Operationalizing Tawarruq By Islamic Banks In Malaysia: Issues, Challenges And Way Forward

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ABSTRACT

Offering viable and competitive Islamic Finance products by banking institutions could be regarded as a crucial roadmap in pursuing and achieving the Sustainable Development Goals (SDGs). Such initiatives strengthen the role of Islamic finance in uplifting financial prosperity, stability and growth. Tawarruq is one of the Islamic finance liquidity providing schemes which is commonly utilized in virtually every country that practices Islamic finance. This research examines the issues and challenges of Tawarruq faced by Islamic banks in Malaysia and the way forward of Tawarruq application. The legality of Tawruq has been debated by few researchers, which contributes towards the diverse resolutions and rulings from Islamic nations on the lawfulness of Tawarruq. This study is carried out based on a qualitative approach whereby resources are obtained from various secondary sources including journal articles, books and internet websites. Besides, this paper aims to provide views and verdicts of legal scholars with respect to Tawarruq in the banking system. This study also provides the literary evidences and sound arguments in reaching towards the final juristic judgment.

Keywords: Islamic Finance, Tawarruq, Islamic Banks, Malaysia

1.0 INTRODUCTION

Islamic banking and Islamic finance have come the picture to eliminate any activity that is unacceptable in Islamic law. Therefore, every transaction should not include any Gharar, Maysir
and Riba’. Some of the reasons why Islamic finance does not permit the practice of such transactions is the distinction made by banks or any institution associated with financing. The customer has to face more burden when they made any transactions such as a loan. Loan made by the non-Islamic banks are interest based which contain Riba’ in it. Thus, it is not permissible for the Muslim to make such transactions. But is it all the products in Islamic banking are truly ‘clean’ and free from any issues? Even though every product has been scrutinized by many scholars, but the issue still exists. The transactions in Islamic finance are quite complicated due to eradicate elements that will be against the principle of Shariah. In this paper, we will focus on one significant product in Islamic finance which is Tawarruq.

Tawarruq implies buying a product at deferred price, either by arrangement or Murabahah, and at that point, make an offer of the product to a third party, in order to get liquidity. In this sense, Tawarruq could be a shared exchange, since there’s no contrast between buying at cash and offering of cash or deferred price. According to Chazi et al. (2010), in Tawarruq, ‘The client, i.e. the Mutawarriq buys commodity on deferred payment from the International Financial Institution (IFI) and offers a product for a cash sum less than the conceded cost to a third party. Tawarruq is one of the Islamic fund item as to store financing, liquidity financing and individual financing. Those sorts of Islamic financing utilized Murabahah and Tawarruq as an item within the specific exchange. In Malaysia, the operation of Tawarruq is administered by the Shariah Committee (SC) in an expansion to the counsel of the Shariah Advisory Board (SAC) which is the most elevated Shariah body set up at Bank Negara Malaysia (BNM) can be looked for ensuring consistency in views and practices. Tawarruq could be a product that’s commonly like product Murabaha which who buys a stock at a deferred price in arrange to offer it. It is for the most part utilized to depict a transaction in which an Islamic bank offers a product to a client on deferred payment at cost with profit, and the client at that point offers the product on a spot premise to a third party for cash (Ismo, 2012). This item is basically to get a quick cash, whereas the payback installment is made conceded. All things considered, the legitimacy of the application of Tawarruq in Islamic banking is flawed either it is allowable or not. The resistance still exists on the ground from a few faultfinders who say that Tawarruq based money related item bear a striking likeness to interest based product. For occurrence, the Islamic Fiqh Institute of Rabbithah ‘Alam Islami, Mecca ruled in 2003 that any item structure based on Tawarruq concept ought to be considered as harem, or illegal in Islamic law (Ismo, 2012). The views and conclusion in this matter are separated by the juristic. A few scholars allow it, based on the lawfulness of deals established on shared assent, as well as the nearness of a third party that avoids it from the shape of the precluded Inah dealt. Others stipulate certain conditions, for its worthiness; whereas others disallow this sort of value-based together, considering it a trick by which Islamic banks give lawful authorize for Riba (usury/interest), which is collectively concurred to be forbidden. Concurring to Khan (2009) in his paper said that the organized and invert Tawarruq are not allowable since they have a few ‘trick’ to induce cash presently for more cash paid afterward. In this way, this paper will study the issues and challenges of Tawarruq practices in Malaysia utilizing the comparative views from the scholars who has been considered approximately this from the improvement of Islamic banking in Malaysia.

