**The essence of al-wadi’ah al-mashrifiyyah**

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**Abstract**

The general objectives of Allah the Merciful and the Compassionate to make law is to accomplish human welfare by ensuring the values of *dharuriyah* (the essential), as well as *hajiyyah* (the complementary) and *tahsiniyyah* (the desirable). Besides protecting assets and properties, one of the advantages in the implementation of *wadiah* is fulfilling humans’ needs as well as eliminating their distress. *Wadiah* is considered a trust, in which it will change into a priority once it has been deposited. In the midst of its development, *wadiah* is not only practiced between individuals, but also institutions, including banking institutions. Unlike the meaning of *wadiah* in terms of *fiqh* (Islamic jurisprudence), *wadiah* in banking is considered as debts based on the interpretation of a number of contemporary Islamic jurists. This is due to the utilization of the fund by banking institutions. Furthermore, the institutions are also responsible for the loss of financial deposit, whether it is due to intentional aspects or not, as well as whether the financial deposit is intentionally lost or not. Moreover, the sole purpose and significance become the emphasis rather than its meaning (*lafadz*) in the process of its covenant.

Key Words: *wadi’ah al-mashrifiyyah*, bank, deposit, trust, debt

DOI: 10.20885/jielariba.vol3.iss2.art5

**Received: 13 January 2017**

**Accepted: 20 September 2017**

**Published: 26 December 2017**

# Introduction

Islam considers the earth and everything in it as Allah’s trust entrusted to the Caliphate (humans) in order to make use of the earth for the purpose of human welfare. To achieve this sacred purpose, Allah has already inspired humans through the Prophets. These inspirations cover everything needed by humans, including *aqidah* (creed), *akhlaq* (manner), as well as shari’a.

The first two components, *aqidah* and *akhlaq*, are constant in nature. Both components do not experience changes wherever and whenever it is. Meanwhile, shari’a follows the necessity of human beings based on their period of time during their own prophecy. This is also stated in QS. al-Maidah verse ke 48.

Consequently, Islamic shari’a, as the shari’a inspired by the last prophet, has its own unique characteristics. This shari’a is not only comprehensive, but also universal in nature. These exceptional characteristics are necessary as there is no other shari’as to appear as the revised version of its own.

The notion comprehensive refers to the full coverage of human life through Islamic shari’a in terms of ritual as well as social (*muamalah*). Meanwhile, universal deals it the ability to be adapted in all period of time as well as in all places until the day of resurrection. This universality can be identified clearly in terms of social aspects (*muamalah*). Besides possessing extensive and flexible coverage, *muamalah* does not discriminate between Muslims and non-Muslims (Antonio, 2015, pp. 3–4).

In terms of Islamic law, as stated by Al-Yubi (Al-Yubi, 1998, p. 388), it is able to bring prosperity and avoid harm, as well as to ease our difficulties.

The act of social aspects (*muamalah*), such as transaction, lease and deposit, is essentially an exchange of prosperity between individuals in order to help each other achieve human welfare as well as fulfill each others’ necessities. For instance, fruit sellers are not able to obtain apparel and other items needed without the implementation of trade transaction. Furthermore, people are not able to utilize their finance to purchase food, beverage and apparel without the application of trade transaction. The condition is also similar to Allah the Merciful and the Compassionate in commanding the application of *wadiah* since human beings are various in nature. This is due to not all people are wealthy nor poor, young nor old. Similarly, not all people are able to protect their wealth independently, instead they will need other people to protect their assets. Further, there are a number of people who possesses assets, but they do not have space and time to protect them. Therefore, Allah the Merciful and the Compassionate commands human beings to implement *wadiah* in order to ease their difficulties as well as their life.

In the midst of its development, *wadiah* is implemented in a number of variations with more insitutions involved, including post giro and financial deposit managed by banking institutions. Hence, *wadiah* is essentially considered as a deposited item that can be withdrawn by its owners on any occasion. While money savings in bank is closely related to bank interest, *wadiah* is basically means to conduct reciprocal assistance without expecting rewards. Furthermore, the money deposited in banks can be utilized in order to make a profit. This profit will then be shared to the customers based on the regulation of each bank. The above condition can be considered as a variation of *wadiah* (Haroen, 2007, p. 250).

In the lens of Islamic law, there are contrasting perspectives between contemporary Islamic jurists on the essence of *wadiah* in banking institutions. A number of jurists argues that *wadiah* is defined as what has been understood in the *fiqh* (jurisprudence) literature, while other jurists claim that it can be defined as debts. Therefore, this article attempts to discover the essence of *wadiah* in banking institutions.

