Jurnal Syariah, Jil. 23, Bil. 2 (2015) 287-324 *Shariah Journal*, Vol. 23, No. 2 (2015) 287-324

SHARIAH ISSUES IN INTANGIBLE ASSETS[1]

Said Bouheraoua[2]
Shamsiah Mohamad[3]
Noor Suhaida Kasri[4]
Syahida Abdullah[5]

ABSTRACT

Intangible assets are regarded as one of the most important asset classes for financial institutions, and their importance and consideration is rapidly increasing. There are existing, well established conventional standards on intangible assets (IA); however the Shariah standard on IA is discussed rather minimally. Thus, this paper attempts to discuss the vital issues related to intangible assets: recognition and measurement, financing and trading, and zakāh, which represents a grey area for the Islamic finance industry. The research employs critical analysis. It aims to provide clarification on the concept of intangible assets from the point of view of the Shariah as well as an analysis of pertinent

1 This article is partly based on the authors' publication namely 'ISRA Research Paper A Critical Analysis of Sharīʿah Issues in Intangible Assets,' No. 61/2013, with modification and addition.

2 Associate Profesor and Senior Researcher, International Shari'ah Research Academy for Islamic Finance (ISRA), Malaysia, bsaid@isra.my

3 Senior Reseacher, International Shari'ah Research Academy for Islamic Finance (ISRA), Malaysia, shamsiah@isra.my

4 Researcher, International Shari'ah Research Academy for Islamic Finance (ISRA), Malaysia, noor@isra.my

5 Researcher, International Shari'ah Research Academy for Islamic Finance (ISRA), Malaysia, syahida@isra.my

Shariah issues on IA. This research explores the following: (i) there is an issue of gharar in the identification and determination of IA due to non-existence of any physical substance and due to future benefit being a probabilistic matter; (ii) it is generally permissible to finance and trade IA and (iii) zakāh is obligatory on IA if the intention is to trade them either at sale price if they are sold or at market price if they are owned by a trader.

Keywords: *intangible assets, Shariah, recognition and measurement, Islamic finance, zakāh*

INTRODUCTION

Islamic finance has developed rapidly over the decades with growth and development of an array of modern financial products. These products involve tangible and/or intangible assets as their underlying. A tangible asset simply refers to any asset that is physical in nature; while an intangible asset refers to any asset that does not exist physically. Despite the intangibility of the intangible asset, their utilisation in the financial activities has proliferated. Due to that, intangible assets are regarded as one of the important asset classes for financial institutions. Their importance is made conspicuous by the twin phenomena of globalization and liberalization.

This paper thus aims to provide clarity on the concept of intangible assets (IA) from Shariah perspective and to analyse pertinent Shariah issues on this type of assets. It refers to both classical and contemporary Islamic jurisprudence literature in understanding and analysing the issues discussed. It also looks into fatwas, resolutions, standards, and other related literature.

Following this brief introduction, this paper is organized as follows: First, it provides an overview of the literature review on IA. Second, it continues with an explanation of legality of intangible assets from the perspectives of Sharīʿah and Accounting and Auditing Organisation for Islamic Financial Institutions (AAOIFI) Sharīʿah Standards. Third, it analyses the Shariah issues related to intangible assets, specifically on the issues pertaining to quantification of intangible assets; tradability of intangible assets; and *zakāh* payment on intangible assets. This paper concludes by providing some brief parameters for the application of the concept of intangible assets in Islamic finance.

LITERATURE REVIEW

Historically, IA especially trademark and copyright (known as intellectual property) received some form of acknowledgement in old civilisations.[6] This acknowledgement can also be seen in the Islamic jurists' discussions about the rights and usufructs when discussing the concept of property in Islam[7]. Most of studies on IA concentrated on intellectual property where the paramount issue discussed was whether intellectual property was a right that could be protected. Numerous studies concluded that IA is a right that is legally protected. This position is supported by reference to the Quran, the Sunnah, *ijmaʿ* (consensus) and *qiyās* (analogy).[8] Recent study on the legality of IA has been done by Mohd Nurdin Ngadimon[9] where, echoing the position of the earlier traditional jurists, he concluded that IA fall under the category of property.

---

6 Amir H. Khoury, 'Ancient and Islamic Sources of Intellectual Property Protection in Middle East: A Focus on Trademarks,' *IDEA: The Journal of Law and Technology* 43/2 (2003): 153-158; Silvia Beltrametti, 'The Legality of Intellectual Property Rights Under Islamic Law,' in *The Prague Yearbook of Comparative Law 2009*, ed. Mach, T. *et al.* (Prague, 2010), at http://www.digitalislam.eu/article.do?articleid=2729, 12 April 2014.

7 al-Sarakhsī, Muḥammad Ibn Aḥmad Ibn Abī Sahl, *al-Mabsūṭ* (Beirūt: Dār al-Maʿrifah, 1993), vii. 160, xi. 79; Ibn Nujaym, Zayn al-Dīn Ibn Ibrāhīm Ibn Muḥammad, *al-Baḥr al-Rāʾiq* (n.p.: Dār al-Kitāb al-Islāmī, n.d.) v. 277; al-Kāsānī, 'Alā' al-Dīn Abū Bakr Ibn Masʿūd Ibn Aḥmad, *Badāʾiʿ al-Ṣanāʾiʿ fi Tartīb al-Sharāʾiʿ* (Beirūt: Dār al-Kutub al-Ilmiyyah, 1986), vii. 358; Ibn 'Ābidīn, Muḥammad Amīn Ibn 'Umar Ibn 'Abd al-'Azīz, *Rad al-Muḥtar 'ala al-Durr al-Mukhtār* (Beirūt: Dār al-Fikr, 1992), iv. 501; al-Qāḍī 'Abd al-Wahhab (n.d.), *al-Ishrāf 'ala al-Masāʾil al-Khilāf,* ii. 271. http://www.ahlalhdeeth.com/vb/showthread.php?t=191810, 09 October 2013; al-Zarkashī, Muḥammad b. Bahadur, *al-Manthūr fī al-Qawāʿid* (n.p: Wizārah al-Awqāf wa al-Shu'un al-Islāmiyyah, 1982), iii. 222. http://www.ahlalhdeeth.com/vb/showthread.php?t=156724, 9 October 2013 ; Ibn Qudāmah, Abū Muḥammad Muwaffiq al-Dīn Ibn Aḥmad Ibn Muḥammad, *al-Mughnī* (Beirūt: Dār al-Fikr, 1994), ii. 5.

8 Steven D. Jamar, 'The Protection of Intellectual Property Under Islamic Law,' *Capital University Law Review,* 21 (1992), 1079-1106; Khoury, Ancient, 158-206; Samarah, I, 'Mafhūm al-Ḥuqūq al-Malakiyyah al-Fikriyyah wa Ḍawābituhā Fī al-Islām,' *Majallah al-'Ulum al-Insāniyyah* (Sakrat: Jāmi'ah Muḥammad Khayḍīr, 2005). http://www.webreview.dz/IMG/Pdf/_-_1.Pdf, 12 April 2014.; Beltrametti, Legality of Intellectual Property.

9 Mohd Nurdin Ngadimon, 'A Comparative Study of Intangible Assets in Hanafi School with Maliki, Shafi`i and Hanbali Schools of Law and Their Modern Application,' (Unpublished Doctoral Dissertation, The University of Birmingham, Birmingham, 2005), 265.

The importance of IA in today's world, especially in Islamic finance, has attracted the attention of contemporary scholars to extend the above discussion. The analysis went deeper into issues relating to its tradability and rulings to be observed when dealing with it.[10] In addition to the said issues, question relating to the obligation of *zakāh* on IA was being hotly debated.[11]

Currently there are a few studies that focus on analysis of Shariah issues in intangible assets but most of these studies are less systematic and structured. On that basis, this paper differs from previous studies in terms of the discussion of some of these Shariah issues in a more comprehensive manner from Shariah perspective. In addition to closing the gap in the current literature, this paper contributes by offering measurements or parameters for the application of IA.

INTANGIBLE ASSETS FROM THE SHARIAH PERSPECTIVE

The discussion on intangible assets from the Shariah perspective is initiated with the deliberation of the concept of *māl* (property). The discussion is followed by the examination on types of *māl*, the Shariah characterization and ruling of intangible assets. The discussion on the concept of *māl* in Shariah is important in order to determine whether or not intangible assets can be categorized as *māl.*

---

10 See: 'Ājil Jasīm al-Nashmī, 'Bayʿ al-Ism al-Tijāri,' *Majallah Majmaʿ al-Fiqh al-Islāmī*, 5/3 (1998), 2268-2354; Muḥammad Taqī al-'Uthmānī, 'Bayʿ al-Ḥuqūq al-Mujarradah,' *Majallah Majmaʿ al-Fiqh al-Islāmī,* 5/3 (1998), 2353-2388; Wahbah al-Zuḥaylī, 'Bayʿ al-Ism al-Tijāri wa al-Tarkhīs', *Majallah Majmaʿ al-Fiqh al-Islāmī,* 5/3 (1998), 2389-2393; Muḥammad Sa'īd Ramaḍān al-Būṭī, 'al-Ḥuqūq al-Maʿnawiyyah Ḥaq al-Ibdāʿ al-'Ilm wa Ḥaq al-Ism al-Tijārī, Ṭabīʿatuhā wa Ḥukm Shirā'uhā,' *Majallah Majmaʿ al-Fiqh al-Islāmī,* 5/3 (1998), 2395-2416; Engku Rabiah Adawiah Engku Ali, 'Re-Defining Property and Property Rights in Islamic Law of Contract,' *Shariah Journal* 11/2 (2003): 47-60; Islamic Development Bank & Islamic Fiqh Academy, 'Resolutions and Recommendations of The Council of The Islamic Fiqh Academy 1985-2000,' http://www.irtipms.org/pubtext/73.pdf, 30 September 2013; Accounting and Auditing Organisation for Islamic Financial Institutions, *al-Maʿāyir al-Sharʿiyyah* (Bahrain: Accounting and Auditing Organisation for Islamic Financial Institutions, 2012).

