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COMPARATIVE STUDY OF ISLAMIC CREDIT CARD BETWEEN INDONESIA AND MALAYSIA FROM THE ISLAMIC LEGAL PERSPECTIVE

BY

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A dissertation submitted in partial fulfilment of the requirements for the degree of Master of Comparative Laws

Ahmad Ibrahim Kulliyyah of Laws
International Islamic University
Malaysia

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ABSTRACT

A credit card facility provided by conventional banks and financial institutions has sparked a debate among the practitioners and scholars regarding the element of interest (*ribā*). However, beginning more than a decade ago, Muslim scholars have come up with alternatives to replace the conventional credit card by applying contracts which are in accordance with *Sharīʿah* principles. Islamic banks and Islamic Financial Institutions (IFIs) have tried to adopt the best Islamic contracts for the Islamic credit card in order to eliminate the element of *ribā* and *gharar*, so the card can be used as long as the credit payment can be made before its due date. The purpose of this study is to provide a better understanding of Islamic credit card as well as to evaluate the instruments and structures involved in the operations. Additionally, through library research, as well as descriptive and comparative approaches, this research attempts to look at the Malaysian and Indonesian banks' practices of Islamic credit card by analyzing their structures and operations of implementing the card. Related *Sharīʿah* issues and legal frameworks used as the basis for the issuance of Islamic credit card are also discussed. The results proved that the structures and operations applied for Islamic credit card of both countries are different in terms of contracts, and in terms of *Sharīʿah* issues that were raised. Nevertheless, the current contracts of Islamic credit card in both countries have been approved by each country's own *Sharīʿah* Advisory Council. The role and responsibility of the *Sharīʿah* Advisory Council is very important to ensure the contracts and operations of Islamic credit card comply with *Sharīʿah* principles.

ملخص البحث

بدأت المناقشة بين العلماء والممارسين حول عنصر الربا في بطاقة خدمة الإئتمان الصادر بواسطة البنوك التقليدية والمؤسسات المالية قبل أكثر من عقد من الزمان، ومع ذلك فقد توصل العلماء المسلمين إلى استبدال بطاقة الإئتمان التقليدية عبر تطبيق العقود التي تتوافق مع مبادئ الشريعة الإسلامية. ولذلك فقد تبنت البنوك الإسلامية والمؤسسات المالية أفضل العقود الإسلامية لبطاقة الإئتمان الإسلامية لكي تتخلص من عنصري الربا والغرر، ولذلك يمكن استخدام هذه البطاقة كأداة دفع دين قبل ميعاد استحقاقه. أما الغرض من هذه الدراسة فهو اعطاء وتقديم فهم جيد لبطاقة الإئتمان الإسلامي وكذلك تقييم الوسائل والتراكيب المتضمنة في هذه العمليات. وقد استخدم الباحث مصادر المكتبة كمنهج بحث في هذه الدراسة بالإضافة إلى استخدام المنهج الوصفي والمقارن. كما أن هذه الدراسة تحاول النظر إلى ممارسة البنوك في ماليزيا واندونيسيا لبطاقة الإئتمان الإسلامي من خلال تحليل تركيبها وعملياتها في تطبيق هذه البطاقة. كما ناقش الباحث في هذه الدراسة القضايا الشرعية والإطار القانوني كأساس لإصدار بطاقة الإئتمان الإسلامي. وقد توصل الباحث بالدليل أن التراكيب والعمليات المطبقة لبطاقة الإئتمان الإسلامي في كلا البلدين تختلف من حيث العقود والقضايا الشرعية التي قد برزت. وبالرغم من ذلك فإن العقود الحالية لبطاقة الإئتمان الإسلامي في كلا البلدين قد قوبلت بواسطة المجلس الإستشاري الشرعي في كلا البلدين. ويعد دور ومسؤولية المجلس الإستشاري الشرعي مهم جداً لتأكيد بأن العقود وعمليات بطاقة الإئتمان الإسلامي تخضع لمبادئ الشريعة الإسلامية.

APPROVAL PAGE

I certify that I have supervised and read this study and that in my opinion; it conforms to acceptable standards of scholarly presentation and is fully adequate, in scope and quality, as a dissertation for the degree of Master of Comparative Laws.

……..
Siti Salwani Razali
Supervisor

I certify that I have read this study and that in my opinion it conforms to acceptable standards of scholarly presentation and is fully adequate, in scope and quality, as a dissertation for the degree of Master of Comparative Laws.

