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On

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Bay‘ Al-Salam Concept as an Alternative to Non-Shari‘ah Elements in Modern Commodity Futures Trading

by

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The rapid development of contemporary commercial and financial institutions has witnessed an ever-increasing need for financial markets. Such markets, in fact, became a vital part of modern economic activities of most countries, but the core of such markets is derived from non-Islamic economic system. The concern of having Islamic financial markets, consequently, has become the focus of extensive attention by Muslim jurists and economists. Apart from that, most current Muslim economists and jurists disapprove of modern conventional market practices of commodity futures trading contracts and consider the establishment of an Islamic alternative to them as a religious obligation of Muslim. They unanimously advocate the use of al-salam sale contract as a typical alternative mode of financing in place of modern commodity futures trading businesses, but there is indeed a substantive gap of present literature on how to effectively utilize and revitalize this contract to create Islamic commodity futures trading businesses. The subject matter of this paper, hence, appeared as a key position towards elaborating the advocacy of present jurists and economists to originate an Islamic commodity futures trading-based al-salam sale concept, but the purposes of this paper are only confined to identify non-Shari‘ah elements in modern commodity futures trading contracts and eventually to show the potentiality of the conceptual framework of al-salam sale contract to legally replace non-Shari‘ah elements-based investing in futures markets for commodities. The substance of this paper verifies the ability of al-salam sale concept to legally replace all impermissible practices available in modern commodity futures trading contracts in addition to state the essential differences between the conventional commodity futures trading and the Islamic commodity futures trading-based al-salam sale concept. This paper clearly stresses that the activation of al-salam contract in Islamic futures markets for commodities ‘cannot be used for’ and ‘will not lead to’ pure speculation, but rather, will promote actual productive, trading, and exchange purposes. This paper concludes that only strict adherence to Islamic Shari‘ah guidelines of exchange will lead to the realization of the usefulness of al-salam sale concept to make fruitful contributions to the development of Muslim economies.
1. INTRODUCTION

Islamic Shari‘ah forbids ‘taking usury’, ‘inserting non-clarity’, ‘treating gambling’, ‘making exploitation’, and ‘practicing uncertainty’ in commercial and financial businesses irrespective of their nature or purpose. Islamic Shari‘ah, alternatively, regulates the ways and means of conducting commercial and financial activities beside supplies dealers with a variety of modes that can be variously utilized for the benefit of money receivers/investors and money advancers whether at individual, societal, or institutional level. However, the present-day resurgence of fundamental Shari‘ah values has not yet been touched extensively the varied activities of financial markets and hence the efforts of contemporary Islamic economists in steering the direction of those markets to operate on Islamic lines are of considerable significance because the objectives of financially helping the producers, economically enhancing the exchange of commodities and promoting output, and generally improving economic growth and development for a society are the economic and financial features of such markets.

After studying the legality of theoretical roots and practical aspects of mainstream commodity futures trading contracts, as a result, the contemporary Islamic economists and jurists have passed a prohibitive judgment on those contracts. In fact, the disapproval of modern practices of such trading contracts led current Islamic economists and jurists to regard the establishment of an Islamic replacement of those contracts is an important legal obligation in Islamic societies. Simultaneously, they unanimously advocated the use of al-salam sale contract as a typical Islamic alternative to those contracts, although this paper notices that no study, up to the limit of the researcher’s knowledge, has discussed or elaborated on how the concept of al-salam contract can be utilized in place of these financial derivative instruments. This notice is largely important because of showing no considerable progress has taken place in the literature on al-salam sale contract as an advocated alternative to those contracts.

In response to both non-Islamic practices of modern futures trading contracts in commodity markets and the demand of Islamic scholars/institutions in benefiting from the legal practical consequence of al-salam sale contract, consequently, this paper attempts to make an initiative towards building a model of commodity futures trading businesses on the basis of al-salam sale contract which is in continuous rise in modern times. But the first and necessary step on constructing the way to the desired model in this respect is to identify non-Shari‘ah elements of modern commodity futures contracts followed by the clarification of whether the conceptual framework of al-salam sale contract is capable to replace the existent non-Shari‘ah elements in those contracts and how this could be done if the answer is positive to establish eventually
the appropriate conceptual framework of the commodity futures trading businesses based on Islamic Shari’ah guidelines.

This paper, accordingly, is composed of nine sections. The general introduction to the topic of this paper transpires in the first section to introduce the basic points upon which the substance of this paper generate in addition to highlighting the way of organizing the present paper. Section two sheds light on the statement of the problem that creates the key motivator for this paper. The objectives and significance of this paper are clarified in the third and fourth section respectively. The fifth section clarifies the legal framework of al-salam sale contract. In this section, the paper displays the pillars and conditions for the valid application of al-salam contract and shows in the form of tables a general summary of the views of jurists on the general, economic, and financial issues of the application of commodity futures trading businesses-based al-salam sale concept. Section six thereafter outlines an overview of modern futures markets while section seven depicts the authentic Shari’ah problems-based investing in modern futures markets for commodities. The Shari’ah replacement of non-Shari’ah factors available in the current practice of commodity futures trading contracts is uncovered and explained in section eight. The final section exposes the conclusion of the present paper.

2. STATEMENT OF THE PROBLEM

One of the conventional economic activities in financial markets is a commodity futures trading, which can be defined as “A commercial contract calling for the purchase or sale of fixed quantities of goods of defined quality at specified futures dates to a price agreed today, but a small pre-determined percentage of the total price is only payable at the time the contract is entered into”. This economic activity in modern times is greatly important for the exchange of commodities and economic development which are interrelated components to formulize a cycle of economic progress for a society and thus deemed as an integral part of contemporary economic businesses. On the other hand, this paper observes that the Islamic economic system makes a particular reference to the institution of exchange for commodities. To this effect, al-salam sale contract, among others Islamic modes of financing, considers as a trading mechanism and hence is capable to play a substantial role in Islamic institutions of exchange for commodities to achieve the same economic objectives of that of conventional futures markets for commodities. This contract is defined as “A sale contract whereby the seller undertakes to supply a specified quantity of a well-defined commodity of precisely described quality deliverable to the buyer at a greed-upon
future date in exchange of an advanced price paid fully to the seller at the time of
effecting the sale”.

