

KLIFF 2024

**ISU-ISU SYARIAH DALAM PRODUK DAN INSTRUMEN
PERBENDAHARAN KEWANGAN ISLAM**

**Prof. Madya Dr. Mohamed Fairouz Abdul Khir
INCEIF University**

KANDUNGAN

Pengenalan: Produk Perbendaharaan Yang Ditawarkan

Prinsip Syariah Yang Digunapakai dalam Produk Perbendaharaan Islamik

Isu-isu Syariah Dalam Produk dan Instrumen Perbendaharaan Islamik

Kesimpulan dan Cadangan

Pengenalan: Fungsi Treasury

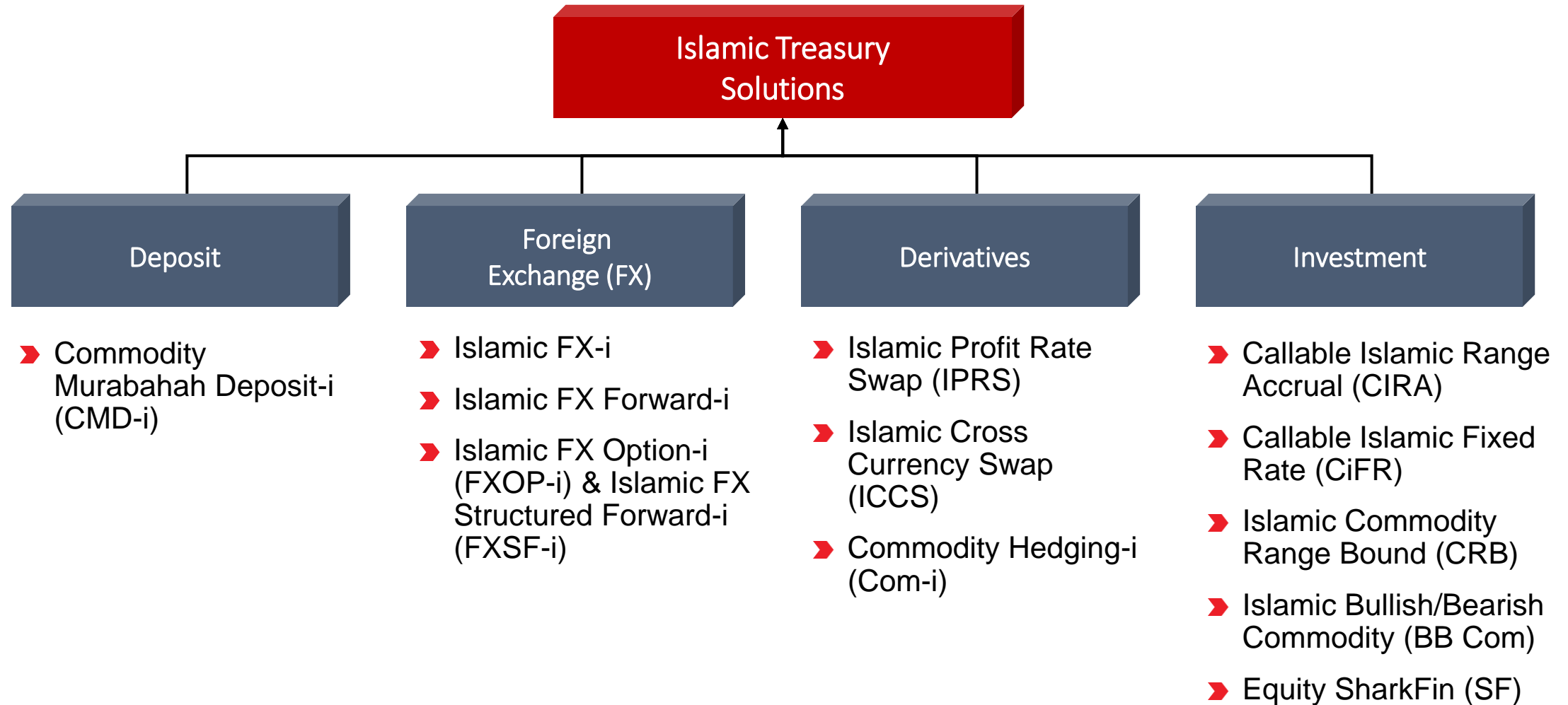
Objektif sesebuah bisnes adalah untuk memaksimumkan kekayaan pemilik (maximizing shareholder's wealth) dengan memaksimumkan kecairan tunai.

