SALES AND PURCHASE OF PHYSICAL GOLD ACCORDING TO
ISLAMIC MUAMALAT: THE JAKIM PERSPECTIVE

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is intended to be used as the basis for class discussion rather than to illustrate either
effective or ineffective handling of a
management situation.

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Introduction

In January 2012, Mr. Shahril Ehsan as the Fatwa Management Council officer from the Malaysian Department of Islamic Development (Jabatan Kemajuan Islam Malaysia – JAKIM) has been appointed to lead a group consisting of officers from the fatwa management division and research division, both under JAKIM. He was asked by the director of JAKIM to examine the gold trading transaction in the country and to select a number of companies to be used as samples (because of different gold transaction). The parameters/guidelines for the sales and purchase transaction of physical gold from the perspective of Islamic muamalat have been released by the fatwa (ruling) division of JAKIM in October 2011. This detailed investigation needs to be performed since there are still unclear transactions and there is a need to improve the procedures and provide extra information for the community. This is because a large part of the Islamic community has been involved in many transactions with companies, whether they would be for the intent to hold the gold for safe-keeping, to invest the gold, or even to make the physical gold as the instrument for exchange.

It is pertinent for further investigation into this matter because Islamic muamalat is very particular about all aspects of the transactions that are performed, which must be free from any vestiges of riba (interest), gharar (uncertainty), and gambling. Additionally, gold is considered as ribawi goods that are clearly stated in the Hadith of the Prophet Muhammad (peace be upon him), which includes the six types of usurious (ribawi) goods.

The Fatwa Management Division of JAKIM

The Malaysian Department of Islamic Development (Jabatan Kemajuan Islam Malaysia – JAKIM) began as the Islamic Affairs Division, Prime Minister’s Department. In the beginning, this division played the role of a secretariat within the Prime Minister’s Department. Official name for them was the National Committee Secretariat for the Malaysian Islamic Affairs (Urusetia Majlis Kebangsaan Bagi Hal Ehwal Agama Islam Malaysia). This Secretariat was established by the Committee of Kings (Majlis Raja-Raja) in 1968. Many important tasks were to this National Committee for Malaysian Islamic Affairs. As the main agency of reference for the management of Islamic affairs at the federal level as well as to fulfill the role of the secretariat for the National Committee for Malaysian Islamic Affairs (Majlis Kebangsaan Bagi Hal Ehwal Ugama Islam Malaysia – MKI), JAKIM implements and maintains three main functions, which are as follows:

Function 1: Formulation and standardisation of Islamic Shari’ah Laws

Function 2: Coordination and administration of Islam

Function 3: Coordination and Development of Islamic Education

The Fatwa Management Division (Bahagian Pengurusan Fatwa), during the early stages, was established administratively on 2 January 2009 with the name of Fatwa Management and Ijtihad Development Division. On 15 June 2009, JAKIM had obtained a designation warrant, the JAKIM Rebranding Proposal Phase 1, effective on 1 June 2009, thus this division officially exists under the name of the Fatwa Management Division (BPF).

The BPF was established with its main task being the Secretariat for the MKI, which was established in early 1970, under Article 11 of the MKI Regulations. This committee is the body that plays the role of discussing and giving opinions regarding the Islamic laws at the national level. Since its inception, this
The committee has been administered by JAKIM through the Policy Branch, Secretariat and International Relations Division (now known as the Relations Division).

The main responsibilities of officers under the BPF include the preparation of paper work and its presentation to the National Fatwa Committee members. The members of this fatwa committee consist of fiqh scholars and academicians appointed by JAKIM.

**Sales and Purchase of Physical Gold**

Gold-based investment and storage is increasingly becoming the focus of many in recent years (in fact, this has been the case for a long time for some, especially women). All this is caused by the price appreciation, more specifically for the duration 2001-2010 which showed a significant increase in price. For example, the value of an ounce (1oz) of the Malaysian gold bullion coin (*Kijang Emas* or *Gold Deer*) that is released by the Central Bank of Malaysia (BNM) on 17 July 2001 was RM1082, which increased to RM4624 30 December 2010. This means that a person who purchased 1oz *kijang emas* in July 2001 would have obtained a substantial return when he or she sold it in 2010, or even today (August 2012 price was RM5502). By the year 2008, there were several other companies also offering investment through gold trading, among which were Public Gold, Kelantan Gold Trade, GoldCrest Pavillion (GCP), and Seri Ayu. These companies offered physical gold for the general public to purchase and also offered a service for buying back the purchased gold. What differentiates these companies with others is the method of sales that they adopt and the physical gold that is being offered.

