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BURSA SUQ AL SILA FRAMEWORK ANALYSIS

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ABSTRACT

Tawarruq was introduced in the Islamic financial system to replace the *bai ai-inah* concept in Malaysia. Hence, *Tawarruq* is the most popular product in the Islamic Banking and finance sector. The ideas of *Tawarruq* came from the classical perspectives of jurists who wanted to assist the development of Islamic economics, banking and finance and replace the old concept, which is clearly prohibited in Islam. Therefore, to overcome these issues and facilitate the implementation of *Tawarruq*, Suq al-Sila' (BSAS) was introduced in the Islamic financial system. However, many scholars have had different views on implementing *Tawarruq* and BSAS. This study refers to BSAS as a case study to complete this research. The objectives of this study are to understand the framework of BSAS, explain the types and specifications of commodities authorised by Bursa Malaysia Islamic Services (BMIS) and participants in the BSAS platform, and analyse issues on the BSAS platform. This research used secondary data from library and internet sources, and primary data was obtained by interviewing the Vice President, Bank Shariah Officer and Shariah Officer of Hong Leong Islamic Bank. This paper will explain the BSAS transaction flow and present the Shariah issues involved. The results of this study found that there are several aspects of the implementation of the BSAS platform that raise some Shariah issues. Therefore, this paper is expected to improve the BSAS platform and *Tawarruq* principles

Keywords: *BSAS, Tawarruq, BMIS, Komoditi, Platform*

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1. INTRODUCTION

As a developing country, Malaysia's emergence of the Islamic financial system is one of the components of growth. The Islamic financial system includes the Islamic banking system, Islamic Banking Money Market, Takaful, and Islamic Capital Market. (B.N. Malaysia 2003). Nowadays, Islamic banking is globally known and considered a viable alternative system that can meet the needs of the people through the products offered. (Mohamad, M.T. et.al., 2010). Islamic banking is also recognised as one of the fastest-growing industries, both domestically and internationally. In Malaysia, Islamic banking began as early as 1983. (B.N. Malaysia 1993). Various contracts were introduced and used in financing products and subsequently introduced in Malaysia, like *murabahah*, *al-ijarah thumma al-bai* (AITAB), *bai' bithamamin 'ajil* (BBA) and *bai' al- 'inah*. The development of innovative Islamic banking products proves that the Malaysian Islamic banking system is moving forward to compete with the conventional banking system. However, the *bai' al- 'inah* contract introduced in Malaysia has caused controversy among Middle East scholars. (Shaharuddin, A., t.t.) In Malaysia, *bai' al- 'inah* contracts have been approved by the Shariah Advisory Council, Bank Negara Malaysia. Still, the majority of the ruling bodies in the Middle East do not approve of this principle as it leads to usury. (Laldin, M. A. et.al. 2012). In fact, to fulfil Shariah requirements, a *tawarruq* contract was introduced. The purpose of introducing a *tawarruq* contract is to replace the *bai' al- 'inah* contract, which received a negative reaction from the ruling body of the fatwa in the Middle East. (Ab. Ghani, A. M. dan Che Abdullah, A. S., 2006).

In fact, some contracts are the 'basic contracts' of local Islamic banking, such as BBA financing 'replaced' with *musyarakah mutanqisah*, *bai' al- 'inah* and *bai' al- dayn* replaced with *tawarruq*. (M.A.M. Adil, 2012). The definition of *tawarruq* is to buy the goods on a profitable basis and then resell them for cash to a third party for a price lower than the price they are for the purpose of obtaining cash. (Wizarah al-Awqaf wa al-Syu'un al-Islamiyyah, 1998). For the implementation and launch of the *tawarruq* contract, the banking sector needs a platform that helps to facilitate the *tawarruq*. Islamic banking in Malaysia has started using the London Metal Exchange (LME) platform to facilitate the implementation of *tawarruq*. However, there are Shariah issues in LME, such as the existence of *gharar* elements in which the commodity traded in LME is sold to one or more parties. The existence of the metal traded in LME is also unclear as to which one belongs to the buyers who made LME purchases. It also raised issues of identifying and benchmarking against commodities traded in LME and whether ownership overlap could trigger the issue of *gharar*. (Mohd Noor, A. dan Mahadi, N. F. 2010), (S.S Rayner, 1991). For example, BSAS was created to provide commodity trading transactions and address the Shariah issues inherent in the LME platform. According to Shamsul Akmal Ahmad, the name of the commodity trading platform is "Murabahah Commodity Exchange", but it is called the Suq al-Sila Exchange to make it a Bursa Malaysia product. The Suq al-Sila (السوق بورصة) exchange is a combination of the Arabic words Bursah (platform), *suq* (market) and *al-sila* (goods/commodities). (Sulaiman, S., 2013).