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Mohd Akram Shair Mohamad
Dean, Ahmad Ibrahim Kulliyyah of Laws

DECLARATION PAGE

I hereby declare that this dissertation is the results of my own investigations, except where otherwise stated. I also declare that it has not been previously or concurrently submitted as a whole for my other degrees at IIUM or other institutions.

Walid Aditiawarman

Signature…… Date……

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DEDICATED TO

My beloved father, mother, brothers and sisters

ACKNOWLEDGEMENTS

All praise to Allah (s.w.t.) the Most Gracious and Most Merciful.

Alhamdulillah, above all and always, I am eternally grateful to Allah for His mercy, guidance and every blessing in my life, for without Allah, none of this would be possible. *Salawat* and *Salam* be upon the Prophet Muhammad (S.A.W), his family and companions.

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LIST OF ARABIC TRANSLITERATION

ء	**a**	خ	**kh**	ش	**Sh**	غ	**Gh**	ن	**N**
ب	**b**	د	**D**	ص	**ṣ**	ف	**F**	و	**W**
ت	**t**	ذ	**dh**	ض	**ḍ**	ق	**Q**	ه	**H**
ث	**th**	ر	**r**	ط	**ṭ**	ك	**K**	ي	**Y**
ج	**j**	ز	**z**	ظ	**ẓ**	ل	**L**		
ح	**ḥ**	س	**s**	ع	ʿ	م	**M**		

Short Vowels		**Long Vowels**	
ـَ	**A**	ا + ـَ	**ā**
ـِ	**I**	يْ + ـِ	**ī**
ـُ	**U**	وْ + ـُ	**ū**

LIST OF STATUTES

Central Bank Act 2009 (Malaysia)
Islamic Banking Act 1983 (Malaysia)
Banking and Financial Institution Act 1989 (Malaysia)
Banking Act No. 10 of 1998 (Indonesia)
Central Bank Act No. 23 of 1999 (Indonesia)
Shariah Banking Act No. 21 0f 2008 (Indonesia)

LIST OF ABBREVIATIONS

AAOIFI	:	Accounting and Auditing Organization for Islamic Financial Institutions
Ambank	:	Arab-Malaysian Bank
B.I	:	Central Bank of Indonesia
BIMB	:	Bank Islam Malaysia Berhad
BIC	:	Bank Islam Card
BAFIA	:	Banking and Financial Institutions Act
CBA	:	Central Bank Act
DPS	:	*Sharīʿah* Supervisory Board Indonesia
DSN	:	National *Sharīʿah* Board Indonesia
DSN-MUI	:	Indonesian *Ulamāʿ* Council's National *Sharīʿah* Board
ICFA	:	The International Council of the *Fiqh* Academy
IFI	:	Islamic financial institution
IBA	:	Islamic Banking Act
KFH	:	Kuwait Finance House
MUI	:	Indonesian Council of *Ulamāʿ*
OIC	:	Organization of Islamic Conference
SAC of BNM	:	*Sharīʿah* Advisory Council of Central Bank of Malaysia

CHAPTER ONE

OVERVIEW OF THE STUDY

1.1 INTRODUCTION

Nowadays, most people carry a credit card. A credit card with a magnetic strip was invented with the purpose to provide security, and simplify the complicated banking process for a customer in case he or she has no cash when making purchases at the stores. It is a mode of payments and provides a revolving credit facility, by which the borrower may use or withdraw funds up to a pre-approved credit limit. This amount of available credit increases and decreases as funds are borrowed and then repaid. In other words, the credit may be used repeatedly. The borrower makes payment based only on the amount he or she has actually used or withdrawn, plus interest. The free credit period is determined by the issuing bank/institution. No interest is charged if the payment is made within the given free credit period.[1]

A credit card, however, has become a major source of controversy for the Muslims in recent years due to the element of *ribā*. For the Muslims, the usage of the above-mentioned conventional credit cards has become a matter of great concern. It has been questioned whether Muslims are allowed or disallowed to use the credit card to purchase an item. Some Muslims argue that it is allowed, as long as the cardholders can practice self-control and pay on time so as not to incur interest. To these Muslims, this is not against the restrictions of *Sharīʿah* principles. Mufti Taqi Uthmani says credit card has become a necessity without which many transactions

[1] Muhammad Ayub, *Understanding Islamic Finance*, (England : John Wiley & Sons Ltd, 2007), 379.

cannot be made. It is therefore permissible to be used, on the condition that the payments are made before the due date to avoid interest.[2]

On the contrary, some people are of the opinion that a conventional credit card is not *Sharīʿah* compliant. To them, the conventional credit card involves *ribā*-based activities and it lacks Islamic features or elements.