Memastikan bank sentiasa mempunyai tunai yang diperlukan untuk bisnes perbankan iaitu melalui pengurusan aliran tunai, pembiayaan jangka pendek dan pembiayaan jangka sederhana.

Mengurus tunai, pelaburan, dan aset kewangan lain bagi perniagaan.

Mengurus risiko melalui aktiviti lindung nilai (Risk management through hedging products. Instruments, activities).

Pengenalan: Produk Perbendaharaan Islamic Yang Ditawarkan Oleh CIMB Islamic Bank



Islamic vs. Conventional Solutions

Treasury Solutions	Islamic	Conventional
Deposit	Commodity Murabahah Deposit-i (CMD-i)	Short Term Money Market Deposit (STMMD)
Foreign Exchange	Islamic FX-i	FX
	Islamic FX Forward-i	FX Forwards
	Islamic FX Option-i (FXOP-i)	FX Options (FXOP)
	Islamic FX Structured Forward-i (FXSF-i)	FX Options (FXOP)
Derivatives	Islamic Profit Rate Swap (IPRS)	Interest Rate Swap (IRS)
	Islamic Cross Currency Swap (ICCS)	Cross Currency Swap (CCS)
	Commodity Hedging-i (Com-i)	Commodity Hedging
Investment	Callable Islamic Range Accrual (CIRA)	Callable Range Accrual (CRA)
	Callable Islamic Fixed Rate (CiFR)	Callable Fixed Rate (CFR)
	Islamic Commodity Range Bound (CRB)	Commodity Range Bound
	Islamic Bullish/Bearish Commodity (BB Com)	Bullish/Bearish Commodity FRNID
	Islamic Equity SharkFin (SF)	Moderately Bullish SharkFin FRNID & Moderately Bearish SharkFin FRNID

Prinsip Syariah Yang Digunapakai dalam Produk Perbendaharaan Islamik

Concept	Definition
Wa'd	<ul style="list-style-type: none">• Wa'd is a unilateral promise which refers to an expression of commitment given by one party to another to perform certain action(s) in the future.• This Shariah principle is mainly used in structuring products which have an element of option. A product may contain more than one Wa'd depending on the product features. There are also instances of product structuring where 2 parties agree on 2 different Wa'd(s) (Waadān) to yield the desired economic return.
Commodity Murabahah	<ul style="list-style-type: none">• Commodity Murabahah is the concept of purchase and sale of a commodity with a markup element which is made known upfront.• This is the most commonly used Shariah principle as it is the most practical Shariah concept to be applied to replicate the same economic benefits in most of our products.
Tawarruq	<ul style="list-style-type: none">• Tawarruq consists of two sale and purchase contracts. The first involves the sale of an asset by a seller to a purchaser on a deferred basis. Subsequently, the purchaser of the first sale will sell the same asset to a third party on a cash and spot basis.• This is commonly used in our deposit and financing products where it involves the element of providing or receiving cash.
Commodity Musawamah	<ul style="list-style-type: none">• Commodity Musawamah is a concept of sale of an asset at cost plus profit without the disclosure of the asset cost price and profit margin to the buyer.• This concept is a normal sale and purchase agreement where profit is not disclosed.

Concept	Definition
Wakalah	<ul style="list-style-type: none">• Wakalah refers to a contract where a party, as principal, authorizes another party as his agent, to perform a particular task on matters that may be delegated, with or without imposition of a fee.• This principle is commonly used by bank to perform tasks on behalf of clients. For example, sale and purchase of commodities.
Ibra'	<ul style="list-style-type: none">• Ibra' is rebate which refers to a refund given by the bank to a client who makes early payment of a financing obligation.• Also commonly used in product structuring where the return may not be fixed upfront.
Bai al-Sarf	<ul style="list-style-type: none">• Bai al-Sarf refers to a contract of exchange of the same or different currency.
Ujrah	<ul style="list-style-type: none">• Fee for remittance service.