Tawarruq is commonly item that has been utilized by the Islamic banks in Malaysia after Bay Bithamanil A’jil (BBA) has been getting an enormous censured by the scholars exterior Malaysia. The concepts of Tawarruq brings same as I’nah where Tawarruq contains all the disallowed affections, such as the contracted meaning of T’nah, express usury, credit, sale of debt, transfer of debt, purchase, or offer of Nasi’ah (deferred payment of Ribawi things), buying something at a stamped up prices, and offering something to the primary dealer or to some person else at a price lower than the initial buy cost (Ajija, Fathia, & Suarni, 2010). With this has been demonstrated that
there's a few issues in Tawarruq which contain a few ‘trick’. Other than that, the disputable issue on the reasonability of Tawarruq which there's a contention on the status of Tawarruq that has been violated to set up a rule of Shariah to abstain from the transaction that have Riba’ in it and the Hilah or trap cannot be considered. In any case, a few individuals contended that Tawarruq is disallowed since of the hurtful impact to the client itself. AAOIFI and ICFA have joint into a message that either do it properly or don't do it all. Usually a profound message from these two big bodies in Islamic banking and finance in arrange to create the product appropriately or take off it because it is since on the off chance that there's slip in it anxious that it'll contain components of Riba’.

The main objective of the study is primarily to determine the issues and challenges of the Tawarruq practices in Malaysia and give the proposal for the improvement of this item in Malaysia. For fulfilling the main goals, these are the divisions of the objectives such as studying the views and supposition of the scholars around Tawarruq, examining the banking and financial institutions on the practices of Tawarruq, distinguishing the boundaries of the practices of Tawarruq in IFIs. This study contributes to the knowledge of the areas of Islamic finance. In addition to this, it contributes to state the knowledge of contemporary issues related to Tawarruq among Islamic banks in Malaysia. The important thing in this study is to clarify how to deal with the product of tawarruq in accordance with the provisions of Islamic law away from Gharar, Maysir and Haram. Therefore, the customer must know all the information that is related to Tawarruq product. This will be in full assurance that will be removed from something which is not permitted in Islamic law.

2.0 LITERATURE REVIEW

Agreeing to Bouheraoua (2009), Tawarruq comes from the word (Al-waraq or al-warq), moreover it comes from “Masdar” the verb (Tawarruqان تَوَارُّقاً) is said (Tawarraqa al-hayawan توزّق الحيوان) which implies the creature ate the takes off. Tawarruq comes from the word specified in Quran (Surah al-Alkahf:19) which is warq:

قَالُواُرَبُّكُمًْأَعْلَمًُبِمَاًلَبِثْتُمًْفَابْعَثُواًأَحَدَكُمًبِوَرِقِكُمًْهََٰذِّإِلَىًالْمَدِينَةًِ

"They said, "Your Lord is most knowing of how long you remained. So send one of you with this silver coin of yours to the city “

Meaning Dirhams made of silver (Khayat, 2006).

2.1 Overview of Tawarruq

In fact Tawarruq has characterized as a “buying of a product on credit by the Mutawarriq who looks for to urge cash and offering it to other than unique vender (third party) cash at lower price” (Dusuki, 2008). The word of Tawarruq was known by Hanbali school, but it was not specified by other law specialists. It was called under other terms. In Hanafi and Shafi'i schools, it was known as "al-Inah" whereas it was known in the Maliki school under conceded payments (Muhammad bin aouali, (2015/1437)).

