
# Ways of Protection from Financial Crimes in Financial Markets (A Fiqh Study)

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**Abstract**

Financial markets are contemporary tools that are used in economic development all over the world. They are indispensable for any country that would like to gain an economic status. While these markets are means of development for finances, they could also be means for unlawfully controlling money by those who do not fear Allah. Some financial crimes take place in financial markets through manipulating the market, dealing with undisclosed confidential information, and gambling using different ways.
This study touches upon these crimes as well as the methods that Islamic Shari’a has adopted for protection from such crimes.

**Keywords**: *financial markets, financial crimes, protection*

## Introduction

The financial and economic development in human societies during different periods, and the emergence of modern means of communication all led to the development of forms of business between countries. Such business forms in return helped economic and social growth among peoples. That development also led to emergence of financial institutions that invested funds of people. The most important and influential institutions for the world were stock markets, which have been fertile grounds for investment. This helped high demand over these markets, especially by the owners of capital. Establishment of large-scale projects that cannot be afforded by the owner of the capital helped emergence of these markets as such projects need congregated efforts to create. The financial markets have witnessed tremendous development in recent years, and they have become strong institutions that are followed up by governments. Governments enacted regulations and laws that govern the progress of these institutions. Concurrently with the appearance of stock markets and the evolution of their work, new forms of financial crimes that utilized this kind of financial transactions to unlawfully control the people's money appeared. This study discusses the financial crimes that utilized stock markets showing ways of protection from it.

## Research Problem

Economic development has led to emergence of new forms of crimes occurring in the financial markets. This study tries to answer the following question: What are the ways to prevent committing these crimes in Islamic jurisprudence [*Fiqh*]?

## Research Questions

What are the forms of crimes occurring in the financial markets?

What are the means that are taken by Islamic law to prevent these crimes?

## Research Objectives

**This study aims to:**

- Show forms of financial crimes occurring in the financial markets.
- Show methods that are developed by the Islamic law to prevent financial market crimes.

## Research Methodology

This study is based on the following methodology:

1. **The descriptive approach**: through showing the types and nature of financial crimes taking place in the financial markets.

2. **The inductive approach**: through investigating the views of contemporary scholars regarding these crimes, and how to combat and prevent them.

## Previous Studies

Some studies were conducted, and they tackled similar topics, namely:

1. **[Regular Crimes and *Fiqh* Provisions]** by Ahmed bin Mohammed Khalil. This study discusses only two types of crimes and the financial markets, which are price manipulation and disclosure of confidential information indicating their harm and style, without talking about the ways of prevention.

2. **[Financial Crimes in Stock Market: A Comparative Analytical Study Between the Saudi and British Systems]** by Sultan Abdul Salam. This study discusses one crime which is market manipulation noting its provisions in the Saudi and British systems. However, the study did not talk about the role of Islamic *Fiqh* in prevention of financial crimes.

3. **[The Impact of Terrorism on Financial Markets]** by R. Barry Johnston and Oana M. Nedelescu. The study refers to operational risks on financial markets due to terrorism therein and the need to combat financing of terrorism, as well as challenges. However, the study did not indicate the protective means to face this terrorism.

This study continues the efforts exerted by former researchers to make benefit prevail and to show the role of Islamic law in preventing these crimes.

## Research Structure

This research consists of the aforementioned introduction, two sections, and a conclusion as follows:

**Section One**: Forms of Financial Crimes in the Financial Markets.

**Section Two**: Ways of Preventing Financial Crimes in the Financial Markets in Islamic *Fiqh*.

**Conclusion**: It includes the most important findings and recommendations.

## Research Terms

This study contains some terms such as:

### Prevention

It means “the actions taken by a country to prevent crime and protect society from criminals, and ensure the safety and security of the people so that they live calm and assured and perform the religious and worldly duty in comfort and tranquility”[1]

### Financial Crimes

It means “doing or not doing any act that is punishable by law and contrary to the economic policy of the state.”[2]

**Financial Markets**

It means a structured framework that includes financial instruments that can be purchased and sold[3], or they are the “markets dealing in financial investment in stocks, both when issued for the first time or when traded after that.”[4]

## Section One

## Forms of Financial Crimes in the Financial Markets

Financial markets are means to invest and develop money, but they can be means to control people's money, and manipulate their livelihoods. They are a good refuge for those who want to get paid quickly, but they may be illegal means through manipulating price and spreading rumors and false information. The study will examine the most important forms of financial crimes occurring in the financial markets.

