

Credit Cards on Islamic Legal View

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Abstract

The development of everyday financial instruments is an important dimension of modern life, and credit cards are considered to be the main instruments and facilitators of spending in modern economies. Together with the Internet, which facilitates the spending process, credit cards have become essential instruments of spending. In response to this, the development of Islamic banking and finance encourages Muslim scholars to create products which help Muslims to avoid 'Riba' including the issuing of Islamic credit cards. Although the practice of Islamic credit cards is still debatable among the scholars especially regarding to its contracts and effectiveness. So, this research aims to analyze the legal view of Shariah on credit cards based on Shariah principles and to examine the well suitable Islamic contract models for its fairer application among Islamic world. The researcher has taken Malaysian and Indonesian Islamic credit card models to analyze the permissibility of contracts. The research is designed as qualitative and data collected for this research are both primary and secondary sources. Primary data is collected by interview and discussion. Library references, books, journals, magazines, websites and any other banks related documents have been used as secondary data. Also this research is analyzed through comparative analyzing system. According to the data analyzed, the scholars are in different of opinions on the application of credit cards but the acceptable view is, it is permissible as long as to exclude any element of Riba (Interest).

Key words: Islamic Credit Cards, Islamic Perspective, Legal View, Application.

1. Introduction

Credit card known as plastic money is an essential mode of payment in today's society. The importance of credit cards and the need to use them is no doubt becomes a matter of necessity in many circumstances. People use credit cards for various reasons for example, to obtain credit facility, cash advance, easy payment, and prestige. Besides that having credit card also may represent the wealth status of a person.

The credit card is a variable repayment card which offers a line of credit to the cardholder who can spend up to a pre-arranged ceiling level. The extended credit must be settled within a given period, or else interest will be charged on the remaining balance. (Paxson & Wood, 1998)

In this manner, Islamic credit card is a modern alternative banking product modified by Shariah scholars in the field to substitute the conventional credit card. The practice of Islamic credit cards nowadays is still debatable among Muslim scholars especially regarding to its contracts and its effectiveness to attain Maslahah. Therefore Study about Islamic credit cards is very essential and some studies have done on it already.

So this part of research aims to analyze the Islamic legal view on credit cards based on the light of Qur'an, Sunnah and any other secondary sources of Islamic law. Also this chapter will include some debates and arguments of scholars against the validity of Islamic credit cards and propose some suitable models for implement the Shariah based credit card transaction. It is a comparative study with Malaysian & Indonesian Islamic credit card models.

2. Problem Statement

Credit cards are very important in contemporary society. The need to use them has become a necessity in many circumstances although the safety consideration sometimes has to be compromised. The issue is in that whether Islamic law allows the usage of credit cards. If their usages are allowed, what are the contract models behind it? And what are the suitable models for its fairer application in Islamic world? These are the two main problems are being examined based on Shariah principles.

3. Research questions

These problems are analyzed through these follow up questions:

- ❖ What is the concept of credit cards in Islam?
- ❖ How does Islam accept the role of credit card as a medium of payment?
- ❖ What are the underlying principles and contracts required by the shari'ah in the functionality of credit cards? And how can these be used to present a model suitable for an Islamic credit card?

4. Objectives of the study

4.1 Major objective

- ❖ Main objective of this research is to identify the concept of credit card transaction on Islamic legal perspective.
- ❖ To analyze the underlying contract models behind its application in current Islamic market.

4.2 Secondary objective

- ❖ The secondary objective of this research is to propose some suitable Shariah based contract models for its smoother execution in Islamic world especially in Sri Lanka.

5. Literature review

5.1 What Does It Mean By Islamic Credit Cards?

Massey (2007), defined Islamic credit card as a payment instrument that meet with at least three criteria of Islamic principles. Firstly, the card must meet the Shariah requirements on lending, which vary from region to region. In general, it must avoid the three essential prohibitions in Islamic finance, which are **Riba, Gharar** and **Maysir**.

