

Shariah Issues on Selected Hybrid Products Practiced by Islamic Banks

Saidatolakma Mohd Yunus¹, Nur Farhah Mahadi², Ahmad Akram Mahmud Robbi³, Rahimah Embong⁴

¹Assistant Professor, Department of Fiqh and Usul Al-Fiqh, Kulliyah of Islamic Revealed Knowledge and Human Sciences (KIRKHS), International Islamic University Malaysia (IIUM),

²Assistant Professor, International Institute of Islamic Banking and Finance, KIRKHS IIUM,

³Assistant Professor, Department of Fundamental and Interdisciplinary Studies, KIRKHS,

IIUM, ⁴Associate Professor, Department of Education, Faculty of Islamic Contemporary

Studies, Universiti Sultan Zainal Abidin (UniSZA), Malaysia

Corresponding Author Email: rahimahembong@unisza.edu.my⁴

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Abstract

This article examines the Shariah aspects of certain hybrid products practiced by Islamic banks in Malaysia and provides a comprehensive analysis of the Shariah principles governing the implementation of these hybrid contracts. Among the hybrid contracts, *bay' bithaman ajil* (BBA) and *tawarruq* have raised concerns due to their potential for facilitating interest (*ribā*) in buying and selling transactions. On the other hand, other hybrid contracts like *mushārahah mutanāqishah* and *murābahah* to the purchase order are deemed less controversial. When applying these contracts, adherence to important Shariah principles is crucial, including the permissibility of individual contracts, independence of contracts, absence of contradictory commitments, and avoidance of any form of *ribā*. This study has significant implications for Islamic banking and finance institutions, as well as the Muslim community at large, by promoting the development and provision of Sharia-compliant products and enhancing confidence in their dealings with these institutions.

Keywords: Hybrid Contract, Shari'ah Principles, Islamic Banking and Finance, Malaysia

Background of the Study

Islamic banking products and services, including saving and financing, are essential for community life and have become most accessible compared to other services in the Islamic finance industry. Personal finances offered by an Islamic bank in Malaysia indirectly impact the economy since it increases the amount of manufacturing of things such as automobiles, electronics, and even houses (Gani & Bahari, 2021). Saving behaviour in Islamic financial institutions, especially Islamic banks, significantly affects family financial management (Nor et al., 2020). It implies that Islamic banking would impact family well-being and sustain the economy. In the view of *Shari'ah* (Islamic law) and *maqasid* (objectives), the operation of

Islamic banks, inclusive of their offered products, should comply with the *Sharī'ah* principle to achieve the *maqāṣid* (Khadijah et al., 2010).

According to Islamic banking experts and some Muslim scholars, using hybrid contracts by almost all Islamic banks causes controversial issues (Arbouna, 2007). This is because a *ḥadīth* forbids merging two contracts into one contract. Besides, in some schemes, it is considered a trick to use usury, such as *bay' al-īnah* and *bay' al-wafa'*.

The hybrid contract debate primarily concerns legality, which frequently contradicts Islamic principles (Maulin, 2020). Therefore, the *Sharī'ah* framework for the hybrid contract is essential to ensure the *Sharī'ah* compliance practice of Islamic banking. Based on this background, this study aims to highlight the *Shariah* principles on hybrid contracts and analyse their application in Islamic banks in Malaysia.

Contract Form an Islamic Perspective

In Arabic, contract or *al-aqd* means an obligation or a tie. The contract is a source of obligation, and the fulfilment of that is a duty, as illustrated in Surah al-Maida, verse one: "Oh ye who believe, fulfil your undertaking" then, in another verse, the Holy Qur'an calls upon believers to observe their commitments as they will be accounted for them. According to Rosly (n.d.), in Islam, the validity of a contract requires four elements: 1. Buyer and seller 2. Price 3. Subject matter 4. Offer and acceptance. Besides, these elements also have their requirements: firstly, the subject must be valid in *Sharī'ah* (*mal-mutaqawim*). Secondly, the seller should have legal ownership of goods, and thirdly, the price must be set on the spot and made known to the buyer. Fourthly, the buyers and sellers should be rational (*aqil*) and adults (*blāh*) enough to conduct the trade to understand their respective roles and obligations. Fifthly, the element of ambiguities (*gharar*) must be avoided in all contracts as its presence will cause defects to the contract and turn it null and void. Whenever *gharar fāḥish* exists in the contract, it is considered null and void because the counterparties receive no legal protection.