Basically, the concept of the BSAS platform began in 2005. It took two years to complete the BSAS platform due to communication issues between Bursa Malaysia and Korea to produce the BSAS platform. In 2007, Bursa Malaysia collaborated with various parties such as Malaysia International Islamic Finance (MIFC), Securities Commission (SC), Bank Negara Malaysia (BNM), Malaysian Palm Oil Board (MPOB) and the Malaysian Palm Oil Filter Association (PORAM) to enable BSAS platform before entering the market. It was only in 2009 that BSAS officially started operations. Although the existence of the BSAS platform is intended to address Shariah issues, there are still some negative questions about the BSAS platform. Since its existence is still new to the market, the BSAS platform and *tawarruq* principles have not escaped criticism among researchers. This is because the BSAS platform and the *tawarruq* contract are tricks to usury and involve *gharar* elements. In this regard, this study attempts to research the BSAS framework in detail and make the BSAS platform a research sample, as it is a platform that is gaining prominence in the current market.

2. LITERATURE REVIEW

Dusuki, A.W. et al. discussed BSAS by comparing the commodity *murabahah* in BSAS with the Jakarta Future Exchange Shariah Indonesia (JFX). At the beginning of the discussion, his opinions and views of classical scholars related to *tawarruq*. He pointed out the difference between the former *tawarruq* and the modern *tawarruq* today. Next, the researcher discusses several Shariah issues that arise in implementing BSAS and JFX regarding commodities, ownership, delivery

and supply (pre-delivery and arrangement). The researcher also discussed the comparisons of BSAS and JFX's performance areas, including objectives, key features, underlying assets and contracts, participants, delivery receipts, shipping process payments, payments, trading terms, pricing, minimum transactions and regulatory bodies regulating BSAS and JFX. (Dusuki, A.W. et.al, 2013).

According to Mohd Noor, A. et al., the study of Shariah principles of *murabahah* and *tawarruq* is based on the commodity *murabahah* by discussing the *tawarruq* contracts permitted and not approved by the current fuqaha. Researchers also discuss that three problems can lead to unauthorised transactions, but with the BSAS platform, these issues can be mitigated and avoided. Among the issues discussed are commodity issues, including *gharar* issues, commodity prices, crude palm oil dilemmas, and expensive charges for commodity delivery. The next issue to be discussed is the implementation of contracts that many scholars have discussed on the trading of *murabahah* commodity markets and the issue of *wakalah* in *murabahah* commodity transactions. Besides that, it is a contract of sale whereby the involvement of a third party is to prevent *riba* and the contract of *murabahah* and *bai' muajjal* is the closing contract for the execution of the usury. Researchers have found that the BSAS platform offered by Bursa Malaysia has the advantage of covering existing Shariah issues. It is an alternative Islamic platform compared to conventional finance and banking. (Mohd Noor, A. dan Mahadi, N.F. 2010).

Hasan (2011) explains that focusing more on the lack of liquidity in financial institutions will expose them to liquidity risks. In addition, the researcher lists liquidity management instruments developed in the global Islamic financial system, including a list of countries using liquid instruments. Further, the researchers also mentioned using *murabahah* commodities in the liquidity management of Islamic financial institutions in Malaysia using *tawarruq* contracts. In addition, the authors state that the issue of non-negotiable instruments using commodity *murabahah* as a result of the debt resulting from the *tawarruq* transaction was accepted as untrustworthy by the majority of scholars, except at par and spot on if the debt was in the form of the money and the payment must also be in the form of money. Finally, the researcher acknowledges that various issues regarding the *murabahah* commodity still exist. Still, researchers acknowledge the need to create good liquidity management that requires the cooperation of all parties. Implementing the commodity *murabahah* as an example illustrates the need for Shariah-compliant instruments that are viable for managing liquidity in Islamic financial institutions. (Hasan, A. 2011)

Rudnyckyj studied Islamic finance in Malaysia, one of Asia's major Islamic financial systems. Malaysia is a country practising the Islamic financial hub, and developing Islamic financial growth starts from the country, expanding to the global level. Among others, through Bursa Malaysia, the Malaysian government has launched the *Suq al-Sila* Exchange as a commodity trading platform dedicated to facilitating the liquidity management of the Islamic banking system worldwide. Hence, this platform will make agricultural commodities such as crude palm oil a basic asset to be a contract that complies with Shariah requirements. This contract is known as a *murabahah* contract. At the end of the study, the author describes Malaysia as "Wall Street Islam" due to its significance in the global network of Islamic finance that meets market needs in Asia and the Middle East. (Rudnyckyj, D. 2013).