On this basis, this paper finds that the underlying economic objectives of
conventional commodity futures trading activities are not inconsistent with the
principles and teachings of Islamic Economics but the conceptual structure or the
essence of those activities are derived from non-Islamic economic system, that is to
say, the approach and outlook of western commodity futures trading contracts in
modern financial markets are foreign to Islamic Shari‘ah or not operating on Islamic
lines. And this phenomenon remains dominant in Islamic societies despite the
similarity of conceptual definition between al-salam sale contract and the conventional
commodity futures trading contracts. In other words, despite the theoretical idea of al-
salam sale contract is similar to the theoretical idea of conventional commodity futures
contracts, al-salam sale has not yet been revived and used for the purpose of having
modern Islamic financial markets for commodities, that is to say, for the purpose of
originating an Islamic commodity futures trading on the ground of al-salam sale
contract. In fact, the importance of looking at this phenomenon is augmented when
some of the underlying basic concepts as well as some of the conditions of such
trading contracts are exactly the same as were laid down by the Prophet Mohammed
(peace be upon him) for al-salam sale contract.

This paper as a consequence will unveil the accurate harmonization of
advocating al-salam contract as a viable substitute to modern futures trading contracts
in commodity markets to purposely smooth the way for replacing the existent authentic
Shari‘ah problems of modern practices in futures markets for commodities.

3. OBJECTIVES OF THE PAPER

The principal objective of this paper is to generally elucidate the importance of
revitalizing the use of al-salam sale contract to innovate the commodity futures trading
contracts from an Islamic economic perspective in order to smooth the way for
developing similar institutions to that of modern financial markets for commodities. To
pursue primarily the above objective, this study will:

1. Highlight the legal framework of al-salam sale contract.
2. Sum up the general, economic, and financial issues of the application of
   commodity futures trading-based al-salam concept. Then show the views of
   jurists on these issues.
3 Identify non-Shari‘ah elements of modern commodity futures trading contracts.
4 Show the potentiality of the conceptual framework of al-salam sale contract to legally replace non-Shari‘ah elements-based investing in modern futures markets for commodities.

4. SIGNIFICANCE OF THE PAPER

It is noticeable that most of the present applied economics and finance rely on values, norms and laws derived from conventional economics. Consequently, Islamic economic researchers have tried to work diligently to produce more vital research to ‘Islamize’ or ‘replace’ the instruments and applications of mainstream economics. Islamic institutions also found themselves in a position that requires them to diversify the applied Islamic modes of financing in their different economic and financial projects. The efforts of contemporary Islamic economists and institutions are highly useful, but they only focus on a few directions in contemporary economic and financial activities and they greatly confine their efforts, whether in research or practice, to some particular modes of financing, although Islamic Fiqh contains other various modes that are quite beneficial for which they have been enacted.

Al-Salam sale contract, in fact, is one of the neglected modes of finance among the applied modes of present-day commercial and financial institutions, despite it was permitted by the Prophet of Allah Mohammed (peace be upon him) and also was implemented and practiced during his lifetime (peace be upon him) as a means to economic development-based Islamic economic system. The recent theoretical studies of al-salam contract, moreover, compared to other Islamic techniques are quite limited. Most of them are briefly formulated with no link to modern economic and financial issues and functions, that is to say, they are no more than abstract ideas and hence a long list of al-salam’s practical economic and financial issues remain unexplored or undeveloped. Thus this paper is expressly attempting to pay the attention of Islamic commercial and financial institutions to the feasibility of the legal use of al-salam contract for the purpose of generally revitalizing the utilization of this contract in their financial and commercial businesses and particularly activating this contract to replace non-Islamic components of modern commodity futures trading in financial markets.

On the other hand, providing viable Shari‘ah replacements of mainstream financial markets activities is not the subject of much discussion and studies by contemporary economists and jurists. This paper, accordingly, is oriented in general towards revitalizing the concern of financial markets as a multi-functional institution
that could provide economic benefits at individual and societal level. By attempting to use al-salam sale contract as a pure Islamic alternative to commodity futures trading contracts will promote the concept of an Islamic mode of finance to suggest a creative response to some multi-faceted issues in mainstream financial markets activities.

In addition, the heavy reliance on non-Islamic modes of financing by Muslim countries leads non-Islamic societies to create plenty of criticisms of the Islamic economic system, alleging that it has no role to play in financing the projects of economic development because Islamic Shari’ah is incompatible with modern economic and financial developments. These criticisms could be eradicated, as a final target, only if the Islamic economic and financial studies are organized by reference to an Islamic economic and financial guidelines and approaches, as a pure path, for getting acceptable Shari’ah findings applicable to commercial and financial challenges. The concept of the present paper, in fact, is an attempt to satisfy this condition that could serve as best alternative solutions to usury-based financing and development-based western economics in futures markets for commodities.

5. THE LEGAL FRAMEWORK OF ‘AQD BAY’ AL-SALAM

The concern of this section is to show the legal-theoretical aspects of al-salam sale contract to be used as a guiding conceptual framework in making both a sound construction for the objectives of this paper in general and a legal judgment on the commercial and financial functions of this contract in particular.

To be more specific, the legal parameters for the valid execution of al-salam contract will be clear after presenting the pillars and conditions of this contract. Indeed, al-Salam sale contract, as an Islamic economic mode of financing, contains important ‘pillars’ or ‘essential requirements’ for the legal performance of this contract in commercial and financial activities. Each ‘pillar’ of al-salam contract has different essential conditions and therefore each ‘pillar’ can only be validated when its conditions are realized. Beside the implementation of ‘pillars’ of al-salam sale, on the other hand, some ‘conditions’ need to be fulfilled to create a binding legal contract and control the valid application of this contract. These ‘conditions’ are treated under three main categories, which are: (1) ‘conditions’ pertaining to the price of the commodity sold and the commodity sold, (2) ‘conditions’ pertaining to the commodity sold only, and (3) ‘conditions’ pertaining only to the price of the commodity sold. Considering them all helps the dealers to fulfill the requirements of Islamic Shari’ah when they conduct their economic transactions in various activities.
Since al-salam sale has regarded as a typical alternative to the modern commodity futures trading contracts, which are not operated in the context of Islamic Shari‘ah parameters, then it is instructive to display all issues related to the application of commodity futures trading-based al-salam sale concept. These issues might emerge before or during the conclusion of al-salam contract or at the end of the contract period. These issues may be related to either the price of the commodity sold or the commodity sold and may be pertaining to the contracting parties or one of them. Some of these issues indeed appear either due to the changing life circumstances of both parties, to a change in the economic prospects or in the investment plans of the dealers, to a change in the desires of the contracting parties, or to a change in the international or national economic and financial situations. Some issues also subject to appear either because of the seller’s delinquency and default in meeting his deadline or because of the death of either of parties. This section as a consequence will mention in the form of tables the name of general, economic, and financial issues relating to the execution of commodity futures contracts-based al-salam sale concept and will shortly summarize up the views of jurists on all of them.