According to Alam *et al.* (2017), the *Sharī'ah* law of contract is primarily based on three fundamental aspects:

- The aspect of justice in any transactions and contract, as mentioned in al-Nisā':58, ensures that neither party to a contract can take advantage of the other. As a result, the *ribā* is strictly forbidden in Islam.
- The principle of transparency and accountability is affirmed in al-Anfāl:27 and 71. All accessible information must be shared by those involved. The contract could be void if critical information about the transaction is kept secret. Contracts with a high level of *gharar*, i.e. *gharar fāḥish*, are also strictly prohibited. The goal is to avoid transactions that result in disagreements and a lack of trust.
- The principle of *maṣlaḥah*, which refers to a shared interest that is backed by the spirit of the *Sharī'ah* which is beneficial for individuals and the Muslim community at large. A specific type of transaction may be exempted from a general norm based on *maṣlaḥah* because it has been demonstrated in common practice to assist business.

Sharī'ah Principles Regarding Hybrid Products

The fundamental principle in *mu'āmalāt* is that every transaction is permissible, except if there is *Sharī'ah* evidence to the contrary. For hybrid contracts, there are some *ḥadīth* which indicate their prohibition. The first *ḥadīth*, as reported by Mālik (n.d., Vol. 5, p. 657), disapproves combining a loan contract and a sale contract. Prophet SAW prohibited the

contract's merger between the *salaf* (qarḍ) and the sale and purchase (Arbouna, 2007). However, it is permissible to practice them separately.

“From ‘Amr ibn Shu‘ayb from his father's grandfather said: "The Messenger of Allah has prohibited lending money by selling goods; he forbids there are two prices in one sale or selling something that is not yours or reselling something that you have bought while the goods are sold. It has not fallen into your hands yet.”

The second *ḥadīth* reported by Aḥmad ibn Ḥanbāl (n.d., Vol. 2, p. 174) disapproves of two sales in one contract (*bay‘tayn fī bay‘ah*) (Arbouna, 2007).

“Hannad narrated to us, ‘Abdah ibn Sulayman narrated to us from Abū Salamah from Abū Hurayrah said: Rasulullah saw forbade two sales contracts in one sale.”

The majority of Muslim scholars agreed that any structured product based on a combination of contracts intended to circumvent unlawful transactions, such as *ribā*, *gharar*, and *maysir*, is unacceptable (Mihajat, 2015). Third, *ḥadīth* prohibits a sale that is circumscribed with a condition. Al-Asbahani (1415 AH, p. 267) reported another *ḥadīth* that states that the Prophet has prohibited a sale that is circumscribed with a condition (*bai wa shart*) (Arbouna, 2007). From the above-referenced *ḥadīth*, several principles need to be observed while applying hybrid contracts in Islamic banking products

1-Permissible Contract in Sharī‘ah Principles

Each contract should be permissible before and after being combined. According to AAOIFI (2017), the law of multi-contract sometimes differs from that of the contracts that make up the multi-contract. Combining many contracts into a single transaction is legal as long as each is legal. This is because the general teachings and directives of Sharī‘ah recognise freedom of contracting and honouring commitments in principle unless such contracts and commitments violate Sharī‘ah rulings (Bank Negara Malaysia, 2010). Combining contracts should not include circumstances where Sharī‘ah expressly prohibits it, such as combining sale and financing in one contract.

2-Independent contract.

Each contract should have its own set of principles as well as its own set of criteria, goals, and obligations (Arbouna, 2007). Ibn Taymiyyah suggested that two contracts with two different values may be combined. According to al- Shāṭibī, the prohibition of combining contracts in rare instances arises from the fact that the act of combining might occasionally result in Sharī‘ah prohibitions that do not apply when the combined acts are performed individually. Combining sale and lending, marrying two sisters, or marrying a lady and her aunt are all examples of acts that become banned when combined, even though they are individually acceptable.

3-The combination must not involve contradictory contracts,

Combined contracts should not disclose differences or conflicts regarding underlying rulings and ultimate purposes. Giving someone an asset as a gift and selling/leasing it to him at the same time, or combining *Muḍārabah* with lending the *Muḍārabah* funds to the *Muḍārib*, are all examples of contradictory transactions, or leasing with selling, or currency exchange with

Ju`alah, or Salam for the same contract value (i.e. hire-purchase in its traditional form) (AAOIFI, 2017).

