

Trading of Shares via Salam Contract: An Exploratory Study

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Keywords: Salam Contract, Shares, Islamic Capital Market.

Abstract: In 2018, it was reported that Islamic capital market (ICM) leads the Islamic finance industry growth with Sukuk grew by CAGR of 9% and Islamic funds grew by CAGR of 16%. Due to the rapid growth of ICM in Muslim countries, there is a need for more innovative products and services to meet the necessity of both investors and players. In correspondence to that, there have been debates on whether share can be traded using Salam contract in the secondary market. Using qualitative and quantitative method, this paper examines the applicability of shares to be traded using Salam contract from Shariah perspective. It is apparent that Salam in blue-chip shares could be a boon for a more innovative products in Islamic capital market.

1 INTRODUCTION

Salam contract refers to a sale of deferred goods with advance payment and is typically used for financing agricultural products. However, there have been numerous discussions by the classical scholars exploring the possibilities to expand the application of Salam contract in different type of commodities. Share on the other hand is something that represent ownership share in a corporation. In recent years, corresponding with the development of Islamic capital market in Muslims countries, there have been debates on whether share can be traded using Salam contract. Salam in shares is considered as *nawazil* (contemporary issues) as it had never been discussed by any classical scholars in the past.

Share as a Salam commodity is unique and seemingly attractive to financial institutions. While banks usually dispose exchanged commodity using Parallel Salam or *tawarruq* arrangement (which makes the trade seems superficial), with share, banks can actually acquire and hold it to make profit out of it. Such characteristic makes Salam in share a potential alternative for the never-ending debates of the commodity *murabaha/tawarruq* arrangement and a boon for a more innovative product in Islamic capital market.

This paper explores *fiqhi* (juristic) analysis on whether share fulfills the requirements of *muslam fih* (underlying asset of Salam contract). To date, there are two authorized institutions namely Malaysian

Shariah Advisory Council (SAC) of Securities Commission (SC) and Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI) which had issued resolutions on Salam in shares. Interestingly, these two influential institutions had a contradictory opinion towards the subject matter. Thus this paper is an attempt to deliberate and scrutinize existing opinions and investigate the best approach to the issue of Salam in shares.

2 LITERATURE REVIEW

Contemporary scholars dispute on the permissibility of share as *muslam fih* in Salam contract. AAOIFI (2017, p. 575) prohibited Salam in shares for four reasons. The primary basis for the impermissibility is that shares of corporations are ascertained thing (*'ayn mu'ayyan*) thus cannot be a liability. Moreover, Salam in shares implies selling an ascertained item that are not owned and this is not permitted. Further, looking from the market condition, one cannot guarantee the constant availability and ability to deliver shares. These elements failed shares from fulfilling *muslam fih* requirements.

In addition to those arguments, Dr Mubarak Bin Sulayman Aal Sulayman (2015, p.1478) pointed out in his research presented to AAOIFI that shares are exposed to sudden increase and decrease in price.

This high level of volatility in shares will let either one of the parties be in a great chance of loss. He also repudiated the analogic extrapolation of Salam in shares with Salam in commodity from a specific place arguing that shares are not a product of a company rather they are part of the company itself, unlike the extrapolated situation.

Taking into account both of the opinions that recognise share as commodity and the other that see share as representing a company's asset, Dr Ahmad bin Muhammad al-Khalil (2003, p.244 & 245) in his book *al-Ashum wa al-Sanadat wa Ahkamuha fi al-Fiqhi al-Islamiy* views that shares comply with all the *muslam fih* requirements including the ability to determine its attributes, availability and ability to deliver. The only requirements that shares fail to comply are the element of ascertainment and its limitation in quantity. Interestingly, in contrast with Dr Mubarak, Dr Ahmad equalises Salam in shares with Salam in commodity from a specific place/orchard though he is at the view that Salam in commodity from a specific place is impermissible hence Salam in shares carry the same ruling.