The mentioned issues in this section, accordingly, will comprehensively supply the theoretical orientations and foundations to smooth the way for the reader to visualize the potentiality of al-salam sale concept in innovating not replicating the Islamic commodity futures trading in financial markets. This means in other words that the profound appreciation of the mentioned issues plays a main role to conceptually replace the authentic Shari‘ah problems-based investing in modern futures markets for commodities which be stated and treated later in the seventh and eighth section respectively.

The paper in the coming pages will summarize up the legal framework of al-salam sale contract in the form of four tables. The first table will cover the ‘pillars’ and ‘conditions’ of al-salam sale contract followed by the second table to sum up the general issues of commodity futures trading-based al-salam concept. The economic issues of commodity futures trading-based al-salam concept are recapitulated in the third table leaving the fourth table to outline the financial issues of commodity futures trading-based al-salam concept. These four tables are as follows:
Table 1: A general summary of the pillars and conditions of al-salam contract as Muslim jurists unanimously lay them down

<table>
<thead>
<tr>
<th>No.</th>
<th>Pillars of al-salam sale contract</th>
<th>Conditions of the pillars of al-salam sale contract</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>al-Sighah (The wording)</td>
<td>1. Clarity of the offer and the acceptance</td>
</tr>
<tr>
<td></td>
<td></td>
<td>2. Conformity between the offer and the acceptance</td>
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<tr>
<td></td>
<td></td>
<td>3. Connection of the offer with the acceptance</td>
</tr>
<tr>
<td>2</td>
<td>al-‘Aqidan (The two contracting parties)</td>
<td>1. Both of them should have full capacity of performance</td>
</tr>
<tr>
<td></td>
<td></td>
<td>2. Both of them should have full authority over the contract</td>
</tr>
<tr>
<td></td>
<td></td>
<td>3. Both of them should have no defects of capacity whether pertaining to reason or not</td>
</tr>
<tr>
<td>3</td>
<td>al-M’qudi ‘Alihi (The object/s contracted for)</td>
<td>(A) Conditions of the price and the good sold</td>
</tr>
<tr>
<td></td>
<td></td>
<td>1. Both of them should be permissible things</td>
</tr>
<tr>
<td></td>
<td></td>
<td>2. Both of them should be free from the effective cause of sales usury</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(B) Conditions of the good sold</td>
</tr>
<tr>
<td></td>
<td></td>
<td>1. The good sold should be accurately described</td>
</tr>
<tr>
<td></td>
<td></td>
<td>2. The good sold should be a debt well-defined in the seller’s liability</td>
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<tr>
<td></td>
<td></td>
<td>3. The good sold should be generally available at the delivery date</td>
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<td></td>
<td></td>
<td>4. The quantity of the good sold should be known</td>
</tr>
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<td></td>
<td></td>
<td>5. The delivery of the good sold should be deferred</td>
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<tr>
<td></td>
<td></td>
<td>6. The delivery date of the good sold should be fixed</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(C) Conditions of the price</td>
</tr>
<tr>
<td></td>
<td></td>
<td>1. The price should be known</td>
</tr>
<tr>
<td></td>
<td></td>
<td>2. The price should be advanced at the time the contract is entered into</td>
</tr>
</tbody>
</table>
Table 2: A general summary of the views of jurists on the general issues of the application of commodity futures trading-based al-salam sale contracts

<table>
<thead>
<tr>
<th>No.</th>
<th>General issues of al-salam contract</th>
<th>The Views of Jurists</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Shafi’i</td>
</tr>
<tr>
<td>1</td>
<td>Conducting al-salam contract using the modern communications</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>Documentation of al-salam contract in witnessing and writing</td>
<td>Lawful</td>
</tr>
<tr>
<td>3</td>
<td>Documentation of al-salam contract by mortgage or security</td>
<td>Lawful</td>
</tr>
<tr>
<td>4</td>
<td>Making al-iqalh for the whole al-salam contract</td>
<td>Lawful</td>
</tr>
<tr>
<td>5</td>
<td>Making al-iqalh for the part of al-salam contract</td>
<td>Lawful</td>
</tr>
<tr>
<td></td>
<td>Utilizing Khiyar al-Majlis in al-salam contract</td>
<td>Lawful</td>
</tr>
<tr>
<td>6</td>
<td>Utilizing Khiyar al-Majlis in al-salam contract when using the means of modern communications</td>
<td></td>
</tr>
<tr>
<td>7</td>
<td>Denise of either of both parties during the duration of Khiyar al-Majlis in al-salam contract</td>
<td>Khiyar al-Majlis does not end by the death of one party and is transferred to his heirs.</td>
</tr>
<tr>
<td>8</td>
<td>Utilizing Khiyar al-Shart in al-salam contract</td>
<td>Unlawful</td>
</tr>
<tr>
<td>9</td>
<td>Duration of using Khiyar al-Shart in al-salam contract</td>
<td>Unlawful</td>
</tr>
<tr>
<td></td>
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</tr>
<tr>
<td>10</td>
<td>Denise of either of both parties during the duration of Khiyar al-Shart in al-salam contract</td>
<td>Khiyar al-Shart does not end by the death of one party and is transferred to his heirs.</td>
</tr>
<tr>
<td>11</td>
<td>Utilizing Khiyar al-‘Aib with regard to al-salam sale price</td>
<td>The seller can either 'revoke the contract and return al-salam price to the buyer' or 'substitute completely the defective money' or 'accept the faulty price, but reduce the amount of goods sold according to the size of defect in al-salam sale price'.</td>
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</tr>
<tr>
<td>12</td>
<td>Utilizing Khiyar al-‘Aib with regard to the goods sold of al-salam sale</td>
<td>The buyer can either 'revoke the contract; return the goods sold to the seller and take back his price' or 'accept the goods sold with the obvious defect without monetary compensation for that', but if the return of goods sold is impossible, then the buyer could accept the defective goods with a monetary compensation for the defect.</td>
</tr>
<tr>
<td>13</td>
<td>Demise of either of both parties during the duration of Khiyar al-‘Aib in al-salam contract</td>
<td>Khiyar al-‘Aib does not expire after the death of its owner; rather it moves to his heirs.</td>
</tr>
<tr>
<td>14</td>
<td>Demise of the seller before fulfilling his promise in al-salam contract</td>
<td>The contract is revoked and the buyer takes back his price</td>
</tr>
<tr>
<td></td>
<td></td>
<td>The goods sold must be instantly given to the buyer.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>The contract is revoked and the buyer takes back his price</td>
</tr>
<tr>
<td></td>
<td></td>
<td>The buyer can 'revoke the contract and take back his price or 'wait until the maturity date'.</td>
</tr>
<tr>
<td></td>
<td>The inheritance of the seller must not be distributed until the maturity date. The buyer, accordingly, can take his due from the inheritance of the seller at the time agreed upon in al-salam contract.</td>
<td></td>
</tr>
</tbody>
</table>
Table 3: A general summary of the views of jurists on the economic issues of the application of commodity futures trading-based al-salam sale contracts