4-It should not be used as a trick for committing *ribā*

The usage of hybrid contracts should not be used as a ruse to conduct *ribā*, based on the directive of the Prophet Muhammad (PBUH), which indicates the prohibition of *bay` al-`inah* and *ribā faḍl* (AAOIFI, 2017; Maulin, 2020; Mihajat, 2015). For instance, Contracts combine when they conclude a lending contract which facilitates some other compensatory gains to them, such as including a clause requiring the borrower to provide lodging at his home for the lender or to give him a gift. Combining contracts could be abused by forcing the borrower to make excessive repayments in quantity or quality (AAOIFI, 2017).

In a nutshell, it is permitted to have multi-variation contracts in one product and executed in an agreement provided that it is not made conditional to each other and must be aligned with the principles of al-Sharī`ah.

Hybrid Contract in Islamic Banking Products and Services

In general, the products and services of Islamic banks can be classified into three main categories: (1) Term deposit, i.e. sale-based, major components of the balance sheet of Islamic banks, such as house financing, car financing, personal financing and credit card facilities which are almost based on hybrid or combination of contracts; (2) Investment account, i.e. partnership-based, e.g. *mushārah* and *muḍārah*; and (3) Saving account through fee-based contracts, e.g. *wakālah* contract where Islamic banks as agents manage some services. Hybrid-based contracts such as *ijārah muntahiyah bi al-tamlīk*, *ijārah mawṣūfah fī zimmah*, *tawarruq*, *mushārah mutanāqīshah*, *tawarruq* and *wakālah bi istithmār* in banking products and services have been expanded by Islamic financial institution beyond the traditional contracts like *murābahah*, *mushārah* and *muḍārah*,

According to AAOIFI (2017), a hybrid contract or combination of contracts is a process between two or more parties and comprises the simultaneous conclusion of more than one contract. Multi contracts (*al-`uqūd al murakkabīn*) are a collection of various contracts combined into a single contract jointly or reciprocally, with all rights and obligations viewed as legal consequences of the deal (Maksum, 2018). The majority of Hanafi, some Maliki, and Shafi`i schools, as well as Hanbali schools of law, are of the opinion that the hybrid contract is valid and permissible according to Islamic law and judged in the light of its components (Mihajat, 2014). This point of view is based on the Islamic legal maxim, which states the origin of the contract is permissible and legitimate, not forbidden and unlawful since there is no explicit evidence to prove otherwise unless the combining of two contracts resembles *ribā*, as a combination of *qard* with another contract, due to the prohibition of merging the contract of sale with *qard* (Mihajat, 2014).

According to AAOIFI (2017), hybrid contracts or multi-variation contracts can be made with any of the following forms: (1) combining more than one contract without imposing any of them as a condition on the other and without prior agreement to have them as conditions in the other; and (2) agreement to conclude the deal through any of different contractual forms as will be finally decided in the future. Almost all Islamic banking products and services offer hybrid contracts. The following are the most common hybrid contracts used in Islamic banks:

1. Bay' Bithaman Ajil (BBA)

Although the application of *bay' bithaman ajil* (BBA) for various Islamic banking products has decreased in recent years, it is still utilised in Malaysia. BBA is simply a method of payment, i.e. deferred payment, which is applied to all kinds of sales where the payment is either by instalment or lump sum payment at the end of the fixed period. The Islamic banking practice in Malaysia tends to confine BBA to long-term asset financing while *murābahah* to short and medium-term financing.

A BBA contract is a deferred payment sale contract that customers apply to finance the properties they want in-house financing products. This type of deferred payment transaction is also known as a credit sale, or *bay' al-taqsit*, *bay' bi al-'ajal*, or *bay' al-mu'ajjal* in Islamic jurisprudence (Engku Ali, 2009). According to Oseni *et al.* (2019), Property Purchase Agreement (PPA) and Property Selling Agreement (PSA) are the two unique contracts utilised in a typical BBA facility for house financing based on the application side of this Islamic Finance Transaction (PSA). The bank buys the property from the customer in cash under the PPA. This payment is the actual amount the customer is expected to pay the original property owner. Conversely, the PSA is a contract in which the bank sells the same property to the customer for a profit and with a deferred payment schedule.

As said above, BBA is used for purchasing property (either home financing or commercial properties) and trade financing products. Nowadays, Islamic banks have weaned themselves from BBA, and it has been replaced by *tawarruq* arrangement using commodity *murābahah*, where the proceed from the sale of the commodity are used to settle the purchases of houses or commercial properties.