# Discussion

## *The Definition of Wadiah*

As stated in *al-Mujam al-Wasit*, *wadiah* is derived from word ودع يودع دعة ووداعة فَهُوَ وديع, which means peace. أودع فُلَانًا الشَّيْء means giving something to someone as *wadiah* (Majma al-Lughah al-‘Arabiyyah, n.d., p. 1021).

In *al-Fiqh al-Manhaji*, it is also stated that *wadiah* deals with submitting something to be protected. Further, *wadiah* also a derivative word of *al-wad’u* which means abandon. The two meanings have a correlation in terms of the peace of assets that has been abandoned to other parties in order to be protected.

In the dictionary of al-Munawwir (Munawwir, 2002, p. 1548), it also deals with ودع الشي (abandoning), ودع مالا عنده (entrust the treasure), ودع ماله فى المصرف (deposit money in banks), ودع الثوب (save the clothing), وديعة (deposit), وديعة مالية (deposit).

*Al-Mausu’ah al-Fiqhiyyah al-Kuwaitiyyah* (The Ministry of Waqf and Religious Affairs Kuwait, 1986, p. 5) defines *wadiah* as follows: “*Wadiah is treasures deposited to other people and protected without expecting compensation.”*

## *The implementation of wadiah*

*Wadiah* is mandated based on al-Quran, *sunah* (hadith) and *ijma* (Bugho, Al-Khin, & Asy-Syurbaji, 1992, p. 85). According to Allah’s the Merciful and the Compassionate commandment in QS. Al-Nisa: 58: “*Indeed, Allah commands you to render trusts to whom they are due.”* QS. al-Baqarah: 283: “*And if one of you entrusts another, then let him who is entrusted discharge his trust [faithfully] and let him fear Allah, his Lord.”*

The commands in both verses are considered general in the sense of covering all items that should be protected and maintained by humans, in terms of debts as well as treasures. The trust to protect treasures can be defined as *wadiah*. The command to protect the asset as well as return it can be a proof of wadiah that should be implemented.

Meanwhile, Prophet SAW in his hadith stated that: “*Keep the trusts from those who entrust to you, do not betray to those who have betrayed you”* (Hadith Narrated by Ahmad and Abu Daud). Further, it is also stated in *ijma* that all Islamic scholars starting from the period of companions (Sahabah) until recently has agreed that *wadiah* is allowed and commanded.

As stated by Muhammad Ibrahim, one of the advantages in implementing *wadiah* is to fulfil the demands of those who possess assets but unable to protect them. For instance, the owners are unable to provide place, weak, unhealthy or unsafe, but there are other parties which are able to protect their assets. Therefore, Allah the Merciful and the Compassionate allows *wadiah* as means to protect assets and means to provide merits for those who protect the assets through *wadiah*, which will then become the needs of people (Al-Tuwaijiri, 2009, p. 548).

## *Pillars and Conditions of Wadiah*

According to Hanafi school of thought, the pillars of *wadiah* are *ijab* and *qabul*, in which A states to B to deposit my (A) assets to B or protect my assets to B or accepts my assets as *wadi’ah* and other statements that will then be accepted by B. These statements will complete the process of *wadiah*.

Meanwhile, based on *Jumhur* (majority), there are four pillars of *wadiah*: Two parties who will make covenant (مودع : those who deposit and وديع: those who accept), *wadiah* (the deposited assets), *shigat* (*ijab* and *qabul*). The variations of *Qabul* can come in several ways, including by making a statement “I hereby accept…” or by accepting the assets then being silent. In that way, the silence becomes a variation of *qabul*.

Regarding the pillars of those who made covenant, Hanafi school of thought argues that they should be mature. Otherwise, *wadiah* cannot be accepted when the people are immature or demented. Further, it cannot be accepted when immature children and demented individuals deposit *wadiah*. Hanafi school of thought does not require maturity as a pillar of *wadiah*. Thus, *wadiah* from children who are mentally mature and granted trade permission can be accepted, as *wadiah* is an aspect needed by traders. Similarly, accepting *wadiah* from permitted children is allowed, as they are able to protect. Meanwhile, *wadiah* cannot be accepted if it is given by children whose asset management is withheld, as they are usually unable to protect assets.

Regarding the pillars of *wadiah, jumhur* argues that the pillars are similar to those of *wakalah*, including mature, rational and thoughtful (*rusyd*). It is also stated that the assets should be directly accepted by hand, therefore, owners are unable to claim for their assets if they deposit lost items, birds, or items drowned in the sea (Al-Zuhaili, 1989, pp. 4018–4019).

