudimentary financing instruments but it has also expanded its toolset to other important directions. To date, Islamic economists have rarely, however, adequately integrated these financing instruments into their macroeconomic models but are rather more inclined to an overly optimistic assessment of the allocative qualities and stability of an Islamic financial system.⁴⁵

Samahah (kindness and compassion) is one of the most vital Islamic principles in business, being kind and forgiving in doing business was emphasized by the Prophet Muhammad Peace be upon him, He said: “Allah have mercy on someone who is benevolent when he sells and benevolent when he buys”.⁴⁶ The Prophet has said when he was repaying a debt “The best among you is he who pays better than what he has taken”⁴⁷ the prophet has also said, about a wealthy man who used to offer loan to the people, he would also tell his men to pardon a distressed person, perhaps the Almighty Allah would pardon us, and he was pardoned.”⁴⁸

Another Shari'ah principle intended to protect the Islamic business arena was *al-wafa bil aqd*, “ fulfillment of contract undertaking” Allah the Almighty said: “And fulfill your promises” the Almighty also said: “O ye who believed fulfill your contractual obligations”.⁴⁹

⁴³ Al-Imam Muhammda bin Idris Al-Shafi'I. (2008), Kitab Al-Umm. Al- Qahirah: Dar al-Hadith

⁴⁴ Azam Shafiq, Muhammad Asim Faheem & Iqra Abdullah (2008) at 89

⁴⁵ Azam Shafiq, Muhammad Asim Faheem & Iqra Abdullah (2008) at 90

⁴⁶ Sahih Al-Bukhari, Hadith 2276, kitab badil wahyi.

⁴⁷ Almanawi, Faidul Kadir, Sharh Al-Jami Alsagir, vol.6 p398

⁴⁸ Sahis Al-Bukhari Hadith 2078, Kitab Badil Wahyi.

⁴⁹ Surah Al-Maidah, verse 1,

The contracting parties in an Islamic contract must fulfill all the contractual obligations as stipulated; otherwise, it will paralyze the Islamic markets which will definitely harm the contracting parties before harming the whole system and the economy. Shari'ah has also prohibits any contract which is not a proper buying and selling contract, and anything related to gambling such as the sale of *al-Munabatha* which means a sale of an item without a proper identification of the sold item.⁵⁰ Likewise, *bay' al-Najsh*, which contains some element of fraud and deception and any other contract with those features should be abandoned by the Islamic Financial Institutions for much healthier and stable Islamic financial markets.

CONCLUSION

This paper concludes that the Shari'ah principles of preventive measures are potential mechanisms intended to help prevent the wealth from harm or total loss. It is also a well-built remedy to the modern financial crisis or recession which normally happens as a result of financial negligence or default of inexperienced merchants, involvement in an excessive risk, gambling and other mischievous activities. The Islamic financial system relies on profit and loss sharing which is stronger than the interest-bearing system of the conventional finance. This is because the Islamic system is built on justice and trustworthiness, both the bank and the merchants are involved in the business and everyone will make sure the success of that particular business so as to share in the profit. And knowing the consequence of lost sharing will make both parties become very vigilant in choosing the healthier business and comply with the agreed contractual obligations.

Consequently, these unique mechanisms have become shield and preventive measure against financial crisis or recession in Islamic Banking and Finance. However, in conventional practice, the bank only secures its profit from the interest accumulated from a debt given by the financial institution to a merchant. The financial institution will normally let the merchants struggle for the bank's interest as well as his business profit, and the bank has nothing to do with the business liabilities and risks. The merchant might put the money in any kind of business he wished without any restriction. Therefore, defaults and panic are always anticipated in the conventional economy, which leads to a collective financial panic, which may cause a possible endemic recession.

It is important to stress that the Shari'ah principles of preventive financial crisis are Shari'ah rules that promote trustworthiness, God-fearing, kindness and other related principles that govern Islamic financial activities and businesses. Some other contracts should be avoided such as gambling, the sale of debt for a differed debt, *Munabatha* and *Najsh* and other related contracts. These principles and prohibitions are intended to serve as protection against cheating, fraud, and deception in the Islamic business and financial markets. In conventional economy cheating and deception are rampant and it's normally causing a recession and financial crisis for a country or even a region at large. Therefore, if the Islamic Banks and Islamic Financial Institutions strictly followed the Islamic laws and rules related to the prohibitions discussed earlier, the Islamic financial institutions would free from any anticipated financial disaster or collapse.

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