Isu-isu Syariah Dalam Produk dan
Instrumen Perbendaharaan Islamik

Isu (1): Aktiviti pasaran sekunder dalam ruang derivatif Islam jauh lebih kecil berbanding dengan pasaran derivatif konvensional,

- There is a heavy dependence on Islamic banks to square their derivative positions with conventional banks. Apart from that, there is also less Islamic derivative activity from clients that took up Islamic financing with a number taking on conventional derivatives.
- As of July 2020, the size of conventional total assets in the Malaysian market stood at MYR 2062 bil while Islamic assets stood at MYR 857 bil which makes up 28% of the market. Meanwhile, total volume of conventional derivatives in 2020 stood at MYR 184 bil whilst Islamic derivatives volume stood at MYR 0.7 bil.
- There is a clear imbalance between Islamic assets and Islamic derivatives in the market as clients who took up Islamic financing are not hedging the respective risk exposure with Islamic derivatives.
- Whilst there is growth in Islamic Assets, for Islamic derivatives, there is an outward flow to conventional derivative market.

Persoalan

- Adakah bank Islam boleh dibenarkan untuk mengambil bahagian dalam aktiviti “market making” dalam derivatif Islam?
- Adakah boleh diperluaskan definisi lindung nilai dalam derivatif Islam untuk merangkumi lindung nilai yang bersifat antisipasi (anticipatory hedging) – Cadangan ini telah mempunyai resolusi.
- Bolehkah diperluaskan penggunaan derivatif Islam dalam segmen pelanggan pembiayaan Islamik, terutamanya kepada mereka yang telah mengambil kemudahan pembiayaan Islamik?

Isu (2): Gabungan Pelbagai Kontrak Syarak dan Prinsip Syarak (al-Jam' bayn al-Úqud)

- Inovasi kewangan melalui gabungan pelbagai kontrak menyebabkan produk perbendaharaan Islamik seperti produk lindung nilai dan produk berstruktur Islamik menjadi kompetitif dengan produk konvensional yang berasaskan riba, gharar dan perjudian.
- Objektif lindung nilai dan penjanaaan keuntungan (yield enhancement) boleh dicapai seperti di dalam produk konvensional.
- Adakah penggabungan kontrak Syarak tersebut bertepatan dengan “dawabit al-jam' bayn al-úqud”?

الأول: أن يكون التوسل بما هو مشروع إلى ما هو محظور في تلك المعاملة كثيرًا بمقتضى العادة، وأن تقوى التهمة وتظهر على قصد ذلك المحظور وإرادته.

الثاني: ألا يكون هناك حاجة أو مصلحة راجحة إلى تلك المعاملة.

المواطأة على المخارج الشرعية: وهي الحيل المحمودة التي لا تخالف وسائلها دليلًا شرعيًا، ولا تناقض أغراضها مقاصد الشريعة، ولا تؤول إلى مفسدة خالصة أو راجحة. وحكمها الجواز.

المواطأة على الجمع بين عقود متناقضة أو متضادة: وهي فاسدة محظورة، بناء على عدم جواز الجمع بين عقدين فأكثر بينهما تناقض أو تضاد أو تنافر في الموجبات والآثار، لأنها وسيلة إليه، (وينظر البند ٤ / ٤).

كالمقارن في الصحة ووجوب الوفاء به، طالما أن العقد قد اعتمد عليه، واتفقت إرادة العاقدین على مراعاته.

٣ / ٦ للمواطأة على جمع العقود صنوف متعددة، ترجع في الجملة إلى أربعة أنواع:

١ / ٣ / ٦ المواطأة على الحيل الربوية: مثل التمالؤ على العينة وعكسها، وبيع الوفاء (بيع الرجاء)، والحيلة إلى ربا الفضل. وهي محظورة شرعًا، ويترتب عليها فساد العقود التي يتوسل بها إلى ذلك.