On the other side of the fence, the Shariah Advisory Council (SAC) of Malaysian Securities Commission (SC) (2009, vol.4, no.1, p.2-5) ruled that shares satisfy the criteria of *muslam fih*. On the issue of '*ayn mu'ayyan*', according to the SAC of SC, mentioning the name of share is for the purpose of distinguishing it from other shares and this is in agreement with the *muslam fih* condition which requires the *muslam fih's* attribute to be specified. However, there are circumstances that can render shares to be '*ayn mu'ayyan*' e.g. when buyer requests to purchase shares from a specific person. The table below explain some differences between unspecific shares ('*ayn ghayr mu'ayyan*') and specific shares ('*ayn mu'ayyan*'):

Table 1: Comparison Between Unspecific Shares and Specific Shares.

	Unspecific Shares	Specific Shares
Example	Telekom shares listed on Bursa Malaysia	Telekom shares listed on Bursa Malaysia but belonging to Mr A
SAC of SC Malaysia's views	The shares are not ' <i>ayn mu'ayyan</i> ' because: 1 They are available 2 They are deliverable 3 Clearing and settlement are regulated	This is ' <i>ayn mu'ayyan</i> ' because: 1 The request is very specific 2 There is a risk of non-delivery

Source: Quarterly Bulletin of Malaysian ICM, 2009.

Further, on the deliverability of shares, they claimed that delivery of shares at the promised date can be ascertained based on what is already being practised in regulated short selling (RSS).

Dr Ali bin Abdullah al-Wasabi (2017) in his paper presented at "The 10th Future of Islamic Banking Conference" entitled *al-Salam fi al-Ashum wa Qardhiha wa Ijaratiha wa I'aratiha wa Rahniha* concluded that Salam in shares is permissible. As long as it's a big, stable company, he opined that specifying shares should not be a hindrance for shares to be traded using Salam contract. This is because the chances for such company to default in delivery is low. Touching on the share's price volatility, he stated that it could happen to other type of *muslam fih* as well and that minor disparity in the attribute i.e. price is forgiven.

Another proponent of Salam in shares is Dr Khalid Bin Muhammad al-Sayari (2017). He argued that the basis for disallowing Salam in fruits from a small and specific orchard is because the fear that the fruit production may halt thus triggering default in delivery. Relying on this argument, if the company is big and the period of Salam is short it will guarantee the delivery of shares hence it should be permissible. Having said that, he outlined three conditions to safeguard the permissibility of Salam in shares; 1) the period of Salam must be short term according to the market custom, 2) the quantity of the trading shares must be numerous and logically able to be delivered and 3) the price paid must not in a form of share to prevent from usury.

Methodology

This paper explores the applicability of trading share using Salam contract from Shariah point of view. Using qualitative analysis, data pertaining to *muslam fih* requirements collected from primary and secondary sources such as hadith and classical texts are examined thoroughly. Different from previous studies which focus on qualitative approach, this paper attempts to delineate and analyze scholarly write-ups and fatwas issued in both qualitative and quantitative manner. Quantitative approach such as calculating shares' volatility using Standard Deviation method.

3 DISCUSSION

In order to address and resolve the issue of Salam in shares in the best manner, one must first comprehend *muslam fih's* requirements. Thus, a section is dedicated to discuss the requirements of *muslam fih* in the light of the four schools of thought.

Requirements for Subject Matter in Salam Contract

Salam, like other contracts of exchange (*bai*'), comprises three pillars: (i) contracting parties, (ii) form of the contract (offer and acceptance), and (iii) subject matter of the contract. Figure 1 summarises these pillars and their general conditions.

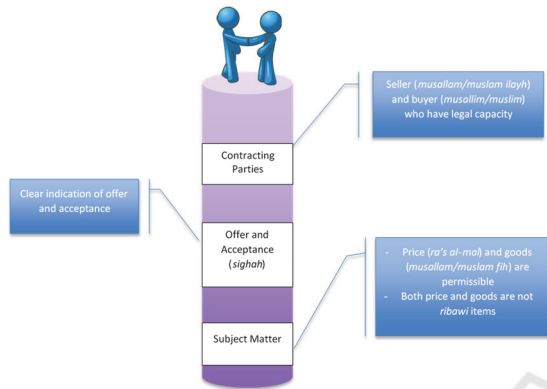


Figure 1: Pillars of Bai'.