### The first issue: manipulation of financial markets

This means:

- "Actions carried out by a trader, or a group of traders, to cause intentional difference between the price of the stocks and their value in order to make profit at the expense of the rest of traders in the market, regardless of anything other than his/their own interest."[5]

- "Artificial guidance of prices, i.e. affecting the price of stocks to be sold higher or lower than the price which occurs as a result of natural processes of supply and demand."[6]

The two former definitions reflect that market manipulation takes place through traders who have a large number of shares through which they can influence the financial markets. This leads them to manipulate the market by selling a number of stocks. This way helps reduce the price of stocks. Accordingly, small investors get seduced to sell their shares fearing another drop of prices leading to a greater loss, which reduces the stock price even more than the former price. Therefore, small investors get seduced to purchase shares again at the lower price, giving them more profit at the expense of senior investors.

As for the purposes of manipulation operations in financial markets, they are limited to three aspects[7]:

1. Raising the price of stocks - this is one of the most common and widespread forms.

2. Fixing the price of stocks - it often occurs at the new issuance of shares to prevent the drop of price at the time of establishing the company.

3. Reducing the price of stocks - this goal is rare, unless speculators have aims behind this decline, i.e. benefits from a short selling.

### Forms of market manipulation

Market manipulation takes many forms depending on various considerations, namely:

### First: Forms of manipulation of financial markets in terms of price

This form of market manipulation is divided into two sections:

1. **Manipulation influential in value**: this occurs when a manipulator behaves in a way that affects the value of a share. This kind of manipulation is often practised by decision-makers in a

joint-stock company, and it can be exemplified by: manipulating the decisions of merging and acquisition such as advertising submission of an offer to purchase or merge or acquire a company. This leads to a rise in the price of the target company's shares where the advertiser sells the shares he/she owns, and then he/she announces that the negotiations have been hindered, and the offer is recalled[8].

2. **Manipulation influential in price**: this kid of manipulation occurs in one of the two following ways[9]:

a. Spreading false information about the prices of stocks causing confusion among shareholders affecting their expectations about the value of the stock.

b. Through misleading trading, i.e. implementing speculative trading that has a direct impact on prices. This affects the rest of the traders' expectations about the value of the stocks – this is the most common type of manipulation.

Sec**ond: Forms of manipulation of financial markets in terms of purchase and selling quality**

These forms of manipulation are divided into three sections:

1. Simulated Sale: this means "creating an active dealing on a share in a time where there is no actual dealing on this share, for example: a person sells the stocks to his son or one of his relatives. Also, a person may purchase and sell stocks on the same day for people he agrees with. The purpose of this is to convince customers that there is a price change has occurred to the stocks in question, and that there is an active dealing on that stock. Simulated sale aims to create a false price for the stock, either with a view to achieve profit or achieve unrealized loss for tax purposes."[10]

2. Abbrochment: when "a person tries to purchase the whole supply of stock in order to achieve a kind of monopoly that could later enable him to sell the stock for those willing to purchase at a price he wants."[11]

3. Manipulation agreements: when "two or more individuals work together in the transactions that manipulate the prices of stock. These agreements aim to bring artificial changes in the prices of stock in order to make profit."[12]

**The second issue: the crime of dealing based on undisclosed internal information**

This means "information that the public does not know, and which is subject to protection *as per* the criminal law as long as it is confidential and may not be disclosed to all."[13] This crime is characterized by a set of characteristics[14], namely:

1. Information should be undisclosed – other than stakeholders cannot get access thereto.

2. Information should be specific – information should be accurate, certain and have a private nature.

3. Information should be correct.

This crime is often committed by the company's management or by the officer in charge of data entry. What actually happens in this crime is that some traders who have influence in the company, by virtue of their position, learn about secrets of the company. This leads them to know the details of things, and they shall know, for example, that the company would merge with a particular company in the coming period. Hence, they take proper actions to get as much profits as possible. By so doing, they take advantage of their managerial positions in the company to achieve their personal interests over other traders who are not familiar with what would happen.

**The third issue: Gambling**

This crime takes two basic forms, namely a short selling, and the purchase limit (margin). The researcher will touch upon each form briefly:

1. A short selling: this means "selling borrowed stocks hoping that the price drops. If the price drops, the traders purchase stocks that they had sold and return them to their owner. A stocks broker facilitates implementation of this process and arranges for purchase. When carrying out a short selling, a person is said to be taking a short center. However, it is supposed that, in the case of purchasing stocks for investment, stocks should be maintained for long term."[15] In this case, it can be noticed that the broker sells something he does not own, i.e. he does not have stocks that he sells for a short time. In terms of legal ruling, this kind of sales is not permissible in Islam because the seller sells something he does not really own. Allah has forbidden selling anything that is not yet owned by the seller. Narrated 'Amr bin Shu'aib, on his father's authority, said that his grandfather 'Abd Allah bin 'Amr reported the Messenger of Allah (PBUH) as saying: "The proviso of a loan combined with a sale is not allowable, nor two conditions relating to one transaction, nor profit arising from something which is not in one's charge, nor selling what is not in your possession."[16]