٢ / ٣ / ٦ المواطأة على الذرائع الربوية: مثل الاتفاق على الجمع بين القرض والمعاوضة، أو على دفع المقترض للمقرض هدية أو زيادة في القدر أو الصفة على المال المقترض.

١ / ٢ / ٣ / ٦ تعتبر المواطأة موجبةً لمنع تلك الذرائع المباحة في الأصل، ومناطًا لحظرها شرعًا بشرطين:

Isu (3): Produk Derivatif Bertujuan Lindung Nilai dan Menjana Keuntungan

- Produk FX Forward plus Islamic option – Cap, Collar, Knock-out Swap.
- Kebanyakan produk derivatif khususnya opsi menggunakan prinsip wa'd / wa'dan/ muwa'adah.
- Dalam produk berstruktur, instrumen derivatif seperti opsi digunakan untuk memberikan pulangan yang maksima kepada pelanggan berdasarkan kepada underlying performance dalam masa yang tertentu.

Definisi lindung nilai: Adakah Jelas?

16.1	A party may provide a unilateral binding promise (wa'd) to enter into bai' al-sarf with another party in the future.
16.2	The parties may provide two separate unilateral binding promises (wa'dan) to each other which will be triggered by different causes of events respectively to enter into bai` al-sarf at a future date.
16.3	The parties may provide bilateral binding promise (muwa'adah) to execute bai' al-sarf in the future.
16.4	All arrangements in paragraphs 16.1, 16.2 and 16.3 shall only be for the purpose of hedging.

Resolusi MPS BNM

The SAC, in its 79th meeting dated 29 October 2008, has resolved that the structure of the proposed foreign currency option product based on wa'd and two independent tawarruq transactions is permissible, provided that the following conditions are satisfied:

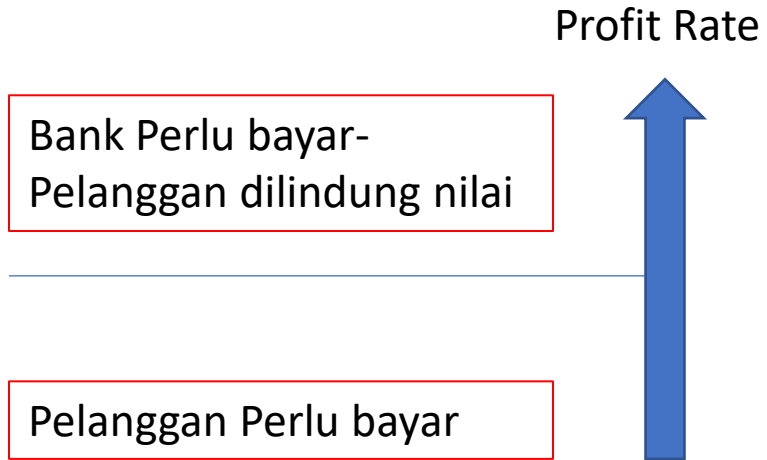
- i. The option product shall only be undertaken for **hedging** purpose;
- ii. Wa'd shall be made independently from the tawarruq transaction and shall not form part of the condition to perform the tawarruq transaction;
- iii. The Islamic financial institution shall ensure that every transaction is conducted independently from each other in terms of documentation and sequence of transactions; and
- iv. The underlying asset shall be Shariah compliant.

- Resolusi Majlis Penasihat Syariah Suruhanjaya Sekuriti Malaysia (SAC SC) ada membenarkan produk-produk derivatif yang mempunyai unsur “*yield enhancement*” seperti:

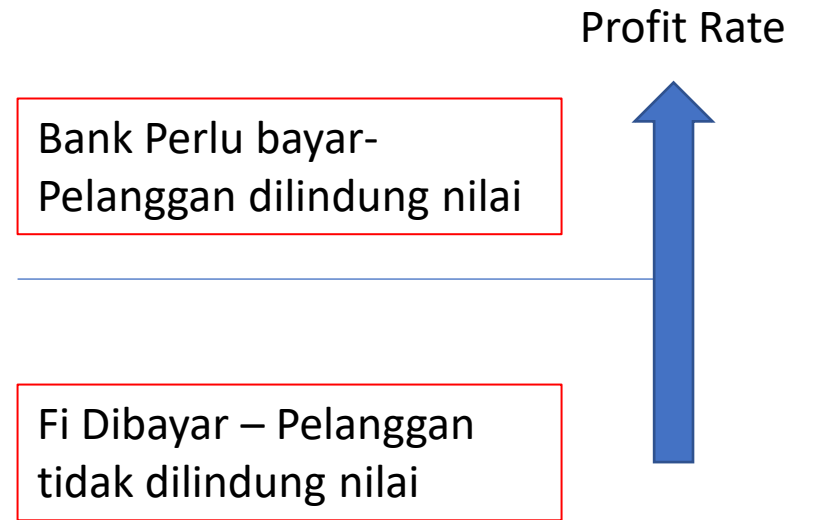
- i. Resolusi “Single Stock Futures”

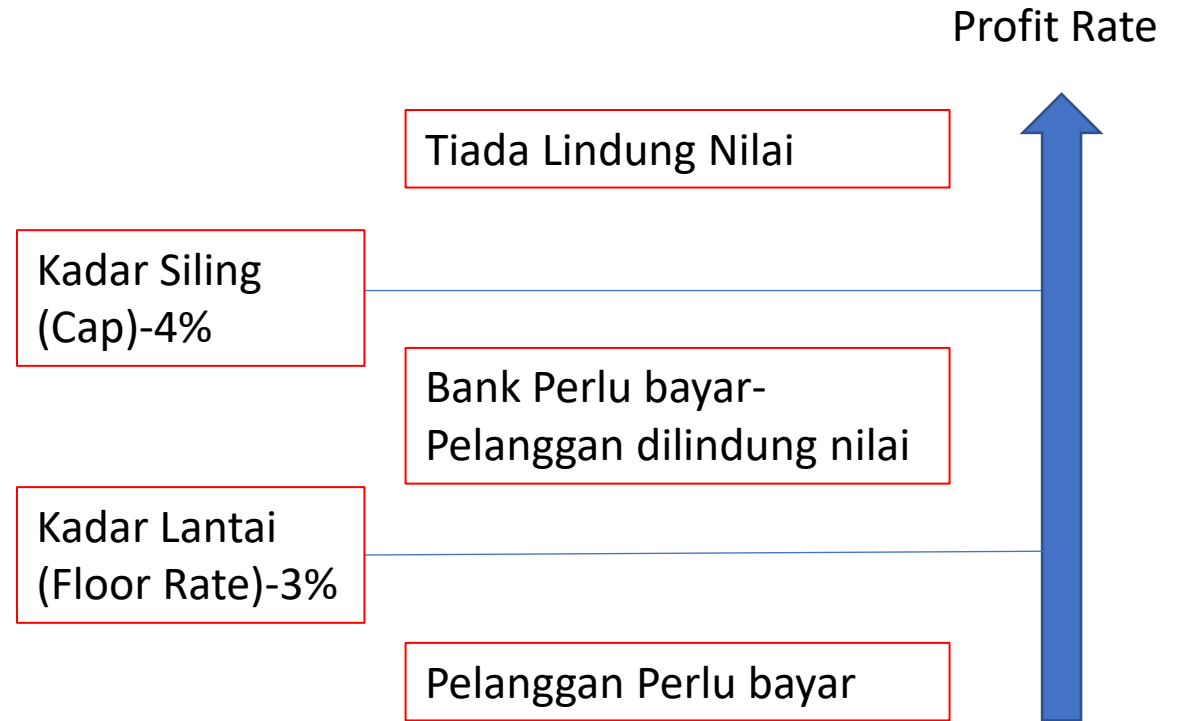
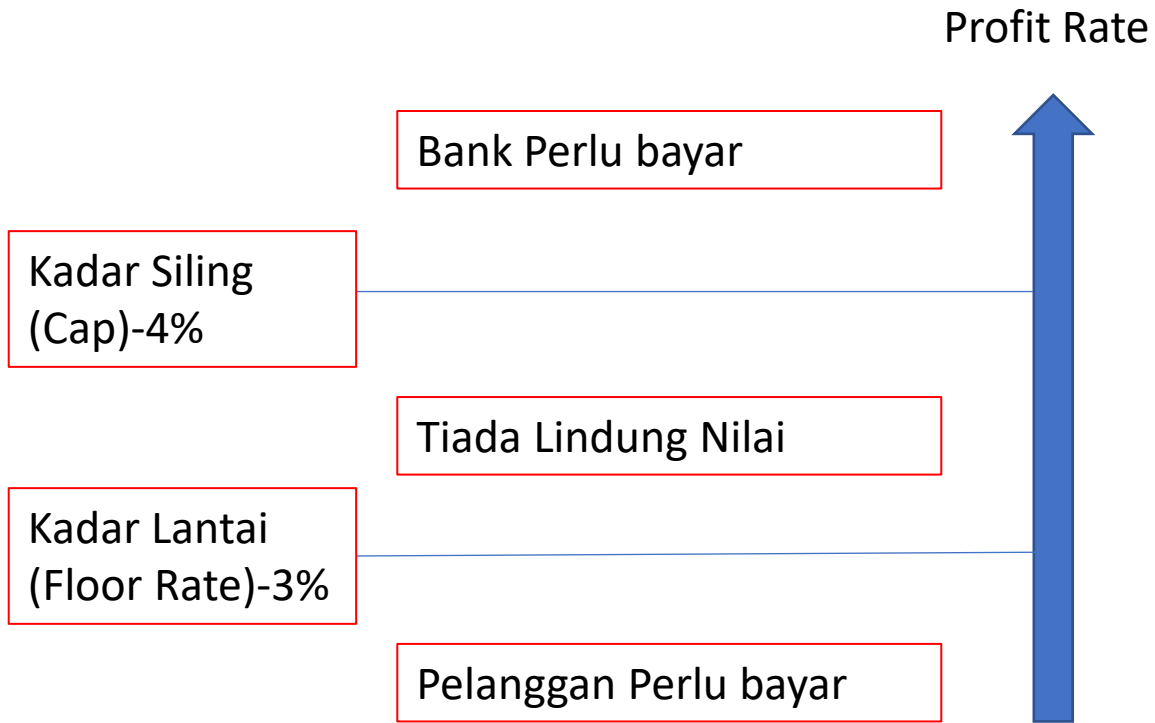
- ii. Resolusi “Islamic Foreign Currency Option Based on Wa`d in Islamic Dual Currency Investment (DCI-i)”