## *The Characteristics of Wadiah Covenant*

*Wadiah* is considered as *jaiz* covenant, or uncommon. Therefore, both or one of the parties can cancel the agreements without asking for their willingness to do so. The agreement is canceled when both or one of the parties are dead or gone demented. Moreover, *wadiah* is considered as *amanah* covenant. Hence, the deposited assets are considered as *amanah* (trust), in which they are not responsible for every damage unless it is intentional or negligent in nature. As *wadiah* is considered as a merit and *ihsan* (good deeds), if a party should be responsible for the asset damage when it is not intentional and negligent in nature, then no individuals are willing to accept *wadiah* which eventually will be disadvantageous for many people. *Wadiah* is the needs of many people (Ministry of Waqf and Religious Affairs Kuwait, 1986, p. 5).

Imam al-Syairazi, a jurist from Syafi’I school of thought, states that *wadiah* is an *amanah* (trust) for the party who accepts it. If the items are damaged unintentionally, then they are not responsible for it. This is also stated by Amer bin Syuaib from his father and grandfather. Further, this is also in line with the statements of Abu Bakar, Umar, Ali, Ibn Masud, and Jabir. Moreover, this is also derived from the agreement of Islamic scholars in every region. The party protects the items in the name of the owners, which then their hands are as if those of the items’ owners. Further, as *wadiah* is considered as a merit and *ihsan* (good deeds), people will be apathetic to accept it if they should be responsible for the items. If someone deposits *wadiah* and demands for damage insurance, then it is still not covered, as it is an *amanah* (trust) (Al-Syairazi, n.d., p. 181).

*Wadiah* is essentially an *amanah*, in which the receivers are not responsible for the damage unless they are negligent to protect it, or if they intentionally lost or damage it. The following are the conditions as explained by Islamic jurists where the damage of *wadiah* can be claimed:

1. When the entrusted party gives the assets to other people without the permission from the owner.
2. Being Negligent to protect it. If they are negligent to protect it which makes it damaged or lost, then they should be responsible for it.
3. Utilizing and making profit from *wadiah*. If they utilize and make profit from it in any ways, they should be responsible for the damage and loss.
4. Traveling with *wadiah*. They are not allowed to travel with *wadiah* as their responsibility is to protect it. In that case, it is better for them to give it to the owner, or delegate other parties. Otherwise, it can be given to judges or trusted people.
5. Breaking the agreement without any hindrance. If the owner asks for assets return, then the entrusted people break the agreement, then they are responsible for *wadiah*.
6. Rejecting to return *wadiah* when the owner asks for assets return.
7. Mixing *wadiah* with other assets. If it is mixed, but are still able to differentiate, such as between dinar and dirham, or between Syrian currency and other currencies, they are not responsible for it as it is easy to differentiate. Meanwhile, if it is difficult to differentiate, such as wheat and *syair* (a type of wheat), then they are responsible for it.
8. The entrusted people are breaking the agreed terms. For instance, they are asked to keep it in A, but they keep it in B instead, then they are responsible if the items are lost (Bugho et al., 1992, pp. 91–93).

## The Definition of Al-Wadi’ah al-Mashrifiyyah

*Al-Wadi’ah al-Mashrifiyyah* is a *murakkab* (a phrase) consisted of two words, including *al-wadiah and al-Mashrifiyyah*. Money deposit in banking institutions can be considered as *wadiah*. This is also due to the history of banking institutions. In the initial period of banking, it only limited customers to deposit gold and silver, with certain amount of protection fee. Further, it expands its operation to not only accept *wadiah* to be protected, but also to own and to utilize it. Additionally, they also lend what has been deposited to other parties with bank interest. Nevertheless, it is still considered as a *wadiah* (Al-Dubyan, 2008, p. 255).

The word *masharif* is a plural form of *mashrif,* that is derived from the word *sharf* meaning returning certain item from one condition to another, or replace it with another. In terms of *fiqh,* it is considered as the trade transaction of money. Furthermore, *mashrif* refers to the place where the exchange of money is situated. The use of word *mashrif* is considered more essential than that of bank (Syabir, 2007, p. 256).

*Al-Wadi’ah al-mashrifiyyah* is translated to English as *bank deposit.* This refers to the assets deposited by the owners to financial institutions. The deposit is sometimes restricted by time period, or there is an agreement between two parties that the owners are able to retake all/some of their assets whenever it is (Al-Utsmani, 2013, p. 335).

