

The Jurisprudential Differences about the Term Credit “Al-I’timan” and Credit Card: Islamic and Conventional Perspectives

Perbezaan Jurisprudens Mengenai Istilah Kredit "Al-I'timan" dan Kad Kredit: Perspektif Islam dan Conventional

Mohammed Jassem Mohammed
mali77oh@yahoo.com
Faculty of Law
Universiti Kebangsaan Malaysia

Rahmah Ismail
irahmah@ukm.my
Faculty of Law
Universiti Kebangsaan Malaysia

Ruzian Markom
ruzian@ukm.my
Faculty of Law
Universiti Kebangsaan Malaysia

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Abstract

The credit in general and credit card in particular have become important instrument for individuals, merchants and banks. The use of a credit card represents a part of daily activities nowadays; therefore, it has become a duty on the Muslim jurists to clarify the Islamic legal principle (Al-Takyif) for the card. Terminologies have a big impact on the jurisprudential adaptation to the extent that a new contract can be formed depending on the jurisprudential analysis. Therefore, the Muslim jurists differ in the term of credit in Islamic credit card transaction relating to the legitimate proof of the term and suitable description of credit to the card used. The jurists debated on the definition of credit card in the modern banking transaction; many of the view the term credit connotes “Al-I’timan” while others prefer “Al-Qard”. The objective of this article is to discuss comprehensively the adaptation of Islamic terminology to the credit card in the banking transaction. Islamic jurisprudential analytical approach was adopted in

justifying the suitable terms of credit to credit card. It also applied the comparative approach in ascertaining the definition of credit card transaction in Islam. Finally, the discussion revealed that the term "Al-I'timan" refers to the term credit in the credit card transaction in Islam.

Keywords: *credit, Al-I'timan, credit card, Al-Qard, Consumer Credit Act 1974, the Card Act 2009.*

Abstrak

Secara amnya kredit dan kad kredit khususnya merupakan instrumen penting kepada individu, peniaga dan bank. Penggunaan kad kredit merupakan sebahagian daripada aktiviti harian pada masa kini. Oleh itu, adalah tanggungjawab ulama Islam untuk menjelaskan prinsip perundangan Islam (al Takyif) terhadap penggunaan kad kredit. Terminologi memberikan impak yang besar terhadap adaptasi jurispruden Islam sehingga boleh mengubah sesuatu kontrak kepada bentuk kontrak yang baru. Justeru, para ulama berbeza pendapat tentang terma kredit dalam transaksi kad kredit Islam dari segi bukti kesahihan mengikut sumber perundangan Islam dan kesesuaian deskripsi kredit terhadap kad yang digunakan. Ulama berselisih pendapat tentang definisi kad kredit dalam transaksi perbankan moden. Sebahagian ulama berpegang kepada pandangan kredit dalam kad kredit merujuk kepada terma "Al-I'timan". Sebahagian yang lain pula berpendapat kredit merujuk kepada "Al-Qard". Objektif artikel ini ialah untuk membincangkan secara komprehensif adaptasi terminologi Islam kepada kad kredit dalam transaksi perbankan. Pendekatan analisa jurispruden Islam telah diguna pakai untuk menentukan terma yang sesuai untuk kad kredit. Selain dari itu, pendekatan komparatif juga telah diaplikasikan dalam menentukan definisi kad kredit dalam transaksi perbankan menurut Islam. Akhirnya, perbincangan juga menunjukkan bahawa terma "Al-I'timan" merujuk kepada kredit dalam konteks transaksi kad kredit dalam Islam.

Kata kunci: *kredit, Al-I'timan, kad kredit, Al-Qard, Akta Kredit Pengguna 1974, Akta Kad 2009.*

1. Introduction

Credit plays an important role in the Islamic world and it is one of the important elements and principal in the area of commercial and banking activities, particularly in the area of credit card. The usage of credit card has become widespread in the world and it represents a part of daily activities for the persons nowadays. It has become a duty on the Muslim jurists to face this case and provide clarification on the Islamic adaptation (*al-Takyif*) for using a credit card. Muslim jurists have differed on the meaning of credit. This difference has led to their differences on the definition of credit card. This matter appears clearly in Islamic jurisprudence, where dispute has arisen among Muslim jurists about the meaning of credit and the meaning of credit card.

The reason of this difference is caused by the term credit “I’timan”. It is a new word which has not been addressed by previous jurists. Conventional jurists do not distance from this difference. They also have differed on the interpretation of the meaning of credit as well as a credit card. This article attempts to draw a comprehensive image for the juristic differences about the definition of credit and credit card in the Conventional and Islamic views in order to help the scholars to determine a suitable legal adaptation of the credit card transaction. The article is divided into three parts; the first part explains the meaning of credit (*al-i’timan*), and distinguishes it from the loan (*Al-Qard*) according to the Islamic view. The second part highlights definition of the credit card in the view of conventional jurisprudence and legislation, while the third part shows the Islamic scholars' opinions about definition of credit card.

2. The Credit (*al-I’timan*) and Distinguishes It from the Loan (*al-Qard*) According to the Islamic View

Islamic scholars have no similar view about the term *I’timan*. Some of them consider it has not differed from *Qard*, while others see there are differences between them. However, in order to highlight scholars' views about the term *I’timan* and *Qard*, and the differences between them the article clarifies the following:

2.1 Meaning of Credit (*Al-I’timan*) According to the Islamic View

The article explains the meaning of credit *Al-I’timan* in terms of literal and technical meaning of credit according to Muslim references as follow:

2.1.1 Literal Definition of *Al-I’timan*

- i. *Al-i’timan* is literally derived from the word *Amanah* (trustworthiness, honesty, confidence, reliance and faith).¹ The word *amanah* is widely known among Muslim scholars in finance transactions. It brings the meaning to appoint or assign someone’s authority upon his property as trust authority.² This principal meaning

¹ Muhammad Ibn Mukarram *Ibn Manzur*, *Lisan Al-Arab*, volume 1, Dar Al-Ma’ref, Egypt, non-date, p141.

² Natalie Schoon, *Islamic Banking and Finance*, Spiramus, UK, 2009, p 58.

only can be applied on deposit safe keeper, business partner, entrepreneur, and agent of sale.³ It is not as surprising as it might appear that the word i'timan is derived from the word 'amanah', but they are differ in terms of mechanism of work and applications. Al-amanah- as mentioned above- is concerned with keeping of money, while, i'timan is granted a right such as a sum of money by a creditor to a debtor to defer payment of a debt. Therefore, there is no any similarity between the two concepts 'amanah and i'timan', in terms of the pronunciation and letters.