There is another reason for the prohibition of dealing in this way, i.e. the broker lends a speculator or a seller on an interest and on the condition of depositing, in the broker's account, an amount of money equivalent to the value of shares or the value of shares sold in order to preserve his right. If the loan brings a benefit, then it is prohibited.[17]

2. Purchase limit (margin): this means "a buyer of stocks pays a certain percentage of the market value of stocks he wishes to purchase, but the rest of the price is considered a loan provided by the broker to the buyer. The former gets a monthly interest. The purchased stocks are kept as mortgage with the broker as a guarantee for the loan where the broker borrows from the bank by guarantee but at a lower interest rate."[18] This kind of purchase is forbidden due to two reasons:

- The loan received by the buyer from the broker or another person stipulates that this loan should be returned with a higher rate, and this is a kind of prohibited usury.

- The combination of donation contract (loan) and the brokerage contract is also forbidden.[19]

## Section Two

### Ways of Preventing Financial Crimes in the Financial Markets in Islamic *Fiqh*

Islamic *Fiqh* gives interest to prevention of financial market crimes. It also developed more strict and effective measures than those established by economists. The Islamic religion works to treat the problem and eliminate it from the roots before it aggravates, and before it entails more crimes. Therefore, we find that Islam has put proactive measures to crimes of financial markets, and these measures are as follows:

1. Prohibition of *An-Najash*: this means “A trick (of offering a very high price) for something without the intention of purchasing it but just to allure and cheat somebody else who really wants to buy it although it is not worth such a high price.”[20] The Prophet forbade *An-Najash*[21]. Abu Huraira reported Allah's Messenger (PBUH) as saying: “Do not go out to meet riders to enter into transaction with them; none of you must buy in opposition to another, nor must you bid against one another; a townsman must not sell for a man from the desert, and do not tie up udders of camels and sheep.”[22]

Most scholars yet consider that selling is duly taking place. Prohibition is related to *An-Najash* not to contracting in selling. However, if selling entails deceit then the buyer has two choices: either redhibition of sale or signing, but if the buyer was deceiving the same way, then he has no choices[23]. When senior investors trick the small ones to sell their stocks in the financial market, they commit a kind of *An-Najash*. They pretend to small investors that there is a significant loss in the company’s shares leading them to sell their shares lest further loss, and then the senior investors purchase these shares. When the price of shares rises, they sell them again. Islamic Shari’a discouraged this act and considered it as deceit. The Messenger of Allah (PBUH) said: “Deceit is in the Hellfire. And whoever performs any action not in accordance with our command, it is rejected.”[24] Therefore, Islam demands preventing this type of crimes before they occur in order to prevent spread of hatred among people.

2. Prohibition of seduction: this means “seducing a buyer verbally or actually to arouse a contractor’s interest to contract. It is divided into two types: seduction in price and seduction in description. The first occurs when a seller says to a buyer: “This is not worth more, and you will not find like it at that price.” In this case, if this also included clear deceit, scholars allowed the deceived person to terminate the contract to avoid any harm. The second type occurs when falsifying the description of a contract regarding a feature that does not exist. In this case, most scholars allowed the seduced person to terminate the contract even if it does not entail deceit.”[25]

What really happens in financial markets is a verbal seduction for investors through showing that shares tend to lose, and continuing to own these shares would cause further loss to investors. This pushes investors to abandon their shares in the company to avoid any possible loss. In return, senior investors and their partners purchase these shares. Seduction may take another form where senior investors show that shares of the company boom and achieve further profits. This in return pushes small investors to own shares seeking profits. Later, they discover that shares of the company are not even equivalent to the value of purchase. Islam prohibited seducing and deceiving people so that those who are greedy and care only about making profits would not utilize this issue. Islamic Shari'a protected people from seduction and deceit.