*Al Wadi’ah al Mashrifiyyah* is classified into four types, including

1. *Wadi’ah Al Hisab al Jari* (*current account*), refers to certain amount of money deposited by customers to banks, in which the banks should return the assets whenever the owners want to. Further, the customers are allowed to withdraw as much as their deposit whenever it is. In this type of wadiah, banks sometimes do not give interest. Moreover, some banks in several countries even demand protection fee to the owners ... However, this type of wadiah can be mixed with that of other customers, so that it is considered difficult to differentiate between one and another. . banks possess rights to utilize the assets . . .
2. *Wadi’ah al Tsabitah* (*fixed deposit*), refers to *wadiah* with limited due. Customers are unable to withdraw their assets before the agreed due. Banks invest the assets and share the interest to the owners.
3. *Wadi’ah al Taufir* (*Saving Account*), refers to *wadiah* without limited due. However, the rights of withdrawing also follow particular restrictions, in which the owners are unable to withdraw all of their assets once. Instead, banks regulate the maximum of money withdrawn each day. In this type of *wadiah,* banks give interest, though the percentage is smaller than that of *wadiah al tsabitah*
4. *Al khozanah al maqfulah (lockers),* refers to *wadiah* which is saved in a deposit box/locker and banks demand for protection fee to the owners. Customers deposit their assets directly as the assets are not related to banks even the staffs do not know the content of the locker. The assets deposited in the lockers are usually jewelery, gold, and precious stones.

The fourth type of *wadiah* is termed as *ijarah*. Moreover, the other types of *wadiah* refer to the transaction in conventional banks that is considered different compared to that of sharia banks. According to the majority of contemporary jurists, *wadiah* in conventional banks is considered as debts given to customers to banks. Whether or not it is termed as *wadiah,* this is still referred as debts as in a covenant, the essence is more emphasized than the statement. Meanwhile, some contemporary jurists differentiate between *al* *wadi’ah al tsabitah* and *al hisab al jari*. Based on their interpretations, *al wadiah al tsabitah* and *al wadiah al taufir* refer to debts. Further, they argue that *al hisab al jari* is classified as *wadiah*. Although banks mix it with other assets and utilize it for business matters, it is not excluded from *wadiah*, as the utilization of the assets is acknowledged by the owners. Nevertheless, this argument is considered incorrect, as the majority of customers do not understand the difference between *wadiah* and debts as they do not concern much on terms (Al-Utsmani, 2013, pp. 336–338).

## *The Type and Nature of al-Wadi’ah al-Mashrifyyah*

The author provides the argumentation and discussion from contemporary jurists regarding the type and nature of *al-wadi’ah al-mashrifiyyah*. The contemporary jurists have contrasting opinion regarding the type and nature of bank deposit, as the two most prominent argumentations are categorized into two parts. *First,* it refers to debts. Therefore, those who deposit the assets are called as debtors while banks are called as creditors. This is derived from the opinion of majority contemporary jurists and approved by al-Majma’ al-Fiqh al-Islami. *Second*. It refers to *wadiah* as stated in *fiqh*. This opinion comes from Dr. Hasan al-Amin and Dr. Abdurrazak al-Haiti

The justification from the first argument is as follows

1. Banks possess the deposit, so that they have rights to utilize as well as to return the assets as proportional as the customer demand. This is the essence of debts. Although it is called as *wadiah*, it is not terminologically *wadiah* in practice. As the banks are allowed to utilize the deposit, it is thence not considered as wadiah. Further, *wadiah* essentially means protect assets and required to return it completely.

The above argument is responded by the second group that the utilization of assets by banks have already been acknowledged by the owners of the assets. Therefore, this condition will not exempt the assets from *wadiah*, that should be protected and returned.

Moreover, the first group responds the argumentation by stating that their argumentation cannot be accepted. If *wadiah* is utilized, this will exempt the assets from *wadiah,* though it has been permitted by the owners. Once it has been utilized but the nature of the assets is still considered similar, then it becomes *‘ariyah*. Further, if the assets are utilized and the nature of the assets change, then it becomes debts, though it will eventually be returned.

1. Banks must return the deposit once it is asked. The institutions are responsible for the damage and loss of the assets, whether it involves intentional acts or not. This is considered as debts. Unlike *wadiah*, banks must return the value, though they are not responsible for the loss of the assets if it does not involve intentional acts.

The justification from the second group’s argumentation is as follows

1. Curstomers do not intend to lend their assets to the banks, nor involve within the seeking of benefits and interest. Instead, they intend to deposit their assets in order to be protected by the banks. As the customers do not intend to lend the assets, it is not considered as debts.

