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بِوَيْبَرِئَتِي إِسْلَامًا أَبَارًا بِجَنَابِ مُلْكِيَتِنَا

AL-WA'D (UNILATERAL PROMISE) AND ITS
APPLICATION IN ISLAMIC FINANCIAL
INSTRUMENTS

BY

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A dissertation submitted in partial fulfilment of the
requirement for the degree of Master of Islamic Revealed
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ABSTRACT

Al-wa'd in Islamic law of transaction means a promise. It is not a contract as the obligation in *wa'd* is one sided whereas a contract obligates more than one party. *Al-wa'd* is widely being used in today's Islamic financial products, particularly in banking and capital market products. The purpose of this study is to address and analyze the permissibility of *al-wa'd* according to *Fiqhī* perspective. This study therefore aims to examine the concept of *al-wa'd*, the issues involve in using *al-wa'd* and the application of *al-wa'd* in Islamic banking and finance particularly in *Murābahah* and *Mushārahah* products. This study used qualitative method in collecting data, which are library research, textual analysis and internet browsing. The collected data is analyzed using inductive, deductive and comparing method. This study begins with the discussion on the concept of *al-wa'd* which includes the definition of *al-wa'd*, juristic views on *al-wa'd*, the status of *al-wa'd* and the legal aspect of the concept. Chapter Three and Four discussed the application of *al-wa'd* in *Murābahah* and *Mushārahah* in banking and capital market products. This study concluded that *al-wa'd* serves as an important tool in banking and capital market products as an exit mechanism used to redeem *ṣukūk* at maturity. It serves as an effective tool in risk management and hedging purposes to ensure the transactions are executed within a controlled environment. Hence, the *wa'd* based methodology is essential to increase market activity. However, for *al-wa'd* to be an effective tool applied in the *Sharī'ah* products which is accordance with the legal system, there is a need to assess the legal framework governing *al-wa'd* to ensure the smooth running of current Islamic commercial transactions.

ملخص البحث

الوعد في المعاملات المالية الإسلامية يعني العهد، ويختلف عن العقد لأن الإلزام فيه من طرف واحد أما في العقد فيكون الإلزام فيه بين عدة الطرفين أو أكثر. ويستخدم الوعد بشكل واسع في المنتجات المالية في الفقه الإسلامي اليوم وبصورة خاصة في المعاملات المصرفية ومنتجات سوق رأس المال. أن الغرض من هذه الدراسة هو توجيه الوعد وتحليله طبقاً للمنظور الفقهي. وبالتالي فإن هذه الدراسة تهدف إلى دراسة مفهوم الوعد والقضايا التي تتضمن استخدامه فضلاً عن تطبيقه في المعاملات المصرفية الإسلامية والتمويل وبصورة خاصة في منتجات المراجعة والمشاركة وتستخدم هذه الدراسة الطريقة النوعية في جمع البيانات والتي هي عبارة عن البحث المكتبي والتحليل النصي والتصفح عبر الانترنت، وتُحلل هذه البيانات المجمعة باستخدام الطريقة الاستقرائية والاستنتاجية. وتبدأ هذه الدراسة بمناقشة مفهوم الوعد والذي يتضمن تعريف الوعد وأوجه نظر القضاة فيه والوضع الشرعي والقانوني له، وفي الفصلي الثالث والرابع ناقشت هذه الدراسة تطبيق مفهوم الوعد في منتجات المراجعة والمشاركة والمعاملات المصرفية ومنتجات سوق رأس المال. وتوصلت هذه الدراسة إلى أن الوعد يصلح كأداة مهمة في المعاملات المصرفية ومنتجات سوق رأس المال وأيضاً كأداة فعالة في إدارة المخاطر وفي أغراض الوقاية من الخسائر المالية لضمان تنفيذ المعاملات المالية ضمن بيئة مسيطر عليها، ومن هنا فإن الوعد يركز على المنهجية التي هي الحجر الأساس في زيادة نشاط السوق. ولأجل أن يكون الوعد أداة فعالة مطبقة في منتجات الشريعة الإسلامية والتي هي بدورها مطابقة للنظام القانوني، فإنه لا بد من وجود حاجة لفرض إطار قانوني يخضع للوعد لضمان زيادة المعاملات التجارية الإسلامية الحالية بطريقة هادئة.