Riba, as applied in the interest concept, is clearly proscribed in the Holy Qur'an and the Hadith of Prophet Muhammad (PBUH) Therefore, an Islamic credit card is not allowed to charge any interest to payments even if the user is late in paying. Gharar, or uncertainty, in the practice of Islamic credit card should be avoided by excluding a charging scheme where the monthly repayment or service charges are variable based on a number of factors. Maysir or gambling is also prohibited. Thus, apart from preventing the card holder to access sites such as online gambling, Islamic cards need some other form of insurance cover. (Salina H. Kassim, 2015)

Secondly, an Islamic credit card must have certainty to be accepted widely. It has to use international payment schemes, such as MasterCard or Visa. Besides that, the card should provide facilities that are not available on debit cards such as CVV numbers for "card not present" transactions and hold amounts. Furthermore, the merchant charges and issuer's fees should not be withheld.

Thirdly, an Islamic credit card should not encourage behavior that is considered Haram. This includes all manner of forbidden behaviors and transactions of an inappropriate nature. (Faried Kurnia Rahman, 2007.)

5.2 Literal Definition of credit (Al-I'timan)

Al-I'timan (credit) is literally derived from the word Amanah (trustworthiness, honesty, confidence, reliance and faith). The word Amanah is widely known among Muslim scholars in finance transactions. It brings the meaning to appoint or assign someone's authority upon his property as trust authority. This principal meaning only can be applied on deposit safe keeper, business partner, entrepreneur, and agent of sale. It is not as surprising as it might appear that the word I'timan is derived from the word 'amanah', but they are differ in terms of mechanism of work and applications. Al-amanah- as mentioned above- is concerned with keeping of money, while, I'timan is granted a right such as a sum of money by a creditor to a debtor to defer payment of a debt. Therefore, there is no any similarity between the two concepts amanah and I'timan, in terms of the pronunciation and letters.(Mohammed Jassem Mohammed, 2011.)

5.3 Jurisprudential Definition of credit (al-I'timan)

The process of exchanging valued property or money at the present time with the consideration of promise to make payment in the future time. The credit can be held in two conditions, Firstly, the condition between the seller and the purchaser. The seller gives an extra period of time to the purchaser to make the payment for the property, and as it is considered as deferred payment the price of the property is increased. Secondly, when a person lends an amount of money to a debtor with the expectation of repayment of the amount at some time in the future and there is the issue of the increase of the price as the consequence of the payment. (Mohammed Jassem Mohammed, 2011.)

a) Al-Quran

Almighty Allah says: *“O you who have attained to faith! Whenever you give or take credit for a stated term, set it down in writing”*. (Al-Qur'an, Al-Baqarah 2:282.)

Since the Quran strictly prohibits the use of riba and warns those who go on earning from it of being at war with God and the Conveyor of his message, it presents a substitute practice of lending money without profit, but with legal and moral safeguards to cover the risk of any denial of obligation. The first part of the verse deals with transactions involving future payment of future consideration. Example on this is if goods are brought now and payment is promised at a fixed time and place in the future. This verse indicates that Allah Almighty provides on the legality of dealing by debt, by saying (Whenever you give or take credit). This verse mentions permissibility of transactions which involves debt, and this transaction - debt- looks a large extent of the credit operation, which is based on a sum of money granted to the applicant by the grantor such as bank, then the applicant pays his debts after a period of time as an installment or once. This transaction does not differ with transaction of debt; both of them depend on a sum of money granted to a debtor.

Credit transaction depends on two fundamental elements; granting a right to an applicant usually a sum of money , and deferred payment, both of these two elements are provided in the above expressed verse (Whenever you give or take credit) and (for a stated term), thus ; it is arguable that the legality of credit mentioned in the above verse implicitly. As Allah Almighty says in the next verse:

“But if you trust one another, let the one who is trusted fulfill his trust, and let him be conscious of God his Lord” (Al-Qur'an, Al-Baqarah 2:283.)