11 See: Muḥammad Sa'īd Ramaḍān al-Būṭī, 'Zakāt al-Ḥuqūq al-Maʿnawiyyah,' http://info.zakathouse.org.kw/nadawat/nadwa7tam.htm, 15 September 2013; 'Abd al-Raḥmān al-Ba`li, 'Zakāt al-Ḥuqūq al-Maʿnawiyyah,' http://info.zakathouse.org.kw/nadawat/nadwa7tam.htm, 15 September 2013; al-Nashmī, 'Bayʿ al-Ism al-Tijārī,' 2268-2354; Ḥasan al-Shadhlī, 'Zakāt al-Ḥuqūq al-Maʿnawiyyah,' http://info.zakathouse.org.kw/nadawat/nadwa7tam.htm, 15 September 2013; 'Alī al-Qurah Daghī, 'Zakāt al-Ḥuqūq al-Maʿnawiyyah,' http://info.zakathouse.org.kw/nadawat/nadwa7tam.htm, 15 September 2013.

The Concept of *Māl*

Māl is defined literally as anything owned.[12] Technically, classical jurists have given various meanings to *māl*. The definitions vary from one another according to different juristic approaches to the concept of *māl*.[13] Basically, there are two major views on the definition of *māl*: the majority Ḥanafī view and the view of the majority of jurists.

1. Ḥanafīs' View

According to the prevailing view of the Ḥanafī school, *māl* is limited to something that has a physical feature. Thus, anything that does not have a physical feature such as usufructs and rights are not regarded as property. This view was put forward by many Ḥanafī jurists, and amongst them are al-Sarakhsī[14] and Ibn ʿĀbidīn.[15]

Ibn ʿĀbidīn in explaining Ḥanafī's stance on this matter states that property is something that humans instinctively covet and can be kept for a period of time. According to the prevailing view of the Ḥanafī school, *māl* should fulfil the following characteristics:

a) It has physical features;
b) It can be kept for a long period;
c) It can bring benefit from the Shariah point of view.

Hence, anything that does not have physical features, such as usufruct (*manfaʿah*) and right (*ḥaqq*),is not considered property, based on the classical majority view of the Ḥanafī school. As a consequence of this definition intangible assets are excluded from being classified as property.

However, there are some Ḥanafī jurists who are of the view that property is not limited to tangible things only but should include intangible things, such

---

12 al-Fayrūzābādī, *al-Qāmus al-Muḥīṭ* (Beirūt: Dār al-Kutub al-'Ilmiyyah, 1995) iii, 218; Jamāl al-Dīn Muḥammad Ibn Mukram Ibn Manẓūr, *Lisān al-'Arab* (Beirūt: Dār Ṣādir, 1994), xi, 635.

13 Muhammad Wohidul Islam, 'al-Mal: The Concept of Property in Islamic Legal Thought,' *Arab Law Quarterly* 14/4 (1999): 361-368.

14 Muḥammad Ibn Aḥmad Ibn Abī Sahl al-Sarakhsī, *al-Mabsūṭ* (Beirūt: Dār al-Ma'rifah, 1993), xi, 79 v & ii, 160.

15 Muḥammad Amīn Ibn 'Umar Ibn 'Abd 'Azīz Ibn 'Ābidīn, *Rad al-Muḥtār 'Alā al-Durr al-Mukhtār* (Beirūt: Dār al-Fikr, 1992), iv, 501.

as usufruct. Al-Kāsānī[16] clearly states that, "*Māl* covers the corporeal (*ʿayn*) as well as usufruct (*manfaʿah*)."

2. Majority Jurists's View

The majority of jurists are of the view that *māl* includes tangible and intangible assets. This is evident from their discussion on the concept of *māl*. The Mālikī jurist al-Qāḍī ʿAbd al-Wahhāb [17] for instance, defined *māl* as anything that can be benefited from and is accepted as consideration (*ʿiwaḍ*). Al-Zarkashī,[18] one of Shāfiʿī jurists, defined *māl* as anything that can be benefited from either from *aʿyān (*corporeal matters*)* or from *manāfiʿ* (usufructs) itself. Ibn Qudāmah,[19] one of Ḥanbalī jurists, mentioned *māl* as anything that can be benefited from, in non-necessity situations.

From the definitions given, it can be concluded that the required criteria for considering something to be *māl* or property in the view of the majority jurists are as follows:

a) People consider it as a source of wealth (*tamawwul*);
b) It can be benefited from the Shariah point of view;
c) It can be compensated (*al-iʿtiyāḍ*);
d) It has value.

Based on the above, it can be concluded that definitions given by the majority of jurists and some Ḥanafī jurists are inclusive in a way that they do not limit *māl* to something that has physical features. Accordingly something *maʿnawī* (intangible) can thus be considered as property if it fulfils all criteria.

This view, held by the majority classical Muslim jurists, is adopted by contemporary scholars such as al-Nashmī,[20] al-ʿUthmānī,[21] al-Zuhaylī,[22] al-

16 'Alā' al-Dīn Abū Bakr Ibn Masʿūd Ibn Aḥmad al-Kāsānī, *Badā'īʿ al-Ṣanā'īʿ fī Tartīb al-Sharā'īʿ* (Beirūt: Dār al-Kutub al-'Ilmiyyah, 1986), vii, 385.

17 al-Qāḍī 'Abd al-Wahhāb, 'al-Ishrāf 'alā al-Masā'il al-Khilāf,' http://www.ahlalhdeeth.com /vb/showthread.php?t=191810, 09 October 2013.

18 Al-Zarkashī, Muḥammad bin Bahadur, *al-Manthūr fī al-Qawāʿid al-Fiqhiyyah* (Kuwayt: Wizārah al-Awqāf wa al-Shu'ūn al-Islāmiyyah,1982), iii, 222.

19 Abū Muḥammad Muwaffiq al-Dīn Ibn Aḥmad Ibn Muḥammad Ibn Qudāmah, *al-Mughnī* (Beirūt: Dār al-Fikr, 1994), ii, 5.

20 al-Nashmī, 'Bayʿ al-Ism al-Tijārī,' 2308.

21 al-Uthmānī, 'Bayʿ al-Ḥuqūq al-Mujarradah,' 2369-2371.

22 al-Zuḥaylī, 'Bayʿ al-Ism al-Tijārī,' 2393.

Būṭī[23] and Ali.[24] Internationally recognised Shariah advisory institutions such as Islamic Fiqh Academy of Organisation of the Islamic Conference (IFA-OIC)[25] and AAOIFI[26] have also shared and adopted the majority view of the classical Muslim jurists. In both of these institutions, they have resolved in Resolution no. 43 (5/5) of IFA-OIC and Article no 3/3/3/1 of A AOIFI Sharī'ah Standards no. 42, respectively, that intangible assets are property which has monetary value that entitles it to legal protection and hence any violations is punishable.

The ensuing section discusses the types of property. In Islam each type of property entails its own rulings and conditions, which have implications for the disposal and usage of the property, whether it is tangible or intangible.

Types of *Māl*

Property or *māl* can be divided into many categories based on different considerations. Among the categories related to the issue of intangible assets are:

a) From the aspect of sharing similarities or not among each property, property is divided into two which are comparable property (*māl mithlī)* and non-comparable property *māl qīmī*. *Māl mithlī* is a property that is available in the market and has total similarity with the one in terms of its type or has slight difference until it is not taken into account by the traders or the people. One example of *māl mithlī* is a large amount of books or a specific brand of hand phones that can be easily replaced in the event of damage as they are available in the market. *Māl qīmī* is property for which there is no equivalent replacement, either because it is unique, like a racehorse or a Picasso painting, or because it is not available in the market, such as a brand that is no longer being manufactured and cannot, therefore, be replaced in the event of damage.
b) From the aspect of ownership, property is divided into *māl khāṣ* and

[23] al-Būṭī, 'al-Ḥuqūq al-Maʿnawiyyah.'

[24] Ali, 'Re-Defining Property,' 58.

[25] Islamic Development Bank & Islamic Fiqh Academy, 'Resolutions and Recommendations of the Council of the Islamic Fiqh Academy 1985-2000,' http://www.irtipms.org/pubtext/73.pdf, 30 September 2013. Resolution no.43 (5/5).

[26] Accounting and Auditing Organisation For Islamic Financial Institutions, *al-Maʿāyīr al-Sharʿiyyah* (Bahrain: Accounting and Auditing Organisation for Islamic Financial Institutions, 2012), Standard 42, Article 3/3/3/1.

māl ʿām. *Māl khās* is a property that is specifically owned whether it is individually owned, jointly owned or shared. An example of *māl khās,* is a house owned by a specific person. On the other hand, *māl ʿām* is public property that is not owned by individuals or certain groups. Examples of this type are roads, *waqf* property, water in the river, and many others.

c) From the aspect of recognition and protection by Islam or otherwise, property is divided into *māl mutaqawwam* and *māl ghayr mutaqawwam*. *Māl mutaqawwam* is a possessed property and Islam permit people to benefit from it such as a car that belongs to Ahmad. *Māl ghayr mutaqawwam* is a property with no owner or Islam does not permit people to benefit from it, for example, wine.

d) From the aspect of ability to grow or not, property can be divided into *māl nāmī* and *ghayr nāmī. Māl nāmī* is a property that can grow or can be invested to grow on its own. Example of property that increases its value without investment is gold and silver, or people who make the property to grow like business items. *Māl ghayr nāmī* is a property that does not grow or is not available for investment purposes like food, shelter and others which are basic needs for human.

These categories are directly related to the issue of intangible assets as comparable property (*māl mithlī*) and non-comparable property (*māl qīmī*) are related to the issue of measurement. The *māl ʿām* and *māl nāmī,* on the other hand, are related to the issue of *zakāh*. Whereas *māl ghayr mutaqawwam* is related to the issue of recognition of income generated from non-halal or mixed intangible assets.

Shariah Characterization of Intangible Assets

Based on the prevailing view of the majority of jurists that usufructs are recognized as property, the following section discusses the nature and Shariah ruling on intangible assets, also known as abstract rights. Although the current manifestations of intangible assets were not present during the era of classical Islamic jurisprudence, the classical *fiqh* literature discussed certain intangible property rights, such as easement rights (*ḥaqq al-irtifāq*) and the right of pre-emption (*ḥaqq al-shufʿah*).