APPROVAL PAGE

I certify that I have supervised and read this study and that in my opinion, it conforms to acceptable standards of scholarly presentation and is fully adequate, in scope and quality, as a dissertation for the degree of Master of Islamic Revealed Knowledge and Heritage (Fiqh and Uşūl al-Fiqh)

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Mohamad Akram Laldin
Supervisor

I certify that I have read this study and that in my opinion it conforms to acceptable standards of scholarly presentation and is fully adequate, in scope and quality, as a dissertation for the degree of Master of Islamic Revealed Knowledge and Heritage (Fiqh and Uşūl al-Fiqh).

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DECLARATION

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

Munirah Binti Kasim

Signature.....

Date.....

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***AL-WA'D* (UNILATERAL PROMISE) AND ITS APPLICATION IN ISLAMIC
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*This study is dedicated to my beloved parents; Rodziah Yaakob and Kasim Ismail,
my husband Hamidi Abu and children; Nurul Hasanah and Muhammad Haziq,
my brothers and sisters
Mohd Eizzuddin, Harlina Hayati, Mujahid, Yusraa, Yusuf Zaki and Yusni Hayati
and all who inspired me in my endeavours.*

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TRANSLITERATION TABLE

b = ب	z = ز	f = ف
t = ت	s = س	q = ق
th = ث	sh = ش	k = ك
j = ج	ṣ = ص	l = ل
ḥ = ح	ḍ = ض	m = م
kh = خ	ṭ = ط	n = ن
d = د	ẓ = ظ	h = هـ
dh = ذ	‘ = ع	w = و
r = ر	gh = غ	y = ي
Short a = ا	Short i = اِ	Short u = اُ
Long ā = آ	Long ī = يِ	Long ū = وِ
Diphthong ay = اِي	Diphthong aw = اَوْ	

CHAPTER ONE

INTRODUCTION

BACKGROUND OF THE STUDY

The structure of Islamic finance is firmly rooted in the Qur'ān and the teachings of Prophet Muḥammad (s.a.w), interpreted by the qualified scholars. The Islamic banking system has its own social implications necessarily connected with the Islamic order itself and has special characteristics that distinguish Islamic banking from other systems. When regulating its financial activities, an Islamic bank has to take into prime consideration the social implications that may be brought about by any decision or action taken. Profitability; despite its importance and priority, therefore, cannot be the sole criterion or the prime element in evaluating the performance of Islamic banks, since they realize both material and social objectives in their service of the community at large and help achieve their role in the sphere of social mutual guarantee. Social goals are understood to form an inseparable element of the Islamic banking system that cannot be dispensed with or neglected.¹

Al-Wa'd is one of the emerging tools applied in Islamic banking and finance products. The validity of *Wa'd* when attached to a particular contract has been debated by various scholars. According to Dr. Muḥammad Riḍā al-Ānī, *Wa'd* means a promise that connotes an expression of willingness of a person to another or a group of people on a particular subject matter. In commercial transactions, *Wa'd* implies the

¹ HSBC Amanah, Malaysia. (n.d.). *About HSBC Amānah*, <<http://www.hsbcamanah.com/1/2/hsbc-amanah/about-islamic-banking/faqs>> (accessed July 10, 2007).

obligation of one of contracting parties.² Many transactions bind both parties only in future transactions. Practically, any transaction can be entirely prefigured in binding fashion by promise. Such deals can be entered into at very low cost, because one's own promise supports the promise of the other party; yet, once they are agreed to, each party gains a right to recover any losses caused by the other party's unexplained breach. A number of financial contracts consist partly or entirely on promises. Under Islamic law almost all contracts become binding only after conclusion, meaning that the grounds for enforcing the contract or awarding damages relies on the notion of the legal ground of the contracts.³