<table>
<thead>
<tr>
<th>No.</th>
<th>Economic Issues</th>
<th>The Views of Jurists</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Shafi’i</td>
</tr>
<tr>
<td>1</td>
<td>Stipulating the existence of the goods sold when conducting the contract</td>
<td>Is not a condition</td>
</tr>
<tr>
<td>2</td>
<td>Specifying the delivery place of the goods sold in al-salam contract</td>
<td>Is a condition</td>
</tr>
<tr>
<td>3</td>
<td>Conducting the contract on usufruct</td>
<td>Lawful</td>
</tr>
<tr>
<td>4</td>
<td>Making the contract in the fruit of a specific farm or village</td>
<td>Unlawful</td>
</tr>
<tr>
<td>5</td>
<td>Submitting the goods sold in installment at fixed dates</td>
<td>Lawful</td>
</tr>
<tr>
<td>6</td>
<td>Concluding the contract based on various goods</td>
<td>Lawful</td>
</tr>
<tr>
<td>7</td>
<td>Selling the goods sold before its possession</td>
<td>Unlawful</td>
</tr>
<tr>
<td>8</td>
<td>Substituting the goods sold after concluding the contract</td>
<td>Lawful</td>
</tr>
<tr>
<td>9</td>
<td>Participating in the goods sold after concluding the contract</td>
<td>Unlawful</td>
</tr>
<tr>
<td>10</td>
<td>Transferring the ownership of the goods sold after concluding the contract</td>
<td>Unlawful</td>
</tr>
<tr>
<td>11</td>
<td>Practicing parallel salam-based original salam contract</td>
<td></td>
</tr>
<tr>
<td>12</td>
<td>Instant delivery of al-salam sale commodity</td>
<td>Lawful</td>
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<tr>
<td></td>
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</tr>
<tr>
<td>13</td>
<td>Concluding the contract based on samples or patterns of goods</td>
<td>Lawful</td>
</tr>
<tr>
<td>14</td>
<td>Marketing-based al-salam contract</td>
<td></td>
</tr>
<tr>
<td>15</td>
<td>Submitting the goods sold before the due date agreed upon in the contract</td>
<td>The buyer has to get the goods sold from the seller if he has no reasons to refuse them</td>
</tr>
<tr>
<td>16</td>
<td>Submitting the goods sold after the due date agreed upon in the contract</td>
<td>The buyer has to get the goods sold from the seller</td>
</tr>
<tr>
<td>17</td>
<td>Inability of the seller to submit fully the goods sold because of A’SAR</td>
<td>The buyer is not allowed to ask his money back from the seller</td>
</tr>
<tr>
<td>18</td>
<td>Inability of the seller to submit fully the goods sold because of EFLAS</td>
<td>1) The seller’s debt has to be paid on a given date agreed upon 2) The seller’s debt has to be paid on the spot and not on a given date agreed upon</td>
</tr>
<tr>
<td>19</td>
<td>Inability of the seller to submit fully the goods sold because of an emergency circumstance</td>
<td>1) The buyer can take back his price or await the goods to be given later to him 2) The contract must be instantly revoked after the buyer takes back his exact price</td>
</tr>
</tbody>
</table>
Table 4: A general summary of the views of jurists on the financial issues of the application of commodity futures trading-based al-salam sale contracts

<table>
<thead>
<tr>
<th>No.</th>
<th>Financial Issues</th>
<th>The Views of Jurists</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Shafi’i</td>
</tr>
<tr>
<td>1</td>
<td>Practicing financial penalty as a method of al-Ta’zir¹</td>
<td>Unlawful</td>
</tr>
<tr>
<td>2</td>
<td>Using financial penalties in al-salam contract</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>Conducting al-salam contract on currency</td>
<td>Lawful</td>
</tr>
<tr>
<td>4</td>
<td>Considering a debt owed to the buyer as al-salam sale price</td>
<td>Lawful</td>
</tr>
<tr>
<td>5</td>
<td>Postponement of al-salam sale price</td>
<td>Unlawful</td>
</tr>
<tr>
<td>6</td>
<td>Participating in al-salam sale price after its payment</td>
<td></td>
</tr>
<tr>
<td>7</td>
<td>Getting back al-salam sale price after its payment</td>
<td></td>
</tr>
</tbody>
</table>

¹ It is of considerable importance to clarify at this juncture that practicing financial penalty as a method of al-Ta’zir does not incur additional amounts on the original debt of the defaulting debtor in al-salam sale contract. However, practicing financial penalty here is to compensate the creditor for the actual damages verifiable by him in case of the debtor’s default or delay in fulfilling the agreed upon-contractual commitments of al-salam contract.
6. **AN OVERVIEW OF MODERN FUTURES MARKETS**

The present age has witnessed an increasing demand of financial markets but the gist of such markets is in line with the western economic system. Before this paper proceeds to the next section to offer an insight into non-shari’ah elements available in the modern practice of commodity futures trading contracts in financial markets, a general clear picture about the nature of western futures markets will be briefly demonstrated. This overview highlights the activities and development of such markets with the passage of time. It is summarized (Khan 1995) in the following points:

1. The modern concept of futures originally was introduced in 19th century in the form of forward trading for the marketing of agricultural commodities. The objective originally was to improve exchange and market operations of agricultural commodities and provide an opportunity to farm producers to hedge against the possible losses arising out of seasonal price fluctuations in the market, but no payment was made in advance by the buyer to the seller at the time the commodity forward contract is entered into. The payment was subject to the delivery time.

2. The prices of agricultural goods at the time of making production decisions are high because of being an off-season for these goods. But the farmers/producers know that when they will harvest their crop and bring it into the market, the price will be much lower because of the abundance of supply. The more they produce or the better is the weather, the more will be the supply in the market and lower will be the price and they may end up not making the break-even point. In order to protect them against the seasonal fluctuations of such goods, producers (as well as consumers) started buying and selling for forward delivery. These dealings (which became known “to arrive” contracts) were in fact a starting point for the modern futures markets.

3. Originally the forward sale contracts were not traded in the secondary market. Only actual commodities were marked after their delivery has been made and received. Later on, however, these contracts found a secondary market for them. The forward sale contracts started getting bought and sold without waiting for delivery. The emergence of this element generated the concept of what is now known “Futures”. Because of that, the conversion of the forward trading into the modern futures market is only a recent phenomenon starting from mid-seventies. This means that the concept of making a futures contract based on a small pre-determined percentage of the total price payable
beforehand but without getting involved in actual production or delivery of any commodity was introduced later on along with the establishment of the clearing house, which in turn led to a tendency in pure speculation activities in such markets.