The Definition of Intangible Assets

AAOIFI, in its Sharīʿah Standard 42, defines intangible assets as:

> *"Property rights that apply to intangible matters, entitling their owners to the exclusive right to any proceeds arising from them."* [27]

On the other hand, IFA-OIC, in its Resolution no. 43 (5/5), chose to clarify the concept by citing the most important examples, saying:

> *"Business name, corporate name, trademark, literary production, invention or discovery, are rights belonging to their holders and have in contemporary times, financial value which can be traded. These rights are recognized by Sharīʿah and should not be infringed."* [28]

Types of Intangible Assets in Shariah

Jurists have divided intangible rights, according to the authority of granting them consideration, into two categories:

i. Legal rights established by the Shariah without the intermediary of *ijtihād*. They are established for their possessors by an explicit text or the implication of a text; for example, the right of pre-emption, rights of inheritance, the right to maintenance, etcetera.[29]
ii. Customary rights are legal rights that are established for their possessors by virtue of custom and practice. They are legal rights in that the Shariah has recognized the authority of custom and practice in general; however, the primary justification for these particular rights comes from standard practice rather than any specific Shariah text; for example, easement rights such as drainage, passage, etc., and the right step to down/withdraw from a job in favour of another for compensation.[30]

On top of the above categories, AAOIFI is of the view that intellectual rights could be divided into several types based on the nature of the IA. The relevant AAOIFI Sharīʿah Standard 42 states:

> *"Types of intellectual rights: There are various types of moral rights, including: trade name, commercial title, trademark,*

---

27 AAOIFI, *al-Maʿayīr al-Sharʿiyyah.* Standard 42, Article 3/3/1.

28 IDB & IFA, *Resolutions and Recommendations,* 89.

29 Muḥammad Taqī al-ʿUthmānī, *Buḥūth fī Qaḍāyā Fiqhiyyah Muʿāṣirah* (Damascus: Dār al-Qalam, 2003), 80.

30 al-ʿUthmānī, *Buḥūth fī Qaḍāyā Fiqhiyyah Muʿāṣirah*, 84.

commercial license, intellectual property, and artistic, manufacturing, and innovation rights." [31]

It should be noted that, at the beginning of the modern juristic effort to identify the theoretical basis for determining the status of these rights in the Shariah, they were called "literary rights"; then they were called "creative rights". One of those who suggested that the name should be changed was Muṣṭafā al-Zarqā,[32] who pointed out that the term "literary rights" is too limited, being inappropriate for some members of the category, such as trademarks and industrial inventions, commercial titles and other intangible rights that have nothing to do with literary effort.

Recognition of Intangible Assets in Shariah

This section delineates the Shariah recognition of IA, based upon the texts of the Quran and the Sunnah, and the statements of the Righteous Predecessors (*al-salaf al-ṣāliḥ*), as well as Islamic legal maxims and principles of *uṣūl al-fiqh* that give consideration to this type of asset.

a) Evidence from the Quran and Sunnah Relevant to Intangible Assets

Verses from the Quran that affirm the right of ownership and the obligation to preserve it from any transgression represent general evidence in respect to intangible assets. Additional evidence exists in verses that deal with rights associated with intangible assets or abstract moral rights, such as the right to blood money in exchange for waiving the right to retribution against the murderer, as mentioned in Allah's statement:

يَٰٓأَيُّهَا ٱلَّذِينَ ءَامَنُواْ كُتِبَ عَلَيۡكُمُ ٱلۡقِصَاصُ فِي ٱلۡقَتۡلَىۖ ٱلۡحُرُّ بِٱلۡحُرِّ وَٱلۡعَبۡدُ بِٱلۡعَبۡدِ وَٱلۡأُنثَىٰ بِٱلۡأُنثَىٰۚ فَمَنۡ عُفِيَ لَهُۥ مِنۡ أَخِيهِ شَيۡءٞ فَٱتِّبَاعُۢ بِٱلۡمَعۡرُوفِ وَأَدَآءٌ إِلَيۡهِ بِإِحۡسَٰنٖۗ

"You who believe, fair retribution is prescribed for you in cases of murder...but if the culprit is pardoned by his aggrieved brother, this shall be adhered to fairly, and the culprit shall pay what is due in a good way."

(Surah al-Baqarah, 2: 178)

[31] AAOIFI, *al-Maʿāyīr al-Sharʿiyyah*, Article 3/3/2.

[32] Muṣṭafā Aḥmad al-Zarqā, *al-Madkhal ilā Naẓariyyah al-Iltizām al- 'Ammah fī al-Fiqh al-Islāmī* (Damascus: Dār al-Qalam, 1999), 32.

Another example is the right of inheritance, mentioned in Allah's statement:

صلے

يُوصِيكُمُ ٱللَّهُ فِيٓ أَوۡلَٰدِكُمۡ

"Allah charges you concerning [the inheritance for] your children..."

(Surah al-Nisā' 4: 11)

Although the Shariah has prohibited exchanging these two rights for wealth, it has recognised them as moral financial rights.

As for the Sunnah, the most relevant evidence on moral rights is the following:

First, the right of pre-emption to a co-owner partner or neighbour. Pre-emption has been defined in Islamic legal terminology as,

"The right to claim ownership of a sold immovable object, thus taking it from the buyer (with or without his consent) in exchange for its price and any expenses that he paid"; or "a right established for an old partner over a new partner, to take ownership of his share with or without his consent, with fair compensation." [33]

Pre-emption has been affirmed in the *Ḥadīth* of Jabir, who said:

جعل رسول الله صلى الله عليه وسلم الشفعة في كل مال لم يقسم، فإذا وقعت الحدود، وصرفت الطرق، فلا شفعة.

"The Messenger of Allah (p.b.u.h.) [only] decreed pre-emption in property that has not been divided; however, when boundary lines are established and paths are laid down, there is no pre-emption." [34]

He also reported:

قضى رسول الله صلى الله عليه وسلم بالشفعة في كل شركة لم تقسم، ربعة

---

33 al-Wizārat al-Awqāf wa al-Shu'ūn al-Islāmiyyah, *al-Mawsūʿah al-Fiqhiyyah al-Kuwaytiyyah,* vol. 26 (Kuwayt: al-Wizārat al-Awqāf wa al-Shu'ūn al-Islāmiyyah, 1992), 136.

34 Muḥammad Ibn Ismāʿīl al-Bukhārī, *Ṣaḥīḥ al-Bukhārī*, Bāb Bayʿ al-Sharīk min Sharīkihi, *Ḥadīth* no. 2213 (n.p: Dār Ṭūq al-Najāḥ, 1422AH), iii, 79.

أو حائط، لا يحل له أن يبيع حتى يؤذن شريكه، فإن شاء أخذ، وإن شاء ترك، فإذا باع ولم يؤذنه فهو أحق به.

"The Messenger of Allah (p.b.u.h.) decreed pre-emption in every joint ownership, [such as] a dwelling or an orchard. It is not lawful for [a partner] to sell [his share] until his partner gives his consent. If [the other partner] wills, he may buy it, or he [may] abandon it if he wills. If [a partner] sells it without getting the consent of [his partner], [his partner] has the greatest right to it." [35]

Second, the *Ḥadīth*,

لاضرر ولاضرار

"Harm shall neither be inflicted nor reciprocated." [36]

AAOIFI regards this *ḥadīth* as the most important text on intangible assets because it has prohibited infringement of any rights possessed by a person, whether that right is tangible or intangible.

Third, narrations from the *Salaf.* Among the narrations from the Muslim predecessors (*salaf*) that support the consideration of intangible assets is the following:

"It is reported that a man wanted to sell his house; when a buyer expressed his intention to purchase it, the owner said: "I will not turn the house over to you until you also purchase from me the proximity to the neighbour." The buyer said: "Who's the neighbour?" The owner said: "Saʿīd ibn al-ʿĀṣ." They then began negotiating an increase in the price. The buyer said: "Have you ever seen anyone buying or selling proximity to a neighbour?" The owner replied: "Would you not be willing to pay for proximity to a neighbour who, when I treated him badly, treated me well; and who, when I treated him discourteously, was forbearing with me; and who, when I had difficulties, eased my burden?" News of this reached Saʿīd Ibn al-ʿĀṣ, who sent him 100,000 dirhams."[37]

---

35 Muslim Ibn al-Ḥajjāj Abū al-Ḥasan al-Qushayrī al-Naysābūrī, *Ṣaḥīḥ Muslim,* bab al-Shufʿah, *Ḥadīth* no. 1608 (Beirūt: Dār al-Fikr, 1995), vi. 38.

36 Mālik Ibn Ānas, *al-Muwaṭṭāʿ, Ḥadīth* no. 2895 (n.p.: Mu'assasah al-Risālah, 1412AH), ii. 467.

37 Ḥisān ʿAbd al-Azīz al-Salmān, *Mawārid al- Ẓam'ān li Durūs al-Zamān* (n.p., 1424AH), iii. 492.

b) The Consideration of Custom and Things as They Are

Classical Muslim jurists were of the view that custom and the dealings among people are evidence for considering something as property. Imām Mālik stated:

> ولو أن الناس أجازوا بينهم الجلود حتى تكون لها سكة وعين لكرهتها أن تباع بالذهب والورق نظرة.
>
> *"If people were to accept leather [as a medium of exchange] among themselves and were to turn it into minted money, I would dislike that it be sold for gold or silver on deferment."* [38]

In other words, the rules of *ribā al-faḍl* would apply to it just as they do to gold and silver coins. If something were considered property amongst the people, jurists would use this customary practice as a criterion for deciding if it is considered property by the Shariah. They said:

> *"Qualifying as property is established by the public, or a portion of them, treating a thing as property."* [39]

One of the legal maxims that support this view is :

العادة محكمة

"*Custom is an arbiter*."