The argumentation of the second group is rejected by the first group due to the unintended act of customers to lend their assets to the banks, thence it does not have any implication toward the essence of its covenant. The majority of customers is not aware of the difference between debts and *wadiah*. Further, they do not consider the terms as important, as they concern more on the scientific conclusion. The customers will not be willing to deposit their assets unless there is a guarantee. Moreover, the guarantee is applied in debts, not *wadiah*. As banks will not accept the deposit unless they utilize it, thence it is essentially considered as debts. Therefore, it can be concluded that their intention is to lend the assets, unlike what it has been defined in *fiqh*. This can be compared to a covenant where it emphasizes the meaning more than the statement.

After exemplifying each argumentation, al-Ghufaili argues that the strongest argumentation is that money deposits in banks are considered as debts. This is justified due to the essence of deposit which is similar to debts as the customers deposit their assets to other parties to be utilized or returned. Debtors deposit their money to banks to be owned and utilized, then banks will be responsible for the return. This is in line with the essence of debts as banks are solely responsible for the asset return, whether or not there is an intentional act, based on the debt covenant. Unlike *wadiah* where the creditors are the ones who accept *amanah*, they do not cover for the damage and loss of debts due to intentional and negligent acts (Al-Ghufaili, 2009, pp. 165–169).

This is in line with the statement from Shalah al-Shawi and Abdullah al-Mushlih that, in terms of *fiqh,* deposit cannot be considered similar to bank deposit. This is due to the essence of deposit in terms of *fiqh* is to delegate other parties to protect the assets in order to be returned to the delegated parties. The deposit is implemented in the form of various commitments between the delegated parties to be protected and returned in the agreed period. This deposit cannot be compared to the common cash deposit that is regulated by banks to be mixed with other assets within the banks. The deposit will then be utilized and returned in the agreed period.

Hence, to define deposits based on *fiqh,* it should be defined as the loan for banks as the essence of deposits is defined as the handover of asset ownership to other parties to be returned toward the lenders. Banks also treat the money deposit as the condition mentioned before. The banks usually mix the deposit with other assets in the banks to be utilized, which then returned to the owners of the asset. As the legal basis considers the real essence and meaning, not merely the name or term, therefore bank deposit is considered as money loan, though it is called as other terms. Determining deposit as bank deposit is considered relevant to Islamic principles and positive law implemented in the society. This is in line with the arguments argued by Ibn Qudamah in *al-Mughni*, al-Sarkhasi in *al-Mabsuth*, and al-Samarqandi in *Tuhfah al-Fuqaha* as well as article 726 of Egyptian law.

In terms of *fiqh,* deposit cannot be considered as the form of money deposit in banks. This is due to the essence of deposit in terms of *fiqh* is to delegate other parties to protect the assets in order to be returned to the delegated parties. The deposit is implemented in the form of various commitments between the delegated parties to be protected and returned in the agreed period. This deposit cannot be compared to the common cash deposit that is regulated by banks to be mixed with other assets within the banks. The deposit will then be utilized and returned in the agreed period.

Are banks impoverished, so that they must ask for loans? Commonly, debts are given from the rich to the poor. Are banks lacking sufficient money, so that we can consider our deposit in the banks as debts?

To respond that, deposit can be defined as handing the asset ownership over other parties to be returned. This can be applied for the loan from rich to poor people and vice versa. If the source of the loan comes from rich to poor people, then it will not prohibit other types of debts that have different types. The most noticeable example can be analysed from the period of Islam. Zubair bin Awwam, a poverished Muslim, assets had ever been calculated when he was passed away. As narrated by Ibnu Katsir in *al-Bidayah wa al-Nihayah,* the amount of his assets was around 59.800.000 Dirham (more than 175 billions rupiah, pent.). Meanwhile, he also had debts around 1.200.000 Dirham. In other words, the netto of Zubair’s asset was around 57.600.000 Dirham. How could he own 1.200.000 Dirham debts when he had abundant amount of assets?

The answer can be revealed from what has been narrated by al-Bukhari in his *Shahih,* "The debts are Zubair’s responsibility as there was a man who met with him to deposit his money. Zubair stated that, 'No. Let it be a loan, as I am worried of losing the money."

The people who met with Zubair only wanted to deposit their money, though he insisted that the money should be in the form of loan. Thus, the difference between loans and deposits are very different. Deposit is not considered as responsibility of those who receive the money as they only bear *amanah*. In other words, they are not responsible for the money unless there is a law violation and negligent act. Meanwhile, loans are the responsibility of the borrowers, which in turn they can utilize the money (Al-Shawi & Al-Muslih, 2001, pp. 404–406).