This research will focus on the application of *Wa'd* in two *Shari'ah* products: *Murābahah* and *Mushārahah*. *Murābahah* financing involve purchase of goods for customers and re-sells them to the customers on a deferred basis adding an agreed profit margin. The customer then pays the sale price for the goods either in installments or on lump sum basis at the end of the decided period. The added profit margin in *murābahah* transaction is completely acceptable according to Islamic law.⁴ On the other hand, a financial instrument in *mushārahah* is a type of *Shirkat al-amwāl* which literally means 'money sharing'. In the context of business, it refers to a joint enterprise in which partners (or parties) share the profit and loss of an enterprise. *Mushārahah* has far reaching implications for Islamic banking and finance in the modern context and provides an excellent alternative to a thoroughly interest-based economy. In a *mushārahah*, the party investing the capital shares equally in both the

² M. R. al-Ānī. *Majallah Majma' al-Fiqh al-Islām*. Quwwatu al-Wa'd al-Mulzimah fī al-Sharī'ah wa al-Qānūn. Vol. 2. (Kuwait: Munazzamah al-Mu'tamar al-Islāmī, 1988), 756 & 759.

³ F.E. Vogel & S.L. Hayes, *Islamic Law and Finance: Religion, Risk and Return*. (London: Kluwer Law International, 1998), 125.

⁴ *Ibid.*, 182.

profit and loss, which is different from an interest-based system where the upside is limited while the downside is very nearly non-existent.⁵

The use of *Wa'd* in both *murābahah* and *mushārahah* based instrument has been a contents issue. The debate still continues and there is a need to further address this issue. This research will explore the juristic debate on *Wa'd* and compare their views on the issue. In addition, it will try to examine to what extent *Wa'd* may dilute the purpose of contracts and other public interest that need to be considered and highlighted.

RESEARCH PROBLEM

The issue of *al-Wa'd* falls under the category of “permissible issues” (*mā yajūz al-khilāf fīhi*). Some modern jurists have moved *al-Wa'd* from the category of the voluntary offer (*tabarru'āt*) to that of commutative contracts (*mu'āwadāt*), so as to replace the contract.

On the other hand, banks usually claim that their unilateral promise (*Wa'd*) is binding. If the client breaks his *Wa'd*, the bank charges him for the incurred loss as result of not fulfilling his promise.

Based on this practice, the researcher analyzes this issue within the *Sharī'ah* framework in which the issue has been given credit in the debate among contemporary scholars. In addition, this research will also focus on the application of *al-Wa'd* in two *Sharī'ah* products, *murābahah* and *mushārahah*.

⁵ M. Taqī 'Usmāni, *An Introduction to Islamic Finance*. (London: Kluwer Law International, 2002), 5-6.

RESEARCH QUESTIONS

The researcher tries to answer the following questions:

1. What is the classical and contemporary definition of *Wa'd*?
2. Is there any difference of understanding of *Wa'd* between the classical and contemporary scholars?
3. Is *Wa'd* a contract or merely a non-binding promise?
4. How does *Wa'd* effect a contract?
5. To what extent does the utilization of *Wa'd* dilute the purpose of *murābahah* and *mushārahah* contracts?

OBJECTIVES OF THE RESEARCH

To clarify the varying definitions of *Wa'd* in classical and contemporary understanding.

To elucidate the difference between *Wa'd* (unilateral promise) and *muwā'adah* (bilateral promise) in classical and contemporary understanding.

To examine whether *Wa'd* is considered a contract or a non-binding promise.

To investigate the effects of *Wa'd* to the *shar'ī* contracts.

To evaluate the importance and effect of *Wa'd* in *sharī'ah* contracts, particularly in *murābahah* and *mushārahah* contracts.

SIGNIFICANCE OF THE RESEARCH

The area of *Wa'd* is a new field in Islamic finance and banking, and extensive research in this area has yet to be done. No similar work on *Wa'd* has been done and further research is needed in this area. Therefore, the researcher believes that this research is a meaningful contribution in this field and produces new insights into the *Sharī'ah*

compliance of financial products and services and helps the promotion of Islamic banking.