Another legal maxim that supports the recognition of intangible assets as a form of property is the maxim:

حكم الحاكم يرفع الخلاف

"The decision of the ruler ends legal controversy." [40]

Although the Ḥanafī opinion may be recognized as a legitimate opinion in the classical legal dispute on the definition of property, the recognition by governments and their laws that intangible assets are property and have financial value settles this dispute in favour of the majority opinion, especially when there is no difference from one jurisdiction to another on this matter. They all grant legal recognition to intangible assets as a form of property and

---

38 Sahnūn Ibn Sa'īd Ibn Ḥabīb al-Tanūkhī, *al-Mudawwanah al-Kubrā*, ed. Umayrat, Z. (n.p: Dār al-Kutub al-'Ilmiyyah, 1994), iii.5.

39 Ibn 'Ābidīn, *Rad al-Muḥtār*. iv. 501.

40 Aḥmad Ibn Muḥammad al-Ḥanafī al-Ḥamawī, *Ghamz 'Uyūn al-Baṣā'ir fī Sharḥ al-Ashbāh wa al-Naẓā'ir* (Mecca: Dār al-Bāz, 1985), iii. 113.

grant them protection on that basis. The IFA-OIC called attention to this point in its resolution on the subject, stating:

> *"Business name, corporate name, trademark, literary production, invention or discovery are rights belonging to their holders and have in contemporary times, financial value which can be traded. These rights are recognized by the Sharīʿah and should not be infringed."*[41]

Al-Khafīf further clarifies this point by saying:

> *"Some jurists have explicitly stated that qualifying as property is an attribute of things that is based solely upon people treating them as property and as the subject of their transactions; and that would not be so unless their need [for those things] called them to do so. They incline to those things by their nature and because it is possible to establish control over them to the exclusion of other parties' claims upon them. It is not necessary that such things be capable of being saved for a time of future need. It is sufficient that it be possible to gain access to them when they are needed. This attribute is found in benefits as well as many other rights. When it is present in something, then it qualifies to be defined as property, based upon people's customs and transactions."* [42]

In contemporary Shariah research, the *fiqh* academies and bodies supporting Islamic financial institutions have recognised intangible assets, such as business name, corporate name, trademark, copyrights and patents as property, and have approved their exchange for property.

The point of the preceding discussion is that intangible assets are property that are recognised by the Shariah, hence they deserve legal protection and it is permitted, in general, to exchange them for consideration.

Intangible Asset in Accounting and Auditing Organization of Islamic Financial Institution (AAOIFI) Sharī'ah Standards

Intangible asset is not mentioned in AAOIFI's Accounting Standards. However, AAOIFI has issued a Sharī'ah Standard 42 on "Financial Rights and their disposition" in 2012. Though the Standard is not dedicated to intangible asset, a

---

41 IDB & IFA, *Resolutions and Recommendations,* 89.

42 'Alī al-Khafīf, *al-Milkiyyah fī al-Sharīʿah maʿā al-Muqāranah bī al-Sharā'iʿ al-Waḍʿiyyah* (Egypt: Dār al-Fikr al-'Arabī, 1996), 58.

considerable part of it is directly related to it. The following is a brief summary of issues related to intangible assets in the AAOIFI Sharīʿah Standards 42: [43]

a) Business name, corporate name, trademark, literary production, invention or discovery, are rights belonging to their holders and have in contemporary times, financial value which can be traded. These rights are recognized by Shariah and should not be infringed.
b) Disposing of intangible rights and transferring any of them for monetary recompense is allowed when it is free of ambiguity, fraud and deception. That is because they are considered financial rights.
c) Commercial license: It is a right given by the authority to certain businessmen to engage in specified activities. The license holder is allowed to dispose of it with or without recompense, except when it is explicitly prohibited by law.
d) Financial rights can be acquired by contracts, stipulated conditions, inheritance, or court order. At times, they are the result of precedence when all those Shariah conditions are met which are required for any cause resulting in a right.

The Standard has also stated some intangible assets discussed in the classical books of *fiqh*. Among these intangible assets are:

a) Easement rights (*ḥaqq al-irtifāq*):

Which means the established right of one real estate property over another. For instance, watering right, the right of watercourse, the right of rivulet, and the right to passage.[44]

b) The right of pre-emption (*ḥaqq al-shufʿah*):

It is the right to take possession of the sold property from the buyer at its sale price, even without his consent. The right of pre-emption is established for the partner in property or for a neighbour.[45]

c) The right of vacating the premises (*ḥaqq al-khuluw*):

Vacating the premises is a right based on the right of tenant to stay in the property or business place.[46]

---

43 AAOIFI, *al-Maʿāyīr al-Sharʿiyyah*, Articles 3/3/3/1, 3/3/3/2, 3/3/3/3 & 3/4.

44 AAOIFI, *al-Maʿāyīr al-Sharʿiyyah*, Article 5/1.

45 AAOIFI, *al-Maʿāyīr al-Sharʿiyyah*, Article 7/1.

46 AAOIFI, *al-Maʿāyīr al-Sharʿiyyah*, Article 8.

The Standard has also set some condition for compensation for rights (*al-iʿtiyāḍ ʿalā al-ḥaqq*) where it allows all kinds of compensations except for anything causing harm or contravening Shariah principle.

As for the methods of disposing of rights, AAOIFI states that: [47]

> *"the starting principle for all financial rights is that they accept disposition, and the owner of a right has the absolute right to dispose of his right in accordance with the principles and provisions of the Sharīʿah, especially the following:*
>
> *a. Rights should not be used highhandedly.*
> *b. The public interest is given priority in case the use of property rights clashes with it.*
>
> *Subject to consideration of what has been stated in this standard, the ways in which rights can be legally disposed include: all kinds of exchange contracts, donations, rebates, partnerships, and assignments of rights; Standard 7 is to be observed in case of assignment."*

The clauses of AAOIFI Sharīʿah Standard stated above are directly related to the issue of intangible assets from the Shariah perspective especially the issues of recognition, measurement, valuation, tradability and *zakāh* payment, therefore, this shall be the premise of our next critical analysis of Shariah issues and a term of reference when it comes to make a Shariah opinion.

ANALYSIS OF SHARIAH ISSUES IN INTANGIBLE ASSETS

Since there is no Islamic accounting standard on intangible assets, this section will analyse some Shariah issues related to intangible assets under the AAOIFI Sharīʿah Standard 42. The issues to be analysed are: recognition and measurement, financing and tradability and *zakāh* obligation.

1. Shariah Issues on the Recognition of Intangible Assets

With regards to the recognition of intangible assets, two main Shariah issues may arise. The first is the issue of identification and determination of the intangible asset because of the non-existence of its physical substance; and

[47] AAOIFI, *al-Maʿāyīr al-Sharʿiyyah*, Article 11/1 & 11/2.

the second is the probability of its future benefits, which may raise the issue of excessive uncertainty (*gharar fāḥish*).

As for the first issue, namely, the issue of identification and initial recognition of the intangible asset because of the non-existence of its physical substance, though there exist an established *fiqhī* opinion rejecting the consideration of usufruct as property that makes intangible assets not considered as well, contemporary scholars, AAOIFI and IFA-OIC have adopted the definition of property (*māl*) that includes usufructs and services. They have also considered intangible assets as real property and the IFA-OIC stated above has clearly established this point where it states that:

> *"Business name, corporate name, trademark, literary production, invention or discovery, are rights belonging to their holders and have in contemporary times, financial value which can be traded. These rights are recognized by Sharīʿah and should not be infringed."* [48]

> *"AAOIFI emphasised on the IFA-OIC resolution by adopting word by word the IFA_OIC resolutions in defining intangible assets."* [49]

Therefore, although there are those who claim that identification and determination of intangible asset as property raises Shariah issues, they represent a small segment of scholars compared to the vast majority, and their arguments are not as strong and rational as the arguments of the majority of scholars. Furthermore, the business reality is that such assets are recognised as possessing financial value.

With regards to the issue of probability of expected future economic benefits, which are quantified based on estimation, the main Shariah issue is the possibility of the existence of excessive uncertainty (*gharar fāḥish*),which is one of the prohibited elements in Islamic commercial transactions. International Sharīʿah Research Academy for Islamic Finance (ISRA) (2010:131) has defined *gharar* as:

---

48 IDB & IFA, *Resolutions and Recommendations,* 89.

49 AAOIFI, *al-Maʿāyīr al-Sharʿiyyah*, Article 3/3/3/1.

> *"Something for which the probability of getting it and not getting it are about the same. Some said: something whose acquisition is uncertain and its true nature and quantity are unknown."* [50]

The prohibition of *gharar* can be deduced from the Quran:

يَٰٓأَيُّهَا ٱلَّذِينَ ءَامَنُواْ لَا تَأۡكُلُوٓاْ أَمۡوَٰلَكُم بَيۡنَكُم بِٱلۡبَٰطِلِ إِلَّآ أَن تَكُونَ تِجَٰرَةً عَن تَرَاضٖ مِّنكُمۡۚ وَلَا تَقۡتُلُوٓاْ أَنفُسَكُمۡۚ إِنَّ ٱللَّهَ كَانَ بِكُمۡ رَحِيمٗا ٢٩

> *"O you who believe, do not consume one another's wealth wrongfully; rather, let there be trade by mutual consent; and do not kill one another, for Allah is merciful to you."*
>
> (Surah al-Nisā', 4: 29)

There is also the *Ḥadīth* reported by Abū Hurayrah:

نهى رسول الله صلّى الله عليه وسلّم عن بيع الحصاة، وعن بيع الغرر

> *"The Messenger of Allah forbade sales of pebble and sales that involve gharar"* [51]

The issue of concern here is whether the probability of expected future economic benefits that is based on estimation is considered excessive uncertainty (*gharar fāḥish*), and is therefore prohibited, or is it considered light uncertainty (*gharar yasīr*) that is tolerated by the Shariah. By reference to the International Accounting Standards 38, we can identify measures proposed by the standard to increase the level of probability of expected future economic benefits. The Standard has set conditions strengthening the level of probability such as:

> *"An entity shall assess the probability of expected future economic benefits using reasonable and supportable assumptions that represent management's best estimate of the set of economic conditions that will exist over the useful life of the asset."* [52]

---

50 International Shari'ah Research Academy for Islamic Finance, *ISRA Compendium for Islamic Financial Terms* (Kuala Lumpur: International Shari'ah Research Academy for Islamic Finance, 2010), 131.