- ii. It may seem at first sight that there is coincidence between (aqd al-i'timan and aqd al-ist'iman) in Islamic law. Where there is a contract named as the contract of trust (aqd al-ist'iman), which is well-known in Islamic jurisprudence as the contract of unconstraint and the unconditional (*aqd al-istirsal wa al-istislam*). For example, a seller asks the purchaser saying "will you please buy this property just as you buy from others? It is because I really do not know the price", so the purchaser gets the property at the price which has been given by him.⁴ In considering the concept of al-ist'iman as explained in the above example, it clarifies that there is no any coincidence or similarity between the concept of al-ist'iman and the concept of al-i'timan, where al- i'timan depends on the deferment of debts payment. While al-ist'iman is not related to right granted or deferment of debts payment.

2.1.2 Jurisprudential Definition of al-I'timan

- i. The process of exchanging valued property or money at the present time with the consideration of promise to make payment in the future time.⁵ The credit can be held in two conditions. Firstly, the condition between the seller and the purchase. The seller gives an extra period of time to the purchaser to make the payment for the property, and as it is considered as deferred payment the price of the property is increased. Secondly, when a person lends an amount of money to a debtor with the expectation of repayment of the amount at some time in the future and there is the issue of the increase of the price as the consequence of the payment.⁶ It notes on this definition, it focuses on essential elements in the credit: The process of exchanging valued property or money between a creditor and a debtor, deferment

³ Rafidah Binti Mohd Azli, Issuance of Islamic Credit Card in Malaysia: a Critical Analysis, a dissertation submitted in partial fulfillment of the requirement for the degree of master of Islamic revealed knowledge and heritage (*Fiqh and usul al-Fiqh*), International Islamic University Malaysia, 2009, p 21.

⁴ Abdul Wahab Abu Sulayman, *al-Bitaqat al-Bankiyyah Al-'Iqradiyyah wa Sahb al-Mubashir min al-Rasid*, Dar al-Qalam, Damascus, 1424H/2003, p 29.

⁵ Wahbah Al-Zuhalyi, *Bitaqat al-I'timan*, a paper presented at the Fifteenth Conference of The Islamic Fiqh Academy by the Organization of the Islamic Conference at Muscat, Oman, 6th-11th March 2004, p 4.

⁶ <http://zuhayli.com/Credit.htm>

of payment and the increase of a sum of debt as the consequence of the deferment of payment. But it did not go beyond the framework of definitions in the conventional law, which means, it did not bring any Islamic idea about the credit.

- ii. Some scholars⁷ see that the meaning of credit is existed in the deposit contract, where the deposit has same meaning with a credit. But in looking at the jurisprudential sources⁸, it notes that the scholars have mentioned to the word amanah (safekeeping) rather than I'timan and the difference between the two meanings is obvious. The meaning of amanah is any person (*al-mudi'*, depositor) deposits an item with other (*al-mudi' ladaih*, depositary) for safekeeping until such time as the depositor should want it back, as stated in Allah Almighty says "*Allah commands you to return trusts to those to whom they are due*"⁹, while the i'timan (credit) means the right granted by a creditor to a debtor to defer payment of a debit. In addition, sometimes the depositor asks from the depositary not to use the deposit in any transaction, he just gives him the deposit to keep.¹⁰ On the contrary, the applicant can use the credit which granted to him in any transaction at any time. As a result, the word which has mentioned in Islamic scholars' sources shows the concept of amanah (safekeeping) not i'timan (credit).

The word i'timan 'credit' has mentioned in Islamic legislation sources as follows:-

a. Al-Quran

Almighty Allah says:

"O you who have attained to faith! Whenever you give or take credit for a stated term, set it down in writing".¹¹

Since the Quran strictly prohibits the use of 'riba' and warns those who go on earning from it of being at war with God and the Conveyor of his message, it presents a substitute practice of lending money without profit, but with legal and moral safeguards to cover the risk of any denial of obligation.¹² The first part of the verse deals with transactions involving future payment of future consideration. Example on this is if goods are brought now and payment is promised at a fixed time and place in the future.¹³ This verse indicates that Allah Almighty provides on the

⁷ A'adl Abd Al-Fathil aid, *the Credit and Debt in the Islamic Banks*, Dar al-Fikr al-Jama'y, Egypt, 2008, p 9.

⁸ Wahbah Al-Zuhayli, *Al-Fiqh Al-Islami wa-Adillatuh*(Islamic jurisprudence and its proofs), translated by: Mahmoud A. Ei-Gmal, Volume1, Dar al-Fikr, Damascus, 2003, p 577.

⁹ Al-Qur'an, Al-Nisa 4:58. Fathi Osman, *Concepts of The Quran*.

¹⁰ *Ibd Al-Halim O'ias*, *Encyclopedia of Contemporary Islamic Jurisprudence*, volume2, Dar Al-Wafa, Egypt, 2005, p 23. See also, Natalie Schoon, *Islamic Banking and Finance*, p 58.

¹¹ Al-Qur'an, Al-Baqarah 2:282, Fathi Osman, *Concepts of The Quran*, published by Muslim Youth Movement of Malaysia(ABIM), Malaysia, first edition, 1997, p 884.

¹² Fathi Osman, *Concepts of The Quran*, p 884.

¹³ Abdullah Yusuf Ali, *The Meaning of Holy Qur'an*, Amana publications, 11Edition, USA, 2006, p117.

legality of dealing by debt, by saying (*Whenever you give or take credit*). This verse mentions permissibility of transactions which involves debt, and this transaction - debt - looks a large extent of the credit operation, which is based on a sum of money granted to the applicant by the grantor such as bank, then the applicant pays his debts after a period of time as an installment or once. This transaction does not differ with transaction of debt; both of them depend on a sum of money granted to a debtor.