This research will generally contribute in providing the general guidelines as to what extent the concept of *Wa'd* is applicable to the banking products, particularly those products which use *murābahah* and *mushārahah* as their underlying contract.

LIMITATION OF THE RESEARCH

This research focuses on analyzing the importance as well as the applications of the concept of *Wa'd* as applied in *Sharī'ah* compliant products.

Therefore, the study aims at providing new insight into the application of *Wa'd* on *murābahah* and *mushārahah* based products. This is because *Wa'd* has been widely used in the products which use *murābahah* and *mushārahah* as the underlying contracts.

RESEARCH METHODOLOGY

In writing this research, the researcher employs certain methods beginning from collecting the data up to analyzing them in order to produce an original and authentic piece of research. The researcher will be using qualitative method in this research as below:

(i) Library Research, Textual Analysis and Internet Browsing

This research engages in analyzing the relevant data in both electronic and non-electronic forms such as academic journals, websites, economic reports, annual reports by financial institutions, monographs related to the research area, conference proceedings, the publications of Muslim scholars and textual references from the Qur'ān and Sunnah.

(ii) Inductive, Deductive and Comparative Method

The researcher will analyze the collected data by using the inductive, deductive and comparative method. Inductive logic involves analyzing through rational thinking by arriving at a general statement based on particular statements.

In contrast, deductive logic starts with a general conclusion to formulate a specific statement. This method is necessary to choose and select suitable and relevant data related to the topic. The comparative method involves analyzing the collected data by comparing them, draw conclusions based on ascertained similarities and differences in order to develop and formulate a conclusion.

REVIEW OF LITERATURE

Unilateral promise has been the subject of study by many researchers in the past. The majority of previous studies highlighted the issue of *Wa'd* related to marriage contracts, debt settlements, trade agreements, etc but did not address issues related to banking and finance in particular.

Al-Ghazālī discusses in his major work *Iḥyā' 'Ulūm al-Dīn*⁶ the issue of promise in general and as from the point of moral obligation. He concludes that making a promise without intending to keep it is a sin. So too is the failure to keep it out of the provocation of the carnal soul. He stated that the failure to keep promise will not be considered as a sin only in cases where such failure is due to some unavoidable necessity.

⁶ M. al-Ghazālī, *Iḥyā' 'Ulūm al-Dīn*, Vol. 3. (Egypt: al-Maktabah al-Tijāriyah al-Kubrā, n.d.)

In his *al-Adhkār*, Nawāwī⁷ discusses the varying views of all legal schools on the legal ramifications of promise. He states that Mālikī jurists consider *Waʿd* as binding only if it incurs expenses or labour or liability is undertaken on the basis of promise. Imām Abū Ḥanīfah, Imām al-Shāfiʿī, Imām Aḥmad and a number of Malikiite jurists are of the opinion that fulfilling a promise is neither mandatory (*wājib*) nor enforceable through legal courts.

Ibn ʿAbd al-Barr in his book *al-Tamhīd*⁸ briefly discusses the effect of *Waʿd* on the given promise. The discussion covers the views and arguments of leading Ḥanafite, Malikiite and Shaifiʿite scholars on why they considered *Waʿd* either binding or non-binding.

Yūsuf al-Qarḍāwī in his book *Baiʿ al-Murābahah li al-Amr bi al-Shirāʾ kamā Tajriyatu al-Maṣārif al-Islāmiyyah (1987)*⁹ attributed to the Hanafite school a divergence in *istisnāʾ* (i.e., a contract for the manufacture and sale for a product according to a pre-specified design, deadline and price) in regard to whether it has to be considered binding or non-binding. His approach leads to another question, namely whether such cases have to be considered as contract or *Waʿd*. Hence, further discussion needs to be carried out to clarify this issue.