4. With the passage of time, the scope of the futures markets expanded to include more commodities but they got themselves confined to the commodities that have short-term volatility in prices. As a result, there are goods whose prices may be known to be stable or may not be fluctuating in a certain time frame but they cannot be produced unless there is a definite demand for them. Infrastructure products, buildings, houses etc. fall into this category. These projects may take a long period to be produced. A concept of futures trading to help in the production of such commodities is non-existent.

5. The speculators entered into the market to benefit from the possible gains arising out of their good guesses of futures prices of the goods rather than the profits arising out of the actual sale of the physical goods. The role of speculators is increasing at accelerated rate upon which the producers or farmers were forced to compete with them. In addition, when the segregation of futures market form cash market transpired, it served more the purpose of speculators than of producers interested in hedging. While speculators make profit by confining themselves to futures markets only, the producers have to deal in cash market and futures market to get the benefit of hedging. In addition, when the segregation of futures market form cash market transpired, it served more the purpose of speculators than of producers interested in hedging. While speculators make profit by confining themselves to futures markets only, the producers have to deal in cash market and futures market to get the benefit of hedging. Being an integral part of cash markets, the forward sale contracts were expected to be constrained by the production capacity of the producers, but the modern futures markets do not face such constraints. The process of contract creation can go on and on indefinitely as long as buyers find sellers and vice versa irrespective of the actual supply of the commodity in question.

6. The concept and spirit of hedging are available in the modern futures market whereby the farmers and producers can sell futures markets simply as a hedging device. This means that in the framework of the modern futures markets, they, i.e. farmers or producers, aim to hedge against any unexpected decline in the cash market, but in search of hedging themselves against the uncertainties of future prices in the cash market have to assume another risk in the futures markets which is supposed to compensate them a large extent for any loss in the cash market if the prices in cash and futures markets moved in unison. But since futures markets and cash markets are independent, a farmer or producer will hardly be a good player in the futures markets. His entry in the futures markets thus will not be so much to make money out of the futures
markets as to avoid losing the reward of his productive efforts in the cash markets. This independence also is quite likely to give wrong signals to the farmers/producers and farmers/producers not being players of the futures markets and having forced to compete the professional speculators, they may often end up being exploited by the wrong signals.

7. No doubt cash and futures prices have a tendency to adopt to each other during the delivery period at the delivery points because of the pressure caused by deliveries in the expiring futures, but at any particular point they may not move in a perfect relationship and hence the loss in cash market may not be fully compensated the gains in the futures market. It is believed that the existence of speculation is essential for futures markets because speculators are supposed to provide bridge between hedger X who wants to sell now and hedger Y who wants to buy later.

8. A further development that has taken place in the modern concept of futures trading, is the list of goods not only to include industrial and metallurgical products but also to include financial instruments (like bonds, bills, mortgages, and shares), financial assets, foreign currencies, and stock indices. Inclusion of foreign currencies can be assigned some rationality under the western system because foreign currency is a sort of real goods (as it gives command over a certain basket of goods of a foreign currency) and the risk in their trading was required to be reduced as their prices (exchange rate) too fluctuated widely and frequently. While the futures trading of stock indices simply provide an extra base to the pure speculations to make income merely on their speculations. The necessity to include financial assets in the scope of the futures markets arose out of the same reason as for goods and of foreign exchange, i.e. wide fluctuations in the prices. The fact is that financial instruments futures markets, also known as interest-rate futures markets, provide an easy source of income that does not involve any real economic activity. This is reflected in the fact that trading volume in the interest-rate futures markets is much greater than the corresponding trading volume in the cash market.

9. Consequently, the only rationality or the key element for including of any item in the scope of modern futures markets is the possibility of volatile uncertain fluctuations in its prices. The risk management became the objective rather than means. On the other hand, the innovations are continuing to further expand the scope of futures markets. Introduction of options on futures contracts is one such innovation.
On this basis, the present paper defines futures trading contracts in modern commodity markets as “a commercial contract or an economic activity calling for the purchase or sale of fixed quantities of commodities of defined quality at specified futures dates to a price agreed today, but a small pre-determined percentage of the total price is only payable at the time the contract is entered into”.

In spite of the economic advantages and merits obtainable by investing in modern futures markets for commodities, the gist of such markets is derived from non-Islamic economic system and hence the commodity futures trading in such markets is not operating on Islamic lines. Consequently, one of the present paper’s essential concerns is to uncover the authentic Shari‘ah problems-based investing in modern futures markets for commodities to be concurrently replaced in the context of this paper on Islamic lines of al-salam sale contract. The revelation of those Shari‘ah problems is the issue to which the present paper turns next.

7. **NON-SHARI‘AH ELEMENTS-BASED INVESTING IN MODERN COMMODITY FUTURES TRADING**

At this juncture, this paper will not only highlight the authentic Shari‘ah problems-based investing in modern futures trading contracts in commodity markets, but also, and more importantly, will show the legitimate justifications and economic logical reasons beyond the Shari‘ah judgment on those contracts. The following rationales for commodity futures contracts prohibition emerge from the debate of jurists and economists over the invalidity of modern practices of futures markets for commodities, which are:

1. Trading in futures contracts involves some forbidden elements, namely gambling (qimar), non-clarity (jahalah), exploitation (istighlal), uncertainty (gharar), and unlawful devouring of the property of others (‘akl amual al-nas bil-batil). The existence of these prohibitory elements is insufferable because the legal rules of their prohibition are both invariable throughout the ages and changeless over times. The explanation of the meaning and of the existence of these elements is as follows:

   - Uncertainty: This element exists when there is uncertainty as to whether the seller will deliver the objects sold or not (i.e. goods that have been bought by the buyer). This is particularly when the seller
initially concludes the contract without the intention of delivering the objects sold at maturity or he usually sells what is not with him and does not know whether the commodity sold is obtainable or not. As well, the existence of pure speculation activities in financial markets creates another form of uncertainty (illustrated below).

- Gambling: This element relates to the risk taken in the hope of getting good results. The job of gamblers in financial markets is to make profits out of the purchase and sale of risk, but gamblers merely depend on luck to make their profits. Gamblers, hence, have no commercial interests in the commodities being exchanged in futures markets, meaning that they are unwilling to have real economic businesses in such markets.