This verse indicates, the trustee's duty to guard the interests of the person on whose behalf he holds the trust and to render back the property and accounts when required according to the terms of the trust. The jurists have called a word trustee (al-Mu'taman) on the person that gave money in a lending contract such as sale on credit (sale by deferred price), where Allah Almighty says:

“O ye who believe! Fulfill (all) obligations” (Al-Qur'an, Al-Ma'idah 5:1.)

The fulfillment of obligations that arises from any contract by a debtor, will make him more trust for a creditor, as in the case of credit transaction, when the applicant pays his debts in due dates, it will make him more trustworthy for credit grantor, thus, it is arguable that the trust that the applicant carries is very important in operation of grants of credit, and this trust resulted from fulfillment of obligations that the above verse provides.

b) Sunnah

In general, the word I'timan has stated in Sunnah of Prophet, where Abu Hurairah reported the Apostle of Allah (May peace be upon him) to have said:

“Pay the deposit to him who deposited it with you, and do not betray him who betrayed you”. (Sunan Abu Dawud, Volume II, Chapter 1326, Hadith No.3528, p1003.)

Also he (may peace be upon him) said:

“There is no guaranty on the trustee”. (AL- Daaraqutni, Volume3, Hadith No.7518, p 47.)

The significance of these Ahadith is that the prophet (peace be upon him) called the word trustee (Mu'taman) on the person who possessed money from another with his permission as credit (amanah). With respect to the definition of credit from the perspective of Islamic banking, it is the trust which the bank confers it to its customers for providing them by the credit tools such as a sum of money according to a permissible economic contract, between the applicant and the bank for a specific purpose and during a limited period.

A credit card definition according to the AAOIFI standard no, 2 of 2010 is as follows;

- a) A credit card is a revolving credit facility within the credit limit and credit period is determined by the issuer of the card, it is also a mean of payment.
- b) The holder of the card is able to pay for purchasers of goods and services and to withdraw cash, within the approve credit limit.
- c) When purchasing goods and services, the card holder is given a free credit card period during which the amount due should be paid and no interest is chargeable. The card holder is also allowed to defer paying the amount due and is charged interest for the duration of the credit. In the case of withdrawal, there is no free credit period.

The Islamic Fiqh Academy in seventh session under resolution No.63 defined the credit card as: a document given by its issuer to a mutual or a juridical person on the basis of a contract between them enabling it to buy goods or services from a vendor who approves the document, without paying the

price immediately as the document includes the issuer's commitment to pay. Some types of this document make it possible to draw cash from the banks. Credit cards are of different kinds:

- a) . For some of them, the drawing or payment is made from the holder's account in the bank and not from the issuer's account, and is therefore covered (as debt cards). For others the payment is made from the issuer's account and is charged back to the holder at periodic intervals.
- b) Some cards impose usurious interests on the balance which remains unpaid during a specified period after due date. Others do not impose any interests.

It is same like the conventional credit card in terms of definition and functions. The only difference is the integration of Islam which makes it Islamic credit card or credit card-I. In Islam, there are some underlying principles that should be followed in order to form an Islamic credit card and also it needs to comply with Shariah.

There are also some issues regarding the use and payment of credit card. The major issue to be avoided in Islamic credit card is the existence of usury (interest) or riba. In Al Baqarah, verse 275, it is mentioned;

“Allah has permitted trading and forbidden Riba”

“So whose ever receive an admonition from His Lord and stop eating riba, shall not be punished for the past; his case is for Allah (to judge); but whoseever return, such are the dwellers of the fire –they will abide there in”.