Credit transaction depends on two fundamental elements; granting a right to an applicant usually a sum of money, and deferred payment, both of these two elements are provided in the above expressed verse (*Whenever you give or take credit*) and (*for a stated term*), thus; it is arguable that the legality of credit mentioned in the above verse implicitly. As Allah Almighty says in the next verse

:(But if you trust one another, let the one who is trusted fulfill his trust, and let him be conscious of God his Lord).¹⁴

This verse indicates, the trustee's duty to guard the interests of the person on whose behalf he holds the trust and to render back the property and accounts when required according to the terms of the trust.¹⁵ al-Zamakhshari said: the debtor should be met by the expectations of the creditor, and must repay (re-deposit) the right¹⁶ which is entrusted to him.¹⁷

The jurists have called a word 'trustee' (al-Mu'taman) on the person that gave money in a lending contract such as sale on credit (sale by deferred price), where Allah Almighty says:

"O ye who believe! Fulfill (all) obligations".¹⁸

The first of the above verse strongly stresses the legal and moral obligation of keeping one's promises with any party. This applies to the individuals and to any Muslim legal body or institution, including the Islamic state; whether its promises have been given internally to its people, or externally to other states, international bodies, or private alien individuals or companies¹⁹. The fulfilment of obligations that arises from any contract by a debtor, will make him more trust for a creditor, as in the case of credit transaction, when the applicant pays his debts in due dates, it will make him more trustworthy for credit grantor, thus, it is arguable that

¹⁴ Al-Qur'an, Al-Baqarah 2:283, Fathi Osman, Concepts of The Quran, p 884.

¹⁵ Abdullah Yusuf Ali, The Meaning of Holy Qur'an, p 119.

¹⁶ Such as property (Ma'l) or non fungible ('Ayn).

¹⁷ Mahmud Ibn Umar Zamakhshari, *Al-Kashshaf an Haqa'iq Al-Tanzil wa Uyun Al-Aqawil fi Wujuh Al-Ta'wil*, vol 1, non date, p 329.

¹⁸ Al-Qur'an, Al-Ma'idah 5:1. The Holy Qur'an, translation by Abdullah Yusuf Ali, Saba Islamic Media, Malaysia, 2008.

¹⁹ Fathi Osman, Concepts of The Quran, p 930.

the trust that the applicant carries is very important in operation of grants of credit, and this trust resulted from fulfilment of obligations that the above verse provides.

b. Sunnah

In general, the word I'timan has stated in Sunnah of Prophet, where Abu Hurairah reported the Apostle of Allah (May peace be upon him) to have said:

*“Pay the deposit to him who deposited it with you, and do not betray him who betrayed you”*²⁰. Also he (may peace be upon him) said:

“There is no guaranty on the trustee”.²¹

The significance of these Ahadith is that the prophet (peace be upon him) called the word trustee (*Mu'taman*) on the person who possessed money from another with his permission as credit (*amanah*). With respect to the definition of credit from the perspective of Islamic banking, it is the trust²² which the bank confers it to its customers for providing them by the credit tools such as a sum of money according to a permissible economic contract, between the applicant and the bank for a specific purpose and during a limited period.²³ It is stated in the Islamic economic history that there was a tool named *Al-Req'ah* cards where *Nasr Khesro* mentioned in his book *Safer Namah* that people when they come to the city market of Basra for shopping or trading they give their money to the money changer and take from him card. After that when the cardholder wants to buy something from that market, he pays those cards to the buyer instead of the cash²⁴. From the above, it has become clear that the Islamic jurisprudence did not mention a clear definition for the word I'timan. In other words, the Islamic jurisprudence did not know the term 'credit', with the concept that circulates now.

However, the Islamic scholars have deduced a comprehensive definition for the term “credit” by virtue of: firstly, existence of an origin of the notion of credit in the Islamic law, as it is explained above Secondly, through the applications and images of contracts in Islamic jurisprudence which approach the notion of credit as follows :(the trust of causing to give the money to others, whether purpose of act in the asset of money, as in the loan, debt and guarantee,

²⁰ Abu Dawud, Muhammad Ashraf, *Sunan Abu Dawud*, Volume II, Lahore, 1984, Chapter 1326, Hadith No.3528, p1003. See also, Mohamed Bin Issa Abu Issa Al-Tirmidhi, *Sunan al-Tirmidhi*, Al-salm, volume3, Dar Ahia Al-Trath Al-Arabi, Beirut, p 564.

²¹ Abdul-Hassan Ali bin Omar Al-Daaraqutni, *Sunan AL- Daaraqutni*, Volume3, Dar Al- Marafh, Beirut, 1386H-1966M, Hadith No.7518, p 47.

²² There is no difference between the western and Islamic jurisprudence in their views about the meaning of trust and credit, where the trust represents personal and substantive circumstances which a person carries them such as the age, solvency, his work and others, that enable him to obtain a credit tool. In other words, the trust is the base that enables a person to get a credit. While the credit is an external effect or appearance for the trust which it embodies through confers the holder of trust a credit tool such as a sum of money.

²³ Al-Zeidanin, *Fundamentals in the Financial System*, Dar Wa'al, Jordan, 1999, p 41.

²⁴ Abd Al-Hamid Al-Ba'aly, *Banking Credit Cards*, volume 2, the Conference of Electronic Banking Activities between *Shariah* and law, Dubai, 10-12/5/2003, p 696.

or to act in the benefit, as in the borrowing, or for the purpose of safekeeping, as in the deposit, or for authorization to act, as in the Agency).²⁵

2.2 The Difference Between (Al-I'timan and Qard) according to Islamic View

It is crucial to stress that the Islamic resources did not mention expressly the notion of credit as it exists now. Thus, there has been a long controversy among Islamic jurists over the meaning of word I'timan "credit". Where this word is inherited from English and there are no expressly signals about it in Arabic language in the contemporary sense.²⁶ Some of jurists say that the word 'credit' in English corresponds with the word 'loan' in Arabic because the meaning and intended is one for both the two words. Thus, the term credit card has to change to the lending card. Conversely, the other trend sees that the word 'credit' has an independent meaning from the loan and there is no coincidence between them. Thus, the term credit card must not change to other term because it is more expressive for the concept of this tool 'credit' in linguistically and practically.

2.2.1 Arguments of the First Trend

- i. Abdul Wahab in his book Banking Cards says that the meaning of *i'timan* 'credit' as it is mentioned in economic and commerce dictionaries and also in Consumer Credit Act 1974 of the United Kingdom and in the USA Truth in Lending Act section 103(E) means the lending.²⁷
- ii. He also sees that the definition of credit under the financial affairs mention as lending also can be understood from the economic definition that the notion of credit does not differ with the lending.²⁸
- iii. That the word "*al-i'timan*" is derived from the word '*Amn, Amanah, Ist'iman*', and there is a contract in Islamic jurisprudence known with '*aqd al-Ist'iman*' ,but this contract does not close to notion of credit as it is explained beforehand. In other words, the concept and mechanism of credit contract do not link to the contract of *ist'iman*. As long as there is no contract in Islamic jurisprudence governing or

²⁵ The conference of "the Role of Islamic Financial Institutions in The Investment and Development", held in University of Sharjah with Islamic Dubai Bank, 1423-2002, p 3. See also, A'adl abd al-Fathil aid, the Credit and Debts in the Islamic Banks, p 8.