There are also numerous works done by contemporary Muslim scholars on *Waʿd*. *Al-Wafāʾ bi al-Waʿd* by Muḥammad Riḍā ʿAbd al-Jabbār al-ʿĀnī¹⁰ explains the issue of *Waʿd* according to its literal and technical definition and states the evidence

⁷ Y. al-Nawāwī, ʿĀlī al-Sharbajī, Qāsim al-Nūrī (Ed.). *Ḥilyatu al-Abrār wa Shiʿāru al-Akhyār fī Talkhīṣ al-Daʿwāt wa al-Adhkār al-Mustaḥabbah fī al-Laila wa an-Nahār: al-Adhkār al-Nawāwiyyah*. (Beirut: Muʿassasah al-Risālah, 1992).

⁸ Ibn ʿAbd al-Barr, *Al-Tamhīd*. (Vol. 3). (Pakistan: al-Maktabah al-Qaddusiyah, 1971).

⁹ Y. al-Qarḍāwī, *Bayʿ al-Murābahah li al-Amr bi al-Shirāʾ kama Tajriyatu al-Maṣārif al-Islāmiyyah*, (Duhā: Maktabah Wahbah, 1987).

¹⁰ M.R. al-ʿĀnī, *Quwwatu al-Waʿd al-Mulzimah fī al-Sharīʿah wa al-Qānūn*. Paper presented in the Council of Fiqh Academy on Discharging of Promise (*Waʿd*) and *Murābahah* on Purchase Orders in Kuwait. Organized by The Islamic Fiqh Academy, Kuwait on the 5th meeting on 10th-15th December 1988.

produced by the four legal schools on *Wa'd* either as a binding or non-binding promise.

Ibrāhīm Fāḍīl al-Dabū¹¹ starts with a general discussion of the difference of *'ahd* (contract) and *Wa'd* (promise) based on their definition and the conceptual views of Muslim scholars. He stresses the importance to oblige any concluded *Wa'd*.

'Abdullah Muḥammad 'Abdullah¹² briefly discusses the ruling of *Wa'd* and the different views of *Wa'd* presented by the four legal schools and furnishes with the main line of their arguments and cited evidence.

Nazīh Kamāl Ḥamād¹³ compares between *Wa'd*, *'iddah* and *muwā'adah*. He stresses that *Wa'd* is considered binding under certain circumstances but does not clarify whether *Wa'd* is considered a binding promise in strictly commercial transactions.

According to Yūsuf al-Qarḍāwī¹⁴, *Wa'd* is binding from the perspective of religion and law. His view is based on the relation between *Wa'd* and *maṣlaḥah* (public interest) to support his argument.

Syaikh 'Abdullah bin Manī'¹⁵ discusses in detail the issue of *Wa'd* from the religious perspective and as a moral obligation, furthermore the legal opinions of the

¹¹ I.F. al-Dabū, *al-Wafā' bi al-Wa'd*. Paper presented in the Council of Fiqh Academy on Discharging of Promise (Wa'd) and Murābaḥah on Purchase Orders in Kuwait. Organized by The Islamic Fiqh Academy, Kuwait on the 5th meeting on 10th-15th December 1988.

¹² M. 'Abdullah, *al-Wafā' bi al-Wa'd*. Paper presented in the Council of Fiqh Academy on Discharging of Promise (Wa'd) and Murābaḥah on Purchase Orders in Kuwait. Organized by The Islamic Fiqh Academy, Kuwait on the 5th meeting on 10th-15th December 1988.

¹³ N.K. Ḥamād, *al-Wafā' bi al-Wa'd fi al-Fiqh al-Islāmī: Tahrīr al-Nuqūl wa Murā'āt al-Iṣṭilāḥ*. Paper presented in the Council of Fiqh Academy on Discharging of Promise (Wa'd) and Murābaḥah on Purchase Orders in Kuwait. Organized by The Islamic Fiqh Academy, Kuwait on the 5th meeting on 10th-15th December 1988.

¹⁴ Y. al-Qarḍāwī, *al-Wafā' bi al-Wa'd*. Paper presented in the Council of Fiqh Academy on Discharging of Promise (Wa'd) and Murābaḥah on Purchase Orders in Kuwait. Organized by The Islamic Fiqh Academy, Kuwait on the 5th meeting on 10th-15th December 1988.