The *kijang emas* produced by BNM is a gold coin product that comes in three different sizes, namely 1oz, ½oz, and ¼oz, which was first introduced by BNM in 2001. BNM offered these gold coins for purchase by the general public through an appointed agent, which is Maybank. The general public can buy and sell these gold coins at any time, depending on the opening times of the bank. The selling and buying prices for each gold coin size are different and they are displayed daily in the BNM and Maybank Internet websites. BNM’s aim is to encourage the public that are capable and can afford to own gold, to purchase and keep those coins. The sales and purchase transaction must be made in cash and the delivery of the gold coins must be made at the same time.

Public Gold (PG) began its operations in June 2008, after registering with the BNM. Among the products offered by PG include gold bars, gold coins (*dinar*), and jewellery. These products are offered to the public for investment and keeping. PG even have agents that often organise courses and seminars for the general public to inform them on how to generate profit through the sales and purchase transaction of gold. The physical gold product offered by PG can be purchased directly from this agent or by placing and booking/order. Purchase can also be performed in cash or by using a credit card.

Kelantan Gold Trade (KGT) offers *dinar* and *dirham* products for keeping or as an instrument for exchange, especially in the state of Kelantan. *Dinar* can be purchased directly from Al-rahnu Kelantan, or even bought on-line. KGT has collaborated with hundreds of interested individuals, especially those in business in Kelantan, in ensuring the Kelantan Dinar and Dirham can be bought and sold at selected locations.

GoldCrest Pavillion (GCP) are involved in products, transactions, and all related to gold bar, dinar, and jewellery, such as bracelets and necklaces of various fashions. The purpose of these product offerings is to provide the opportunity/choice to the community for owning gold as jewellery for women, and also for the purpose of saving and investment. The method of trading adopted by this company is done through direct purchase at branches or through GCP agents located all over the
country GCP. Customers can also book in advance on-line without having to pay any deposits. Buying and selling prices of GCP gold are checked and displayed every day in GCP website.

SRI AYU FINE GOLD SDN. BHD. (SAFG) was established in 2011. It is the third SRI AYU company after Kedai Emas Sri Ayu Sdn. Bhd., and Kedai Emas Sri Ayu Satu Sdn. Bhd. The headquarters is currently located at Jalan Temenggong, Kota Bharu, Kelantan. This organisation has been operating in the gold industry and it has the largest network of gold trading shops in Kelantan.

The products offered by SAFG include gold bar, Mecca dinar, jewellery, which can consist of bracelets and necklaces of various fashion. The aim of offering these products is to provide the opportunity/option for the general public to own gold for their personal use (normally for females to wear), for keep, and for investments. The sales method that they implement is through direct purchase from their branches or through a Sri Ayu agent located throughout the country. Customers can also book in advance on-line through their website without paying any deposit in advance. The selling and purchase prices for the Sri Ayu products are checked and displayed daily from the Sri Ayu website.

The community has also been exposed to various sales and purchase transaction techniques involving gold with the aim of generating profit. One of these methods is the outright purchase of gold, pawning (gadai, similar to mortgaging), and re-pawning (gadai semula), and re-purchase/retrieval (tebus). Other methods include being similar to investing just RM5000 in order to obtain physical gold valued at RM20,000. This method begins with the purchaser paying in advance RM 5000, and he or she is supplied with 100 grams of gold. The purchaser will then be asked to pawn or hock the gold in any Islamic pawn shop. The return from the pawning of gold will be used to pay for the balance of the 100 grams of gold that was purchased during the early part of the transaction.