This paper focuses mainly on the conditions of Salam's subject matter which refers to the exchanged items, i.e. price (*ra's al-mal*) and goods (*musallam/muslam fih*). Different from other sale contracts, there are additional specific conditions and requirements that the subject matter of Salam must adhere to. These conditions are vital in promoting justice and fairness among the contracting parties of the transaction. The following subsection discusses the major requirements stipulated for both price and goods.

Requirements of Ra's Al-Mal

Ra's al-Mal or price is a crucial element in any exchange contract. It is a consideration for the object/item/good sold. Scholars from the four schools of Islamic jurisprudence agree that payment in Salam must be done in advance to avoid the event of selling debt for debt that is prohibited. Nonetheless, there is a leniency in Maliki's opinion to postpone the payment. Khalil ibn Ishaq (2005, p. 162) when mentioning about Salam's condition stated:

شَرَطِ السَّلْمِ: قَبْضُ رَأْسِ الْمَالِ كُلِّهِ أَوْ تَأْخِيرُهُ ثَلَاثًا وَلَوْ بِشَرَطِ

“Condition of Salam contract: receive full payment of the price or delay it up to three days regardless if it is stipulated.”

The basis for allowing the delay in payment is the maxim ‘ما قارب الشيء يعطي حكمه’ which means ‘something that is close, take the same judgement’. Relying on this maxim, Maliki scholars allow the delay up to three days from the contracting day. However, such relaxation is not permissible if the period of Salam (i.e. delivery of the goods) is lesser than the extended three days as it would not serve the purpose of doing Salam contract (al-Dusuqi, n.d.). **Error! Reference source not found.** summarises the opinion of Maliki on this matter.

Table 2: Maliki's Opinion on Delayed Payment of Ra's al-Mal.

Scenario	Ruling
1 Transaction date: 1 st July 2018 Delivery date: 31 st July 2018	Delay in paying <i>ra's al-mal</i> is allowed up to 3 days
2 Transaction date: 1 st July 2018 Delivery date: 3 rd July 2018	Delay in paying <i>ra's al-mal</i> is NOT allowed

Requirements of Muslam Fih

Salam contract is actually an exception from the general prohibition of sale of non-existent goods (*Bai' Ma'dum*). The hadith below depicts the permissibility of Salam contract:

عَنْ ابْنِ عَبَّاسٍ رَضِيَ اللَّهُ عَنْهُمَا، قَالَ: قَدِمَ النَّبِيُّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ الْمَدِينَةَ وَهُمْ يُسَلِّفُونَ بِالتَّمْرِ السَّنَيْنِ وَالثَّلَاثِ، فَقَالَ: «مَنْ أَسْلَفَ فِي شَيْءٍ، فِي كَيْلٍ مَعْلُومٍ، وَوَزْنٍ مَعْلُومٍ، إِلَى أَجَلٍ مَعْلُومٍ»

Ibn Abbas r.a narrated: The Prophet p.b.u.h came to Medina and the people used to pay in advance the price of dates to be delivered within two or three years. He said (to them), "Whoever pays in advance the price of a thing to be delivered later should pay it for a specified measure at specified weight for a specified period (al-Bukhari, 1422H, vol. 3, p. 85).

It is believed that the wisdom behind the prohibition of *Bai' Ma'dum* is to prevent from ambiguity and uncertainty (*gharar*) in transaction which may lead to dispute between counterparties. Salam contract on the other hand, is deemed permissible - despite the absence of goods during the transaction - to alleviate hardship and facilitate financing for entrepreneurs that need capital to

operate their business. Therefore, to avoid dispute which is the reason of the impermissibility of *Bai' Ma'dum*, there are several conditions relating to the *muslam fih* that must be adhered to.

Deriving from the abovementioned hadith, there are two key conditions for *muslam fih*:

1. Its specification must exactly be known to both parties; and
2. It must be capable to be delivered in the future.

The following paragraphs provide more detailed explanation of these two requirements.