Moreover, Dr. Monzer Kahf, a prominent economist and counselor states that the opponents of credit cards found their view on the basis that it is an interest-based loan contract. Consequently, it is sinful (*ḥarām*) on the ground that it is *ribā*. There is no doubt therefore that issuing such an interest-based credit card is not permitted for any Muslim or Islamic financial institutions (IFIs).[3]

To solve this problem, Islamic financial institutions found an alternative to the conventional credit card, which is a credit card based on *Sharīʿah* principles. In practice, no charges are imposed on a customer who delays payment due. If any fee is charged upon the customer because of penalty, it goes to charity. Islam allows the use of credit card as long as it does not involve the element of *ribā*/interest.[4] This is evident in the verses "*If the debtor is in a difficulty, grant him time till it is easy for him to repay. But if ye remit it by way of charity, that is best for you if ye only knew*" (Qur'an, *al-Baqarah*: 280).

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[2] Muhammad Taqi Uthmani, "Is It *Ḥarām* To Use Credit Card," Sunnipath The Online Islamic Academy, <http://qa.sunnipath.com/issue_view.asp?HD=1&ID=377&CATE=43> (accessed 3 March, 2009).

[3] Monzer Kahf, "Credit Card between Permission & prohibition," <http://www.muslimdiary.com/articles.php?article_id=478> (accessed 18 April 2009).

[4] Mohd Ma'sum Billah, "Islamic Credit Card in Practice," United Kingdom: Islamic Mortgages, 2008, <http://www.islamicmorgages.co.uk/> (accessed 10 March, 2009).

1.2 BACKGROUND SUMMARY OF THE PROPOSED DISSERTATION

The best advantage of a credit card is the possibility of purchasing something without having to pay using cash money. Normally, the time period set for settling the debts is 25-30 days. No interest will be charged on the loan on condition that the credit is paid on time. Unfortunately, in reality, there are very few cardholders who are able to repay the borrowed money within the grace period. Late charges are imposed on customers who delay payment with a certain level of interest.

This is the dilemma for Muslims in using credit card. It is due to *ribā*/interest, which undeniably is one of the things that are strictly forbidden in the Islamic *Sharīʿah*. The Qur'an (*al-Baqarah*: 275 and 278) clearly states that:

> "*Allah has permitted trading and forbidden ribā*". So "*those who after receiving direction from their Lord, desist, shall be pardoned for the past; their case is for Allah (to judge); but those who repeat (The offence) are companions of the Fire: They will abide therein (for ever*)." And "*O you who believe! Fear Allah and give up what remains (due to you) from ribā (from now onward) if you are (really) believers*."

These verses prohibit the element of *ribā*. On this basis, Islamic banks issue credit cards that are not interest-based. Essentially, the bank withholds from your account a certain amount as a guarantee for the payment at the end of the grace period of the card. Each month, if your current account permits it, the credit card charges will be deducted from the current account. Otherwise, the amount you owe on the credit card will be taken from the amount withheld, and you will be asked to replenish the amount withheld. Islamic banks therefore do not really benefit from the card itself, and they provide it as a service to their valued customers. However, they benefit from the *muḍārabah* deposit withheld as a guarantee as well as fees for services.[5] This is the illustration for credit card implementation based on *Sharīʿah*

[5] Monzer Kahf, <http://www.muslimdiary.com/articles.php?article_id=478>.

principles. It adopts the Islamic law contract for the credit card in order to eliminate element of *ribā* and *gharar*.

In addition, the historical background and status of Islamic credit card in the *Sharīʿah* will also be explained. The implementation of Islamic credit card can be done with various applicable contracts such as *ijārah*, *murābaḥah*, *bayʿ al-ʿīnah*, *wakālah* and others. The Qur'an (*al-Māʿidah*: 1) states that "*O ye who believe! fulfil (all) obligations"*. Under these schemes there are different models, features, ways of generating profit, fees and others. The bank also provides Islamic insurance for coverage on outstanding balance. One important thing is the bank's capability to deal with customers, which is to provide credit for purchase of items at the stores. The other important thing is determining which contracts can be used, and when the bank may settle the debts with the merchants. The bank also must follow the rules of *Sharīʿah* principles. Some banks follow the standard made by the Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI) or the International Council of the *Fiqh* Academy (ICFA) to ensure the banks' activities do comply with *Sharīʿah* principles. Furthermore, some banks also have their own rules to determine the policy regarding their activities. These rules are made in order to ensure the Islamic banks' activities are *Sharīʿah* compliant. The study will then be finally concluded together with some recommendations.