²⁶ Abd Al-Hakim Ahmad Othman, Rulings of Credit Cards in the Law and Islamic Jurisprudence Opinions, Dar Al-Fikr Al-Jame'y, Alexandria, First Edition, 2007, p 31.

²⁷ Abdul Wahab Abu Sulayman, *al-Bitaqat al-Bankiyyah*, p 22.

²⁸ Abdul Wahab Abu Sulayman, *al-Bitaqat al-Bankiyyah*, p 23.

regulating the contract of *i'timan*, therefore, it has to be governed by the contract of loan.²⁹

2.2.2 Arguments of the Other Trend

The Muslim scholars have discussed the arguments of Abdul Wahab as follows:

- i. Mohammed Abdul Halim said, when we return to the English dictionaries to define the two words 'credit and loan', we will find that each word is independent from other in terms of the concept and content.³⁰ As with the Arabic, the word 'credit' means the mutual trust between two persons or more, which makes the person reassured to lend money for other people, while the loan is the money that the person gives to other, then he reimburses it in due date.³¹
- ii. In the banking terminology, the credit is an undertaking issued by a bank to a person for providing or reimbursing a sum of money instead of him in the future, while the loan is a sum of money which the bank gives to the customers virtually.³²
- iii. The credit is the readiness for giving debt or undertaking of bank to put a sum of money under action of customer. He may use that money whole or in part, or not use, whilst the loan is a term that expresses a debt already occurred.³³ In other words, the lender gives money to a borrower directly, while in the credit transaction the beneficiary is given the ability to do all his needs without paying cash.³⁴
- iv. When the borrower receives the loan it will be under his liability wholly whether he uses it or not, while in the credit transaction, the credit will not be under the liability of applicant unless he uses it.³⁵

2.2.3 Appraisal of Both Trends

It may seem at first sight that Abdul Wahab's opinion about the coincidence between '*I'timan and Qard*' is the true fact, but when looking at the arguments of other trend in addition to the following arguments it will appear that it is not accurate as follow:-

²⁹ Abdul Wahab Abu Sulayman, *al-Bitaqat al-Bankiyyah*, p 25-26.

³⁰ Mohammed Abdul Halim Umar, *Bitaqat al-I'timan, Mahiyatuha wa al-Alaqat al-Nashi'ah an Istikhdamiha bayna al-Shari'ah wa al-Qanun*, volume 2, the Conference of Electronic Banking Activities between *Shariah* and law, Dubai, 10-12/5/2003, p 622.

³¹ Abd Al-Hakim Ahmad Othman, *Rulings of Credit Cards in the Law and Islamic Jurisprudence Opinions*, p 37. See also, Mohammed Abdul Halim Umar, *Bitaqat al-I'timan*, p 622.

³² Mohammed Abdul Halim Umar, *Bitaqat al-I'timan*, p 622.

³³ Mohammed Abdul Halim Umar, *Bitaqat al-I'timan*, p 663. See also, Essam Hanafi Mahmud Moussa, *The Legal Nature of Credit Cards*, volume 2, the Conference of Electronic Banking Activities between *Shariah* and law, Dubai, 10-12/5/2003, p 872.

³⁴ Abd Al-Hakim Ahmad Othman, *Rulings of Credit Cards in the Law and Islamic Jurisprudence Opinions*, p 37.

³⁵ *Ibid*.

- i. The credit contains a notion of the revolving credit and this notion is not found in loan. The borrower has to receive the borrowed money, whether he wants to use it or not, whilst in the credit transaction, the beneficiary can use a part or all of sum of credit and repays it in the end of the month wholly or partly, or may not use it.³⁶
- ii. Under revolving credit, when the beneficiary needs a credit, he does not need to renew his contract with the grantor of credit, while the loan, the borrower has to renew his contract when he needs a new loan.³⁷
- iii. The sums and dates of repayment are different in revolving credit, while the loan, they are regulated or arranged in terms of the dates and amounts of repayment.³⁸
- iv. Usually, the loan is associated with the money only, while the credit transaction does not associate with the money only, but also with other means which is granted to the customers such as a letter of credit.³⁹
- v. From the above, in spite of the similarities between Qard and I'timan, there is not a coincidence between them.

3. Definition of Credit Card According to the Jurisprudence and Legislation

It can explain the definition of a credit card according to Islamic and conventional view as follows:

3.1 Definition of The Credit Card According to the Conventional Jurisprudence and Legislation

There are various opinions among jurists about the definition of credit card. These differences have led to difference of legislations about the definition. In order to explain those differences, this subject divides into two topics; the first is about the jurisprudence and second about legislations:

³⁶ J.L.Hanson, Dictionary of English of Economics and Commerce, McDonald & Evans Ltd, London, 4Edn, 1974, p 412.

³⁷ Ian Lindsy, Credit Cards: The Authoritative Guide to Credit and Payment Cards, Rushmere Wynne, England, 1994, p13.

³⁸ Ibid.

³⁹ Essam Hanafi Mahmud Moussa, the Legal Nature of Credit Cards, p 872.

3.1.1 Jurisprudence

There has long been a debate among jurists on the definition of credit card. Several authors have written about the definition of credit card as follows:

- i. Some authors viewed to a credit card from the perspective of a cardholder; therefore, they have defined it as a plastic card issued by a bank or finance organization, which enables its holder to obtain credit when making purchases⁴⁰. The credit cards usually denote token which allow the cardholder access to extended credit with an installment payment facility and, most significantly⁴¹. The credit card enables the holder to whom such a card issued to obtain goods and services without payment in cash or by cheque, and to obtain cash.⁴²

Thus, the credit card is a payment instrument that enables cardholder to make purchases of goods and payment for services instead of using cash.⁴³ The cardholder can obtain funds at interest from a credit institution, at her own discretion, up to some limits.⁴⁴

It is crucial to stress that, these definitions consider the credit card as an important instrument which enables its holder to obtain goods and services by using a credit card without paying in cash. Furthermore, the credit card enables a cardholder to pay for his purchases with installments. It notes on these definitions that they did not consider a comprehensive view to the credit card they just focused on the functions of the card toward its holder.