- Unlawful devouring of the property of others: This element denotes that the contract of commodity futures in financial markets passes from party to party starting from the first seller who sells items he does not have and the subsequent buyers selling without acquiring possession of the commodities. By so doing, the contract is bought and sold several times until the settlement day, even though the contract is frequently divorced from the product. Buying and selling through this method leads to unlawful exchange by which every party takes the money of other party hoping to get benefits out of nothing, i.e. without the involvement in a real economic activity. This is unjust taking or consuming of others’ property and wrongful creating of gains.

- Exploitation: This factor means, in financial markets, the strong dealer exploiting the weak, where one is obligated to deliver the commodity is not given a chance by speculators to hedge against loss and simultaneously speculators might insist on delivery of a particular grade whose stocks are small. The exploitation also occurs when monopolists make large sales and purchases of contracts not only to stock goods with the intention of causing a shortage in the markets and pushing up the price, but also leading weak dealers to have a loss and financial difficulty over time and ultimately excluding them out of the market. Weak dealers, as a result, would bear the negative financial consequences for a mere exploitation and monopoly and not for something else.
Non-clarity: This factor regards another form of gharar but relates to unfamiliarity with different material aspects of the dealings. It transpires partly because of unawareness of whether the contract will end in physical delivery or not and partly because of the parties’ lack of knowledge regarding which grade of a commodity will be delivered because the dealers in financial markets are permitted to conclude their trading dealings in a number of alternative grades of a commodity. This element is also available because of non-clarity in quantifying potential profits or losses since the full price ‘is not’ and ‘will not be’ advanced on the spot and on the settlement day respectively.

2. The sellers and buyers in financial markets equate paying the full price with having a clear pricing of the good sold without the intention of receiving a delivery. While the latter often comes before the former, i.e. for making an actual payment, but in reality the dealers in such markets stick to pay only a small pre-determined percentage of the total price, after having a clear pricing, of the good sold. In addition, the pre-determined percentage forms a margin account which is marked to the market value of the contract every day, but more deposit is required in this account if value falls below a certain margin and market interest rate is charged or earned on the margin account balance.

3. In futures markets for goods, in addition to the above second point, the net difference between the prices of the two goods to be exchanged is paid in a daily settlement. Because the futures prices are reset daily, as if money is treaded as a commodity, and hence the contract buyer gains cash if the rest price is higher than the previous day’s price, and loses cash if it is lower. The price’s increase and decrease is attached to the decrease and increase of interest rates respectively. The point is that the concept of the financial institutions dealing only in money to generate money is foreign to Islamic Shari’ah, so the dealers shall have to deal in goods if they want to earn halal profit. In other words, no profit is allowed in Islam on advancing money (i.e. the price) only as an economic activity which forms pure usurious treatments. In contrast, money can be validly traded only at spot with actual delivery and it should be generated out of real economic activities.

4. The concept of the following legal maxim “Linking lawfulness of gain to risk-taking” is inapplicable amongst dealers of commodity futures
contracts. The existence of this maxim, as a legal economic principle, is important for the valid application of those contracts. Futures markets for commodities, hence, have no the objective of distributing the trading risks amongst dealers; meaning that 'there are no risk-sharing activities' or 'dealers are not equally bearing the risk in their trading activities' and thus the gain of one party is certainly the lose of the other. This means that acquiring gains out of riskless economic activities, for the benefit of one of the contracting parties only, are unjust. This is why fixing the price in advance for commodities, in modern financial markets, without paying it up immediately serves the interest of speculators/gamblers more than the interest of producers. The negligence of this maxim generates also the elements of uncertainty and exploitation which make Islamic transactions null and void. The existence of these elements in turn creates dispute amongst parties that ultimately mars the transaction too.

5. Futures contracts involve buying and selling commodities before they are received, which means that the dealers in financial markets have no intention of taking delivery but only of liquidating their contracts against the price discrepancies of the commodities sold. The fact is that futures markets for commodities that emerged out of the concept of enhancing the trade of primary commodities have ended up not doing any trade at all.

6. Futures markets permit trading in a number of grades of a commodity to protect hedge sellers from being ‘cornered’ by speculator buyers. Since a number of alternative grades can be tendered, the futures markets are not suitable for the acquisition of the physical commodity, which means that the futures markets provide solely an exchange of unreal deals for the purpose of speculative profit-making, i.e. gains arising out of the price movements of goods when speculators relying on their guesses (i.e. based on their trading

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2 Linking lawfulness of gain to risk-taking, {الغرم بالغم}. This maxim means that disadvantage is an obligation accompanying enjoyment, that is to say, a person who enjoys a thing must submit to the disadvantages attaching thereto (Hooper 1933). Indeed, the consideration of this maxim when concluding commercial and financial transactions is of consequence, as a legal economic principle, for the valid application of those transactions. The negligence of this maxim in turn generates the elements of uncertainty and exploitation which mar those transactions. The existence of these elements also creates dispute amongst parties that ultimately leads those transactions to be null and void too. Therefore, Islamic economic system replaces usury-based loans, interest-bearing debt instruments, and unlawful gains-based economic activities with ‘risk-sharing modes’ or ‘risk-sharing economic activities’ in which both parties should equally bear the risks and share the profits according to the nature of each contract or economic activity that is dealt with.
discernment) and they are unwilling to take actual delivery, that is to say, they are not willing to make profits out of the actual sale of the physical goods.

7. The seller of futures contracts neither owns nor possesses the commodity he sells; the contract that is concluded is, therefore, said to be no more than a paper transaction. For this reason, physical delivery of the commodities in fulfillment of the futures contract generally does not take place and thus does not lead to increase valuable economic activities and that is legally forbidden. Indeed, if futures contracts are allowed to grow on the basis of increasing volume of transactions in the interest-rate futures markets, they will increase their turnover in paper dealings to the extent that cash or physical trading will not only be adversely affected but that the market in the commodity may even be put out of business altogether.

8. Futures sales include the sale of debt for another debt that is invalid in the eyes of Islamic Shari’ah, which means neither the commodity sold nor the price of that commodity is existent or advanced at the time the contract is entered into.

9. A monopoly develops through futures trading contracts in commodity markets by making large sales and purchases of contracts only to force smaller dealers to suffer a loss and suffer hardship accordingly. This action in turn leads to an artificial expansion in the volume of transactions, creates an unnecessary heat in the market, and generates erratic fluctuations in prices because futures dealers sell something they cannot consume or use in their business, upon which they perform no work and to which they add no value.