2-Tawarruq

Practitioners in the Islamic banking industry see *tawarruq* as a necessity because, with its current structure, it provides liquidity management solutions to Islamic financial institutions. Another reason is the need to provide Muslim customers with Shari'ah-compliant working capital without collateral. Therefore, *tawarruq* is used as a source of fund products and financing products. Technically, *tawarruq* is defined by the OIC Fiqh Academy fatwa no. 179 as a purchaser (*mustawriq*) who buys an item on a payment basis intending to sell it for a lower price in order to obtain cash (Abdillah *et al.*, 2020). This scheme has been utilised for a variety of products and services, including deposit and financing products, as well as a source of funds for banks. In this plan, the *'aqad* or multi-variation contracts involved are *murābahah*, *musāwamah*, *wakālah* and *tawarruq* itself. *Tawarruq* is used to replace the *muḍārabah* term deposit account in the case of deposit accounts (Ismail *et al.*, 2013). The Islamic Financial Service Act of 2013, which classifies Islamic deposits as principal guaranteed and investment accounts as non-principal guaranteed, resulted in this change (Bank Negara Malaysia, 2013).

3-Combination of Wakālah (Agency) and Kafālah (Guarantee)

In certain transactions, there are instances where one party assumes the responsibility of two contracts simultaneously. However, Muslim jurists generally agree that combining agency (*wakālah*) and personal guarantee (*kafālah*) in a single contract is not permissible. This means that the same party cannot act as both an investment agent and a guarantor at the same time. Such a combination is considered contradictory to the fundamental nature of these contracts. Moreover, if a party acting as an agent for an investment provides a guarantee, it transforms the transaction into an interest-based loan, as the additional capital is regarded as *ribā*. (Elgari

(2008). In clause 22.5, as stated in *the Kafālah* policy document by BNM: "When *kafālah* is applied with a *wakālah*, the contracts shall be entered into independently and separately where the effect of one contract shall not be interrelated to the other" (BNM, 2017).

4-Mushārahah Mutanāqīshah

A partnership contract known as *mushārahah mutanāqīshah* involves the transfer of property from one party to another, ultimately resulting in the latter's sole ownership (Samsudin et al., 2015). This type of contract encompasses multiple interconnected agreements, including *mushārahah* (partnership), *ijārah* (lease), and *al-bay'* (sale). In the realm of Islamic banking, the *wa'd mulzim* is often incorporated into this contract (Samsudin et al., 2015). Shuib et al. (2011) assert that the combination of these contracts is permissible as long as each obligation is implemented separately and fully. This contract encompasses various contractual elements within a single transaction, such as joint ownership (*shirkah al-milk*), sale (*bay'*), lease (*ijārah*), and grant (*hibah*).

5-Financing Product Based on *al-Istiṣnā' al-Muwāzī*, *Ijārah Mawṣūfah fī al-Zimmah* and *Ijārah Muntahiyah bi al-Tamlīk*

According to Bank Negara Malaysia (2010), based on the concepts of *istiṣnā'* and *ijārah mawṣūfah fī al-zimmah*, an Islamic financial institution offers a financing solution for houses under construction. The financing procedure begins with the consumer signing a sale and purchase agreement with the developer and paying a deposit equal to 10% of the house's selling price. Following that, the customer will seek a financing facility from an Islamic financial institution based on an *istiṣnā'* contract (*istiṣnā' muwāzī* or *parallel istiṣnā'*), in which the customer will sell the house to the Islamic financial institution based on *istiṣnā'* contract. The customer will also sign an *ijārah mawṣūfah fī al-zimmah* leasing agreement for the house, which is currently being built. In this case, the customer agreed to begin paying monthly rent while the property was still being built and gradually purchased the house's shares over time.

Discussion on hybrid products in Islamic Banks

This section focuses on two prominent hybrid products in Islamic banking, namely BBA (*Bai Bithaman Ajil*) and *tawarruq*. These products are widely utilized by Islamic banks compared to other hybrid contracts like *mushārahah mutanāqīshah*, *ijārah muntahiyah bi al-tamlīk*, and *ijārah mawṣūfah fī dhimmah*. Several relevant Sharī'ah issues are highlighted in relation to these products.