1. Specification of *Muslam Fih*

- (a) *Muslam fih* must be a debt, and hence its attributes must be precisely defined (منضبطة أو صاف) to avoid any dispute in the future.

This includes specifying the type of the commodity, category, features, quality, weight, measurement, etc. Ibn Qudamah (1994, vol.2, p.62) explained the general requirement of the specification:

أن يكون مما ينضبط بالصفات التي يختلف الثمن باختلافها ظاهراً

'It should be an item/object which can be specified via description of those features due to the variance of which the price changes.'

Some Hanafi jurists stipulated that the subject matter of Salam must be a fungible (*mithliyyah*) item. Al-Kasani (1986, vol. 5, p. 218) stated:

"الذَّرْعِيَّاتُ كَالثِّيَابِ، وَالْبُسُطُ، وَالْحَصِيرُ،

وَالْبَوَارِي وَنَحْوَهَا فَالْقِيَاسُ أَنْ لَا يَجُوزَ السَّلْمُ

فِيهَا؛ لِأَنَّهَا لَيْسَتْ مِنْ ذَوَاتِ الْأَمْثَالِ..."

[Things that are measured by] arm's length like garment, carpet, mat, bawari and et cetera are not allowed to do Salam because these are not fungible items...

- (b) *Muslam fih* should NOT be a specifically identified and ascertained item (عين معين).

Although *muslam fih* must be specified, it cannot be too specific as it will bring difficulty for the seller to fulfill the request, thus triggering the element of *gharar* when the seller is not able to deliver the 'debt'. The Shari'ah basis for

this requirement is the hadith of '*Ha'it Banī Fulān*' (Orchard of the Kin of So and So) narrated by Ibn Majah (n.d, vol. 2, p. 765), which mentions:

جَاءَ رَجُلٌ إِلَى النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ،
فَقَالَ: إِنَّ بَنِي فُلَانٍ أَسْلَمُوا - لِقَوْمٍ مِنَ الْيَهُودِ -
وَإِنَّهُمْ قَدْ جَاعُوا، فَأَخَافُ أَنْ يَرْتَدُّوا، فَقَالَ النَّبِيُّ
صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ: «مَنْ عِنْدَهُ؟» فَقَالَ: رَجُلٌ
مِنَ الْيَهُودِ: عِنْدِي كَذَا وَكَذَا - لِشَيْءٍ قَدْ سَمَاهُ -
أَرَاهُ قَالَ: ثَلَاثُمِائَةَ دِينَارٍ بِسِعْرِ كَذَا وَكَذَا مِنْ
حَائِطِ بَنِي فُلَانٍ، فَقَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ
وَسَلَّمَ: «بِسِعْرِ كَذَا وَكَذَا إِلَى أَجْلِ كَذَا وَكَذَا،
وَلَيْسَ مِنْ حَائِطِ بَنِي فُلَانٍ»

A man came to the Prophet (peace be upon him) and said: 'The kin of so and so from the Jews had embraced Islam. However, they are hungry, and I am afraid they may become apostates'. The Prophet (peace be upon him) asked the people around him: 'Who has something [money]?' One Jew said: 'I have so and so (he mentioned a sum of money), maybe he said; "I have three hundred dinars and I will pay such and such price for the products of the farm of the kin of so and so'. The Prophet (peace be upon him) said: "[buy] with such and such price to be delivered after such and such period, but not for the products of the kin of so and so'.

Based on this hadith, **Error! Reference source not found.** illustrates some examples of specification of *muslam fih* that are allowed and disallowed.

Table 3: Types of Specification in *Muslam Fih*.