There are two reasons for selecting this topic. Firstly, it is to find applicable contracts for Islamic credit card and legal rulings as mentioned above. Secondly, it is to determine whether these contracts are considered as *Sharīʿah* compliant in their implementation.

1.3 STATEMENT OF THE PROBLEM

Islamic banks or Islamic Financial Institution (IFIs) have issued the Islamic credit card. Various concepts of contracts have been applied. The contract can come under *ijārah*, *murābaḥah*, *bayʿ al-ʿīnah*, *tawarruq*, *kafālah/ḍamān*, *ujrah* and *ḥiwālah* or *wakālah*. There are some contracts that have been argued as controversial due to the implementation of the contracts themselves. However, Islamic banks or IFIs try to find preferable contracts for Islamic credit card transactions that can eliminate the element of *ribā*, *gharar* and *maysir*. At the moment, Bank Islam Malaysia Berhad (BIMB)'s Bank Islam Card (BIC) falls under the contract of *bayʿ al-ʿīnah,* whereas Bank Danamon Syariah Indonesia's Dirham Card is using *kafālah*. Both cards have the structures, operations, *Sharīʿah* issues and resolutions as the legal basis for implementation of the Islamic credit card. Therefore, by looking into these above issues, the questions on the structures and operational practices of Islamic credit card scheme will emerge. This research intends to answer the following: How does the Islamic credit card work under these schemes? What are the operations and procedures involved in implementing BIC and Dirham Card and what are the differences between the two? What would be the possible legal issues and whether the credit cards issued by both banks are considered as *Sharīʿah* compliant? What are the legal basis for the issuance of Islamic credit card?

1.4 OBJECTIVE OF THE PROPOSED DISERTATION

The objectives of this dissertation are:

1. To present the variety of structures of Islamic credit card that can be applied.

2. To identify the differences of structures and operations between BIC and Dirham Card.
3. To know if BIC and Dirham Card are complying with the *Sharīʿah* rulings in Malaysia and Indonesia.
4. To find out the legal frameworks and the *Sharīʿah* governance of Islamic credit card in Malaysia and Indonesia.

1.5 HYPHOTHESIS

Various contracts are applicable in accordance to *Sharīʿah* principles. Every contract has its own structure and operation. The structures and operations between BIC and Dirham Card are different. The BIC and Dirham Card are *Sharīʿah* compliant according to the resolutions of the *Sharīʿah* Advisory Council of Central Bank of Malaysia (SAC of BNM) and *fatwā* of the Indonesian *Ulamāʿ* Council's National *Sharīʿah* Board (DSN-MUI) respectively, the contracts used however are still controversial among Muslim scholars. These resolutions are the legal basis for the issuance of Islamic credit card. The Dirham Card has a better concept of contract for Islamic credit card as compared to BIC. It adopts the three principles pertaining to contracts of guarantee (*kafālah*), leased (*ijārah*) and benevolent loan (*qarḍ ḥasan*) in Islamic law as the underlying contract for credit cards. In practice, *kafālah* contract is thus preferable to *bayʿ al-ʿīnah* contract.

1.6 LITERATURE REVIEW

Islamic scholars have done many studies, but there are no clear illustrations in books to explain the legal meaning and structures of Islamic credit card. However, the author manages to review several previous studies about Islamic credit card, which

will be explained in the next paragraph. Additionally, there are many articles that concentrate on Islamic credit card. Some of these literatures are briefly described as follows:

Aboubacar Salihou Kante, "Credit Cards from the Islamic Legal Perspective".[6] The author explained the concept, historical development and characteristics of the credit card. He also elaborated *Sharīʿah* issues with regards to credit card and the revolution of Islamic credit cards in Malaysia. This book has explained comprehensively about the contract of credit cards from the Islamic perspective and has given solutions, as well as how these contracts should be applied to the Islamic credit card implementation in Malaysia. In line with this, the researcher believes that these kinds of contract may also be applicable for credit card issued by banks in Indonesia. This book can also be used as a reference by researchers on the implementation of Islamic credit card. It has deeply attempted to present a comprehensive and critical analysis of major issues of credit card implementation from the Islamic viewpoint.