51 Muslim, *Ṣaḥīḥ Muslim*, Bāb Buṭlān Bayʿ al-Ḥasāḥ wa Bayʿ fīhi al-Gharar, *Ḥadīth* no. 1513, v. 127.

52 IAS Plus, *International Accounting Standards IAS 38, Intangible Assets* (N.D.), Para 22.

and

> *"An entity uses judgement to assess the degree of certainty attached to the flow of future economic benefits that are attributable to the use of the asset on the basis of the evidence available at the time of initial recognition, giving greater weight to external evidence."* [53]

The Standard also proposed to measure it at cost in the early stage of recognition to guarantee an accurate recognition. The question to be answered is does the Shariah recognise a property based on this level of probability of future economic benefit?

An examination of classical *fiqh* literature reveals two major views:

The **first** view is that any consideration of property or right based on future probability is prohibited. The supporting evidence of this view is as follows. First, one of the main objectives of the Shariah regarding property (*māl*) is to guarantee certainty and stability (*thabāt*). Second, one of the five leading legal maxims states:

اليقين لا يزال بالشك

"Certainty is not overcome by doubt."

This is in addition to other legal maxims that indicate reliance on certainty, such as:

لا يثبت حكم الشيء قبل وجوده

"A thing is not considered to exist before its existence."

المتوقع لا يجعل كالواقع

"That which is expected to occur cannot be treated like that which has already occurred.."

and,

الأصل في الصفات العارضة العدم

"The presumptive rule is that transitory attributes do not exist."

[53] IAS Plus, *IAS 38*, Para 23.

Hence, any future economic benefit that is probable should not be recognised until it exists. This is to ensure the protection of property and avoid disputes among contracting parties.

The **second** view is that, although the achievement of certainty is a major objective of Islamic law, this does not mean that Islamic law rejects applying probability. This is evident from the fact that consideration of preponderant presumption (*ghalabat al-ẓann* or *al-ẓann al-rājiḥ*) in Shariah rulings and occurrences has been present throughout the history of Islamic law. The evidence supporting this view includes: first, the consideration of solitary narrations (*akhbār āḥād*) in making Shariah rulings. The vast majority of scholars consider the level of knowledge about the authenticity of even those narrations with apparently authentic chains of transmission to fall short of certainty, but they still consider it obligatory to accept them as evidence in *fiqh* issues. Secondly, there is a need for the consideration of probability (*ẓann* and *ghalabat al-ẓann*) in making *ijtihād*. Thirdly, there are a set of Islamic legal maxims supporting the consideration of probability, among them:

تنزيل الاكتساب منزلة المال الحاضر

"Future acquisition is given the ruling of present property."

ما قارب الشيء أعطي حكمه

"Something close to another takes its ruling."

العبرة للغالب الشائع لا للنادر

"Consideration is given to the predominant and widespread, not to the rare."

الاحتمالات النادرة لا يلتفت إليها

"Rare possibilities are not to be considered."

Fourth, the resolution of the Sharīʿah Advisory Council of Bank Negara Malaysia, in its 71st meeting dated 26-27 October 2007, affirmed the Shariah compliance of recognition based on probability.

After examining the two approaches and their justifications and evidence, we are in favour of considering the probable future economic benefits of intangible assets, on the condition that they are based on reasonable and

supportable assumptions and assessed using judgements based on the best evidence.

2. Shariah Issues on the Measurement of Intangible Assets

IAS 38 states:

> *"Intangible assets such as these may be recognised either at fair value or nominal value. This is an accounting policy choice" and: "If an entity chooses not to recognise the asset initially at fair value, the entity recognises the asset initially at a nominal amount."*

From the above mentioned provision of the measurement, we can conclude that the measurement is based on expert evaluation that is subject to revisions and adjustments or it can be concluded that the above provisions are indications of the flexible approach of measurement. Another indication of relativity and flexibility of the method of measurement is that countries' preferences and exceptions added to the standard.

With regards to Shariah, the initial ruling on procedural and technical measure is the permissibility condition that the person or the institution exhausts its utmost effort in measuring assets. The *Ḥadīth* of the Prophet (p.b.u.h) :

أنتم أعلم بأمر دنياكم

"You know more about your worldly affairs." [54]

This is a clear indication of the Shariah's consideration of expert exercise of *ijtihād* on measurement issues. Muslim jurists stressed this approach when they made *ijtihād* in measuring or deciding the level of application. Imām Mālik, for instance, repeatedly uses these two statements:

ذلك على وجه الاجتهاد من الإمام، ليس عندنا في ذلك أمر معروف إلا الاجتهاد من الإمام.

"This is to be decided by the ruler's ijtihād; we have no determined position other than leaving it to the ruler's ijtihād," and

[54] Muslim, *Ṣaḥīḥ Muslim*, Bāb Wujūb Imtithāl ma Qālahu Shar'an, no. 2363, viii. 100.

ذلك إلى الإمام يرى فيهم رأيه.

"It is up to the ruler to decide about such persons." [55]

This indicates that authority and decision-making has to be done by the ruler, which includes Islamic institutions and standard setting bodies. Al-Shāfiʿī, in discussing evaluation of the compensation for game that has been killed during *hajj* by a pilgrim in a state of *iḥrām*, if it has no similar animal, averred that the matter is to be referred to the *ijtihād* of experts:

> *"For those which are not lawfully edible, determination shall be made on the basis of precedent and analogy by paying their price to the owner. It is agreed [among the scholars] that the decision as to the price should be on the price of the game in the place and the day [it was killed], for [the prices] vary from one place to another."* [56]

He also discussed disagreement between judges on the criteria for a person giving testimony:

> *"Two judges may take a decision in which one of them accepts [a witness] while the other rejects him. This is [an example] of disagreement, but each judge has fulfilled his duty."* [57]

Contemporary scholars have allowed the use of conventional tools to measure Islamic products. For example, AAOIFI's Standard 27 on benchmarking allows Islamic banks to use LIBOR (the London Inter-Bank Overnight [Interest] Rate) to calculate their mark-ups on *murābaḥah* sales and their profits on all their financing instruments.

3. Shariah Issues on Tradability of Intangible Assets

The IFA-OIC and AAOIFI have set a number of general rulings and parameter for the tradability of the intangible assets. The IFA-OIC in its Resolution no. 43(5/5),[58] for instance, stated that:

---

55 Sahnūn, *al-Mudawwanah al-Kubrā*. i. 502.

56 Muḥammad Ibn Idris al-Shāfiʿī, *al-Risala: Treatise on The Foundations of Islamic Jurisprudence,* (Khadduri, M. Trans, 1961), 298.

57 Al-Shāfiʿī, *al-Risala*, 299.

58 IDB & IFA, *Resolutions and Recommendations*, 89.

> *"It is permitted to sell a business name, trademark for a price in the absence of any fraud, swindling or forgery, since it has become a financial right."*

AAOIFI gave more specific conditions for trading an intangible asset. They first differentiated between intangible rights established to the respective people to avoid harm such as the right of pre-emption (*ḥaqq al-shufʿah*) where the person is permitted to dispose of it but not to sell it, whereas the intangible rights and assets established initially as legitimate rights such as the right of vacating the premises (*ḥaqq al-khuluww*) and easement rights (*ḥaqq al-irtifāq*) can be traded and exchanged. They mentioned some rulings on compensation for rights (*al-iʿtiyāḍ ʿalā al-ḥaqq*) such as the prohibition of selling rights in the form of options.[59] They also set some general conditions for the disposal of right under the title of "Method of disposing of rights," these conditions are:

a. *"The starting principle for all financial rights is that they accept disposition, and the owner of a right has the absolute right to dispose of his right in accordance with the principles and provisions of the Sharīʿah, especially the followings:*
   i. *Rights should not be used highhandedly.*
   ii. *The public interest is given priority in case the use of property rights clashes with it."*

b. *"Subject to consideration of what has been stated in this standard, the ways in which rights can be legally disposed include: all kinds of exchange contracts, donations, rebates, partnerships, and assignments of rights. Standard 7 is to be observed in case of assignment."* [60]

Some scholars proposed some parameters to trade and exchange intangible assets. Al-Qurah Dāghī for instance proposed the following parameters:[61]

a) The right should be established at present and not expected in the future;

---

[59] An option is a contract that gives the buyer the right, but not the obligation, to sell or buy a specific quantity of a given asset at a specified price at a specific date in the future. Iqbal, I. Kunhibava, S & Dusuki, A.W., *Application of Options in Islamic Finance* (Kuala Lumpur: International Shari'ah Research Academy for Islamic Finance, no. 46, 2012), 3.

[60] AAOIFI, *al-Maʿāyir al-Sharʿīyyah*. Articles 11/1 & 11/2.

[61] al-Qurah Dāghī, 'Zakāh al-Huqūq al-Maʿnawiyyah,' http://info.zakāh house.org.kw/nadawat/nadwa7tam.htm. 15 September 2013.

b) The right should be established initially as legitimate rights and not to avoid harm;
c) There is a possibility to transfer rights from a person to another;
d) The right should be specified and does not entail excessive uncertainty or ambiguity; and
e) The right should be in the custom the character of wealth with regards to value and tradability.

With regards to the tradability of intangible assets, two major Shariah issues are of concern:

The **first** one is in trading and exchanging intangible assets such as receivables, options and futures. With regards to Shariah related standards and resolutions, AAOIFI Sharī'ah Standard mentioned above clearly prohibits trading option as it stated that:

> *"Recompense, through sale, etc., is not allowed for rights in the form of options."*

IFA-OIC in its resolution of 1992, asserts that:

> *"Option contracts as currently applied in the world financial markets is a new type of contract which do not come under anyone of the Sharīʿah nominate contracts. Since the subject of the contract is neither a sum of money nor a utility or a financial right which may be waived, the contract is not permissible in Sharīʿah."* [62]

El Gari who argued in favour of introducing options trading on other grounds concurs with this viewpoint. He concludes that:

> *"The said right does not have a tangible and material quality, but is indeed intangible that may not be sold or bought, considering that it is not a property. It is only similar to a pre emptive right (shufʿah, right of custody and guardianship) all of which, while allowed in Sharīʿah are intangible rights that are not allowed to be sold or relinquished against monetary consideration."*[63]

---

62 IDB & IFA, *Resolutions and Recommendations.* Resolution No. 63/1/7. 131.

63 El Gari, M.A, 'Towards An Islamic Stock Market,' http://www.irti.org/irj/go/km/docs/documents/idbdevelopments/internet/english/IRTI/CM/Downloads/IES_Articles/Vol%201-1..Ali%20Al-Qari..TOWARDS%20AN%20ISLAMIC%20STOCK%20MARKET.Pdf, 12 September 2013.