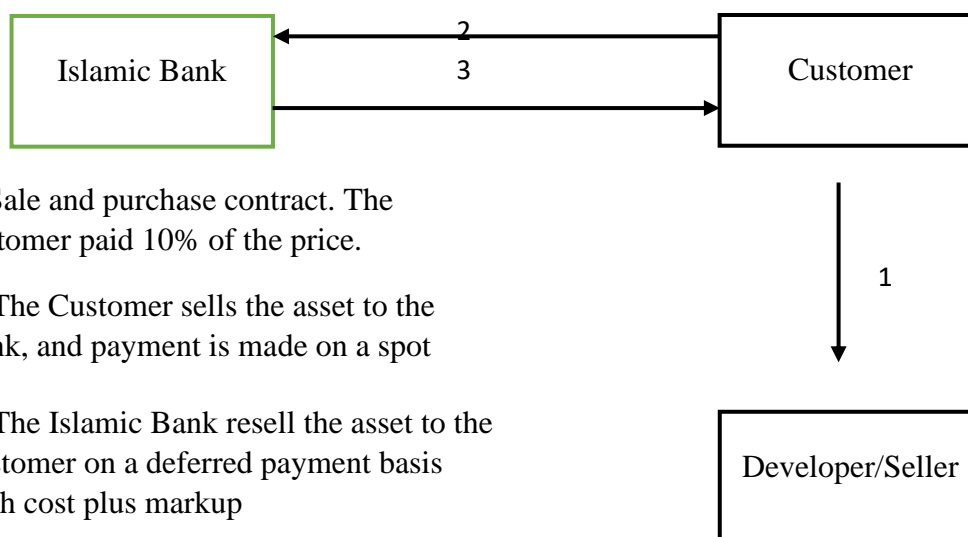
1-Issues with BBA and *Tawarruq*:

Combining a deferred payment sale with an immediate payment sale is an example of merging two sales into a single agreement, known as *bay' al-ṭinah* in Islamic law. In Islamic banking and finance, this structure is referred to as a "sell and buy-back agreement" (Arbouna, 2007). The permissibility of such a contract is a subject of debate among Muslim scholars. Some scholars allow Islamic financial institutions to employ this contract, deriving its permissibility from the general principle of *al-aṣlu fī al-mu'āmalah al-ibāḥah* (Al-Qarālah, 2014), which means that the default rule in transactions is permissibility. They also cite Quranic support, such as Surah al-Baqarah: 275, where sales and purchases are permitted. According to these scholars, BBA represents a contract of sales and purchases (Azli et al., 2011).

However, some scholars do not approve of the implementation of BBA in Islamic financial institutions. They argue that *bay' bithaman ajil* is a variant of *bay' al-'inah* and is based on debt-based financing with elements of the *bay' al-'inah* contract (Hanafi et al., 2012). This contract is primarily employed to address liquidity needs, where a buyer purchases an item from a seller on a spot payment basis for investment purposes. The buyer subsequently agrees to sell the item back to the seller at a predetermined amount, usually lower than the purchase price. Combining these elements is deemed impermissible in Sharī'ah, as *bay' al-'inah* is widely regarded as unlawful. This is because the seller sells the item to the buyer at a higher price with a payment plan to ensure buyer liquidity, and then repurchases the item from the buyer at a lower price on a spot basis. The arrangement is intentionally structured in this manner, making it an arrangement for a prohibited loan contract (Muwazir et al., 2017). Additionally, Chong & Liu (2009) argue that a BBA facility lacks a clear profit and loss paradigm.

Here is an example of a BBA transaction:

BBA Asset Financing



1. Sale and purchase contract. The customer paid 10% of the price.
2. The Customer sells the asset to the bank, and payment is made on a spot
3. The Islamic Bank resell the asset to the customer on a deferred payment basis with cost plus markup

Tawarruq also still becomes an issue in the Islamic banking industry. The classic *tawarruq* is accepted by most Muslim scholars, according to al-Shanqitī (n.d). Classical *tawarruq*, which may also be referred to as non-organised *tawarruq*, was largely accepted and regarded as permissible by a wide range of classical scholars from the Ḥanbalī, Shāfi'ī and Ḥanafī schools of thought (Faruq Ruslan et al., 2019). Meanwhile, some scholars from Hanafi and Maliki have put *tawarruq* under the discouraged practice of Sharī'ah (Alkhan & Hassan, 2019).