Muhammad Taqi al-Utsmani outlines that *wadiah al-mashrifiyyah* is *al-hisab al-jari*. It is not considered as debts, but *wadiah* as defined in *fiqh*. The owners have acknowledged the banks to mix their assets with other assets, for the purpose of internal affairs. If there is no permission aspect to mix the assets, the assets will not be exempted from *wadiah*. He argues that the form of *wadiah* is not relevant to *fiqh* as the asset owners’ covenant will be changed as the mix of asset ownership. Thence, the mix method becomes their mixed asset. However, as stated earlier, the mixed assets will become *amanah* (trust). It will not be convered unless if it is beyond the limit. Customers will not be willing to deposit their money in banks, if their hands are considered as hand *amanah* (trust). The purpose of depositing the money in the banks is to let them ensure it. As their sole purpose is not *wadiah* but debts, *al-wadi’ah al-mashrifiyyah* in conventional banks can be considered as debts and will be treated as they are (Al-Utsmani, 2013, pp. 340–341).

The commandment of Prophet Muhammad SAW is also one of the justifications that it is not allowed to accept additional fee from the main deposit: “*And it has been narrated by al-Humaidi Abdullah bin al-Zubair stating, it has been narrated by Sufyan, that it has been narrated by Yahya bin Sa'id al-Anshari, that it has been reported by Muhammad bin Ibrahim al-Taimi, that he heard from Alqamah bin Waqqash al-Laitsi who said; I have ever heard from Umar bin al-Khaththab who stated in a podium; I heard Rasulullah SAW stating that: "The reward of deeds depends upon the intentions and every person will get the reward according to what he has intended. So whoever emigrated for worldly benefits or for a woman to marry, his emigration was for what he emigrated for ". (Saheeh Bukhari)*

Mansoori (2007) outlines that intention and motivation are essential aspects in defining legal status in Islam, whether or not particular deeds are acceptable in the lens of sharia. If certain acts are conducted through forbidden ways, therefore the acts cannot be accepted in Islamic law. Further, the acts will not be granted by merits, even will be counted as sinful deeds.

Imam Ibn Qayyim, an Islamic jurist from Hanbali school of thought wrote that: “*The arguments and rules of sharia regulate that intention is considered in a covenant. Intentions can influence the validity and legality of certain covenants. More importantly, the intentions influence acts that are not included in a covenant regarding their validity. Similar acts can/cannot be accepted in certain period depending on the sole intention and purpose.”*

One of the principles regarding the role of intentions in a covenant can be referred through the argument of Mansoori (2007): “*Essentially, an agreement/ covenant depends on its meaning, not its statement nor form*.” Intention and motivation also define the nature of a covenant, besides defining its validity. While there is a covenant stating that the debtors will obtain all benefits in *mudharabah*, thence the covenant cannot be considered as *mudarabah,* but debts.

Giro, current deposit in conventional banks, is one of examples in which the nature of particular agreement is defined on its purpose and essence. Contemporary scholars consider giro as a debt covenant than that of *wadiah* as it does not resonate the characteristics of *wadiah*.

In Islamic law, *wadiah* is considered as a trust. The deposited *wadiah* cannot be utilized by the person who protects it. In principle, those who protect it are not allowed to utilize the items. However, based on the Islamic jurists, the covenant will change once the protector utilizes the items even with the permission from the owner. In turn, the covenant can be converted into debts, agency, or partnership covenants. Buhuti, a well-known scholar from Hanbali school of thought, outlines that “deposit which is permitted to be utilized can be considered as debts which become the risk and responsibility of the savers.

As giros form the relationship of debtors and creditors between customers and banks, thence it is not permitted for banks to provide additional service to the customers, as it can be considered as usury. If banks act as debtors, as illustrated in giro covenant which add benefits for customers, then banks have already provided certain thing exceeding the main deposit of customers. This is clearly considered as usury. In the context of debt transaction, the service fee given to the debtors can be considered as usury. Therefore, in the principle of *sadd al-dara’i* (avoiding every possible thing that can lead to wickedness), these things should be avoided (Mansoori, 2007, pp. 23–26).

Al-Mutrik (n.d.) argues that *wadiah mashrifiyyah* is essentially not a type of *wadiah* in its practice. The type of *wadiah* can be considered as debts. Practically, *wadiah* is an asset deposited by its owners to other parties to be protected. Therefore, it is required for *wadiah* to:

1. The trusted parties should protect and return the assets. Meanwhile, financial institutions own and utilize the assets, instead of protecting and they bear equal responsibilities.
2. There is no responsibility for the trusted parties to replace *wadiah* if it is damaged unintentionally, as stated in prophet’s hadiths.
3. If financial institutions go bankrupt, then the customers will not also go bankrupt. It is because the savings are owned by customers. This is also in line with the principle as a debtor.