Nik Norzul Thani, Mohamed Ridza Mohamed Abdullah and Megat Hizaini Hassan, "Law and Practice of Islamic Banking and Finance".[7] The book explains legal aspects of electronic Islamic banking. Chapter Eight of this book elaborates the definition of E-banking and gives explanation such as consumer electronic banking, corporate electronic banking, interbank electronic banking and products (plastic cards). The book also covers Malaysia's legal framework on e-banking, the legality of e-Islamic banking under the *Sharīʿah,* and legal issues on e-Islamic banking. This

[6] Aboubacar Salihou Kante, *Credit Cards from the Islamic Legal Perspective*, (Kuala Lumpur: Ilmiah Publisher, 2006).
[7] Nik Norzul Thani, Mohamed Ridza Mohamed Abdullah and Megat Hizaini Hassan, *Law and Practice of Islamic Banking and Finance*, (Selangor: Sweet & Maxwell Asia, 2003).

book can be used as a reference for comparative study of legal frameworks between countries.

Muhammad Ayub, "Understanding Islamic Finance".[8] The book is divided into three parts titled Fundamental, Contractual Bases in Islamic Finance and Islamic Finance-products and Procedures. The latter discusses the application of the system's financing and practices. The author wrote about Islamic credit cards of Emirates Islamic Bank, Bank Islam Malaysia (BIC), AmBank Berhad (Al-Taslif Card), Kuwait Finance House (Al Tayseer Credit Card), and Kuwait Finance House (Bahrain, *Ijārah* Card). This book can be used as guidance for researchers concerning Islamic credit card and Islamic finance. It can also be used as a foundation for comparative study on Islamic credit card, or case study of Indonesia.

The International Centre for Education in Islamic Finance (INCEIF), "Applied *Sharīʿah* in Financial Transactions".[9] This book elaborates the *Sharīʿah* principles in financial transactions. It also explains the various principles such as sale-based, profit sharing, lease-based, fee-based, free-of-charge principle, and supporting contract. The book discusses definition, sources of law, types, mechanism, subject matter as well as the application to modern commercial transactions. This book is very detail and comprehensive, even though there is no explanation about Islamic credit card. It may still however be used by researchers as reference.

Mohammed Obaidullah, "Islamic Financial Services".[10] The author wrote on any kind of contracts which is relevant to the transactions in Islamic banking. This book elaborates on the Islamic financial system, fund management, investment in banking as well as insurance. Unfortunately, there is little discussion related to

[8] Muhammad Ayub, *Understanding Islamic Finance*, (England: John Wiley & Sons Ltd, 2007).
[9] INCEIF, *Applied Sharīʿah In Financial Transactions*, (Kuala Lumpur: INCEIF, 2006).
[10] Mohammed Obaidullah, *Islamic Financial Services*, (Jeddah: n.p., 2005).

Islamic credit card. The author wrote about Islamic credit card based on the contracts of *bayʿ al-ʿīnah* and *tawarruq*. The author also explained the Islamic credit card applied by BIMB. The book can be a reference for the study on Islamic credit card in Malaysia or for comparative study of other countries.

Adil Manzoor Bakhsi, "Developing a Financial Model for Islamic Credit Card for the UK".[11] This paper attempted to develop a financial model for an Islamic Credit card for the Islamic Bank of Britain for the UK market. It attempted to achieve this by using the basis of existing models for Islamic credit cards that are available in the Gulf and Malaysia.

The author has proposed two model structures which can form a basis on which Islamic Bank of Britain can develop a credit card for the UK market, and offer it to customers enabling them to use present day payment methods that will be in line with their religious beliefs. The author proposed some concept of credit card contracts that can be used by Islamic bank. The first model is based on *kafālah* and can be defined closely to a charge card model, whereas the second model is a combination of *tawarruq* and *wadīʿah* contracts. Although the author did not offer a complete solution, it can still be considered as an important work that could be combined with existing research undertaken by other researchers in this field.

Mohd. Ma'sum Billah, "Islamic Credit Card in Practice."[12] The author has examined credit card from the Islamic legal perspective. The article focused on Islamic credit card issued by Ambank Berhad, pertaining on how Ambank applies the concept of *bayʿ al-ʿīnah* in its Taslif Islamic credit card. The author wrote on the principle of *bayʿ al-ʿīnah* in Islamic credit card, although only in brief. However, he

[11] Adil Manzoor Bakhsi, "Developing a Financial Model for Islamic Credit Card for the UK," (Master. dissertation, Salford University, 2006).
[12] Mohd Ma'sum Billah, "Islamic Credit Card in Practice," United Kingdom: Islamic Mortgages, 2008, <http://www.islamicmortgages.co.uk/index.php?id=262> (accessed 10 March, 2009).