A different view was hold by The Islamic Instrument Study Group of the Securities Commission Malaysia as it finds call warrants being acceptable because it:

> *"has the characteristics of an asset which satisfies the concept of "ḥaqq mālī" and "ḥaqq tamalluk" which is transferable based on the majority of fuqaha' views other than mazhab Ḥanafī. Therefore this right can be classified as an asset and can, therefore, be traded. The famous fuqaha' can also accept this right as an asset on the basis that conventional wisdom is something you can possess and benefit from."* [64]

Same Shariah issue is to be said on the issue of receivables based on *murābaḥah* and *salām* where we have the majority of scholars including AAOIFI, IFA-OIC, International Fiqh Academy Muslim World League (IFA-MWL) and Middle East and North Africa Shariah Councils (MENA) prohibiting trading receivables based on *murābaḥah* and *salām* considering them as a sale of debt, whereas Malaysian scholars differentiate between debt based on sale where it is permissible to trade them in secondary market and debt based on pure loan (*qarḍ*) where it is prohibited to trade them in secondary market.

The researchers though considering the matter an *ijtihādī* issue due to the non-existence of explicit text, are not in favour of trading these assets in secondary market. This is preferred as the evidences prohibiting tradability are weightier in our opinion than those allowing it. Furthermore, the impact of opening the door for such transactions will have a negative repercussion on the financial market.

The **second** issue is the issue of trading intangible assets which contain prohibited elements, either bearing interest or mixed with non Shariah compliant assets. The IAS 23 stated that:

> *"If payment for an intangible asset is deferred beyond normal credit terms, its cost is the cash price equivalent. The difference between this amount and the total payments is recognised as interest expense over the period of credit unless it is capitalised in accordance with IAS 23 Borrowing Costs."* [65]

---

64 Mohammed Obaidullah, 'Financial Engineering with Islamic Options,' *Islamic Economic Studies,* 6/1 (1993): 76.

65 Borrowing Costs are Interest and Other Costs That An Entity Incurs in Connection with The Borrowing of Funds. See: IAS 23, Para. 32.

This means that there is a price for the intangible asset plus the interest over the period of credit and there is a Shariah non-compliant portion in the intangible asset or in the company holding that intangible asset.

Muslim Jurists agree on the prohibition of trading Shariah non-compliant assets such as gambling software. They have also agreed that the Shariah non-compliant portion related to the intangible asset is prohibited and needs to be purified, however they differ on the benchmark that make a mixed company Shariah non-compliant.

The Securities Commission Malaysia in its revised screening methodology has adopted a two-tier quantitative approach which comprise of quantitative assessment that apply the business activity benchmarks and the newly introduced financial ratio benchmarks. Apart from that, the qualitative assessment at the same time is retained. The newly adopted financial ratios are as follows:[66]

i. Cash over Total Assets

Cash will only include cash placed in conventional accounts and instruments, whereas cash placed in Islamic accounts and instruments will be excluded from the calculation.

ii. Debt over Total Assets

Debt will only include interest-bearing debt whereas; Islamic debt/financing or *ṣukūk* will be excluded from the calculation.

Both ratios, which are intended to measure *ribā* and *ribā*-based elements within a company's balance sheet, must be lower than 33%. Table 1 shows a comparison between revised Shariah screening methodology and previous Shariah screening methodology.

[66] Securities Commission Malaysia, http://www.sc.com.my/revised-screening-methodology/, 2 November 2013; Shamsiah Mohamad, *et al.*, Shariah-Compliant Securities, Sukuk and Islamic Reits in Malaysia, in *Islamic Economics, Banking and Finance,* ed. Asmak Ab Rahman, *et al.* (Kuala Lumpur: Pearson, 2014), 124.

Table 1: Comparison between Revised Shariah Screening Methodology and Previous Shariah Screening Methodology.

	Previous Shariah Screening Methodology (*as from 1995 to Oct 2013*)	**Revised Shariah Screening Methodology (*as from Nov 2013*)**
Quantitative Assessment		
(i) Business activity benchmarks	• 5% • 10% • 20% • 25%	• 5% • 20%
(ii) Financial ratio benchmarks	Not applicable	• 33%
Qualitative Assessment	Applicable	Applicable

Source: Securities Commission Malaysia, http://www.sc.com.my, 2 Nov 2013; Authors' own.

The contribution of Shariah non-compliant activities to the overall revenue and profit before tax of the company will be calculated and compared against the relevant business activity benchmarks. The outcome of the revised methodology will be reflected in the list of Shariah-compliant Securities by the SAC effective from November 2013.[67]

AAOIFI in its Sharī'ah Standard 21, al-Rajhi in its Resolution no. 485, and Dow Jones Islamic in its website[68] have also issued screens for Shariah -compliant companies and businesses. Al-Rajhi stated in its Resolution no. 485 on investment in mixed shares held in 2001 that:[69]

[67] Securities Commission Malaysia, http://www.sc.com.my/post_archive/malaysia-to-revise-screening-methodology-determining-shariah-compliant-status-of-listed-companies/, 29 September 2013.

[68] For further information, please visit: http://www.djindexes.com/islamicmarket/

[69] The original text is: والهيئة توضح أن ما ورد من تحديد للنسب في هذا القرارمبني على الاجتهاد وهو قابل لإعادة النظرحسب الاقتضاء

> *"The Sharīʿah committee explains that the report determining the proportions in this decision is based on the ijtihād and subject to revision as appropriate."* [70]

4. Shariah Issues Related to Financing Intangible Assets

IFA-OIC and AAOIFI allow the financing of these assets if specific conditions such as the absence of any fraud, swindling or forgery are met. Dallah al-Barakah, in its Twentieth Seminar on Islamic Economics, on 3-5 Rabīʿ al-Awwal 1422/25-27/6/2001, allowed the financing of intangible assets and proposed appropriate methods for financing intellectual products at the development phase of the idea, before completion and after completion. They allowed the use of either partnership or *muḍārabah* to finance, at the development stage, intellectual work that ends in a product that generates a moral right. Other modes such as *istisnā'* and *juʿālah* require - in their view - further analysis and investigation. With regard to financing intellectual products after completion, they proposed the modes of partnership, lease contract, *murābaḥah* and *muḍārabah.*[71]

5. Shariah Issues Related to *Zakāh* Obligation on Intangible Assets

With regards to *zakāh* obligations on intangible assets, two main issues can be identified: the first one is the Shariah ruling on *zakāh* obligations on intangible assets; the second one is the method of measurement of intangible assets for *zakāh* payment.

a) Shariah Ruling on *Zakāh* Obligations on Intangible Assets

AAOIFI has issued two standards on *zakāh*: The first one is Sharī'ah Standard 35 in 2008 and the second one is Accounting Standard 9 in 1999, however there was no discussion on *zakāh* obligation on intangible assets in the standards. The same can be said for IFA-OIC and IFA-MWL resolutions. The only institution that has dedicated a section in its Annual International Seminar is Bayt al-*Zakāh* (the International Shariah Institution of *Zakāh*) in its Seventh

---

[70] al-Rājhī, *Qarārāt al-Hay'ah al-Sharʿiyyah bi Maṣrif al-Rājhī* (Riyād: Dār al-Kunūz Ishbiliyā, 2010).

[71] Dallah al-Barakah, 'Resolution of the Twentieth Seminar on Islamic Economics.' http://www.islamfeqh.com/kshaf/list/viewdecisiondetails.aspx?decisionid=1644. 23 September 2013.

International Symposium held in Kuwayt in 1997,[72] where they dedicated a full section on the issue of *zakāh* obligations on intangible assets. This is in addition to some scholarly writings on the issue.

With regards to Muslim jurists' views on *zakāh* obligations on intangible assets, three opinions can be identified:

First Opinion: No *zakāh* obligation on intangible assets. This opinion is adopted by al-Būṭī,[73] al-Shadhlī,[74] and others. Their argument is that intangible assets though considered property, do not have the element of growth which is one of the conditions of *zakāh* payment. This is based upon the statement of the Prophet (peace be upon him):

ليس على المسلم في عبده ولا فرسه صدقة

"There is no zakāh upon a Muslim on his slave or his horse." [75]

This is because it is diverted from growth to personal use. Being capable of growth can mean growth in the literal sense, such as by biological reproduction or trade; or it could mean in a more abstract sense, as in the case of gold, silver and currencies. The latter are capable of growth by investing them in business; therefore, *zakāh* is paid on them unconditionally. As for property that is owned with the sole intention of possessing it, no *zakāh* is due upon it because it does not grow, either literally or abstractly. Therefore, no *zakāh* obligation on intangible assets is paid unless they are sold and reach a minimum limit (*niṣāb*). In this situation *zakāh* should be paid on the spot regardless of the passage of a lunar year (*ḥawl*) based on the views of some jurists or to add the amount to other money and wait until the passage of a lunar year (*ḥawl*) based on the second view. If IA are not sold, *zakāh* is due on these intangible rights when associated to the company assets.

Second Opinion: *Zakāh* is obligatory on intangible assets regardless of any other consideration, so the owner has to get the expert estimates of their value, combine them with other property and then pay *zakāh* annually. This is the opinion of scholars in favour of *zakāh al-mustaghalāt* such as ʿAbd al-Wahhāb Khalaf, Abū Zahrah and al-Qaraḍāwī, and others.[76] The proponents of

---

72 For further information, please visit: http://info.zakathouse.org.kw/nadawat/nadwa7tam.htm.

73 al-Būṭī, 'Zakāh al-Ḥuqūq al-Maʿnawiyyah.'