**JAKIM's Gold Investment Parameters**

In 2011, JAKIM through its Ruling Committee has passed a ruling related to the investment in gold. The 96th Muzakarah Jawatankuasa Fatwa Majlis Kebangsaan Bagi Hal Ehwal Ugama Islam Malaysia was held between 13 and 15 October 2011, and there were discussions about the Gold Investment Parameters. The Muzakarah has made the following decisions:

After listening to the talk and elaboration given by Y. Bhg. Prof. Dr. Ashraf Md. Hashim and Y. Bhg. Ustaz Lokmanulhakim bin Hussain from the Islamic Finance in International Syariah Research Academy (Akademi Penyelidikan Syariah Antarabangsa Dalam Kewangan Islam – ISRA), this Muzakarah agrees to accept and endorse the Gold Investment Parameters, which are as follows:

**Requirements for General Sales**

The gold sales and purchase transaction must fulfil all the requirements or integral elements (rukun) of sales that have been established by the Syarak, that is, the party that will perform the akad, exchange item, and formal exchange (sighah) according to the customs or practice ('uruf) that has been adopted. If this transaction that does not completely fulfil all the rukun of sales, then the transaction can be deemed to be null and void.

**The Akad Party**

The party that will perform the akad must have the qualifications of one that can perform a contract (Ahliyyah al-Ta’aqud), which is by fulfilling the following criteria:
i. Come of Age (Baligh), of Intellect (Berakal), and Rasyid

If the akad party is individual that is insane or child that is mumayyiz or not mumayyiz, then the sales and purchase transaction is null and void. An akad performed by mumayyiz children is not valid because this sales and purchase transaction involves goods of very high value.

ii. Acceptance/Contentment (Keredhaan)

The sales akad must be performed by two parties who are sincere and content with the transaction, without any elements of force, pressure, and exploitation.

Purchase Price (al-Thaman)

The purchase price (al-Thaman) needs to be known and made clear by both parties that want to perform the akad during the sales and purchase transaction.

Purchase Goods (al-Muthman)

The purchase goods (al-Muthman) need to be something that exists, and completely owned by the selling party when the sales contract occurs. Therefore, the sales of an item that does not physically exist and also the sales of something that is not wholly owned by the seller can compromise the transaction and render it invalid.

The purchased goods (al-Muthman) need to be handed over to the buyer or representative during the transaction. If the sold goods cannot be surrendered to the buyer, or the seller decides not to relinquish the goods, then the akad can be considered null and void.

The purchase goods (al-Muthman) need to be something that is known to both parties that perform the akad during the sales and purchase transaction. It can be implemented through the following methods:

i. The buyer observing himself or herself the goods that is to be purchased during the sales akad, or before the sales akad within the duration that does not alter the goods’ characteristics.

ii. The buyer examining a sample of the goods that is to be purchased. This normally occurs during the ordering/booking process before the akad is performed.

iii. There is an establishment, in detail, of the characteristics and rates of the purchase goods according to ‘uruf without any doubt surfacing. In the context of gold, the determination of the facts includes the identification of the purity level of gold, whether it is based on the old standard of carat (like 24 carat gold), or the new standard of percentage (like 999 gold). The determination of characteristics should also include the shape of the gold, whether it is in the form of coins, wafers, bars, and the like. The accurate weight of the gold is also part of the integral element in determining the gold characteristics.

Formal Exchange (Sighah)

Sighah in sales is something that shows the sincerity and acceptance/contentment (keredhaan) of both parties to enter into the sales contract. This can happen whether through speech, of in some form that can be deemed as a replica of speech, such as in writing and other forms. Meanwhile, sales
in the form of Mu’ataah (give-receive) can also be considered as sighah that is muktabar by some experts (fuqaha’).

In sighah, sales and purchase transactions cannot have elements of time duration or limits. For example, a seller imposes a time limit by saying “I sell this item to you with the price of RM100 for the duration of a year”.

Offer (ijab) and acceptance (qabul) must correspond and be accurate from the aspects of the characteristics and details of the sales and purchase contract.

**Specific Requirements of Gold Sales and Purchase as a Ribawi Item**

Because gold and money are two usurious (ribawi) items that have the same illah, thus there are additional requirements for the sales and purchase transactions of gold. These include the following:

i. There is a hand-over (taqabudh) of both items involved in the transaction before both parties involved in the transaction leave the akad event.

ii. Sales and purchase of gold need to be performed on the spot (lani), and there must not be any postponement.

These requirements are specifically for gold items that is characteristically ribawi, like gold bars and gold coins. These requirements are not needed for gold jewellery items since they are excluded from being items of illah ribawi.