In this modern day, *tawarruq* used by the financial institutions in Malaysia has faced criticism amongst modern scholars. Some of them have prohibited organised *tawarruq* since its scheme aims to obtain cash rather than goods (Asni & Sulong, 2018b). The modern practice of *tawarruq* has departed from the classical form of *tawarruq* approved by the overwhelming majority of jurists (Ali & Hasan, 2018). The OIC Islamic Fiqh Academy distinguishes and classifies between the permissible (*tawarruq haqqi*) and the forbidden (*tawarruq munazzam* or organised *tawarruq*), which is widely practised by Islamic banks and is deemed to be synthetic and fictitious as *bay' al-'inah* and trick to circumvent the prohibition of *ribā* in its 17th session in December 2003 (Mihajat, 2015).

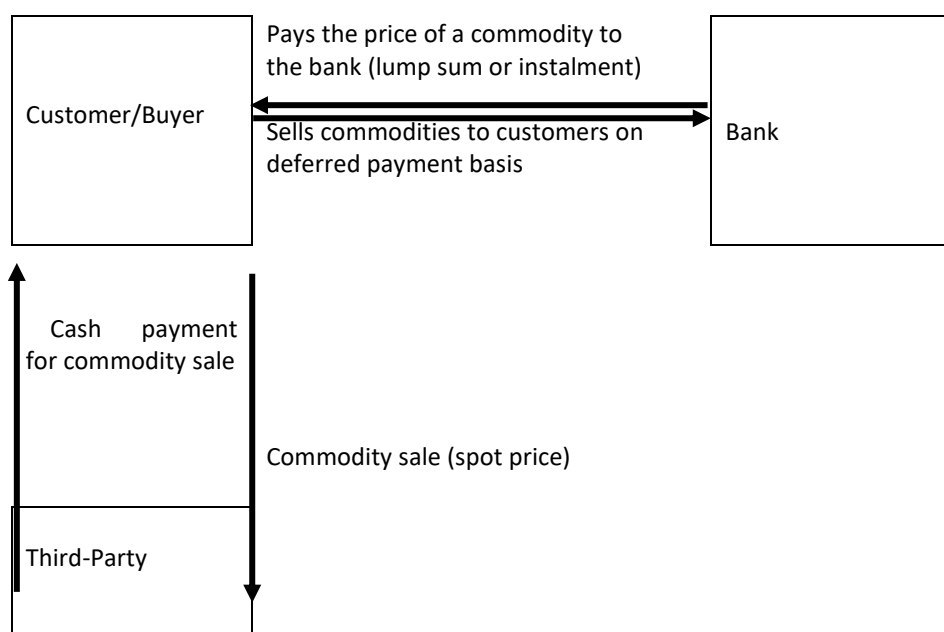
BBA (with *bay' inah*) and *tawarruq* are considered tricks to impose interest or called *hīlah*, i.e. the customer aims to get liquidity that leads to lending money with interest. This refers to

avoiding illegal activity; another reason to use it is that it is a straightforward transaction (al-‘Imrâni, 2006). Both of these contracts, however, are contentious hybrid contracts. This contract is considered a high scheme to engage in usury, a remedy utilised by an individual to exit from something prohibited to something permissible." Some Muslim scholars consider the *hīlah*-grounded product development in Islamic finance as a circumvention of prohibited interest (Syed & Omar, 2017; Maksum, 2018). If the purpose of *hīlah* is to achieve an unlawful goal by circumventing the Sharī‘ah ruling, it would be considered illegitimate.

According to Khir *et al.* (2010), *hīlah* is prohibited if it is to violate the Sharī‘ah, either to negate the law of Sharī‘ah or to convert it to another law, such as leaving what is required and legalising what is banned, so causing harm to the Islamic norms. *Fuqahā’* universally agree that *hīlah* is prohibited in this group. The *hīlah*, on the other hand, is permitted if the goal is to accomplish good intents and does not go against Sharī‘ah. In this category, most *fuqahā’* acknowledge the authorisation of *hīlah*. In conclusion, additional hybrid contracts used in Islamic banks, such as *mushārah mutanāqīshah*, *ijārah muntahiyah bi tamlik*, and *ijārah mawṣūfah fī dhimmah*, fall within the good *hiyāl* category. However, *tawarruq* and *bay’ bithaman ajil* are engaged in non-Sharī‘ah *hīlah*.