- ii. The second view is that a credit card as a mean of electronic payment. It is the most familiar E-payment type in the world and it is a convenient form of payment mode acceptable everywhere.⁴⁵

The above definition does not give an obvious image a credit card. It has considered the credit card as a means of payment but there are other types of cards such as debit or charge cards that also consider as means of electronic payments, thus, it will be difficult to distinguish between them.

⁴⁰ Oxford Reference, A concise Dictionary of Law, UK, 2th, 1990, p107.

⁴¹ Ian Brown, Commercial Law, p788.

⁴²LS Sealy &RJA Hooley, Commercial Law -Text, Cases and Materials, Butteworths, London, 2th,1999,p720.

⁴³ Bank Negara Malaysia, Card Transaction and You- Credit Cards, Malaysia, 1th, 2003, p2, via www.bankinginfo.com.my.

⁴⁴ Edward J. Bird, Paul A. Hagstrom, Robert Wild, Credit Cards and the Poor, 1997, p2, via <http://www.ssc.wisc.edu/irp/>.

⁴⁵ Bill Hardekopf, John Oldshue, and Lynn Oldshue, The Credit Card Guidebook, Hampton & Associates Inc, USA, 2008, p 2. See also, Stuart E. Weiner, Electronic payments in the USA, p 4.

- iii. The third view has concentrated on the credit generated from the card. Graham Stephenson has defined a credit card as means of providing a revolving credit to the debtor.⁴⁶ With same meaning, some others say, that the credit cards provide a means of immediate obtaining goods and services on credit⁴⁷, in other words, any card, plate, coupon book or other credit device existing for the purpose of obtaining money, property, labor, or services on credit.⁴⁸ Others opined that a credit card must offer options of revolving credit.⁴⁹

The final opinion is nearest to the concept of credit card, due to the fact that those cards are connected with a close association with the revolving credit which they confer to the cardholder. Furthermore, the grant revolving credit to the cardholder represents most important aspect of the credit card which distinguishes the credit card from other cards which do not provide a revolving credit to their holder such as debt, ATM cards. Thus, from a practical view, focusing on providing of revolving credit to the cardholder gives an accurate description from the fact and function of the credit card.

3.1.2 Legislations

English legislations do not define a term 'credit card' whether expressly or implicitly notwithstanding the first credit card introduced in the United Kingdom was in 1966.⁵⁰ That is why there was no legislations dealing with a credit card, until 1974 when the Consumer Credit Act was passed, only certain types of lending, such as hire purchase, were dealt with by legislation, but other areas such as credit card were left totally unregulated.⁵¹ Even with the issuance of Consumer Credit Act in 1974, it did not mention to the term 'credit card' expressly, where the term 'credit card' is neither employed nor defined in the Consumer Credit Act as such cards were not in widespread use in 1974, the reason for that is perhaps the term 'credit' as it is mentioned in S 9(1), which is defined as a cash loan and any other form of financial accommodation, which is indicative of the legislature's objective of the bringing within the compass of the regulated regime not only loans or credit card but every form of agreement involving credit.⁵² But nevertheless, the Act's structure copes perfectly well with credit card agreements⁵³. In spite of that, the Consumer Credit Act 1974 has mentioned the term 'credit-token' expressly in the following article:

⁴⁶ Graham Stephenson, *Consumer Credit*, Collins Professional Books, London, first edition, 1987, p14.

⁴⁷ Lee Mwi Pheng, *Detta Samen*, *Banking Law*, *Malayan Law Journal*, Kuala Lumpur, 2th, 2002, p 232.

⁴⁸ Datinder S. Sodhi, *The Attorney's Pocket Dictionary*, p 124.

⁴⁹ LS Sealy & RJA Hooley, *Commercial Law*, p720.

⁵⁰ Michael Brindle, Raymond Cox, *Law of Bank Payments*, p 215.

⁵¹ Peter E Sayer, *Credit Cards and the Law: An Introduction*, Billing & Sons Ltd., London, first published, 1988, p 16.

⁵² Dennis Rosenthal, *Consumer Credit Law and Practice*, p 5.

⁵³ Ian Brown, *Commercial Law*, p 788.

- (1) A credit-token is a card, check, voucher, coupon, stamp, form, booklet or other document or thing given to an individual by a person carrying on a consumer credit business, who undertakes:
 - (a) That on the production of it (whether or not some other action is also required) he will supply cash, goods and services (or any of them) on credit, or
 - (b) that where, on the production of it to a third party (whether or not any other action is also required), the third party supplies cash, goods and services (or any of them), he will pay the third party for them (whether or not deducting any discount or commission), in return for payment to him by the individual.
- (2) A credit-token agreement is a regulated agreement for the provision of credit in connection with the use of a credit-token.⁵⁴

Credit card represents the most prominent applications the 'credit-token', is the most important source of statutory regulation in the context of plastic money in the UK as in the Consumer Credit Act 1974. That Act does not, however, apply to all forms of plastic money. While it is clear that credit cards are subject to the provisions of the Act, there have been some controversies over whether debt cards, cheque cards or ATM cards are so subject.⁵⁵ Credit cards do, of course, fall within the definition of a 'credit-token'. For example, store cards, where the card issuer and the supplier of goods or services are one and the same, will fall within the first limb of the section 14(1) definition, in that the issuer undertake that he will supply goods or services on credit on production of the card. The same is true of a bank-issued credit card when used to obtain cash on credit from the issuing bank. Where the issuer of the card and the supplier of the goods or services are not the same person (as in the case of a bank-issued card used to obtain goods from a third party, or a store card where the issuer is in fact a subsidiary company of the supplier, and hence legally a distinct person), the credit card will fall within the second limb of the definition, in that the issuer undertakes to pay the third party (supplier) for the goods or services supplied, in return for payment to him by the cardholder.⁵⁶ In respect with Consumer Credit Act 2006, it does not amend or replace definition of 'credit-token' which means the meaning of 'credit -token' that the CCA1974 mentioned in s.14 still effect even after the Act 2006 was passed.

As for the American legislator, he considers a credit card as a form of open-ended credit or revolving charge account covered by the Truth-in-Lending Act⁵⁷. This Act defines credit card as:

⁵⁴ Part 11 section 14 Consumer Credit Act 1974.

⁵⁵ R M Goode, *Consumer Credit Law and Practice*, Butterworths Law, London, 25.67-25-88.

⁵⁶ Michael Brindle, Raymond Cox, *Law of Bank Payments*, 4-065, p 239.

⁵⁷ The Truth in Lending Act, passed in 1968, was the first component of the Consumer Credit Protection Act. It was designed to facilitate the consumer's comparison of creditors' loan terms and to encourage competition among lenders.