Tawarruq has been for the most part utilized to allude a course of action whereby an individual who require money bought a few products for deferred payment at that point sold the merchandise to another party at a lower cash cost (Ali, 2008). The fiqhi Reference book of Kuwait's Awqaf and Islamic Issues has characterized Tawarruq as "buying a product with deferred payment and offering it to an individual other than the buyer for a lower cost with quick payment to urge cash" (Kuwait's Awqaf and Islamic Undertakings, 2005).
There are two common kinds of Tawarruq: the primary is classical Tawarruq (al-tawarruq al-fardi التورق الفردي) and the moment is modern or organized Tawarruq (al-tawarruq al-munazzam المنظم). The definition of classic Tawarruq is “buying a product from the dealer who possesses it by conceding payment, at that point the buyer offers the product for cash to other than unique vender to get cash (Bouheraoua, 2009). Fahmi et al. (2008) characterized the organized Tawarruq as "buy the product by the individual (mustawariq) from local or international advertise by conceding installment. At the same time, the Mustawriq inquires the lender as his possess capacity or by financier's operator or through the particular understanding with Mustawriq for offering once more at the spot with the lower cost.

2.2 Classical and Contemporary Views of Tawarruq

As said above, the term Tawarruq is particularly to Hanbali, but other schools incorporate it under “Bay’ al-Inah”. Since its start, the work of Tawarruq has been carried out agreeing to the basic frame. The concept of Tawarruq has not changed and has improved as it were in later decades. Major legal scholars approve this Tawarruq, they consider that the deal and buy are permitted by Allah and the interest is illegal. Ibn timiyah and Ibn al-qayyim don't passable it and they say agreeing to Umar bin Abd-aziz: that tawarruq may be a share of usury. They consider it as extortion against Allah and Shariah (Ahmed et al., 2012). Most of the scholars approve that the frame of basic Tawarruq transaction is allowed in case the dealer has possessed the product by genuine possession and exchange the product to the buyer, but in case this transaction connected with other circumstances, it'll be changed by the administering either not consent or despise (al-Uthmani, 2009).

Recently, Tawarruq has been created and got to be a very contentious issue among Shariah modern scholars. It's called organized Tawarruq. This contract in Islamic banking and financing considered a implies to induce cash. A few of the scholars have permitted it, whereas others have not permitted it since there's a presence of blending halal and haram in Tawarruq transaction (Ahmed et al., 2012). Who permitted organized Tawarruq, Bank Negara Malaysia and others, such as Ibrahim Muhammad Uthman and Raji Hanif. AAIOFI, Mustafa Wahbah Az-Zuhayli and Muhammad Taqiyyuddin Al-Uthmani don't permit organized Tawarruq (Muhammad ben auali, (2015/1437). Regarding to Bank Negara Malaysia guidelines and rules (Bank Negara Malaysia, 2015), “A Tawarruq comprises of two sales and buy contracts. The primary includes the sale of an asset by a dealer to a buyer on a deferred premise. Subsequently, the buyer of the primary deal will offer the same asset to a third party on a cash and spot premise”.

Regarding to AAOIFI Shariah standard, “The product (object of monetization) must be sold to a party other than the one from whom it was obtained on deferred payment premise (third party), to maintain a strategic distance from E’na which is entirely disallowed. Besides, the product ought to not return back to the vendor by the ethics of earlier agreement or conspiracy between the two parties, or concurring to tradition.”

2.3 Application of Tawarruq

A consideration number of Islamic banks (IBs) utilize transaction of Tawarruq. Indeed, in spite of the fact that a few of the scholars disallowed the organized Tawarruq other scholars have allowed it. The Tawarruq connected with a few strategies.
According to (Fahmi et al., 2008), the classical Tawarruq operates as follows: The Islamic Bank (IB) buys the product from the seller A at cash cost, at that point the product will be possessed by the IB. After that, IB offers the product to the counterparts such as a client or another Islamic bank based on conceded price (fetched cost also profit margin). At that point the product will be possessed by the counterpart. The counterpart offers the product to another party which is merchant B based on cash. In conclusion, the commodity's possession will be exchanged to merchant B as shown in the Figure 1 below.