Scenario	Status of specification
1 (i) I want to buy a gold iPhone7 Plus with the serial number s431278901	⊗ Too specific as only one iPhone will have that serial number
(ii) I want to buy a gold iPhone 7 Plus with a storage of 128GB	⊙ Attributes and characteristics are defined but NOT too specific
2 (i) I want to buy 100kg of green apple from a tree located in orchard A of Cameron Highland	⊗ Too specific as there is only one orchard A in Cameron Highland
(ii) I want to buy 100kg of green apple from an orchard located in Cameron Highland	⊙ Attributes and characteristics are defined but NOT too specific
3 (i) I want to buy Proton's SUV model X70, Premium 2WD, Snow White colour from Car Dealer A in Kuala Lumpur	⊗ Too specific as there is only one car dealer A in Kuala Lumpur
(ii) I want to buy Proton's SUV model X70, Premium 2WD, Snow White colour	⊙ Attributes and characteristics are defined but NOT too specific

From these examples, it is apparent that mentioning the name of a manufacturer or a supplier is deemed too specific like ‘the fruit of particular tree’ or ‘the product of a particular farm’ as mentioned in the hadith of *Ha'it Bani Fulan*. However, there is a commentary from Imam Malik r.a (1994, vol. 3, p. 56) which states:

إِذَا أُرْهِى ذَلِكَ الْحَائِطُ الَّذِي سَلَفَ فِيهِ فَلَا
بَأْسَ بِذَلِكَ وَلَا يَصْلُحُ أَنْ يُسَلَفَ فِي ثَمَرِ حَائِطٍ
بِعَيْنِهِ قَبْلَ أَنْ يُرْهِى.

If the orchard has blossomed, then there is nothing wrong to do Salam with it, but if it is yet to blossom, it is not appropriate to do Salam with fruits from a specific orchard.

Ibn Rushd (2004, vol. 3, p. 221) states that Imam Malik allows mentioning the name of village which the subject matter is produced if the existing of the subject matter is guaranteed upon the time of delivery;

وَأَنَّهُ لَا يَكُونُ فِي مَعِينٍ: وَأَجَازَ مَالِكُ السَّلْمَ
فِي قَرْيَةٍ مَعِينَةٍ إِذَا كَانَتْ مَأْمُونَةً، وَكَأَنَّهُ رَأَاهَا
مِثْلَ الذَّمَّةِ

The subject matter cannot be specified: However, Imam Malik permitted specifying a village if it is safe [minimal risk of delivery failure], as if he considered it tantamount to [any other specify] liability.

Thus, based on some Malikis' opinion, it is permissible to specify the producer of the item or the place where the item is produced if its production is guaranteed and is being able to be delivered on the agreed date.

2. Deliverability of Muslam Fih

(a) Date of delivery

It is clearly mentioned in the hadith of Ibn 'Abbas that along with the criteria of *muslam fih*, date or time of delivery must be known to both parties. There is no dispute on this.

(b) Availability of Muslam Fih

The opinions of scholars vary when it comes to availability of the commodity. Hanafi's requirement is the most stringent

whereby the *muslam fih* must be available on the transaction day until the date of delivery. According to Ibn Mazah (2004, vol.7 p.71), commodity that is inconsistent in its availability is not allowed to be traded by Salam contract:

أَنْ يَكُونَ الْمُسْلِمَ فِيهِ مَوْجُودًا مِنْ وَقْتِ الْعَقْدِ إِلَى
وَقْتِ مَحَلِّ الْأَجْلِ حَتَّى أَنْ السَّلْمَ فِي الْمَنْقَطِعِ لَا يَجُوزُ
وَهَذَا مَذْهَبُنَا.

The muslam fih must be in existence from the day of the contract [is concluded] until the day of delivery. To do Salam on things that is intermittent in its existence is not allowed and this is our mazhab.

Scholars from Hanbali stipulated that the *muslam fih* must usually be safe from shortage. Ibn Qudamah (1994, vol.2, p.65) says:

أَنْ يَكُونَ الْمُسْلِمَ فِيهِ عَامَ الْوُجُودِ فِي مَحَلِّهِ،
مَأْمُونِ الْإِنْقِطَاعِ فِيهِ

The muslam fih must be normally existent and safe from shortage.

It is justified that the condition provides assurance in the deliverability of *muslam fih*.