(any card, plate, coupon book or other credit device existing for the purpose of obtaining money, property, labor, or services on credit).⁵⁸

The Fair Credit Reporting Act 1968⁵⁹ did not come out of definition of Truth in Lending Act; it has adopted itself as following:

(The term "credit card" has the same meaning as in section 103 of the Truth in Lending Act).⁶⁰

At the same time, the Truth in Lending (regulation Z) which is enforced in 2010 did not mention any essential change in the previous definitions of credit card, thus; it defines the credit card as:

(Credit card means any card, plate, or other single credit device that may be used from time to time to obtain credit).⁶¹

It is arguable that, these previous definitions have focused on the credit card as a means to provide a credit. A cardholder can use the credit to obtain cash, goods and services. From a practical view of point the Truth in Lending Act 1968 did not longer meet the purpose to deal with all aspects of credit card nowadays, especially after increase of using and issuance of credit cards dramatically. For above reason and others, this prompted the American legislator to issue a new Act about credit card in 2009. This Act has been kept on the definition of credit card as defined in the Truth in Lending Act, which means the definition of credit card under the Truth in Lending Act remains in effect even after issuance of the Credit Card Act 2009.

3.2 Definition of The Credit Card From The Perspective of Islamic Law

The credit card can be defined from three aspects according to the perspectives of Islamic law in terms of linguistic, technical and jurisprudential meaning:

3.2.1 The Linguistic Definition of Credit Card

The term credit card has two words, credit (i'timan) and card (*Bitaqah*): as for the card, Ibn Manzur said in *Lisan al-Arab* that the card is a paper or a small patch of paper or other which puts on something to show its price and description, as it puts on the cloth and writes in it its

⁵⁸ Section 103 (K) of The Truth in Lending Act 1968.

⁵⁹ The Fair Credit Reporting Act 1968, requiring consumer credit reports to contain accurate information, was added in 1970.

⁶⁰ Section 603 (r) (2) of The Fair Credit Reporting Act 1968.

⁶¹ Section 226.2 (a) (15) of The Truth in Lending (Regulation Z) 2010.

price.⁶² The card (*Bitaqah*) in an Arabic word came in the words of prophet of Mohammed - peace be upon him- where it is mentioned in the Hadith called Hadith Al-Bitaqah famous" ... it comes out for him a card in it: "I bear witness that there is no god but Allah and that Muhammad is His slave and His Messenger".⁶³

From the above, it is clear that the card according to the linguistic definition is a piece of paper or cloth or leather containing information about something ; then , the industry of cards developed and became made of metal instead of the paper or cloth, as it is nowadays made of plastic. In respect with credit (*i'timan*): *al-i'timan* is literally derived from the word *Amanah* (trustworthiness, honesty, confidence, reliance and faith).⁶⁴ It also brings the meaning (to appoint or assign someone's authority upon his property as trust authority).⁶⁵

3.2.2 The Technical Definition of Credit Card

A credit card is a thin plastic card, usually 3-1/8 inches by 2-1/8 inches in size that contains a magnetic stripe that holds a machine readable code and identified information such as a signature or picture, and authorizes the person named on it to charge purchases or services to his account. The credit card is made of many plastic layers, laminated together. The center is commonly made from a plastic resin known as polyvinyl chloride acetate (PVCA).⁶⁶ This resin is then mixed with other materials, such as dyes and plasticizers to give it the appropriate look and feel. A variety of inks or dyes, in various colors, are also used for printing credit cards. These inks and dyes are especially made for use on plastic. Special magnetic ink is also available to print the magnetic stripe (magnetic stripe) on the rear side of the card.⁶⁷

3.2.3 The Jurisprudential Definition of Credit Card

There has been controversy among Muslim scholars over the naming a credit card "*Bitaqah al-I'timan*". Some of them have said that the term credit card ' *Bitaqah Al-It'iman* must change to lending card "*Bitaqah al-Aqrath*" in order to correspond with its substance. Other scholars do not view a necessity to change the naming. The root of that controversy - as mentioned in previous pages - represents in the absence of counterpart for the word *ist'iman* 'in Islamic sources'. Abd al-Wahab views that there is a necessity to change the naming ' credit card "*Bitaqah A-It'iman*" to lending card "*Bitaqah Al-Aqrath*" for linguistic, legal and economic reasons. In terms of language he views that there is no a linguistic rooting or synonymous for the word *It'iman*. The words

⁶² Muhammad Ibn Mukarram Ibn Manzur , *Lisan Al-Arab*, volume 1 ,p 302. See also, Muhammad ibn Abi Bakr ibn Abd al-Qadir al-Razi, *Mokhtar Al-Sihah*, Dar Al-Fiker, Beirut, 1981, p 56.

⁶³ Ibn Manzoor, *Lisan Al-Arab*, volume 10, Dar Al-Hadith, Egypt, p 21.

⁶⁴ Muhammad Ibn Mukarram Ibn Manzur , *Lisan Al-Arab*, volume 1, p 141.

⁶⁵ For more details about the linguistic definition of credit see p 14-15.

⁶⁶ <http://ezinearticles.com/?Ever-Wonder-How-Credit-Cards-Are-Made?---Manufacturing-Credit-Cards:-Materials-And-Processes&id=527352>

⁶⁷ <http://ezinearticles.com/?Ever-Wonder-How-Credit-Cards-Are-Made?---Manufacturing-Credit-Cards:-Materials-And-Processes&id=527352>.

amanah and ist'iman' does not denote the meaning of It'iman⁶⁸. As for the laws, Abd al-Wahab considers that the word credit mentioned in Consumer Credit Act 1974 in the UK⁶⁹ and the Truth in Lending Act in the USA⁷⁰ denotes the lending.⁷¹ In terms of the economic definition, the economic dictionary defined the term 'credit card' as a loan.⁷² From the above, it can be deduced that Abd Al-Wahab and some scholars⁷³ view a necessity to change the naming to '*Bitaqah Al-Aqrath*' instead of '*Bitaqah Al-It'iman*'.