¹⁵ 'Abdullah bin Manī', *al-Wafā' bi al-Wa'd wa Ḥukm al-Ilzām bihi*. Paper presented in the Council of Fiqh Academy on Discharging of Promise (Wa'd) and Murābaḥah on Purchase Orders in Kuwait. Organized by The Islamic Fiqh Academy, Kuwait on the 5th meeting on 10th-15th December 1988.

four legal schools and their arguments in regard to *Wa'd* either being considered a binding or non-binding promise.

Hārūn Khalīf Jīlī¹⁶ covers the literal and technical definition of *Wa'd*, the general ruling of *Wa'd* from a religious and moral perspective, and the views and arguments put forward by Maliki jurists who consider *Wa'd* a binding promise.

Syaikh al-Ḥāj 'Abd al-Raḥman Bāh¹⁷ and Syaikh Shīt Muḥammad al-Thānī¹⁸ share the same view on *Wa'd* and why to oblige it from a religious and moral perspective. Their papers do not include any new discussions or conclusions on *Wa'd*.

Having mentioned all the contemporary studies done on *Wa'd*, it must be noted that all these studies focus more or less on theoretical aspects. Although they discuss all the classical views of *Wa'd* and its rulings, they do not venture into the practical aspects of *Wa'd*, particularly when related to banking and finance.

Taqī 'Uthmānī in his book *An Introduction to Islamic Finance (2002)*¹⁹ explains the difference between a promise (*Wa'd*) and a contract (*'ahd*). A promise is to be understood as a one-sided commitment as opposed to a contract which typically requires two sides (with the exception of unilateral contracts that are rare in nature). In commercial transactions the promising party may be compelled by the court if he or she has caused the promise to incur some expenses or undertaken labour or liability on the basis of that promise. However, further research is needed to clarify the subject particularly related to commercial transactions.

¹⁶ Jīlī, Hārūn Khalīf, *al-Wafā' bi al-Wa'd fi al-Fiqh al-Islāmī*. Paper presented in the Council of Fiqh Academy on Discharging of Promise (Wa'd) and Murābaḥah on Purchase Orders in Kuwait. Organized by The Islamic Fiqh Academy, Kuwait on the 5th meeting on 10th-15th December 1988.

¹⁷ 'Abd al-Raḥman Bāh, *al-Wafā' bi al-'Ad wa Injāz al-Wa'd*. Paper presented in the Council of Fiqh Academy on Discharging of Promise (Wa'd) and Murābaḥah on Purchase Orders in Kuwait. Organized by The Islamic Fiqh Academy, Kuwait on the 5th meeting on 10th-15th December 1988.

¹⁸ M. al-Thānī, *al-Wafā' bi al-Wa'd*. Paper presented in the Council of Fiqh Academy on Discharging of Promise (Wa'd) and Murābaḥah on Purchase Orders in Kuwait. Organized by The Islamic Fiqh Academy, Kuwait on the 5th meeting on 10th-15th December 1988.

¹⁹ M. Taqī Usmani, *An Introduction to Islamic Finance*. (London: Kluwer Law International, 2002).

The same approach to the issue of *Wa'd* can be found in Mohd. Ma'sum Billah in *Islamic Law of Trade and Finance: Some contemporary Issues (2001)*²⁰ and Frank E. Vogel and Samuel L. Hayes in *Islamic Law and Finance: Religion, Risk and Return (1998)*²¹. In classical Islamic law unilateral promises are not considered binding, whereas modern jurists view that many transactions in modern finance and banking heavily rely on promises. Therefore, the legal enforceability of a promise is vital for creating an effective financial instrument. However, most Muslim jurists fail to discuss this issue in relation to modern banking and limit their discussion on *Wa'd* as implemented in modern *murābahah* sales. Further research should be done to widen the implementation of this concept in other Islamic finance and banking products such as *mushārah* and *murābahah*.