8. SHARI’AH REPLACEMENT OF NON-SHARI’AH ELEMENTS IN MODERN COMMODITY FUTURES TRADING BASED ON AL-SALAM CONCEPT

At the end of this paper, it is of considerable consequence to elucidate the Shari’ah meaningful solutions to the authentic Shari’ah problems derived from the investment approach of modern commodity futures trading contracts in financial markets. This means that offering Shari’ah alternatives to non-Shari’ah elements of modern commodity futures trading on the basis of al-salam sale contract originates eventually Islamic commodity futures trading-based al-salam sale concept. From this perspective, the following rationales of Shari’ah replacements for non-Shari’ah components in
those modern trading contracts emanate from the legal framework of al-salam sale contract formerly mentioned, which are:

1. Trading in Islamic commodity futures contracts is safeguarded against the existence of impermissible elements, namely uncertainty (gharar), gambling (qimar), non-clarity (jahalah), exploitation (istighlas), and unlawful devouring of the property of others (’akl amul al-nas bil-batil). Non-existence of these prohibitory elements is clear, in Islamic futures markets for commodities, as the following explanation shows:

   • Uncertainty: This element does not exist in Islamic futures markets for commodities because fixing the delivery date of the commodity sold is a condition for the valid application of commodity futures trading-based al-salam contract. The seller, thus, is contractually and legally liable to deliver the objects sold (i.e. goods that have been bought by the buyer) on term day. This element also is non-existent because the agreed-upon commodity sold, in exchange of the advanced payment, should be generally available in the markets at the date of delivery as another condition for the valid application of commodity futures trading-based al-salam contract. The seller, hence, initially does not conclude the contract without the intention of delivering the objects sold at the maturity date. He, therefore, is not selling what is not with him but rather he knows whether the good sold is obtainable or not.

   • Gambling: This element does not transpire because the job of purchasers in Islamic futures markets for goods is to make profits out of real purchase of goods, while the job of the sellers is only to keep to their contractual obligations and meet their deadline. They are, in fact, not buying or selling the risk in the hope of getting good results, but rather they have commercial interests in the commodities being exchanged in futures markets, meaning that they are willing to have real economic businesses in such markets. Above all, advancing the purchase price of the commodity sold at the time of effecting the contract is a condition for the valid application of commodity futures trading-based al-salam sale. The availability of this condition excludes gamblers from the markets since paying the price on the spot is not in line with their interests. This is because their job is to make profits out of the purchase and sale of risk in the hope of getting good results, i.e. depending merely on their luck. Gamblers thus are unwilling to have real economic businesses in such markets.
• Unlawful devouring of the property of others: This element will not take place in Islamic futures markets for commodities because the contracts of commodity futures trading-based al-salam sale will not pass from party to party to be bought and sold several times before the settlement day. In addition, the fulfillment of contractual undertakings of such contracts is legally and conditionally binding on both parties, that is to say, the contracts, that are concluded, are always not divorced from the product. Unlike modern commodity futures trading contracts, the sellers in Islamic futures markets are not permitted to sell their contractual undertakings to others whatsoever. Although the buyers in Islamic futures markets are permitted to dispose of their goods sold before the delivery date, but they are bound to meet certain legal conditions in this regard to keep their contractual undertakings with the sellers intact. Hence, there is no existing method in such markets leads to unlawful exchange (i.e. every party takes the money of other party hoping to get economic gains without the involvement in an real economic activity). This is why the delivery date of the commodity sold should be mutually determined in al-salam contract as a valid condition for the application of this contract.

• Exploitation: This element has no room in Islamic futures markets for commodities because there will be nothing called strong dealers or weak dealers. Because the dealers in such markets have to meet several conditions, either related only to the commodity sold or related only to the purchase price, before signing the contract of commodity futures trading-based al-salam sale. Therefore, either party or the contracting parties will have no way to get around these conditions and if they fail to realize them, then the sale contract becomes legally null and void. This clarification denotes, on the other hand, that the structure and the outlook of Islamic futures markets for commodities generate no motivation for speculators and monopolists to play their exploitative role in such markets unlike the case in western financial markets. Because the existent of speculators, as strong dealers, in western financial markets powerfully entitles them to exploit the weak dealers by not giving them the chance to hedge against loss and simultaneously they might force them to deliver a particular grade of goods whose stocks are small. The exploitation also occurs in western financial markets when monopolists make large sales and purchases of contracts not only to stock commodities with the intention of causing a shortage in the markets and pushing up the price, but also leading
weak dealers to have a loss and financial difficulty over time and ultimately excluding them out of the market. So, weak dealers would bear the negative financial consequences for a mere exploitation and monopoly and not for something else because the institutional arrangements of western futures markets for commodities allow most of the dealers, including speculators and monopolists as a part of them, to bypass the legal provisions of actual delivery through the provisions of the reversing contracts. As well, such institutional arrangements in reality have no enforcement clause to force the dealers in western futures markets for goods to pay the price in full in the event of the exchange of goods which pave an additional way for pure speculators and monopolists to play their exploitative role in such markets.

- Non-clarity: This element is not available at all in Islamic futures markets for commodities because the contacting parties in such markets have the full familiarity of all material aspects of the contract of commodity futures trading-based al-salam sale before their signature. Therefore, the commodity sold should be well-defined and accurately described as well as ‘the quantity’, ‘the quality’, ‘the delivery date’, and ‘the price’ of the commodity sold should be known as well as stated in the contract as conditions for its validity. Automatically, the contract will end in physical delivery and ownership of the commodity sold by which the dealers in such markets, as a result, will have approximately a comprehensive clarity in quantifying potential profits or losses for their own interests.

2. The buyers in Islamic futures markets for goods are legally obliged to submit the full purchase price of the goods sold to the sellers, which reflects their inward intention of having commercial interests in the goods being exchanged in futures markets before receiving them. They, hence, have no choice to pay only a small pre-determined percentage of the total purchase price of the goods sold. Therefore, no place for the margin account to be marked to the market value of the contract every day as it is the case in western futures markets for goods. Non-existence of the margin account in Islamic futures markets for goods leads to have no market interest rate, which is available in western futures markets to be charged or earned according to the decrease or increase of the margin account balance.

3. As a consequence of the above point, calculating the net difference between
the prices of the two goods to be exchanged in order to be paid in a daily settlement is no longer existing in the structure of Islamic futures markets for goods because of advancing the full purchase price on the spot as a condition for the valid execution of the contract of commodity futures trading-based al-salam sale. In such markets, hence, the prices will not reset daily, the money will not be treated in exchange for money, and the price’s increase and decrease will not be attached to the decrease and increase of interest rates respectively, as it is the case in western commodity futures contracts. In addition, the concept of the financial institutions dealing only in money to generate money is inapplicable in the institution of Islamic futures markets because the dealers will have to deal in goods to earn halal profit. Indeed, in Islamic Economics, money can be legally traded only at spot with actual delivery and it should be generated only out of real economic activities.