74 al-Shadhlī, 'Zakāh al-Ḥuqūq al-Maʿnawiyyah.'

75 Muslim, *Ṣaḥīḥ Muslim,* Bāb Lā Zakāh 'Alā al-Muslim fī 'Abdihi wa Farasihi, *Ḥadīth* no. 982 (Beirūt: Dār Al-Fikr, 1995), iv. 48.

76 See: Yūsuf al-Qaraḍāwī, *Fiqh al-Zakāh* (Beirūt: Mu'assasah al-Risālah, 1981).

this view based their argument on the general texts of the Quran. Allah says in the Holy Quran:

وَٱلَّذِينَ فِيٓ أَمۡوَٰلِهِمۡ حَقّٞ مَّعۡلُومٞ ٢٤ لِّلسَّآئِلِ وَٱلۡمَحۡرُومِ ٢٥

"And in whose wealth there is a right acknowledged. For the beggar and the destitute."

(Surah al-Ma'ārij, 70: 24-25)

They also refer to the texts of Sunnah that command the payment of *zakāh* on property above minimum limit (*niṣāb*) without any specification. The proponent of this view are scholars in favour of paying zakāh on property when it reaches minimum limit (*niṣāb*) regardless whether they are meant for trade or investment (*istighlāl*).

Third Opinion: Agrees with the view of the majority of scholars that intangible assets have in contemporary time financial value which are recognized by Shariah and can be traded. However in terms of *zakāh* on these assets the proponents of this view have divided their view into two situations:

i. The first situation is when the intangible assets are part of the whole company assets and business which are not meant for trade. In this situation we do not need to pay *zakāh* on these assets but on the dividends of the company. Defending this opinion, the IFA-OIC states that:

> *"If he [shareholder] had invested in the company to benefit from the annual dividends of those shares, and not for trading purposes, then the owner of such shares will not pay zakāh on the market value of the shares but only on the basis of the dividends, at the rate of ¼ of /10, (2.5%) after the elapse of one year from the date of the actual reception of the dividends, provided that all other conditions are met and no impediment exists. This ruling is in conformity with resolution 2 (2/2) adopted by the Council of the Academy at its 2nd session with respect to zakāh on the rented real estates and non-agricultural leased lands."* [77]

The resolution 2 (2/2) adopted by the Council of the Academy in December 1985 says:

> *"1. No zakāh is levied on assets of the real estate and rented lands. 2. Zakāh is due and payable on its yield, which is one*

[77] IDB & IFA, Resolutions, 57.

> *fourth of the one tenth (2.5%), after the elapsing of one year period from the date of its actual receipt, if all other conditions are present and no impediments exist."* [78]

This resolution is applicable to intangible assets as the IFA-OIC considers them as wealth that has value. This means that if the company has invested in intangible assets to benefit from their annual dividends and assets are not for trading, they should not pay *zakāh* on them but on the dividend of the whole company. The resolution implies that shares are to be treated as "earning assets" like real estate or properties notwithstanding the fact that a small percentage of investors look forward to long term appreciation and dividends.

ii. The second situation is when the intangible assets can be separated from the company's assets and are meant for trade. In this situation, scholars such as al-Ashqar[79] and al-Qurah Dāghī[80] in their research presented in the 7 Symposium of contemporary Issues in *Zakāh* and Yāsin in his comment on the papers and others view that *zakāh* is to be paid on these assets after they are sold. Yāsin in explaining this opinion says:

> *"An example of this is what is applied by a lot of industrial companies and institutions when they set specific branches to invent new designs, plans and programmes, and employ technicians and experts to devise models and designs and software innovations and pay them wages for it, and the output is owned by these companies and they have on them their names, and may be sold to others, where it will hold the name of the new buyer... My view is that there is zakāh obligation on these types of property if the intention is to trade them after the invention. Zakāh is obligatory on the second buyer if he bought them with the intention of selling them. However if the first buyer or the second one has no intention to trade them but to use them in their industry manufacturing or other facilities, there is no zakāh obligation."* [81]

---

78 IDB & IFA, Resolutions, 4.

79 Al-Ashqar, 'Zakāh al-Ḥuqūq al-Maʿnawiyyah.'

80 Al-Qurah Dāghī, 'Zakāh al-Ḥuqūq al-Maʿnawiyyah.'

81 Muḥammad Naʿīm Yāsin, 'Zakāt al-Ḥuqūq al-Maʿnawiyyah,' http://info.zakāhhouse.org.kw/nadawat /nadwa7tam.htm., 15 September 2013.

Al-Qurah Dāghī summarised this opinion by saying:[82]

> *"Zakāh is not obligatory on intangible assets except in two situations: First: When the trade mark is sold. Zakāh in this case is obligatory on the sale price. Second: When the trade mark is dealt with as commodity, where it is owned by a trader expert in selling and buying trademarks. Zakāh in this situation is obligatory based on market price."*

We prefer the third opinion as it is justified, rational and fair to both intangible assets owner and the people entitled to receive *zakāh*.

b) Method of Measurement of Intangible Assets for *Zakāh*

We have preferred the third opinion that says that there is *zakāh* obligation on intangible assets if the intention is to trade them either on sale price if they are sold or on market price if they are owned by a trader expert in selling and buying trademarks. However, the determination of the value in which *zakāh* amount is to be deducted from this tradable intangible asset is an issue of disagreement among Muslim jurists. In this respect, Muslim jurists agree that if the intangible asset is already sold, we have to consider the selling price of the good in *zakāh* payment; however, if it is not sold and has a cost value and an existing market value, Muslim jurists hold three views: the first view is in favour of paying *zakāh* based on its cost value. Their argument is that this is the real value of the good at its inception and charging *zakāh* on the market price is not fair to the intangible asset holder as the market may depreciate and the owner has yet to sell it and may not even be able to sell it. The second view is in favour of paying *zakāh* based on its market value. Its argument is that if the asset is known in the market and has a relatively stable value, therefore, it should be based on it, furthermore, it is fair to the intangible asset holder as the market may depreciate and may also appreciate where the asset may increase in value. The third view differentiates between the trader of intangible assets and the company developing or designing intangible assets, where the former should pay *zakāh* on its market price whereas the later should pay on the cost price.

[82] al-Qurah Dāghī, 'Zakāh al-Ḥuqūq al-Maʿnawiyyah.'

CONCLUSION

This research has discussed the concept of intangible assets from Shariah perspective. It examined pertinent Shariah issues on intangible assets: recognition and measurement, financing and trading, and *zakāh* employing critical and comparative analysis.

Intangible assets are considered as property (*māl*) as they fulfil the requirement of Shariah as people consider them as a source of wealth (*tamawwul*) that generates future benefits and can be compensated and exchanged. This paper discussed different types of *māl* to provide a better understanding on the legal aspects of intangible assets. In terms of conventional application, the paper discussed its chronological development with reference to common law and Shariah law.

The study found that there are few important Shariah issues related to intangible assets. The Shariah issues concerned include the issue of excessive uncertainty (*gharar fāhish)* in the identification and determination of the intangible assets due to the non-existence of its physical substance and the probability of its future benefits. There are two Shariah views on this aspect: one view does not recognize probability until the future economic benefit exists in order to ensure the protection of properties and avoid dispute among contracting parties; the second view recognizes the probability of future economic benefit with consideration of the probability (*ghalabat al-ẓan* or *al-ẓan al-rājih*) providing Shariah rulings and occurrences in the history of Islamic law as evidenced in the *ḥadīth* and Islamic legal maxims.

In trading and financing intangible assets, the IFA-OIC and AAOIFI have set some general rulings and parameters that permit intangible assets to be traded and used in financing. Both agree on the prohibition of trading and exchanging of receivables, option and futures. However, the Shariah Advisory Council of Securities Commission Malaysia allows receivables to be traded and exchanged.

In addition to the recognition and measurement criteria, *zakāh* payment on intangible assets was an issue of disagreement among scholars. Some scholars were not in favour of paying *zakāh* on intangible assets, others made *zakāh* compulsory on all intangible assets, whereas others differentiate between separate assets used for trade and assets that are not for trade.

In a nutshell, it can be concluded that intangible assets are property that have financial value and are generally tradable.

REFERENCES

Accounting and Auditing Organisation for Islamic Financial Institutions, *al-Maʿāyīr al-Sharʿiyyah* (Bahrain: Accounting and Auditing Organisation for Islamic Financial Institutions, 2012).

Ali, Engku Rabiah Adawiah Engku, 'Re-defining Property and Property Rights in Islamic Law of Contract,' *Shariah Journal* 11/2 (2003).

Al-Ashqar, ʿUmar Sulaymān, 'Zakāh al-Ḥuqūq al-Maʿnawiyyah,' http://info.zakāh house.org.kw/nadawat/nadwa7tam.htm., 17 September 2013.

Al-Baʿlī, ʿAbd al-Raḥmān, 'Zakāh al-Ḥuqūq al-Maʿnawiyyah,' http://info.zakāh house.org.kw/nadawat/nadwa7tam.htm., 19 September 2013.

Beltrametti, Silvia, 'The Legality of Intellectual Property Rights Under Islamic Law,' in *The Prague Yearbook of Comparative Law 2009*, ed. Mach, T. *et al.* (Prague, 2010).

Al-Bukhārī, Muḥammad Ibn Ismāʿīl, *Ṣaḥīḥ al-Bukhārī* (n.p.: Dār al-Ṭūq al-Najāḥ, 1422AH).

Al-Būṭī, Muḥammad Saʿīd Ramaḍān, 'Zakāh al-Ḥuqūq al-Maʿnawiyyah,' http://info.zakāh house.org.kw/nadawat/nadwa7tam.htm., 15 September 2013.

Al-Būṭī, Muḥammad Saʿīd Ramaḍān, 'al-Ḥuqūq al-Maʿnawiyyah, Ḥaq al-Ibdāʿ al-ʿIlmī wa Ḥaq al-Ism al-Tijārī, Ṭabīʿatuhā wa Ḥukm Shirā'uhā,' *Majallah Majmaʿ al-Fiqh al-Islamī,* 5/3 (1998): 2395-2416.