In the practice of *tawarruq* by Islamic banks, there are three forms of non-Sharī‘ah *hiyāl* or *hīlah* observed

1. Commodity without Intention: In this form, the sale and purchase of a commodity are not intended by the contracting parties. The commodity serves merely as a medium for conducting the transaction. The focus is primarily on obtaining money rather than acquiring the actual commodity (Ajija *et al.*, 2009; Asni & Sulong, 2018b).
2. Unclear Ownership: The ownership of the commodity in a *tawarruq* contract becomes ambiguous. It is not evident who truly possesses the commodity, raising concerns about the validity of the transaction (Ajija *et al.*, 2009; Asni & Sulong, 2018b).
3. Commodities as a pretence: In this scenario, the commodities involved in the transaction are not items that the customers actually require. Their primary objective is to obtain money, and the sale and purchase of the commodities are merely a facade or illusion to achieve this goal (Ajija *et al.*, 2009; Asni & Sulong, 2018b).

Tawarruq transaction

First: A customer purchases a commodity from a seller (bank) on a deferred payment basis (murabahah-cost plus price)

Second: The customer will sell the same commodity to a third party on a spot payment basis (the customer authorises the bank to sell the commodity on his/her behalf). The bank will then credit the proceeds from the sale to the customer's account, and the customer pays the commodity's price to the bank (lump sum or instalment).

Standard No. 30 of AAOIFI issued the application of *tawarruq* is done when the first contract involves purchasing the commodity on deferred, called *murabahah* or *musawamah*. The second contract involves selling the commodity to a third party on a cash basis. Another thing that needs to be criticised is the dependence of one contract on another. In practice, BBA and *tawarruq* in Islamic banks have been regulated. If one contract is not executed, it will affect another contract's occurrence because the contract's purpose is to obtain liquidity. Combining more than one contract is permissible without imposing any of them as a condition in the other and without prior agreement to make them a condition in the other (AAOIFI, 2017).

From Malaysian practice, Bursa Malaysia introduced the Commodity *Murabahah* House, known as Bursa *Suq al-Sila'*, as a platform to assist Islamic financial transactions (Ismon, 2012). Bursa Malaysia introduced and designed Bursa *Suq al-Sila'* (BSAS) in 2009 to facilitate *tawarruq* transactions it offers solutions to transact *tawarruq* based on the actual commodity market. In this BSAS structure, the seller is required to have the commodity first before any sales transaction is made. BSAS allows the buyer to accept delivery of the commodity if the buying position exceeds the selling of the commodity and the trading account is not closed (square off) on the same day. Shari'ah Advisory Council of BNM, at the 78th meeting dated July 30 2008, has decided that the proposed BSAS operational structure is allowed on the condition that the traded commodities must be clearly and accurately identified and determined (*mu'ayyan bi al-dhāt*) in terms of location, quantity and quality to meet the characteristics of real transactions. In addition, it is recommended that transactions be done randomly so that BSAS operations are more in line with the characteristics of the original bay'

tawarruq. This initiative is an approach to raising issues regarding *tawarruq* amongst modern scholars who argue the validity of *tawarruq*.

2- Shari'ah Analysis

From the previous discussion, we may draw the following conclusion. It is obvious that BBA and *tawarruq* (organised) are both involved in selling an item or commodity intended by someone other than the contracting parties. For example, in BBA financing, the item sold to the bank by the customer is not the desire of the bank to use. Similarly, in the case of *tawarruq*, the commodity the bank sells is not the customer's desire. This is against the Shari'ah concept of buying and selling in Islam, which indicates the intention of contracting parties to own and use the item being sold. Ibn Taymiyyah has divided sales into three groups according to the buyer's intention, namely:

"... that he purchases the goods in order to use or consume them such as food, drink and the like in which Allah has permitted in this type of sale.."

"... that he purchases of goods in order to trade with them in which case this is a sale where Allah has permitted..." (Ibn Taymiyyah, 1966, p. 431)

Other than these intentions, for example, facilitating cash through sale is prohibited. Ibn Taymiyyah said:

"... then the cause may be dirhams (cash), which he needs, and it was difficult for them to borrow, so he purchases the good on credit (with increased dirhams) in order to sell it and takes its price. Then this is haram according to most Jurists" (Ibn Taymiyyah, 1966, p. 431).

Based on this, the contracting parties in BBA and organised *tawarruq* clearly do not fulfil the objective or intention for which the Shariah initiates the legitimate sale in the first place. However, they intend to achieve illegal objectives that are money or cash, which resembles the loan concept with an increase. It is clear that it contradicts the principle of Shariah. Thus, the element of intention or *niyyah* is made secondary in applying these two hybrid contracts. The contracting parties have no direct relationship with its actual use, and the underlying asset or commodity is used as an object of sale merely to facilitate the customer's liquidity which is against Shari'ah.