The details of taqabudh and on-the-spot (lani) transactions are as follows:

**First Requirement: Taqabudh**

Taqabudh (hand-over/surrender) needs to occur involving the two items in the sales and purchase transaction, in this case the price (money) and the sold goods (gold), and this process needs to be completed before both parties leave the akad event.

The hand-over of price payment can be made using any of the following methods:

a. cash payment,

b. certified cheque payment (like a banker’s cheque),

c. personal cheque payment,

d. debit card payment,

e. card credit payment, and

f. money transfer from savings or current accounts.

According to custom and practice, all the above forms of payment, except for (c), can be considered as cash payment by the seller. The payment using credit cards is still considered cash payment because the seller will get the payment in full from the credit card vendor/bank. The debt
that occurs, if there is any, will be between the credit card holder and the credit card company, and not with the seller of the goods.

The cash status can still be customarily accepted by the seller even though in reality the seller will physically receive the payment or through a transfer into his or her account several days after the transaction has occurred.

The hand-over or surrender of the purchased goods (gold) needs to occur as an intrinsic surrender (penyerahan hakiki) or using a muktabar method that can replace the intrinsic surrender. The surrender of purchased goods through muktabar can give the same effects and an intrinsic surrender, which are as follows:

a. Transfer of dhaman (guarantee of responsibility) from the seller to the buyer.

b. The buyer’s ability to obtain the purchased goods at any time without hindrance.

The akad event in a sales and purchase transactions can occur in physical face-to-face meetings, or through meaning (maknawi). For example, an akad event can occur through maknawi when ijab and qabul happens through the telephone, simple messaging system (SMS), email, fax, and others. However, as required for all types of akad event, there needs to be taqabudh occurring during that akad ceremony, for example the hand-over through wakalah.

It must be noted that the written akad event can only begin when it is received by the contractual parties. For example, the buyer signs the binding akad contract and sends it through the postal system to the seller. After three days, the akad arrives in the hand of the seller. Thus, the akad event begins at this time. If the seller agrees, then the akad needs to be completed by the seller with his or her signature, and the purchased goods need to be handed-over or surrendered to the buyer according to the hakiki or hukmi method.

**Second Requirement: Instant/On-the-Spot (Lani)**

The gold sales and purchase transaction needs to occur immediately or on-the-spot (lani) and there cannot be any element of delay or postponement, neither in the surrender of the payment nor in the surrender of the gold.

The deferment of payment that cannot be accepted covers the purchase using debt or by instalment payments.

A delay in the surrender of gold that goes beyond a three-day duration after the akad sales and purchase transaction has been made is strictly not allowed.

Meanwhile relating to the surrender of gold with the duration of these three days, the Muzakarah has noted that there is a difference in opinions among the Islamic leaders/scholars (ulama) in this matter. However, the Muzakarah is leaning toward accepting the opinion of not allowing any delay, even though the duration is less than three days. In other words, the surrender of gold must be performed during the akad event without any delay. This is because in the trade of gold, the delay of three days is not customary (uruf), which is different with the issue of foreign currency exchange.

In the exchange of foreign currency, a period of T+2 is required because it goes through certain processes that involve different work hours between countries, electronic money transfer, clearing
house, and others. These mentioned processes do not occur in the physical gold trade. Therefore, it is not appropriate to make a comparison (qiyas) with the process of foreign currency exchange.

However, practically the seller will hand-over the gold after the payment amount made through cheques and the like, is credited into his or her account. This process will normally take three work days. In order to address the period between the surrender of cheques and gold, the seller and the buyer can use the following rule:

The buyer will only place an order to the seller by stating the type and weight of gold that he or she intends to purchase. This order can include the transfer of money into the seller’s account. At this stage, the following matters should be observed:

i. At this stage, the akad event of trading gold has not occurred.

tii. The money that is in the sellers account still does not belong to the seller. It is still being owned by the buyer and it is entrusted for safe-keeping to the seller. In this matter, it would be better if one specific trust account is opened by the seller.

tiii. The gold is still owned by the seller and he or she has full responsibility over the owned gold.

iv. At this stage, the buyer still can cancel his or her order and the seller must return the money to the buyer, if a cancellation does so occurs. However, if there is a real loss occurring from this cancellation, there can be a requirement that places the loss on the buyer. For example, the buyer places an order of 100 grams of 999 gold at a price of RM20,000. At this time, the seller has reserved the gold and would not sell the gold to other interested parties. After three days, the seller is ready to perform the akad transaction and is about to release the gold to the buyer, but the buyer suddenly cancels the order. At that moment in time, the price of the gold had dropped to RM19,000. In other words, the seller would incur a loss of RM1,000 if he or she sells the gold to another party. In this matter, the real loss amounted to RM1000.