The verse also mentioned that whoever follows riba, war will be initiated upon him from Allah and His Messenger. So in withdrawing money in advance from credit card results in paying interest, it is prohibited. Similarly if there is an additional interest charged for making delay in payment is also prohibited. Therefore, if the credit card serves as a charge card, where you only pay the principle amount that you use plus the service charges, it is permitted. (<https://putrabs.academia.edu/>)

6. Methodology

Data needed to undergo the research designed as qualitative were collected through following two ways:

1) primary data

Primary data was collected through the following methods:

- ❖ Interview method
- ❖ Discussion method

The Interview method is one of the prominent data collection strategy and has been used in a wide variety of social movement studies. For this study semi-structured interviews were conducted with the shari'ah scholars of some selective Islamic financial institutions of Sri Lanka to collect the related data. Semi-structured interviews allow the researcher to vary the sequence of questions as well as to ask further questions whenever it is necessary. All interviewees were given the same questions in order to answer the research question of this study. The semi-structured interviews were conducted face to face and over the phone with shari'ah scholars. Also discussion was conducted with some senior shari'ah scholars in Sri Lanka based on this research topic to find out their views and opinion on Islamic credit cards. Details of interviewees and structured questions have attached in references & appendix part.

2) Secondary data

The secondary data was collected in the following ways:

- ❖ Various conventional and Islamic sources will be used as journals, books, internet and other important reports on the area will be consulted.
- ❖ Some relevant documents from banks will be referred to.
- ❖ Islamic banking publications, such as: magazines, newspapers, conference papers.

The researcher has used the qualitative, descriptive research methodology to review the topic. So this study was analyzed through comparative analyzing system. Malaysian & Indonesian Islamic credit card models were used to compare the validity of Islamic credit card models and to forecast some suitable models for Sri Lankan IFIs too.

7. Conclusions and Recommendations

7.1 Objectives and Findings

The major objective of this research is to explain the concept of credit cards on Islamic legal perspective based on the light of Qur'an, Sunnah and any other secondary sources of Islam. According to this objective the researcher examine this concept as a comparative study with Malaysian and Indonesian Islamic credit card models. Also the researcher examine the concept of conventional credit card system to identify the difference between the Islamic and conventional credit card transaction by using previous literatures of secondary data.

According to analyzed data, the researcher gets these following findings:

Shari'ah scholars in the field are in different of views on the usage of credit card by Muslim customers. But most of the contemporary scholars have validated the credit card transaction as long as it is excluded from any element of Riba.

Modern scholars in the field have developed some Shariah based structures to introduce the Islamic credit card system as an alternative to conventional plastic card system while still this concept is debatable among them.

As we know, conservative Shariah scholars are against credit cards for many reasons. Some of them are;

- It is not an Islamic product, it comes from conventional banks.
- It is based on the concept of forbidden riba and it work like bai al-inah.
- Credit cards are a creation of Western culture, where shopping is regarded as a way of spending time and enjoying yourself.
- Debt is created without needs and it will be burden on the borrower at the time of repayment.
- The simple pleasure of buying now and paying later does not necessarily appeal to Muslim (or just ethical) mentality. It can be seen as tempting faith for the sake of short-lived pleasure and not for satisfying the real needs of a human being.

And others accepted this kind of easy facilitation on the basis of Maslahah (welfare) to the Muslim society by the adaption of some Shariah based contracts such as: Ijarah, Kafalah, Qardhul Hassan and the combination of these contacts.

According to collected and analyzed data the result of the study suggests the validity of credit card payment system with adaption of shari'ah compliance contacts. With concern of that, Islamic banks have created Islamic credit cards based on the following structures:

- a) Ujrah and Ijarah
- b) Kafala
- c) wakalah
- d) Qard
- e) Bai al-inah/ Tawarruk
- f) Combination of those models

In Ujra-based structures, the client simply pays an annual service fee for using the card. The fee can include charges for bank statements, requests for statements and likewise. The fee can be deemed high in comparison with a conventional credit card but still it offers no interest and no hidden charges.

The Kafala model provides that the bank acts as a kafil (guarantor) for the transactions of the card holder. For its services, the card holder is obligated to pay kafala fee.

Under Wakalah, the card issuer (bank) is considered as an agent of the card holder, he pays the merchants on behalf of the card-holder; with a promise to provide the card holder with a loan to pay the amounts resulting from the use of the credit card.

In the qard structure, the client acts as the borrower and the bank as a lender.