It may seem at first sight that this opinion is true, but in looking at other views it will be seen that the first view is not true completely. Other scholars do not agree with Abd al-Wahab's view about of change the naming of '*Bitaqah al-I'timan*' to '*Bitaqah al-Aqrath*' depending on the arguments following:-

- i. Mohammed R'aouf views that the meaning of a specific word could move to another meaning in some cases for the existence of a relationship between them or to clarify a specific concept. Thus, we can use the term '*Bitaqah al-I'timan*' in order to clarify the concept of credit despite the word Al-I'timan being derived from Amanah, the latter did not correspond with the word I'timan 'credit' according to the concept of credit as it is mentioned in English dictionaries.⁷⁴
- ii. Mohammed Abd Al-Halim sees that some functions of credit card do not contain a loan or debt such as the withdrawal from the balance when the cardholder has sufficient balance. Thus it is not true to call a lending card because it does not have a loan.⁷⁵
- iii. Despite that naming of *Bitaqah al-I'timan* is not representing its true sense in terms of Islamic meaning, it can be viewed from a different point. Where the card depends on Amanah between its parties; therefore, we can name it Bitaqah Al-It'iman.⁷⁶

⁶⁸ Abdul Wahab Abu Sulayman, *al-Bitaqat al-Bankiyyah Al-Iqradiyyah*, p 24-25. See also p14.

⁶⁹ Consumer Credit Act 1974, Section 9 "Credit" includes a cash loan, and any other form of financial accommodation.

⁷⁰ The Truth in Lending (Regulation Z) section 226.2 (14) "Credit means the right to defer payment of debt or to incur debt and defer its payment"

⁷¹ Abdul Wahab Abu Sulayman, *al-Bitaqat al-Bankiyyah al-Iqradiyyah*, pp 20.

⁷² Ibid.

⁷³ Al-Menshawi Al-Wardani in his Article 'The Credit Cards Between the Law and Shariah' <http://www.badlah.com/page-556.html>

⁷⁴ Mohammed R'aouf, The concept of credit card and its types and its legal natural, volume 2, the Conference of Electronic Banking Activities between Shariah and law, Dubai, 10-12/5/2003, p 617. See also, Abdu Al-Hakim Ahmad Othman, Rulings of Credit Cards in the Law and Islamic Jurisprudence Opinions, p 35. See also p 14.

⁷⁵ Mohammed Abdul Halim Umar, *Bitaqat al-I'timan*, p 663.

⁷⁶ Essam Hanafi Mahmud Moussa, the Legal Nature of Credit Cards, pp 871.

Furthermore, the term '*Bitaqah Al-I'timan*' is closer to the nature of this card, where it considers within the operations of credit because it involves the elements of credit following (granted of credit to a client, the client pays commission and the client repays the credit granted).⁷⁷

- iv. Widespread use of this naming and the stability of the banking and commercial practice to name it a credit card "*Bitaqah al-I'timan*", as for the other names such as lending card "*Bitaqah al-Aqrath*" are not widely used and its unfamiliar in banking activities.⁷⁸

From the above, it is arguable that naming a "*Bitaqah al-I'timan*" is closer to its substance and fact for an important reason, that card involves an important element which is a revolving credit. It is the most important element that distinguishes between the credit card and other cards such debt card. While the loan does not have a revolving credit as with the credit card, thus, it will be not true naming the card '*Bitaqah al-Aqrath*'.

As is clear from the previous details the Islamic sources did not include an explicit definition of the credit '*I'timan*' as well as credit card. That is why the Contemporary Muslim scholars find a difficulty to define a credit card according to the Islamic perspective. Also, that subject of credit card is not fall generally under one contract of the legitimate contracts. It contains numerous contracts which govern its relationships. Therefore; it is difficult to define or adapt the credit card within one contract. Nonetheless, there have been some attempts of researchers to define the credit card from the perspective of Islamic jurisprudence:-

- i. Mohammad Al-Qari views that the credit card has a tripartite relationships; the first part is the issuer of card (usually is a bank), the second is the cardholder and the third is the merchant who accepts the card instead of cash.⁷⁹

The note on this definition, it is a general definition for all types of cards issued by banks, in addition, it does not include a standard distinguishes between the credit card and other cards.

- ii. Al-Sheikh Hassan Al-Jawahiry has defined a credit card as: a card issued by a bank or institution which allows a cardholder to obtain goods and/or services without payment of cash immediately, as to repay the prices of those purchases, it will be from his account in the bank or institution if he has a balance, or through a loan

⁷⁷ Ibid.

⁷⁸ Mohammed R'aouf, The concept of credit card and its types and its legal natural, p.617. See also, Mohammed Abdul Halim Umar, *Bitaqat al-I'timan*, p.663. See also, Abdu Al-Hakim Ahmad Othman, Rulings of Credit Cards in the Law and Islamic Jurisprudence Opinions, p 35.

⁷⁹ Mohammed Ali Al-Qari Bin Aid , *al-I'timan al-Muald Ala Sheikl Bitaqah*, Journal of Islamic Fiqh Academy, eighth session, the eighth issue, Volume 2, 1994, p 580.

grants to him by the card issuer, then the cardholder repays that loan during a specific period.⁸⁰

The definition involves an explanation about the mechanism of payment the prices of purchases. The card issuer pays those prices to the merchant instead of cardholder, either by withdrawing from his account or by lending if he does not have a balance. The definition did not explain the revolving credit which is the most important operation in the credit card; where the cardholder is not obliged to repay the full sum during specific period but he can repay by installments for an opened period.

- iii. Mohammed Al-Ausemi has defined a credit card as: a tool (local or regional or international) for payment (immediately or revolving credit) arising from a contract (a bilateral or trilateral) issued by (Market or bank or company) allows its holder from a procedure of special contracts to obtain special services.⁸¹

The definition denotes a very important issue which is a revolving credit. This issue is the most important characteristic for credit card which distinguishes it from other cards such as charge card which it has a credit but it is short-term not revolving credit such as Travel and Entertainment Cards.

iv. International Islamic Fiqh Academy

International Islamic Fiqh Academy researched and discussed the subject of credit card in several sessions; the first discussion was in the seventh session where the Academy defined the credit card depending on the researches that were introduced to the Academy. The next discussions were in the eighth and tenth sessions where the Academy listened to new researches about that subject for building a complete image about it ,then in the twelfth session the Academy redefined the credit card , and the last one was in the fifteenth session, where it explained the Islamic rulings of other cards such as debt cards. The Islamic Fiqh Academy in seventh session under resolution No.63 defined the credit card as: a document given by its issuer to a mutual or a juridical person on the basis of a contract between them enabling it to buy goods or services from a vendor who approves the document, without paying the price immediately as the document includes the issuer's commitment to pay. Some types of this document make it possible to draw cash from the banks. Credit cards are of different kinds:

⁸⁰ Hassan Al-Jawahiry, Credit Cards (Lending), Journal of Islamic Fiqh Academy, fifteenth session, the fifteenth issue, Volume 3, 2004, p 115.