Kadar Tetap
(Fixed Rate) 4%



Cap at 4%





Lindung Nilai

- A hedge is an investment that is selected to reduce the potential for loss in other investments because its price tends to move in the opposite direction..... The term hedging can be used to describe diversifying a portfolio by buying shares in a conservative bond fund to offset potential losses in more volatile stock funds.

Spekulasi

- Speculation involves calculating risk and conducting research before entering a financial transaction.
- A speculator buys or sells assets in hopes of having a bigger potential gain than the amount he risks.
- They take risks and know that the more risk they assume, in theory, the higher their potential gain.
- However, they also know they may lose more than their potential gain.

Perjudian

- Converse to speculation, gambling involves a game of chance. Generally, the odds are stacked against gamblers. When gambling, the probability of losing an investment is usually higher than the probability of winning more than the investment. Compared to speculation, gambling has a higher risk of losing the investment.

Isu (4): Penggunaan Underlying Reference yang Tidak Patuh Syariah

- Terdapat produk yang melibatkan penggunaan indeks yang mempunyai index constituents tidak patuh Syariah sebagai underlying reference.
- Mereka yang membenarkan berpendapat bahawa ia hanya rujukan (reference) dan opsyen yang dibeli tidak mempunyai pilihan physical delivery kepada pelabur.
- Ini bermakna penggunaan indeks sebagai underlying reference bukan pelaburan sebenar ke dalam saham tidak patuh Syariah. Ini dapat dilihat melalui cash settlement.
- Sekiranya opsyen yang dilanggan terdapat pilihan physical delivery kepada pelabur, penggunaan indeks tidak patuh Syariah boleh menyebabkan pelabur menerima pulangan dalam bentuk aset tidak patuh Syariah.