In the case of bai al-inah, it often works together with other structures (e.g. wadiah/ deposit) in a combined Islamic credit card model. The bank sells a product at a certain price which is the pool of means available for the client from its credit card and then the bank repurchases the item from the client at a lower price. The difference between the prices is the income of the bank. In this model, the client would have a ceiling limit of money it could spend.

Many Islamic banks ask those who wish to use the credit cards to provide a deposit it is similar to conventional bank's credit card with the higher limit. This is crucial, especially in the case of revolving facilities, where the client can transfer some parts of their monthly income to the bank as a deposit.

Islamic banks, just like conventional ones, offer a grace period for their credit card holders. Nevertheless, they do not charge simple and compound interest on default payment but instead some banks may impose additional fees on the client. This is treated as a voluntary sadaqah. In such a case, the bank will transfer the means obtained from the client to a charity; it will bear no legal title to it.

Arguments on the Structure of Credit Cards used at IFIs.

- I. Ujarah based cards are in line with Shariah principal. However, it is often argued that the fees charged by Islamic banks for Shariah-compliant credit cards are higher than the fee charged by conventional banks. If the customer who pay on or before due date, wishing to use a Shariah-compliant credit card to pay for their utilities, will end up paying much more than with a conventional credit card.
- II. In Kafala based cards, the bank charge a fee as a guarantor of the payment. The issue is this fee is linked to the amount, time and tenor. It is not permitted by the Shariah scholars.
- III. In Qard based cards, are not viable for commercial banks to offer all the segments. It is simply because any excess/ increase over the principal amount of the loan/ Qard as a condition of the contract will tantamount to Interest.
- IV. The structure of Bai-Inah, it is criticized by most of the Sharia scholars and not acceptable to the local Scholars due to invalidity of this contract.

7.2 Suggestions and recommendation

Many Muslim scholars in the banking field have proposed different contracts to apply and validate the Islamic credit card transaction according to shari'ah compliant way. There are number of research already done with regarding to this concept, and also it is still analyzed by modern scholars.

So in this section the researcher propose some suitable models for Islamic credit card based on the literatures of scholars in this field.

7.2.1 Kafalah based model

This is the simpler of the models and falls more closely to be defined as a charge card. A card can be offered to customers who use credit cards to avail of interest free period and like to clear full outstanding balance by direct debits thereby carrying no balance to forward billing period. For the bank it is better to offer such customers a product like charge cards. The bank can earn revenue in terms annual fees (fixed) and interchange fees. Though it is quite difficult to visualize that customer will accept to pay annual fees on credit cards since banks that offer conventional credit cards do not charge any fees. However, the bank can offer the product in such a way that it includes various other associated benefits like card protection (takaful), payment protection (takaful), discounts & marketing deals, takaful (travel / death & burial) and etc. It will have a good chance of being a success and at same time earn revenue for the bank. The basis of charging the annual fees will be the charge for the guarantee as in the case of banks in the gulf. The bank will exercise the acceptable right of charging for the provision of a financial guarantee as there is cost elements involved in making that guarantee and in honoring the guarantee. These those cost as explained earlier are staff costs, processing costs and so on.

7.2.2 Wakalah based model

Under Wakalah, the card issuer (bank) is considered as an agent of the card holder, he pays the merchants on behalf of the card-holder; with a promise to provide the card holder with a loan to pay the amounts resulting from the use of the credit card.

The card issuer may also apply an agency commission to the sellers as a wage for acting as a financial intermediary in facilitating the settlement of transactions. This commission should be a percentage of the purchase price of the items and services purchased using the credit card. . Cash withdrawal fee can be charged for any cash withdrawals using the card; the charge should be a fixed amount per transaction.