Furthermore, he also outlines that the term *wadiah* is used due to its own history. It emerged as a *wadiah,* in which its principle is expanded by financial institutions as debts. In terms of its term, *wadiah* is still considered protected, though the term is not applicable for its essence of *fiqh* (Al-Mutrik, n.d., pp. 345–346).

This is also in line with the statement from Al-Dubyan (2008) who states that *wadia’h al-mashrifiyyah* has certain characteristics, which include:

1. The deposit particularly refers to money, in which *wadiah* usually covers for money and other forms
2. Banks own the deposit to be managed and made profit from it. They also mix the asset with another intentionally, as well as give compensation fee for the customers. Meanwhile, in *wadiah,* the trusted parties are not able to manage the assets, instead they only become a delegation to protect, preserve and return the asset to the owners.
3. *Wadiah mashrifiyyah* is guaranteed, in which the asset will not be covered unless if there are *ta’addi* are *tafrith* (intentional and negligent acts), as it is considered as trust for the trusted parties (Al-Dubyan, 2008, p. 361).

Moreover, after presenting and discussing various perspectives of Islamic jurists regarding *wadiah al-mashrifiyyah,* Al-Dubyan (Al-Dubyan, 2008, pp. 279–280) argues that *wadiah* is converted into *muawadhah* covenant if it involves bank interest that will be given to customers. For instance, it is the trade of dirham with additional interest and suspension. This is considered as *fadhl* and *nasa* usuries. Meanwhile, it is considered as debts if it does not involve bank interest. In this case, banks act as creditors while customers become the debtors. Although it is termed as *wadiah*, it is essentially *gharbiyyah* (western people), which is not based on *fiqh*. Hence, the *wadiah* leads to debts as banks are not allowed to provide additional fee for the customers since it is considered as a usury (Al-Dubyan, 2008, p. 265).

Syabir (2007) terms it as a banking *wadiah* while most of the constitution consider it as debts. The utilization of *wadiah* does not depend on its essence as banks do not consider it as a trust. Instead, they must return the asset to the owners. Banks utilize the assets and return them as equal as they are. If *wadiah* is considered as debts in constitutions, it is considered allowed if there is no usury. This can be compared to *al-hisab al-jari* (bank saving)*.* However, deposit and saving are related to usury as conventional banks accept *wadiah* with determined interest which will be returned to other parties with high rate of interest. Therefore, it is still considered as usury. Although it is termed as *fawaid* or *‘awaid,* it is classified as an additional fee within debts covenant which is not permitted in practice (Syabir, 2007, pp. 256–257).

Hence, the National Sharia Council of MUI (2006:5) in their decree No : 01/DSN-MUI/IV/2000 regarding giro determines that there are two types of giro:

1. Unacceptable giro based on sharia law, dealing with giro which involves the calculation of interest.
2. Acceptable giro, dealing with giro which follows mudharabah and wadiah principles (National Sharia Council of MUI, 2006, p. 5).

Moreover, in the decree No: 02/DSN-MUI/IV/200 regarding saving, the National Sharia Council of MUI (2006: 12) determines that there are two types of saving:

1. Unacceptable saving based on sharia law, dealing with saving which involves the calculation of interest.
2. Acceptable saving, dealing with savings that follow mudharabah and wadiah principles (National Sharia Council of MUI, 2006, p. 12).

In terms of deposit, the decree No: 03/DSN-MUI/IV/200 regarding deposit, the National Sharia Council of MUI (2006:18) determines that there are two types of deposit:

1. Unacceptable deposit based on sharia, dealing with deposit which involves the calculation of interest.
2. Acceptable deposit, dealing with deposit which follows *mudharabah* and *wadiah* principles (National Sharia Council of MUI, 2006, p. 18).

## *The Legal Status of Wadi’ah al-Mashrifiyyah*

1. Bank deposit, one of the types is deposit with bank interest, as what has been practiced in most of banking institutions. This is considered as a usury in terms of saving and deposit
2. Bank deposit that follows Islamic principles, it is in the form of investment with profit sharing mechanism. This deposit is considered as a *mudharabah* capital implemented in the principle of *mudharabah*. This principle does not require banks to bear the responsibility for the *mudharabah* capital.

If all transaction activities in banks are considered prohibited due to usury and other practices, therefore it is not allowed for us to deposit money in banks, unless in case of emergency (Al-Musyaiqih, 2013, pp. 221–222).