Another researcher, Sulaiman (2013), mentions the role of BSAS from a liquidity management perspective. The researcher also discussed the implementation of BSAS and the support of various parties. He also discusses the uniqueness of BSAS, which combines physical asset trade with virtual applications across borders and is accessible worldwide. The basic assets of BSAS are crude palm oil and polythene (plastic resin). The mechanism of the BSAS transaction and the Shariah issues gaining ground in his research are also discussed. BSAS has also received various awards to further strengthen the local and global markets. (Sulaiman, 2013). Dusuki has focused on the study of the Commodity Murabahah Program (CMP) as one mechanism for liquidity needs and investment opportunities for Islamic Financial Institutions. He also studied several Shariah issues related to contracts used in the CMP, known as *tawarruq* contracts. He cited views from all four well-known sects and the ruling *Majma' Fiqh Islami* in 2003 banning the use of the *tawarruq munazzam* contract or the *tawarruq masrafi*. Subsequently, his review of the concept of liquidity management adopted in Islamic financial institutions further discusses the concept and method of operation of liquidity management based on the Islamic approach. His further research on the concepts, structures and mechanisms of the CMP and he also commented on the decision of the Shariah Advisory Council (MPS) of the Securities Commission and the Bank Shariah Advisory Council of Bank Negara Malaysia to officially confirm *bai 'al-' inah* and *tawarruq* would be used for liquidity management purposes. (Dusuki, 2007).

3. METHODOLOGY

In this qualitative study, three methods were applied for data collection to lead the BSAS as one of the paradigm platforms and *tawarruq* contracts. Initially, the first method was to use library sources to obtain as much information as possible, such as books, articles, journals, magazines, and scientific studies related to BSAS and the implementation of *tawarruq*. Besides that, several resource centres have been visited to access various information, such as UIAM, ISRA and INCEIF libraries. On the other hand, this research also conducted subsequent semi-structured interviews with the latest primary information related to the operation of the BSAS platform in BMIs and the financing of products based on *tawarruq* contracts in several Islamic banks. Some respondents were interviewed directly, including Mr En. Shamsul Akmal Ahmad (Vice President of BSAS, Alternative and Islamic Markets), Ms Aziah Aziz (Shariah Officer of Bank Rakyat) and En. Asharul Huzairi Mohd Mansor (Shariah Officer of Hong Leong Islamic Bank). All respondents also cooperated in providing financing contracts using the principles of *tawarruq*, BSAS documentation and everything related to the study.

4. FINDINGS AND DISCUSSION

4.1. Participants and BSAS Platform Framework

The commodities traded in BSAS follow the *tawarruq* contract and comply with Shariah standards and guidelines. Because of that, the BSAS platform's operation requires affiliates' participation. Among the affiliates involved in the BSAS transaction are Bursa Malaysia, Islamic Banking and commodity providers. Bursa Malaysia established BMIS, its subsidiary, to facilitate the business and ensure it runs efficiently. BMIS is responsible for controlling the BSAS platform, obtaining commodity suppliers, maintaining BSAS and seeking Islamic banking as a customer of the BSAS platform. The supervision and monitoring of the BSAS platform starts with commodities placed in the market until the commodity is finally transferred to the final buyer. This monitoring is supported by an electronic system developed by Bursa Malaysia. Since BSAS was launched in 2009, 78 Islamic Banking participants, including local and foreign institutions, have been on the BSAS platform. For commodity suppliers, BMIS finds local commodity suppliers simultaneously facilitating commodity suppliers' trade in the market.