![Figure 1: Classical Tawarruq](Source: Fahmi et.al (2008))

Usually the organized Tawarruq utilized on product Murabahah. The product Murabahah is considered as a common utilized liquidity management instrument by IBs. Typically the operation of organized Tawarruq when the IB gives reserves in case of product Murabahah is as follows. IB buys warrants from seller A and pay spot at that point offers itself to the counterpart. After the counterparts accept the offer from IB, he will purchase the warrants premise on a conceded payment. And the mark-up and the repayment date are pre-concurred. The Counterparty chooses IB as an operator to offer and offer warrants for its sake. At that point IB gets to be a specialist in offering the warrants to another merchant B at the spot. On the other hand, the warrants can be sold and advertised within the open market by the counterpart. The counterpart will pay as a conceded installment to IB. This installment happens at a pre-concurred time afterward on and comprises of the vitality of the major purchase in expansion to a pre-agreed mark-up (Fahmi et al., 2008). Figure 2 below shows the organized Tawarruq on Murabahah product.
Malaysia has created Tawarruq items in all banking and finance segments (e.g. Islamic banking segment, Islamic Interbank Money Market (IIMM) and Bursa Suq al-Sila). These days, Malaysian Islamic Financial System practices the Tawarruq as known (commodity Murabahah), it’s got to be allowable from Shariah advisory board of BNM. The Tawarruq considers as an elective of Bay’ al-Inah in many standards of Islamic financial products such as a product to risk management, deposit products, financing and asset (Ahmad et al., 2017). The application of Tawarruq in Islamic banking sector considers as a substitution of Mudarabah term deposit account in case of a deposit account, and it ought to be backed by Wakalah consequently the bank is chosen as an administrator of the client to purchase an item from a supplier (Rahim et al., 2013). Within the application of Islamic Interbank Money Market (IIMM) Malaysia has displayed it as a broker based on Tawarruq standards to manage the liquidity and contribute. Within the Islamic Capital Market there’s a same way connected where the bank works as an operator of BNM amid excess and turn into a client of BNM amid the insufficiency.

In terms of application Tawarruq in Bursa Suq al-Sila (BSAS), this practice was permissible by Shariah Advisory Council of BNM as follows:

i. When the market is open, the banks will bid on the price and suppliers of commodities will line up as from supplier A, B and C. The market will open at 10.30 and the order will be matched by ‘Trading & Clearing Engine’. After the bidding, CPO will be sold to Islamic Bank at via Broker A.

ii. ‘Trading and Clearing Engine’ will ensure the delivery of commodities and trade confirmation will be sent to all parties. The price will be credited to Trade and Clearing Engine Account upon the payment.

iii. The commodities will be sold by Islamic bank A to Islamic bank B based on deferred payment.
iv. The transfer of ownership will be done after selling the commodities by the Islamic bank B to ‘Trading & Clearing Engine’ via broker B.

v. The commodities will be sold by Trading & Clearing Engine to to the buyer based on the bidding price.

2.4 Issues and Challenges of Tawarruq

There are several crucial issues and challenges discussed in literatures pertaining to Tawarruq. One of these issues is that there is not yet a result of organized Tawarruq of all scholars and this issue is still disputable among the different scholars, thus, there’s no agreement on the rule of Tawarruq until presently. Scholars who don’t permit the utilize of Tawarruq consider it illegal and must be absent from all banks. In any case, many Islamic banks utilize Tawarruq in their transactions, but there has never been a consensus on their permissibility.

Another issue is the needs for more alternative to avoid any disallowed in this transaction. Islamic financial institutions ought to look for barely to discover a strong alternative and must follow Shariah guidelines to avoid any hurt in their exchanges. On the other hand, IFIs will appear up as specialists of just imitating the conventional framework, their utilization of Islamic concepts will be as a camouflage of Riba.

In additional, the Hilah (trick) and Shubuhah (doubt) are presences in Tawarruq. It can be said that Tawarruq contains Hilah (trick) since its components incorporate Riba (usury) and it contains Shubuhah (doubt) since the confirmations still clashing between the scholar’s sees and the religious boards etc.

Moreover, there is no real income from organized Tawarruq. In fact, Tawarruq leads to new debts more than the cash amounts received. This may cause a passive effect on the truthfulness and safety of the Islamic banking industry in general. The implicit mechanisms become disconnected from the real economy without increasing in the net wealth of society.