Affanah (2009, p. 15) states that it used to be prohibited to conduct transaction with conventional banks as most of the activities are related to debts with bank interest, in which it is considered forbidden. However, by considering limited number of Islamic banks as well as the inability to save our assets independently, as well as the dependency of industrial and business matters on conventional banks, therefore it is allowed to open a bank account in a conventional bank without involving bank interest. Nevertheless, if there is an Islamic bank in particular regions, then it is required to conduct business matters in that bank and prohibited to do so in a conventional bank (Affanah, 2009, p. 15).

Muhammad (2002) states that banking *wadiah* is not classified as *wadiah*. This is because banks utilize it, as well as bear responsibility on it. Thus, banking *wadiah* is essentially considered as debts since banks utilize the deposit and return it once it is asked, as well as bear responsibility of its damage and loss. Moreover, there are two types of customers in a bank. *First,* usurer, that is an individual who wants to expand and invest their assets through usury. This is clearly considered as a forbidden activity. *Second*, individuals who want to protect their assets, and classified into two conditions: the availability and unavailability of Islamic banks. If there is a conventional bank in a certain area, therefore it is considered forbidden to deposit our money in a conventional bank since there are two reasons: *first,* there is no harm, *second*, there is another place where we can deposit the assets without usury.

Meanwhile, if there is no Islamic bank, customers are allowed to deposit their assets in conventional banks when the situation is considered unsafe (threat to be stolen or unable to protect) with the condition that they should withdraw the assets in the future. The deposit in conventional banks should be free from the practice of usury (Muhammad, 2002, pp. 265–271)

Al-Zuhaili (2002) outlines that if a country has established Islamic Financial Institutions, then they must conduct transaction with it, as it is considered *halal* in practice. Moreover, he also answers the question of where Muslimin should deposit their assets, whether it is in Islamic financial institutions or in foreign banks? He answers that “If a muslim is forced to open bank deposit to finance imported commodities in foreign countries, thence it is allowed. As it is considered as emergency, so that it can allowe what it used to be forbidden and emergency situation is measured by its size” (Al-Zuhaili, 2002, p. 126).

Al-Utsmani (2013) argues that there is no difference between *wadi’ah tsabitah* and *wadi’ah taufir.* Both types are considered as debts while the excess service given by banks is a usury practice. Majma al-Fiqh al-Islami has discussed this matter in the second *daurah* (study). Whosoever deposits their assets in banks through both types, then they make debt covenant with usury practice and it is considered forbidden.

Some contemporary scholars allow muslims to deposit their assets through both types, though they forbid customers to take bank interest for individual needs. Instead, they should give is as charity to people in need or other things. The argument of depositing assets in banks in order to get bank interest is considered weak, though it aims to give it as charity. Consequently, this is still considered as a forbidden usury practice (Al-Utsmani, 2013, p. 335).

Al-Dubyan (2008) states that if customers take what they have deposited in Islamic banks without any reduction and addition, then it is permitted. Moreover, it is recommended to provide loans to other people in order to support the propagation of Islam, to motivate other banks to turn into Islamic system, and release from conventional economy system.

Moreover, it is permitted for customers to deposit their assets in conventional banks in an emergency (threatened to be stolen or inavailability of Islamic banks). This is as stated in QS. Al-An’am: 119

Meanwhile, there is a discussion whether customers can deposit their assets in conventional banks and get bank interest due to the number of branch as well as the ease and closeness aspects. According to Majma al-Fiqh al-Islami, al-Laznah al-Daimah decree, as well as the opinion from Abdullah bin Baz and Muhammad Ibn Utsaimin, it is considered forbidden. Meanwhile, Dubyan suggests that depositing assets in these banks is *makrooh*. However, *makrooh* can be changed into permitted in emergency situation, as it also can change forbidden into allowed acts (Al-Dubyan, 2008, p. 255). This is also in line with the argument of Al-Utsmani that it is considered as *makruh karahah tanzih* (very hated and disliked) (Al-Utsmani, 2013, p. 347).

# Conclusion

Wadi’ah is commanded in al-Quran, hadith and *Ijma*. *Wadi’ah mashrifiyyah* is essentially different from *wadiah* that has been explained in *fiqh* literature. This *wadiah* is named based on its history and Western term. *Wadi’ah mashrifiyyah* is essentially considered as debts, as this is also the responsibility of banks where they must return the assets to the customers in the case of emergency whether it is intentional/negligent or not. Meanwhile, in *wadiah,* there is no compensation in the case of emergency, unless it involves intentional and negligent acts. Further. *wadiah mashrifiyyah* is considered as debts since it emphasizes the meaning more than the statement in its covenant. Thus, *Wadi’ah mashrifiyyah* is conducted in the principle of *yad dhaman* instead of *yad amanah.*

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