Unlike Hanafi and Hanbali, Shafi'i and Maliki scholars view that the commodity does not necessarily has to be in presence throughout the period of Salam but enough to be available at the time of delivery. The ability to deliver, as mentioned by Imam al-Nawawi (1991, vol.4, p.11) means the ability to perform delivery on the day promised;

وَإِنَّمَا تُعْتَبَرُ الْقُدْرَةُ عَلَى التَّسْلِيمِ عِنْدَ وُجُوبِهِ.

The ability to deliver means [the ability to deliver] when it is obligatory.

Al-Dusuqi (n.d. vol.3, p.211) further delineates Maliki opinion on this as he says:

(قَوْلُهُ وَلَا يُشْتَرَطُ وُجُودُهُ فِي جَمِيعِ الْأَجَلِ)
 أَي بَلِّ الشَّرْطُ وُجُودُهُ أَي الْفُدْرَةُ عَلَى تَحْصِيلِهِ
 عِنْدَ حُلُولِ الْأَجَلِ وَلَوْ انْقَطَعَ فِي أَثْنَاءِ الْأَجَلِ بَلِّ
 وَلَوْ انْقَطَعَ فِي الْأَجَلِ بِتَمَامِهِ مَا عَدَا وَقْتُ الْقَبْضِ

(He said that the existence [of muslam fih] is not stipulated to be throughout the entire period [of Salam contract]) this means that the condition of existence means the ability to receive [the muslam fih] at the promised time regardless if its existence ceased [sometimes] within the period or even throughout the whole period [of Salam contract] but not on the day of the delivery.

In a nutshell, Salam commodity should under normal circumstances be available in the place/market and it is safe from being unavailable or short of supply. Certainly, it must be present at the date of delivery.

(c) Mode of delivery

With regard to the mode of delivery, all the three schools of thought namely Hanafi, Maliki and Hanbali require the commodity to be delivered on a deferred basis. According to Al-Sarkhasi (1993, vol.12, P.128):

وَالسَّلْمُ لَا يَجُوزُ إِلَّا مُوجَّلاً فَعَرَفْنَا أَنَّهُ لَا
 يُسْتَحَقُّ النَّسْلِيمُ عَقِيبَ الْعَقْدِ فِيهِ بِحَالٍ وَإِنَّمَا
 اسْتِحْقَاقُ النَّسْلِيمِ عِنْدَ حُلُولِ الْأَجَلِ...

And Salam contract is impermissible except [that it must be] in deferred. Thus, we knew that delivery cannot be done

immediately after the contract [concluded] but it must be delivered when the time due.

Meanwhile, Imam al- Shafi'i in his book, al-Umm allows and even encouraged *muslam fih* delivery to be on the spot (1990, vol.3, p.97):

فَإِنْ اخْتَارَ أَنْ يَكُونَ إِلَى أَجَلٍ جَازٍ وَأَنْ يَكُونَ
 حَالًا وَكَانَ الْحَالُ أَوْلَى أَنْ يَجُوزَ...

If he choses [to deliver] on a certain date then it is permissible or if it is now, then [to deliver] now is more appropriate to be allowed...

Imam al- Shafi'i mentioned two bases for his argument. First because *Salam al-Hal* or Salam with spot delivery is more guaranteed and hence, the earlier the buyer receive his goods, the smaller the chance of getting involve with uncertainties. However, this come with a condition that the *muslam fih* must be available on the time of transaction (Mughni al-Muhtaj, al-Sharbini, 1994, vol.3 p. 8).

After having robust understanding on the requirements and conditions of *muslam fih*, the proceeding section will examine whether shares—being a financial instrument that has not been mentioned in any classical texts—qualify to becoming an object of sale in Salam.

Author's View

First, from the contemporary scholars' opinion on Salam using shares, the author deduced that their arguments revolve around the same issues but from different perspectives as summarised in

From the author's viewpoint, the key *raison d'être* in prohibiting Salam in shares is due to high possibility of delivery failure which may arise either because it is too specific or because of its shortage or non-availability. Consequently, this *gharar* would lead to disagreement and dispute between contracting parties in the future.

Table 4: Justifications on the Permissibility and Impermissibility of Salam Using Shares.