7.2.3 Al-Hiwalah al-Mutlaqah, QardulHasan and Ujr

This proposal is taken by the combination among al-Hiwalah al-Mutlaqah, QardulHasan, and ujr contracts. Firstly, the bank issues the card to the customer. It issues basis of al-ujr. So, al-ujr contract between the bank and the customer in which bank charges a fix annual fee to the customer for the

services given such as issuing cards and billing services. Secondly, al-Hiwalah is contract that allows the customer to use the fund. When the customer purchases on credit as he charges it to his card, customer becomes a debtor. The merchant who accept the card becomes the principle creditor. The merchant transfers the debt to the bank which is willing to buy the debt. Therefore the bank will be the new principal creditor.

7.2.4 Murabahah Credit Card Model

The final structure to be analyzed here is based on the contract of al-murabaha.

The descriptions of this model are: The bank appoints the customer as a purchasing agent on behalf of the bank. In murabaha contract, the seller requires to be in the ownership of the asset which will be sold even for a moment. The customer makes a credit purchased from the merchant on behalf of the bank. So, the bank is the owner of the asset. The bank as the owner of the asset remits payment to the merchant. The customer then makes the purchasing from the bank and makes his repayment on a deferred basis.

7.3 Conclusion

In recent Islamic banking practices, to avoid riba, many shari'ah based contracts are utilized to apply the credit card in Islamic way, such as: bai al inah. Qardh Hassan, wakalah, kafalah, Bai bidhdhamaan ajil etc. as we mentioned above.

In Malaysia, there are some Islamic Banks who offer Islamic credit card like Maybank Islamic Berhad, Standard Chartered Bank, Bank Islam Berhad, HSBC, Bank Raykat and etc. like that in Indonesia bank danamon offers a leading service on Islamic credit card.

In order to structure and deliver an appropriate, suitable shari'ah compliant models for credit cards, the researcher has examine the Islamic credit card industry which is already exist in Islamic economic market, such as Malaysian and Indonesian Islamic credit card models.

Actually, the Islamic credit card is still debatable among Muslim scholars regarding its contracts and its effectiveness to fulfill the maslahah. The contract which is still controversial such as bay al inah used by Bank Islam Card (BIC) should be avoided in the practice of Islamic credit cards. On the contrary, contracts which are globally accepted by Muslim scholars such as ujr practiced by MPower Credit Card-i, and kafalah, qard and ijarah practiced by Dirham Card can be developed in this product. Due to the success of MPower Credit Card-I by using ujr as its contract, it is better that other Islamic banks can imitate the way of HSBC Amanah to promote its Islamic credit cards. Moreover, because the practice of Islamic credit cards in Malaysia is faster and more attractive than in Indonesia, the Indonesian Islamic banks can make Malaysia as a role model in the practice of Islamic credit cards. Moreover, in spite of the issue about the consumerism, Islamic credit cards must be used wisely and the credit issuers must

have the rules to control it such as giving the limitation of credits and making the feasibility study regarding to the applicants properly.

In addition, due to the important of Islamic credit cards today, the innovation is very necessary to increase the quality and quantity of this product, for example by increasing the IT used and promoting Islamic credit cards to the Muslims as well. Regarding to the promoting of this product, it is important to campaign that Islamic credit cards do not encourage Muslims to spend their money to the unneeded goods, but to spend their money to the spending that really needs credit cards to make the transaction becomes easier. Thus, by using Islamic credit cards, Muslims can attain live scales and the principle of *maslahah* can be attained.

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9. Appendix

9.1 Interview & discussion questionnaire

- 1) What Islam says about credit based transaction?
- 2) What is the shari'ah view on credit cards?

- 3) How does Islam accept the role of credit card as a medium of payment?
- 4) What are the underlying principles and contracts required by the shari'ah in the functionality of credit cards? And how can these be used to present a model suitable for an Islamic credit card?
- 5) How Islamic credit cards designed as long as far from the element of "riba"?
- 6) What are the shari'ah based contracts utilized for practicing Islamic credit card transaction in current Islamic world?
- 7) What are the views of scholars in the field on this kind of transaction and which is the acceptable view among that?
- 8) What are the suitable contracts to propose for the execution of Islamic credit cards on fairer way in Islamic word especially in Sri Lanka?