In spite of the contention over the admissibility of permissible and forbidden Tawarruq, a conclusive number of Islamic banks are driving a huge amount of Tawarruq transactions in connection with treasury operations. The Shariah Board, of these banks endorses operations. Banks can basically contract with a researcher who supports these things to be basic to empower financial activity without entering in Riba transactions. In any case, utilization of unadvised of Tawarruq and a few other comparative debt instruments by Islamic banks fills the observations that the IBs utilize instruments which bases on interest without taking after the Shariah in its substance and without realize the Islamic economic goals (Msatfa, 2011).

In terms of the agency, the prohibited of organized Tawarruq is due to its process. For example, earning money for money without any real exchanges (Mohamad and Rahman, 2014). Furthermore, the commodity of Tawarruq is not really occured, but only documents done by parties from one place to another or they use the same commodity in various transactions of Murabahah which makes Tawarruq illegal and forbidden (Dusuki et al, 2013).

According to Bouheraoua (2013), the expenses and charges are often exaggerated in the Islamic Finance Institutes which apply the concept of Tawarruq. Due to series of binding processes agreement, i.e. agency fee and Murabahah profit.
Many scholars believe that Tawarruq and Bay' al-Inah are a forced sales which is prohibited is Islam because of the exploitative nature. The contract is done by somebody who is in need for seeking liquidity and he is forced to do that. While the counterparty does not want to provide finance, instead, sells commodity with profit (Dusuki, 2010).

3.0 METHODOLOGY

As of late, Tawarruq have been broadly utilized within the Islamic banking for financing or cash liquidity purposes. It more often than not be considered as an alternative instrument to cove al-Inah. Tawarruq is the purchase of a product on conceded payment premise. The product is at that point sold by the buyer for cash to a party other than the initial dealer. On the opposite, Bay’ al-Inah is the deal same product between the same counter parties, it is regarded a replication of conventional loans, and most Muslim scholars perceived bay al isn't Shariah compliant. Subsequently, these days, many Islamic banks have begun to move from Bay’ al-Inah to Tawarruq. Since concurring to the determination of the Shariah Advisory Committee of Bank Negara Malaysia, the Tawarruq concept has been affirmed by BNM for utilizing for deposit, financing and Sukuk items. In Modern time, different items have been created utilizing the concept of Tawarruq by Islamic banks. Such as Islamic revolving credit by Joined together Oversea Malaysia (UOM), Tawarruq term financing of AFFIN Islamic, Tawarruq term deposit by bank Islam. In any case, Tawarruq still may be a questionable item in Islamic banking confronting different issues, such as Shariah compliance issue, liquidity issues, credit issues, etc. The admissibility of Tawarruq has been talked about among Shariah scholars due to their recognition, knowledges, involvement, circumstance of environment, etc.

We use qualitative analysis utilized accessible secondary resources for this paper. At to begin with, we cited the verse of the Quran that both AAOIFI and Shariah Advisory Chamber of Bank Negara Malaysia as well as most Muslim researchers cited to approve the authenticity of Tawarruq. The authenticity of the Tawarruq is determined from the Quran. The verse of the Quran suggests the common permissibility of sales contract counting Tawarruq “whereas Allah SWT has allowed exchanging and illegal usury”. In any case, there's no coordinate direction from the Sunnah with respect to the authenticity of the Tawarruq. Most Islamic institutions or Shariah scholars cite this source and regarded Tawarruq is allowable based on the common permissibility of deals in Shariah. Consequently, the permissibility of Tawarruq still be wrangled about among Shariah scholars due to their recognition, knowledges, involvement, circumstance of environment.

The second resource is journal articles, it was the larger part of these resources, by means of these journal articles to get it the definition, system and structure of Tawarruq. Besides that, we utilize product disclosure sheet (PDS) by Islamic banks in Malaysia analyzed the issues of application of Tawarruq in virtual implementation. Product Disclosure Sheet given basic data approximately a product in a steady form. The objective of the Item Disclosure Sheet is to assist customers make educated choices when obtaining a product based on a clear understanding of the most highlights and risks and other necessities of the item. It too empowers customers to compare items and services advertised by diverse financial institutions.
Table 1: Important of Information in Product Disclosure Sheet

This is a study in Malaysia by BNM for significance of information covered in the PDS for customers' decision making, as indicated in Table 1 above. There are four options to evaluate these categories, most customers by means of the PDS to seek for information on financial items. And they considered this information in the records of the PDS are exceptionally valuable for them to know the fundamental information about the item. Therefore, banks, post primary highlights, conditions and requirements of items as well as risks on PDS for transparency and disclosure of items. Subsequently, we will compare between the virtual usage and documentation requirements of the application of Tawarruq through PDS.