Justifications	Opponents	Proponents
Shares being specific items (<i>'ayn mu'ayyan</i>)	 Mentioning the company's name is considered as specific	 Mentioning the company's name is part of identifying share's attribute. It is rather mentioning the name of the share's owner that is deemed as specific.
Risks due to price fluctuation	 Shares in general are high in volatility	 Price fluctuation is normal in goods
Deliverability of shares	 Deliverability can't be guaranteed as it is prone to supply shortage.	 Stock market high regulation minimize the risk of default.

Source: Author's own.

Nevertheless, if this *'illah* of prohibition can be eliminated or at least minimised, shares should be allowed for trading in Salam. This is based on the legal maxim that says 'إذا زال المانع، عاد الممنوع' which means 'when the impediment is removed, the original Shari'ah rule is restored to full effect' (al-Zarqa, 1989, p. 191). The following paragraphs provide justifications to support and establish this argument.

1. Shares and Specification

As mentioned earlier, the most debatable issue regarding the permissibility of Salam using shares is whether they are considered as specific items or not. While the AAOIFI classifies shares as specific items because the company's name is specified in the transaction hence, it cannot be traded using Salam contract, the SAC of SC Malaysia argues that stating the company's name is not deemed as too specific. It is when the owner's name being mentioned that the share is considered as too specific.

Based on all the justifications given above, it can be concluded that there is a positive possibility of letting Salam to be used in shares particularly blue-chip shares. It has also been proven that shares issued by big companies are capable of becoming liability thus, the issue of *'ayn mu'ayyan* is solved.

Now based on that, does specifying shares triggers uncertainty in delivery? The following section will continue to discuss.

2. Availability of Shares

In the previous quote of Imam Malik regarding specification, it is understood that specifying a village of *muslam fih* is permissible if it is safe from delivery failure. In terms of availability of shares, large and stable companies i.e. blue-chip companies, and large stock exchanges often have a dynamic movement in shares trading compared to the smaller one. This is evident by the comparison of Average Trading

Volume (ATV) for Blue-Chip and Non Blue-Chip Company as below:

Table 5: Example of Average Trading Volume for Blue-Chip and Non Blue-Chip Company.

Company	Blue-chip Company		Non Blue-chip Company	
	TNB	Al-Rajhi	Focus Point	Tihama
Average Trading Volume	9,065,320	7,109,422	643,134	146,292

Source: finance.yahoo.com, 2019.

ATV is the average number of shares traded in a particular time frame. The low and high of the trading volume reflects the liquidity, competitiveness and also the volatility of shares. As seen in Table 5, the ATV for Tenaga Nasional Berhad (TNB) and Al-Rajhi are more vibrant and higher compared to the Non Blue-Chip companies. This indicates that both shares are more liquid, competitive and stable in comparison to Focus Point and Tihama.

With regards to deliverability of shares, a research held by Kasri & Lukman (2017) on Bursa Malaysia exchange discovers that the default risk in shares delivery is notably trivial. It is quoted that:

In 2015, out of 2,378,328 registered stock trades, only 56 transactions went into default due to seller's failure to deliver the securities on the settlement date. The clearing house was also not able to deliver the securities via the buying-in mechanism and thus had to go through the cash settlement mechanism. The 56 failed transactions represent about 0.002354595% of the total transactions in 2015.

Based on all the justifications given above, it can be concluded that there is a positive possibility of letting Salam to be used in shares particularly blue-chip shares. It has also been proven that shares issued by big companies are capable of becoming liability thus, the issue of *'ayn mu'ayyan* is solved.

3. Price Fluctuation in Shares

Next, the ever-fluctuating behavior in share's price. As highlighted in the previous section, price fluctuation happens in other commodity as well. Oil for example has high volatility yet it is permissible to be used as the underlying asset for Salam

transaction. Charts 1 and 2 depict the daily price fluctuation in oil i.e. Western Texas Intermediate (WTI) and Brent Crude Oil. Whilst charts 3 to 6 show daily price fluctuation in blue-chip shares i.e. Tenaga Nasional Berhad and Al-Rajhi as well as non blue-chip shares i.e. Gamuda Bhd and IJM Corporation Bhd from the month of August until December 2018.