An important contribution on the subject has been made by Rafiq Yūnus al-Maṣrī in his article *The Binding Unilateral Promise (Wa'd) in Islamic Banking Operations: Is it Permissible for a Unilateral Promise (Wa'd) to be Binding as an Alternative to a Proscribed Contract?*²² This article discusses all the opinions of the classical and modern jurists on unilateral promise, either in binding or non-binding contracts. He briefly explains both forms and illustrates them with cases. He argues that there is no difference between *Wa'd* and *muwā'ada* as both involve two parties. He regards *Wa'd* a valid alternative to a proscribed contract and argues that selling goods which are not in one's possession in form of a promise has to be considered binding because a binding unilateral promise (*Wa'd*) is analogous to a contract.

²⁰ M. Ma'sum Billah, *Islamic Law of Trade and Finance: Some Contemporary Issues*, (Kuala Lumpur: IIUM Press, 2001).

²¹ F.E. Vogel & S.L. Hayes, *Islamic Law and Finance: Religion, Risk and Return*, (London: Kluwer Law International, 1998).

²² R.Y. al-Misri, *The Binding Unilateral Promise (wa'd) in Islamic Banking Operations: Is it Permissible for a Unilateral Promise (wa'd) to be Binding as an Alternative to a Proscribed Contract?*, *Islamic Economics*, vol. 15. 2002, 29-33.

There are also numerous work of contemporary scholars on *ṣukūk*. This study can be found in Taqī ‘Uthmānī’s article, *Ṣukūk and their Contemporary Applications*²³ where he criticizes the application of *ṣukūk* in current practice which does not meet the *Sharī‘ah* ruling. He is in view that 85% of the current structures of Gulf *ṣukūk* do not comply with Islamic law, in particular *mushārahah ṣukūk*, *mudārahah ṣukūk* and *ṣukūk al-istithmār*. He stated that it is unlawful for *ṣukūk* manager to furnish an undertaking to repurchase the assets at face value. The repurchase must be carried out on the basis of the net value of the assets, or at a price agreed upon by the parties at the time of purchase.

Muhammad Ayub in his paper *Securitization, Ṣukūk and Fund Management Potential to be Realized by Islamic Financial Institutions*²⁴ is in the same view with Taqī ‘Uthmānī where he noticed that a number of *ṣukūk* issues lack in respect of *Sharī‘ah* compliance in one way or the other as this will contributes to loss of integrity of the emerging Islamic finance industry in the long-run as it nullifies its very basis and contravenes the investors’ aspiration based on their belief. He believes that funds mobilized using the mode of *mushārahah* can be utilized on the basis of Sharing or Fixed-return modes keeping in view the risk preferences of investors to generate variable or quasi fixed income securities. He also discusses the status of Islamic finance movement, features and structures of various *ṣukūk* securities which is compliance with the *Sharī‘ah* ruling.

²³ M. Tāqī ‘Usmānī, *Sukuk and their Contemporary Applications*, 1-15. Accessed May 10, 2010. <http://www.failaka.com/downloads/Usmani_SukukApplications.pdf>

²⁴ M. Ayub, *Securitization, Sukuk and Fund Management Potential to be realized by Islamic Financial Institutions*, 1-26. Accessed on May 11, 2010. < http://www.docstoc.com/docs/19628563/48-Muhammad-Ayub-Securitization_-Sukuk>

Another important work on *ṣukūk* is done by Muhammad al-Bashir Muhammad al-Amine²⁵ where he clearly discussed various types of *ṣukūk* and supports them with the views of the classical jurists. He also explained that today's transaction involving *ṣukūk* as the Islamic alternative of resource mobilization and as tools of monetary management. He also illustrated his explanations with examples of the *ṣukūk* as been currently been practice in the market.

²⁵ M. A. M. Al-Amine, The Islamic Bonds Market: Possibilities And Challenges, *International Journal of Islamic Financial Services Vol. 3 No. 1*, 1-18. Accessed May 10, 2010. <<http://www.cba.edu.kw/elsakka/albashir.pdf>>