Dallah al-Barakah, 'Resolution of the Twentieth Seminar on Islamic Economics,' http://www.islamfeqh.com/Kshaf/List/ViewDecisionDetails.aspx?DecisionID=1644, 23 September 2013.

El Gari, M.A, 'Towards an Islamic Stock Market,' http://www.irti.org/irj/go/km/docs/documents/IDBDevelopments/Internet/English/IRTI/CM/downloads/IES_Articles/Vol%201-1..Ali%20Al-Qari..TOWARDS%20AN%20ISLAMIC%20STOCK%20MARKET.pdf, 15 September 2013.

Al-Fayrūzābādī, Muḥammad Ibn Yaʿqūb Ibn Muḥammad Ibn Ibrāhīm, *al-Qāmūs al-Muḥīṭ* (Beirūt: Dār al-Kutub al-ʿIlmiyyah, 1995).

Al-Hamawī, Aḥmad Ibn Muḥammad al-Ḥanafī, *Ghamz ʿUyūn al-Baṣā'ir fī Sharḥ Kitāb al-Ashbāh wa al-Naẓā'ir* (Mecca: Dār al-Bāz, 1985).

IAS Plus, *International Accounting Standards IAS 38, Intangible Assets,* (n.d.).

Ibn ʿĀbidīn, Muḥammad Amīn Ibn ʿUmar Ibn ʿAbd al-ʿAzīz, *Rad al-Muḥtār ʿalā al-Durr al-Mukhtār* (Beirūt: Dār al-Fikr, 1992).

Ibn Manzūr, Muḥammad Ibn Mukarram al-Ifrīqī, *Lisān al-ʿArab* (Beirūt: Dār Ṣādir, 1994).

Ibn Nujaym, Zayn al-Dīn Ibrāhīm Ibn Muḥammad, *al-Baḥr al-Rā'iq* (n.p.: Dār al-Kitāb al-Islāmī, n.d.).

Ibn Qudāmah, ʿAbd Allāh Ibn Aḥmad, *al-Mughnī* (Beirūt: Dār al-Fikr, 1994).

International Accounting Standard (IAS) 38, 'Intangible Assets,' http://www.ifrs.org/IFRSs/Documents/English%20IAS%20and%20IFRS%20PDFs%202012/IAS%2038.pdf., 2 September 2013.

Iqbal, I. Kunhibava, S & Dusuki, A.W, *Application of Options in Islamic Finance* (Kuala Lumpur: International Shari'ah Research Academy for Islamic Finance, no. 46, 2012).

Islam, Muhammad Wohidul, 'al-Mal: The Concept of Property in Islamic Legal Thought,' *Arab Law Quarterly* 14 /4 (1999).

Islamic Development Bank & Islamic Fiqh Academy, 'Resolutions and Recommendations of the Council of the Islamic Fiqh Academy 1985-2000,' http://www.irtipms.org/PubText/73.pdf., 30 September 2013.

Jamar, Steven D., 'The Protection of Intellectual Property Under Islamic Law,' *Capital University Law Review* 21 (1992).

Al-Kāsānī, Abū Bakr Ibn Masʿūd, *Badā'īʿ al-Ṣanā'īʿ fī Tartīb al-Sharā'īʿ* (Beirūt: Dār al-Kutub al-ʿIlmiyyah, 1986).

Al-Khafīf, ʿAlī, *al-Milkiyyah fī al- Sharīʿah al-Islāmiyyah maʿā al-Muqāranah bi al-Sharā'iʿ al-Waḍʿīyyah* (Egypt: Dār al-Fikr al-ʿArabī, 1996).

Khoury, Amir H., 'Ancient and Islamic Sources of Intellectual Property Protection in Middle East: A Focus on Trademarks,' *IDEA: The Journal of Law and Technology* 43/2 (2003).

Mālik, Anas, *al-Muwattaʿ* (n.p.: Mu'assasah al-Risālah, 1412AH).

Mohamad, Shamsiah. *et al.*, 'Shariʿah-compliant Securities, Sukuk and Islamic Reits in Malaysia,' in *Islamic Economics, Banking and Finance,* ed. Ab Rahman, A. *et al.* (Kuala Lumpur: Pearson, 2014).

Muslim, *Ṣahīh Muslim* (Beirūt: Dār al-Fikr, 1995).

Al-Nashmī, ʿAjīl Jasīm, 'Bayʿ al-Ism al-Tijārī,' *Majallah Majmaʿ al-Fiqh al-Islamī*, 5/3 (1998): 2268-2354.

Ngadimon, Md. Nurdin, 'A Comparative Study of Intangible Assets in Ḥanafī School with Maliki, Shāfiʿī and Hanbali Schools of Law and Their Modern Application,' (Unpublished Doctoral Dissertation, The University of Birmingham, Birmingham, 2005).

Obaidullah, Mohammed, 'Financial Engineering with Islamic Options,' *Islamic Economic Studies* 6/1 (1993).

Al-Qāḍī ʿAbd al-Wahhāb, 'al-Ishrāf ʿalā al-Masā'il al-Khilāf,' http://www.ahlalhdeeth.com/vb/showthread.php?t=191810), 9 October 2013.

Al-Qaraḍāwī, Yūsuf, *Fiqh al-Zakāt* (Beirūt: Mu'assasah al-Risālah, 1981).

Al-Qurah Dāghi, ʿAlī, 'Zakāh al-Ḥuqūq al-Maʿnawiyyah,' http://info.zakāh house.org.kw/nadawat/nadwa7tam.htm., 15 September 2013 and http://www.qaradaghi.com/portal/index.php?option=com_content &view=article&id=177:2009-06-29-09-04-13&catid=30:2009-06-25-09-19-59&Itemid=34., 15 September 2013.

Al-Rajhi Bank, 'Ḍawābiṭ al-Istithmār wa al-Mutājarah fī al-Sharikat al-Mukhtaliṭah,' http://www.saaid.net/fatwa/sahm/2.htm., 23 September 2013.

Al-Rājhī, *Qararāt al-Hay'ah al-Sharʿiyyah bi Maṣrif al-Rājhī* (Riyād: Dār al-Kunūz Ishbiliyā, 2010).

Sahnūn, ʿAbd al-Salām Ibn Saʿīd Ibn Ḥabīb al-Tanūkhī, *al-Mudawwanah al-Kubrā*, ed. Umayrat, Z. (n.p.: Dār al-Kutub al-ʿIlmiyyah, 1994).

Al-Salmān, Ḥisān ʿAbd. al-ʿAzīz, *Mawārid al-Zamān li Durūs al-Zamān* (n.p. 1424AH).

Samarah, I, 'Mafhūm al-Ḥuqūq al-Malakiyyah al-Fikriyyah wa Ḍawābituhā fī al-Islām,' *Majallah al-ʿUlūm al-Insāniyyah* (Sakrat: Jāmiʿah Muḥammad Khaydīr, 2005), http://www.webreview.dz/IMG/pdf/_-_1.pdf., 12 April 2014.

Al-Sarakhsī, Abū Bakr Muḥammad Ibn Aḥmad, *al-Mabsūṭ* (Beirūt: Dār al-Maʿrifah, 1993).

Securities Commission Malaysia, http://www.sc.com.my/post_archive/malaysia-to-revise-screening-methodology-determining-Sharīʿah-compliant-status-of-listed-companies/, 29 September 2013.

Securities Commission Malaysia, http://www.sc.com.my/revised-screening-methodology/, 2 November 2013.

Shamsiah Mohamad, *et al.*, Shariah-Compliant Securities, Sukuk and Islamic Reits in Malaysia, in *Islamic Economics, Banking and Finance,* ed. Asmak Ab Rahman, *et al.* (Kuala Lumpur: Pearson, 2014).

Al-Shafiʿi, Muhammad Ibn Idris, *al-Risala: Treatise on the Foundations of Islamic Jurisprudence* (Khadduri, M. Trans, 1961).

Al-Shādhlī, Ḥasan, 'Zakāh al-Ḥuqūq al-Maʿnawiyyah,' http://www.saaid.net/fatwa/sahm/2.htm., 23 September 2013.

Al-'Uthmānī, Muḥammad Taqī, 'Bayʿ al-Ḥuqūq al-Mujarradah,' *Majallah Majmaʿ al-Fiqh al-Islāmī,* 5/3 (1998): 2353-2388.

Al-ʻUthmānī, Muḥammad Taqī, *Buhūth fī Qaḍāyā Fiqhiyyah Muʿāṣirah* (Damascus: Dār al-Qalam, 2003).

Al-Wizārat al-Awqāf wa al-Shuʾūn al-Islāmiyyah, *al-Mawsūʿah al-Fiqhiyyah al-Kuwaytiyyah* (Kuwayt: al-Wizārat al-Awqāf wa al-Shuʾūn al-Islāmiyyah, 1992).

Yāsin, Muḥammad Naʿīm, ʻZakāh al-Ḥuqūq al-Maʿnawiyyah,ʼ http://info.zakāh house.org.kw/nadawat/nadwa7tam.htm., 15 September 2013.

Al-Zarkashī, Muḥammad bin Bahadur, *al-Manthūr fī al-Qawāʿid al-Fiqhiyyah* (Kuwayt: Wizārah al-Awqāf wa al-Shuʾūn al-Islāmiyyah, 1982).

Al-Zarqā, Muṣṭafā Aḥmad, *al-Madkhal ilā Naẓariyyah al-Iltizām al-ʿAmmah fī al-Fiqh al-Islāmī* (Damascus: Dār al-Qalam, 1999).

Zaydān, ʿAbd al-Karīm, *al-Madkhal li Dirāsah al-Sharīʿah al-Islāmiyyah* (Baghdad: Matbaʿah al-ʿAnī, 1969).

Al-Zuhaylī, Wahbah, ʻBayʿ al-Ism al-Tijārī,ʼ *Majallah Majmaʿ al-Fiqh al-Islāmī,* 5/3 (1998): 2389-2393.