Jika tiada pilihan physical delivery misalnya dalam Single Stock Futures (SSF), maka akan timbul pula isu SSF yang tidak genuine kerana physical delivery tidak akan berlaku. Aset yang dibeli mestilah mampu diserahkan.

- It is opined that the reference index or portfolio may include Shariah-compliant asset and/or non Shariah-compliant asset i.e. shares, indices, commodities, etc.
- However, the image of the bank has to be taken into consideration should a non Shariah-compliant asset is to be used as the component of any of reference index or portfolio. The above shall be guided by the following parameter:

Guiding Parameters:

- 1) The Reference Assets shall exclude references which are not Shariah-compliant like gaming, liquor, conventional banking and finance, conventional stockbroking etc.
- 2) However, in the case of mixed assets or portfolio, the non Shariah-compliant component shall not be more than 49%
- 3) The above shall not portray negative image to the Bank.

Examples at CIMB Islamic bank:

- 1) Islamic Profit Rate Option ("PRO-i")
- 2) Islamic Digital FX Option

٣ / ٥ يجوز اتخاذ مؤشر، مثل معدل ليبور أو مؤشر أسعار أسهم أو سلع محددة، أساساً لتحديد الربح في الوعد بالمرابحة شريطة إبرام عقد المرابحة على ربح معلوم لا يتغير بتغير ذلك المؤشر. (وينظر المعيار الشرعي رقم (٨) بشأن المرابحة البند ٦ / ٤).

Contoh Parameter Untuk Underlying Reference Kepada Conventional Financial Institution's Stock.

- (i) The Financial Institution group had a full-fledged Islamic business entity, not an Islamic window (minimum and compulsory parameter).
- (ii) The Financial Institution group was practicing Islamic first policy.
- (iii) The Islamic business entity paid business zakat.
- (iv) The Financial Institution Group or its Islamic entity had issued Sukuk to fund its Islamic business.

The fatwa of Dallah Al-Barakah also resonated the same view in this regard which states as follows:

“(22/1) Establishing Islamic benchmark as an alternative to interest-based benchmark for dealings involving deferred payment

....

b. there is no prohibition in relying on the interest rate benchmarking in pricing the Islamic products of which such use of benchmark does not contradict the products’ nature of conforming to the Shariah upon its usage.”

Isu (5): Isu-isu Lain Dalam Produk Berstruktur Islamik

- Kos sebenar dalam Early Termination Charge (Administrative cost, MTM, unwinding cost)
- Perbezaan diantara actual redemption amount dan outstanding deferred payment amount yang berasaskan prinsip ibra' dan hibah bersyarat.
- Capital reduction dalam situasi early redemption.
- Dual profit rates (higher rate and lower rate) yang bergantung kepada pelbagai scenario – Adakah ciri ini menyebabkan gharar pada harga yang perlu dibayar / keuntungan? Sedangkan total sale price yang dikontrakkan melalui CM ialah pada lower rate. Jika scenario menunjukkan perlu bayar higher rate, issuer perlu bayar lebih daripada contracted selling price melalui hibah.

KESIMPULAN

- Keperluan kepada parameter Syariah untuk produk derivatif.
- Kajian mendalam diperlukan untuk membina parameter Syariah terhadap penggunaan derivatif untuk tujuan keuntungan. Contoh parameter umum:
 - 1) Transaksi mesti bebas daripada unsur-unsur haram seperti perjudian, gharar dan riba.
 - 2) Tujuan akhir transaksi ialah untuk mengembangkan harta secara patuh Syariah.
 - 3) Transaksi tidak boleh menjurus kepada moral hazard yang membawa kepada kemusnahan ekonomi (seperti Credit Default Swap-CDS)