4.0 FINDINGS AND DISCUSSION

Based on the establishment and focus of the application of Tawarruq in Malaysia, there are few findings toward the views from the component of the items. To begin with, the resolutions for permitting the practice of Tawarruq push that the genuine association of the product within the important trade is profoundly required. Rail transfers of commodity are required as the foremost critical condition concurring to resolve. In expansion, Shaikh 'Abd al-'Aziz Ibn Baz the regarded Legal Authority of Saudi, specified that the bank ought to buy and have control over the products. Besides, Tawarruq indicates that those net income alternately. Additional costs must firstly have agreed by both parties. No premium will make charges to the client on account from claiming default portion. Over contrast, it can be seen as that those sort of disallowance approximately excitement toward conventional interest-based. Progresses will be seen additionally as a chance cosset of the financial benefits. As expressed in Shariah guidelines besides in the occasion that Tawarruq deal the special cost of the good and all costs expressed by the initial buyer to pick up must be clear and known to the buyer in Tawarruq transaction and with this, the master characterizes the sale of Tawarruq as the sale of a product with its unique costs included Ann concurred upon profit. In case all Tawarruq sale information should be transparent in each sales contract put within the record of each agreement.
Most of the scholars endorse that the frame of essential Tawarruq transaction is permitted in case the merchant has had the item by genuine ownership, and trade the item to the buyer, but in case this transaction associated with other circumstances, it'll be changed by the regulating either not consent or detest. In addition to this, the scholars unanimously agree that the original tawarruq is permissible considering it as a type of sale product except orginazed Tawarruq which is a matter of disagreement among scholars. Some of them have forbidden orginazed Tawarruq based on the principle of its connection to the concept of Riba (usury) referring to the verse:

واحل الله البيع وحرم الربا

Moreover, as we mentioned before that PDS can be used to assist customers make educated choices when obtaining a product based on a clear understanding of the most highlights and risks and other necessities of the item. Therefore, most customers by means of the PDS to seek for information on financial products. And they considered this information in the records of the PDS are exceptionally valuable for them to know the fundamental information about the product. Therefore, banks, post primary highlights, conditions and requirements of products as well as risks on PDS for transparency and disclosure of products meaning that the application of Tawarruq will be practiced based on the PDS and its clarifications about Tawarruq product.

5.0 CONCLUSION

It is apparent within the paper that the present-day analysts don't discharge those arrangements of Tawarruq out-rightly or maybe the rejection will be more since those huge numbers violations the Shari’ah rules and conduct. This announcement may be without a doubt comparative with the role of AAOIFI, which require never detested Tawarruq as a Shariah compliant product. In addition to this, it might have been likewise revealed that since the clash viewpoint in regard to the utilize of Tawarruq over the world, it'll be vital for Islamic financial organizations to screen all the Tawarruq course of activity to encourage move forward and utilized in understanding for coordinating Guidelines from claiming the Shariah status of the product and within the same time the commerce able to keep developing and appear incredible result in the general economy. Primarily the utilize of Tawarruq might bring damage to the party that keep on disregarding the indicator due to Shariah issue and clash in the product.

From the paper ready to at last concluded It Might a chance to be seen that those modern researchers endorsed the built up classical Tawarruq. The issue arises from the act and practice of organized Tawarruq around the world. Already in Malaysia, Tawarruq is no doubt utilize in nearly all areas of the Islamic Banking transaction, counting deposit, financing additionally venture. Malaysia takes after those Fatwahs beginning with the bank Negara’s Shari’ah directing board which Commissioned the act from claiming the use of organized Tawarruq. Essentially, as a result, Malaysia is prepared to make complex Tawarruq in entirety portion about financing works out. Besides, Tawarruq demands are limited in other portion of the world. The endless larger part countries, fundamental most remote point its utilization with individual financing.
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