4. The concept of the following legal maxim {الغنم بالغرم} “Linking lawfulness of gain to risk-taking” is applicable amongst dealers in Islamic futures markets for goods as a legal economic principle for the valid application of the contract of commodity futures trading-based al-salam sale. The implementation of the concept of this maxim realizes the objective of distributing the trading risks amongst dealers; meaning that ‘there will be risk-sharing activities’ or ‘dealers are equally bearing the risk in their trading activities’ in Islamic futures markets for goods. This means that the price is legally paid in full beforehand in such markets as a valid condition for the execution of the contract of Islamic commodity futures trading to circumvent unjust and bias towards either party. This is why fixing the price in advance for goods without paying it up instantly, as it is the case in modern futures markets for goods, serves the interest of speculators/gamblers/traders more than the interest of producers.

5. Trading in Islamic commodity futures contracts-based al-salam sale does not involve buying and selling goods before they are received because the dealers will have the intention of taking delivery not of liquidating their contracts against the price discrepancies of the commodities sold. Delivering and taking the commodities sold at maturity, indeed, is a condition for the valid execution of commodity futures trading contracts-based al-salam sale, meaning that the goals of such contracts will not be broken because upon which Islamic futures markets will be established and operated. This clarification emerges the following two points:
• Islamic futures markets for commodities will have no the purpose of speculative profit-making, i.e. gains arising out of the price movements of goods whereby speculators are unwilling to take actual delivery, that is to say, they are not willing to make profits out of the actual sale of the physical goods. Added to this is the point that advancing the purchase price of the commodity sold at the time of effecting the contract as a condition for the valid application of the contract of commodity futures trading-based al-salam sale excludes speculators from the markets since this condition is not in line with their interests. This is because their job is to make profits out of the purchase and sale of risk in the hope of getting good results, i.e. depending merely on their trading discernment.

• The dealings in Islamic futures markets for commodities will end in physical delivery of the commodities sold and hence absolute paper transactions will be out of the structure and the outlook of such markets. Islamic futures markets for commodities, consequently, will lead to increase valuable economic activities, i.e. they will not increase their turnover in paper dealings, to protect the markets from collapse/falling down. In addition, the transactions in such markets will not include the sale of debt for another debt, which means neither the commodity sold nor the price of that commodity is existent or advanced at the time the contract is entered into. This in turn, most important of all, leads the buyers (price advancers) not to have the intention of reaching the monopoly purposes in the Islamic commodity futures trading-based al-salam concept because of their adherence to Islamic economic moral values as an indispensable requirement, for the whole dealers, when conducting the economic activities in Islamic financial markets.

9. CONCLUSION

This paper has proved that there have been multiple proposals available on contemporary literature recommended the use of al-salam sale contract as a best viable Islamic alternative to the western types of commodity futures trading contracts in financial markets. But there was a substantive gap of contemporary literature on how to effectively utilize this contract as a typical mode of financing in place of modern commodity futures contracts to be operated on Islamic lines. The subject matter of the
current paper, hence, could be driven ahead as a key position towards the arena of elaborating the recommendation/suggestion of the present-day jurists and economists in order to develop the conceptual framework of commodity futures trading contracts-based al-salam sale concept. This paper was confined to identify non-Shari'ah elements in modern commodity futures trading contracts and eventually to show the potentiality of the conceptual framework of al-salam sale contract to legally replace non-Shari’ah elements-based investing in modern futures markets for commodities.

The substance of this paper, consequently, appeared as a combination of theoretical general, economic, financial, and legal issues of al-salam contract to utilize them symmetrically for originating the conceptual framework of Islamic commodity futures trading contracts-based al-salam contract. This was clear by avoiding to imply a carbon copy of western commodity futures trading contracts but through providing pure Shari’ah replacements of non-Islamic elements in those contracts.

It is evident from the foregoing explanation in this paper that there is a need for Muslim societies to study the availability of organizing a futures market for commodities to operate on Islamic lines to financially help the producers, economically elevate the exchange of commodities and promote production/trade, and generally improve economic growth and development upon which the economic welfare and prosperity depend. From this perspective, this paper would confirm that the economic and financial features/objectives of modern commodity futures trading are the brainchild of principles of Islamic Economics and hence the concept of al-salam sale contract for futures trading in commodities is more logical to be used in this regard than the western concept of modern commodity futures contracts. This is because, as it was clear in the comparative analytical manner provided in this paper, al-salam sale concept cannot be used for pure speculation and monopoly purposes, but only for promoting actual productive, trading, and exchange purposes.

This paper, as a result, reflected the essential differences between the Islamic commodity futures trading and the modern commodity futures trading to be substantially as follows:

1. The Islamic commodity futures trading includes the options of condition, session, and defect and its contractual obligations are binding on both parties to end up in physical delivery and ownership of the commodity sold.

2. The Islamic commodity futures trading can be concluded in various goods either of a specific place or of a general one and the full price is either paid in
advance or postponed but not more than the duration of the option of condition.

3. The price, in the Islamic commodity futures trading, is recoverable and it can be either a currency or a debt owed to the buyer by the seller or services of real assets, while the commodity sold can be either a currency or a fungible commodity or services of real assets.

4. The commodity sold, in the Islamic commodity futures trading, can be delivered either instantly or at maturity or in installment at fixed dates and it can be substituted only by mutual agreement amongst parties.

5. In the Islamic commodity futures trading, only the buyer, before the due date, can sell the commodity sold or transfer its ownership to a third party, make an independent parallel salam contract based on the original salam contract, and bring another person to become his partner.

6. In the Islamic commodity futures trading, there are viable legal solutions in case of the seller’s delay because of justifiable emergency situations, his default because of unavoidable emergency situations, his delinquency or his default with no reasons, his A’SAR, his insolvency, and his death.

7. In the Islamic commodity futures trading, both an instant salam and a deferred salam form Islamic marketing techniques and they are revocable, either partially or totally, but only by mutual contentment amongst parties.

In short, introducing the concept of al-salam sale contract as ‘a viable production mechanism’ or ‘a powerful financial instrument’ or ‘a practical trading vehicle’ to replace the present-day commodity futures trading contracts requires serious attention for discovering the possibility of developing an appropriate method to benefit from the conceptual structure and legal framework guidelines of al-salam sale contract as a starting point to construct Islamic financial markets institutions. This paper, on this basis, stresses that only strict adherence to Islamic Shari‘ah guidelines of exchange will lead the realization of the usefulness of al-salam sale concept to make fruitful contributions to the Muslim economies either in Islamic futures markets for commodities in particular or in commercial and financial institutions in general. By so doing, the application of Islamic Economics’ teachings and principles become dominant and the flexibility of Islamic Shari‘ah and its consideration for the needs of mankind will be applicable.
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