3. Do no harm to others: Islamic Shari'a stipulated no harm to oneself or others. Narrated Abi Sai'd al-Khudari that the Messenger of Allah (PBUH) said: "There should be neither harming nor reciprocating harm and whoever causes harm, Allah harms him, and whoever is harsh, Allah will be harsh with him."[26]

This hadith totally refuses harm whether it was specific or general. This includes ways of prevention before harm actually occurs and after it occurs through measures that could eliminate its consequences and avoid recurrence. Among the severe harm that might happen to people is unlawfully controlling their money. Allah says: **[O you who believe! Eat not up your property among yourselves unjustly except it be a trade amongst you, by mutual consent. And do not kill yourselves (nor kill one another). Surely, Allah is Most Merciful to you]**[27]

This verse means that anyone who harms others just to get personal interests as if he bleeds and exposes himself to destruction.[28]

What happens in financial markets is one kid of severe harm that is caused to other people through unjustly eating up their property. This is forbidden in Islam to prevent harm to others and protect their property – these are among the measures that protect people's money.

4. Prohibition of spreading lies: Islamic Shari'a forbids lying and spreading lies, and it made credibility a virtue. It was narrated in Hadith that: "Adhere (you people) to truth, for truth leads to good deeds and good deeds lead to Paradise, and if a man continues to speak the truth and makes truth his object he will be recorded as truthful before Allah. Avoid (you people) falsehood, for falsehood leads to wickedness and wickedness leads to Hell, and if a man continues to speak falsehood and makes falsehood his object he will be recorded as a liar before Allah."[29]

Speaking truth is a virtue that Islam recommends, while speaking falsehood and lying is a vice that Islam forbids. What happens in financial markets is a kind of spreading falsehood regarding the shares of a company will rise and another company's shares will drop. Such lying harms people and causes financial loss for them. Financial markets should have maximum credibility.

Losing credibility leads to abstention from dealing with stocks, which ultimately causes a financial crisis. False news may harm the economy of a country. It may be falsely spread that a country is not a good place for investment. This results in abstention of investors from investing in that country. Therefore, the country will face an economic loss. Accordingly, Islamic Shari'a is keen on preventing lying particularly in markets as one of the measures to protect the economy of a given country.

5. Prohibition of betrayal: Islam orders people to save trusts, and it considered betrayal prohibited. Allah says: **[O you who believe! Betray not Allah and His Messenger, nor betray knowingly your *Amanat* (things entrusted to you, and all the duties which Allah has ordained for you)]**[30]

The researcher showed in the previous section that one form of financial markets crimes is that some investors, by virtue of their position of the company, know details of that company. Some of them exploit this information for their personal interests, or they tell their relatives about it. This is such a betrayal that is forbidden in Islamic Shari'a.

6. Prohibition of monopoly: Monopoly means "locking up items that people direly need waiting for higher prices."[31-]

Scholars unanimously agreed that monopoly is forbidden in Islam because it is a kind of cooperation in sinful acts[32]. However, scholars differed in the way of determining prohibition or reprehension[33]. The following quotes indicate prohibition of monopoly: "Anyone who monopolizes is wrong,"[34] "Anyone who monopolizes to make things expensive for Muslims, then he is wrong and is deprived of Allah's protection,"[35]

Senior investors monopolize the stock until the price reaches the highest levels, and then they sell them to people. It is clear from the previous quotes that Islam may prevent monopoly, pursuant to the principle of protective measures of financial crimes in general and crimes in financial markets in particular.

7. Prohibition of dealing in usury: Prohibition of usury is one of the things that do not need a proof. The researcher discusses in the previous section a form of financial markets crimes, i.e. short selling which is similar to dealing in usury and that is forbidden in Islamic Shari'a.

## Summary

It is clear that Islamic Shari'a prevented the causes that lead to any form of financial market crimes, and it took all the necessary measures to prevent them. If they occur, Islamic Shari'a either put a punishment for that crime or ordered governors to take their role in preventing continuation in that crime in order to achieve security and stability in the country. This procedure aims to prevent economic terrorism so as not to have economic recession in the market that may eliminate economic and social stability and may increase the proportion of recession and unemployment among members of the society. Islam is distinctive from other religions as it deals with a problem before it occurs through eliminating it. It is the mercy of Allah towards His worshipers that He provided them with the means to live in safety and peace in all aspects of their lives.

## Conclusion

### The study has reached some findings:

1. Some crimes occur in financial markets such as manipulation, dealing based on undisclosed internal information, and gambling. Each one of these crimes has various forms.
2. Islamic Shari'a prohibited any unlawful control of money. It stipulated deterring punishment that could prevent crimes to happen.
3. Islamic Shari'a adopted various ways that could prevent crimes in financial markets.

### The study has reached the following recommendations:

1. The researchers recommend that it is essential to conduct workshops and conferences that touch upon ways of prevention of crimes in financial markets.
2. The researchers recommend the legislative and legal bodies to activate penal law that includes penalties for crimes in financial markets.
3. The researchers recommend inclusion the topic of financial crimes especially those taking place in financial markets in the curricula of schools and universities to show their danger and ways of preventions.

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