⁸¹ Mohammed Al-Ausemi, Plastic Cards, Dar Ibn Al-Jawzi, Saudi Arabia, 1424H, p 89.

- a. For some of them, the drawing or payment is made from the holder's account in the bank and not from the issuer's account, and is therefore covered (as debt cards). For others the payment is made from the issuer's account and is charged back to the holder at periodic intervals.
- b. Some cards impose usurious interests on the balance which remains unpaid during a specified period after due date. Others do not impose any interests.⁸²

It is deduced from this definition, the distinguishing between two kinds of cards: the underlying account cards such as debt card, and non-underlying account cards such as credit card. The underlying account cards are the drawing or payment that is made by the holder's account and not by the issuer's account. With respect to the non underlying account cards (credit card), the Islamic Fiqh Academy defined these cards under resolution No.108 which is issued in session twelfth as: A document that its issuer (issuing bank) gives to a natural or legal person (card bearer) according to a contract between them. The card bearer becomes able, by virtue of this arrangement, to purchase goods or services from those who recognize the card without immediate payment of the price as commitment will thus fall on the issuer. Payment is made from the account of the issuer who will afterwards charge the card bearer at regular time intervals. Some issuers used to impose usurious interest on the total outstanding balance that the bearers owe to them, after due date of payment, while other do not.⁸³ This definition represents a comprehensive and clear definition for all of details and characteristics of credit card, in addition, it mentions impliedly to the revolving credit when it considers that the card issuer is obliged to pay instead of cardholder that on cardholder repays during periodic periods.

Conclusion

Previous Islamic scholars did not mention the term (credit, *i'timan*) in their books as it uses in the present time. Muslim scholars have differed on the meaning of credit (*i'timan*); some of them consider the *I'timan* has not differed meaning from Qard, while others see there is a difference between them. *Al-i'timan* is literally derived from the word *Amanah*. The word *amanah* is widely known among Muslim scholars in finance transactions. The problem has arisen among Muslim scholars is the meaning of *Amanah* differs with the meaning of credit as the conventional law uses. Where, the meaning of *amanah* is any person (depositor) deposits an item with other (depository) for safekeeping until such time as the depositor should want it back, while the credit means -as it uses in conventional law - the right granted by a creditor to a debtor to defer payment of a debit.

⁸² The Council of the Islamic Fiqh Academy, holding its Seventh session in Jeddah, Kingdom of Saudi Arabia, from 7 to 12 Dhul Qi'dah 1412 H (9-14 May 1992), Resolution No. 63(1/7).

⁸³ Council of the Islamic Fiqh Academy of the Organization of the Islamic Conference in its Twelfth Session held in Riyadh (Kingdom of Saudi Arabia) during the period from the 25th of *Jumad Thani* to 1st of *Rajab* 1421 H (23-28/9/2000), Resolution No. 108 (2/12).

In spite of that Wahbah Al-Zuhayli describes the word 'credit' in distinctive way which is considered as exchanging money with the promise to make payment and it is considered as deferred payment. But after thorough discussions in this regard the Islamic Fiqh Academy and many Muslim scholars have deduced that the use of the term 'credit' is more appropriate to express the mechanism of credit card transaction because the expression and practice banking and business agree with term a credit card without other names. The difference that emerged among Muslim jurists on the definition of credit has been influenced on the definition of a credit card. We note the difference of Muslim scholars in introducing a precise definition of a credit card, where some of them designate the lending card rather than credit card, While the conventional jurists and after agreeing on the meaning of credit, said that cards consistent with an essence and work of credit card.

With respect to Islamic jurisprudence, there is the difference in the meaning of credit its effect on explaining the meaning of credit card and its adaptation; That is why the Islamic Fiqh Academy was later agreed on the precise definition of the credit card until the year 2000, when it issued the final definition of a credit card, where we see that this date was too late in comparison with the date which the conventional jurisprudence reached in defining the credit card, where it was in the seventies.

After the definition of the Islamic Fiqh Academy of the credit card which did not notice a difference in the above definition and the definitions of conventional jurisprudence and legislations, it is arguable that both two jurisprudences agreed that the card is a document depends on the three parties (the issuer, the cardholder and the merchant) that allows the cardholder to purchase goods and services from merchants who accept the card, at the same time the card issuer obligates to pay the prices of those purchases from the issuer account which have to be paid by the cardholder that on the a regular times. But the point of contention between both jurisprudences stand out in the question of interest (riba), which the banks takes from the cardholder but that interest is prohibited under Islamic law and permissible under conventional law.

In relation to the word 'card', there is no difference between the perception of Islamic and conventional jurisprudence to the word and meaning of card, the meaning of card is mentioned in Arabic dictionaries and the saying the Prophet peace be upon him as it can see in Hadith al-Bitaqah when he says: "I bear witness that there is no god but Allah and that Muhammad is His slave and His Messenger".⁸⁴ Arabic dictionaries have interpreted the word 'card' as paper that bears, price of goods. The Islamic Fiqh Academy has adopted this view when it defined the card as a document. By this definition, the Islamic jurisprudence agrees with conventional jurisprudence in the meaning of word 'card', which is also indicative of any paper, document,

⁸⁴ Al-Tirmidhi narrated this Hadith under No (2639).

coupon, stamp, form or booklet as it is defined in the books of conventional jurisprudence. The definitions of conventional jurisprudence concentrated on the revolving credit which represents the most important aspect of credit card, as with the definition of Islamic Fiqh Academy under resolution No.108 that mentioned the revolving credit impliedly and considered it the most important point in operation of credit card which distinguishes it from the other cards.

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Mohammed Jassem Mohammed; Rahmah Ismail; Ruzian Markom

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About the Authors

Mohammed Jassem Mohammed is a (Ph.D) candidate at the Faculty of Law, Universiti Kebangsaan Malaysia. He is a senior lecturer at the University of Thi-Qar, Iraq. His specialization is in Banking Law. His researches are based on the comparison between Islamic and conventional views. He can be contacted at *mali77oh@yahoo.com*.

Rahmah Ismail (Ph.D), is an associate professor at the Faculty of Law, Universiti Kebangsaan Malaysia. She specialises in Consumer Law, Law of Tort. She can be contacted at *irahmah@ukm.my*.

Ruzian Markom (Ph.D), is a senior lecturer at the Faculty of Law, Universiti Kebangsaan Malaysia. She is specialises in Islamic Finance. She can be contacted at *ruzian@ukm.my*.