4.2. Commodities Offered at BSAS

There are four major commodities traded on the BSAS platform. It aims to diversify trading commodities and meet the demands of Islamic banking. BSAS plans to diversify Shariah-compliant commodities, including cars, air-conditioning units, oil, copper and aluminium. Below are the commodities offered at BSAS:

1. Crude palm oil (MSM)
2. Plastic Resin (plastic resin)
3. RBD Olien
4. Wood

Commodities that the BMIS has approved must include the following:

1. BMIS quality specifications
2. The commodity supplier must ensure that the commodity offered is kept at a designated location
3. The BMIS determines fees and payments to commodity providers
4. The supplier may appoint a supplier agent to carry on the transaction activities at BSAS provided:
5. Proposal to sell approved commodities
6. Selling commodities to traders through the commodity house system
7. Purchase of BMIS-approved commodities
8. Issue documents if physical delivery is required
9. The commodity delivery document must contain the following details:
10. Specified location
11. Date of assessment, if any
12. A statement showing the commodity has been approved and meets the specifications for shipment
13. Any other details as stated by BMIS

BMIS scrutinises suppliers that are capable of trading large quantities of commodities. The major commodity traded in BSAS is MSM, and among other traders are Felda Plantation, IOI Plantation, and Sime Darby Plantation, including several multi-national plantation companies like Wilmar International Limited. As for the plastic resin commodity, BMIS has offered four types of plastic resins for sale at BSAS, namely Polythelin (UI Prospector, tt), LDPE (Exxon Mobil Chemical, tt), HDPE (Ceresana, tt) and Master Batch (Made-In- China.com, tt). In addition, the plastic resin suppliers for the BSAS platform are Riomas Company, Lon Dah Company and Win Long Company.

The following commodity offered on the BSAS platform is RBD Olien. The BMIS needs to work with PORAM because PORAM is one of the associations with the crude palm oil refinery that produces Olien RBD commodities. The production of Olien RBDs has to be done through distillation, purification, and removal of odours and commodities that have expiration dates and cannot be stored for long. (Ibrahim. K. 2009). The fourth commodity offered in BSAS is wood. Trading timber commodities in BSAS is a special request of Islamic banking in Kuwait. These commodities are offered in two types, namely hardwood and softwood. Most of the timber commodities are from Sabah. Having received approval from the SC, the timber commodity supplier does not require any other institution to operate. This is because the demand for these commodities is small and specific to Kuwait alone, and there is no demand from the local market.

5. CONCLUSION

5.1. Commodity Position

The commodity positioning dispute within the BSAS platform raised criticism over the existence of *gharar* over MSM commodities. Researchers have found that on the supply side, MSM commodities are constantly flowing, whether it is pumped in or pumped out of the MSM tank before being traded on the BSAS platform. This indicates that the MSM position in the tank provided is indeterminate. According to AAOIFI guidelines, it can be categorised as *bai' al-mausuf fi dhimmah* (imaginary object sale). In the view of the fuqaha jurors, the contract of sale of imaginary objects is not allowed. To avoid the sale of *bai' al-mausuf fi dhimmah*, the buyer should ensure that the commodity is fully identified. When purchasing a commodity, the buyer should know the type, specification, nature, and quality. If the buyer does not know the commodity specification, then there will be an element of *gharar* and dispute over ownership of the commodity. In the event of any damage or loss to the commodity, the buyer will be solely responsible.

Therefore, to avoid *gharar* the commodity, BMIS has taken the initiative to address the issue by tagging the commodity and issuing a certificate containing complete information on the MSM commodity traded in BSAS. The information includes bid numbers, the date of the commodity issued at BSAS, the date of valuation, the product code, unit, amount, currency value, price, and transaction type. Thus, the element of *gharar* in MSM commodity on the BSAS platform can be minimised because, for each completed sales transaction, all data is detailed and recorded so that no major issues arise.

5.2. Double Commodity Ownership

The author's next concern on Shariah issues is the dual ownership of commodities traded in BSAS. The issue of multiple ownership of commodities, especially MSM commodities, comes from Islamic banking in the Middle East. They believe that there is a double ownership of the commodities on sale. This double ownership means uncertainty (*gharar*) of which one belongs to us, and perhaps the commodity sold to us is another person's right. However, this issue has been clarified by the BMIS to Islamic banking in the Middle East, using the method of benchmarking up the ownership of the commodity and obtaining approval from the Shariah Advisory Council of Bank Negara Malaysia.

In conclusion, elements of *gharar* were found in several situations when implementing BSAS. However, *gharar* exists in this situation, can be minimised by this BSAS implementation, and has different opinions from Islamic scholars. Despite that, researchers recommend replacing the MSM and RBD Olien commodities with other physically more stable commodities to avoid elements of *gharar* in transactions.

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