The second point is that both BBA and *tawarruq*, when applied for financing, are not independent contracts meaning that if one contract in either BBA or *tawarruq* is not executed, another contract will not occur. In other words, the second contract's occurrence depends on the first contract's occurrence. Thus, we can understand that the first contract is a condition for another invalid contract. In another narrative, some view both contracts as the sale of a forced person, which explicitly violates the Shari'ah principles concerning the objectives of sale and purchase (Al-Bugha et al., 1992). For example, in the case of BBA, the seller (customer) must agree to repurchase the item sold to the bank. Similar to *tawarruq*, although the item is not sold back to the customer, the bank will sell the item or commodity to another party on the customer's behalf which has been planned and organised, and this is also violating the real concept of *tawarruq*. Scholars like Ahmad ibn Hanbal (2012) derived the opinion of disapproving from the narrated hadith recorded by Abū Dāūd (1999) as Prophet Muhammad disallowed the sale of a forced person.

The third point is that hybrid contracts should not disclose differences or conflicts. In the case of BBA, there is a contradictory transaction whereby the customer who has sold an item to the bank is forced (direct or indirectly) to repurchase the item at a higher price with a payment plan which has been pre-agreed upon. In Islam, selling an item to a buyer with the condition that the seller needs to purchase it back from the buyer is forbidden. This is because it violates the true nature of selling and purchasing contracts.

Another point is that BBA and *tawarruq* are considered a trick to circumvent *riba*. It applies when a spot sale precedes a sale by deferred payment. It is a case where in BBA, the customer sells his asset to the bank for cash, after which he will purchase it back from the bank on a deferred payment basis which is higher. In this case, the bank and the customer have satisfied with their needs. The customer obtains the cash while the bank gets some profit. The same also applies in *tawarruq*, where the commodity is sold to the customer by virtue of a trick to get away from *riba*. The asset or commodity is not utilised in the same way that a genuine buyer would use it. Therefore, based on Shari'ah principles, any transaction with that purpose is invalid.

Moreover, some scholars forbid *tawarruq* because *mafsadah* overwhelms *maṣlaḥah*. Among the harmful effect of *tawarruq* is that it leads to the creation of debt whose volume is likely to increase, and it results in an exchange of money at present by providing an additional amount in future. Thus, it seems unfair because of the risk and uncertainty involved, and it could lead to debt proliferation (Ismon, 2012).

When Islam predetermined its ruling concerning selling and purchasing, the objective of the prescription is to establish ownership amongst people. However, practising BBA and *tawarruq* (organised) has eluded such objectives according to some opinions. In this respect, the objective of BBA and *tawarruq* (organised) is not for ownership; rather, their form is to obtain cash flow for certain parties. In addition to this, it seems that BBA and *tawarruq* both are embedding *hiyal*-based contracts, which, according to Syahmi et al. (2021), who stated *tawarruq* contract consists of two sales and purchase contract is executed to obtain liquidity and not to aim at the underlying asset. Thus, it is apparently clear that both BBA and *tawarruq* are controversial because both transactions violate some Shari'ah principles.

Conclusion

The utilization of hybrid contracts is prevalent in a wide range of products and services offered by Islamic banking. However, certain schemes like BBA and *tawarruq* remain contentious due to their association with the illegitimate practice of *hīlah*. Moreover, in these schemes, one contract becomes a prerequisite for others, creating interdependence among them. The combination of different Shari'ah contracts into a single scheme within a financial product or service is permissible, as there is no explicit prohibition in Shari'ah. However, certain Shari'ah standards must be adhered to when employing multiple contracts. These standards dictate that the individual contracts used must be permissible in Shari'ah, and when combined, they should retain their independent nature. The combination of contracts should not involve conflicting commitments, and it should not serve as a means to engage in *ribā* (usury). Therefore, it is imperative for Islamic banks to play a crucial role in ensuring that all relevant guidelines are observed during the development of products, ensuring proper structuring and implementation. Failure to comply with these guidelines may lead to instances of Shari'ah non-compliance, which can result in non-compliant financial outcomes. In summary, while the combination of contracts is permissible in Islamic banking, it is essential to follow the prescribed guidelines to ensure compliance with Shari'ah principles. Islamic banks must

exercise diligence in product development and adhere to the relevant standards to avoid non-compliance with Shari'ah requirements.

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