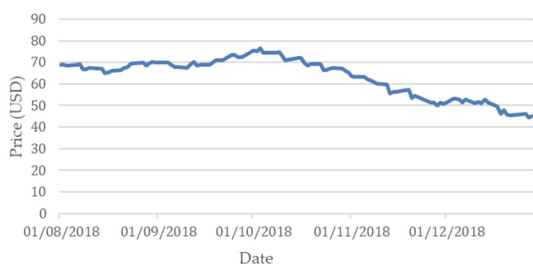


Chart 1: Western Texas Intermediate. Source: U.S. Energy Information Administration, 2018.

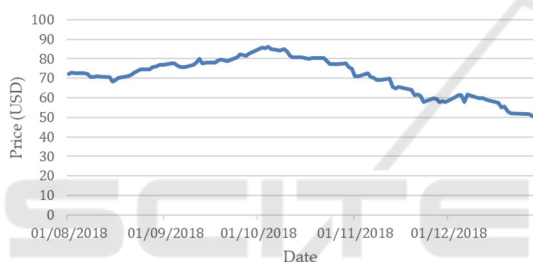


Chart 2: Brent Crude Oil. Source: Macrotrends, 2018.



Chart 3: Tenaga Nasional Berhad. Source: Bloomberg, 2019.



Chart 4: Al-Rajhi Bank. Source: Bloomberg, 2019.

Table 6.

Name	Oil		Blue Chip Company	
	WTI	Brent Crude Oil	TNB	Al-Rajhi
Daily variance	0.049102%	0.041807%	0.015988%	0.020475%
Daily volatility	2.215893%	2.044688%	1.264421%	1.430923%
Annualized volatility	35.04%	32.33%	19.99%	22.62%

The table above depicts the daily variance, daily volatility and annualized volatility occur in all the four shares. TNB shares’ daily and annualized volatility is the lowest compared to the rest variables (smaller number indicates more stability in price i.e. low volatility). Interestingly, even though Al-Rajhi’s chart seems fluctuating vigorously, the standard deviation calculation proves the otherwise. WTI apparently has the highest volatility followed by Brent Crude Oil and Al-Rajhi in those five months. Although this finding challenges the mentioned argument, it is irrefutable that price fluctuation in blue chip stocks is lower compared to stocks of smaller companies. The latter is more volatile, hence exposing to a greater risk.

As an addition, both of the counterparties in shares trading are equally exposed and well informed on the shares’ pricing and risk associated. This further reduces the element of *gharar* in the transaction. Ibn Sirin and al-Sya’bi when they were asked about *Bai’ Gharar* both agreed that information is an essential criterion that determine the legality of a transaction:

لَا يَجُوزُ بَيْعُهُ حَتَّى يَعْلَمَ الْبَائِعُ مَا يَعْلَمُ الْمُشْتَرِي

The trade is not permissible until the seller knows what buyer knows (Abu Bakar, 1409H, vol.4, p.312)

4 CONCLUSION

This paper discussed *Fiqh’s* stance on Salam in shares. It finds that there is dispute between contemporary scholars on the permissibility of trading shares using Salam contract. The dispute revolves mainly among the following issues (i) ascertainment of the subject matter; (ii) inconsistency of its attributes; (iii) volatility in price; and (iv) high probability to default in delivery. These disputed areas (محل النزاع) in determining *muslim fih*, have always been a nonunanimous issue since the time of the classical scholars. To address these issues in shares, the paper had looked into both classical texts and real data to then compare it with the concerns raised. Accordingly, this paper finds that blue-chip stock fairly comply with *muslim fih’s*

requirement and inclines toward allowing Salam in it.

In conclusion, Salam contract was first approved to remove hardship and protect the *maslahah* of farmers. This beautiful form of consideration and compassion should not be limited to support agriculture activities only. Especially in this modern and complex era, any commodity that complies with the requirements should be considered to use Salam contract. Hopefully, this *fiqhi* position will bring the current divergence in Salam in shares ruling to a point of convergence and sparks more innovations in Islamic capital market.

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