When the order payment has been given clearance by the bank, then the akad trade needs to be completed. The money in the trust account (if any) can be transferred to the seller’s account and the gold needs to be given to the buyer.

**Akad and Side Effects**

The involvement of grant (hibah) in the sales and purchase transaction, whether the hibah is in the form of goods or money, is allowed all the requirements of hibah are fulfilled, and there are no involved elements that go against syarak. It must be stated there that hibah is at the basic level voluntary akad and not in the conventional form. In other words, if this promise of hibah is not kept by the seller, then the buyer cannot force the seller to give the promised hibah.

The involvement of safe-keeping (wadiah) in the gold investment plan must fulfil the integral elements of wadiah, amongst which is that the basis of wadiah lends much from Yad Amanah.

A buyer of gold is free to manage (tasarruf) his or her gold, including the lending or loan (qardh) to other parties. However, this must fulfil all the criteria of qardh that are allowed by syarak, amongst which includes not having any elements of interest, and no integration of “salaf wa bay”, which is the debt tied to the sales and purchase.
A gold buyer is free to manage (tasarruf) the gold, including pawning it for cash, just as long as the concept of al-Rahn used strictly adheres to the integral elements of syarak. However theoretically, this matter is not encouraged because it indirectly encourages the activity of being in needless debt.

Wa’d can be integrated into the investment of gold, just as long as it is wa’d from one party, and not muwa’adah from both parties. An example of a wa’d application in this context is making a purchase order, which is when the customer makes an agreement to purchase gold at a certain price. This purchase agreement is called ‘key price’. If this process is a replica of the sales and purchase akad, then it is not allowed since there is a postponement.

The sales and purchase transaction needs to be free of any elements of interest, gambling, excessive uncertainty (gharar), and tyranny. If there are any vestiges of these prohibited elements, the sales and purchase transaction can be considered to not have fulfilled the criteria of syarak.

Specific Issues

The companies and parties that offer such said gold sales and purchase transactions have offered many types of trading forms. The Kijang Emas offered BNM, for example, can be purchased at selected Maybank counters by paying cash and getting physical gold at the same time. From another aspect, there are the physical gold buyers that have made a personal loan from banking institutions to buy the gold. Some use credit cards to buy the gold. There are some issues that have been identified to be examined from the perspective of Islamic muamalat related to the physical gold trading transactions. This includes the use of the al-Rahnu instruments and gold purchases using credit cards. Inevitably alms (zakat) issues should also be addressed, in other words, whether these activities of trading and keeping gold need zakat to be applied or otherwise. Another issue is the use of purchased gold as a tool for exchange. However, the most important issue is the gold being usurious (ribawi) goods and that it is necessary for the transactions necessary to be examined so that there are no prohibited elements involved.

Recommendations to JAKIM

Islamic muamalat is characteristically integrated (syumul) and covers all aspects of community life. In order to ensure the physical gold trading transaction is protected from the elements forbidden in muamalat, the companies and parties involved in the transaction should emphasise and adopt the gold trading parameters set by authoritative parties. This means that the guidelines relating to the sales and purchase of gold issued by JAKIM would later become a ruling (fatwa) that is to be followed by the Islamic communities throughout Malaysia.

Shahril, together with his team, needs to look into the physical gold trading transactions described in this discussion. Next, he needs to analyse the transactions that are required (harus) from the perspective muamalat, any transaction that is not required, and what are the recommended improvements that can be presented by Shahril and his group to the involved parties. This is to ensure that the physical gold sales and purchase transactions conducted by all parties strictly adhere to the Islamic muamalat principles as outlined by the Al-Quran and Al-Sunnah.

Additional Reading


Reference


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