

BAI` BITHAMAN AJIL HOME FINANCING IN MALAYSIA: AN EVALUATION

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ABSTRACT

The discussion on Shariah concepts in home financing products is not new. However, this matter is always seen relevant with Islamic finance. Based on *bai` bithaman ajil* (BBA) home financing, this paper tries to examine the practice among Islamic banking institutions compared to views of Shariah advisors in Malaysia. Even though BBA home financing is said to have many weaknesses, but most of the Islamic banking institutions are seen to offer such products on the market. The question is, how about the views and the stands of the Shariah advisors towards this Shariah concept? This question will be answered based on the primary information from Shariah advisors. The results show that most of the Shariah advisors do not agree with this BBA practice. These findings demonstrate a difference in views that occurs between the Shariah advisors and the practice in Islamic banking institutions in Malaysia.

Keywords: *bai` bithaman ajil*; home financing; Shariah advisor views

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1.0 INTRODUCTION

Islamic banking products are different from conventional banking products due to its formation that should be parallel with the Islamic principles. Islamic banking products are mainly known through the application of the particular concepts in Shariah. However, sometimes the use of Shariah concept in Islamic banking products have come into doubt when the concept selected is the controversial Shariah concept. Therefore, this paper attempts to look into BBA home financing, a home financing product that has a lot of controversy and has been discussed among scholars.

2.0 THE SHARIAH CONCEPTS IN HOME FINANCING

Islamic banking institutions (Islamic bank) in Malaysia as listed by Bank Negara Malaysia (BNM)² are divided into two types which is the local ownership and the foreign ownership. List of all Islamic banking institutions according to the types of ownership is as described in Table 1.

Table 1: List of Islamic Banking Institutions by Types of Ownership

Types of Islamic Banking Institutions	No.	Islamic Banking Institutions
Local Ownership	1	Affin Islamic Bank Berhad
	2	Alliance Islamic Bank Malaysia Berhad
	3	AmIslamic Bank
	4	Bank Islam Malaysia Berhad
	5	Bank Muamalat Malaysia Berhad
	6	CIMB Islamic
	7	Hong Leong Islamic Bank
	8	Maybank Islamic Berhad
	9	Public Islamic Bank Berhad
	10	RHB Islamic
Foreign Ownership	1	Al Rajhi Banking & Investment Corporation (Malaysia) Berhad
	2	Asian Finance Bank Berhad
	3	HSBC Amanah Malaysia Berhad
	4	Kuwait Finance House (Malaysia) Berhad
	5	OCBC Al-Amin Bank Berhad
	6	Standard Chartered Saadiq Berhad

Source: Bank Negara Malaysia

From Table 1, there are 10 Islamic banking institutions of local ownerships and six foreign ownerships. From the observation, the Shariah concepts that have been practiced in home financing products in Islamic banking institutions in Malaysia are as described in Table 2 (until January 2013).

² BNM is a Central Bank of Malaysia.

Table 2: Shariah Concepts in Home Financing Products by Islamic Banking Institutions

Types of Ownership	Islamic Banking Institutions	Home Financing Product	Shariah Concept
Local Ownership	Affin Islamic	Home Financing-I Flexi Home Financing-i Premier Corporate Home Financing-i	BBA BBA BBA
	Alliance Islamic	i-Wish Home Financing-I i-Wish Flexi Home Financing-i	BBA BBA
	AmIslamic	Home Financing-I Flexi Home Financing-i	BBA BBA
	BIMB	Baiti Home Financing-I Wahdah Home Refinancing-i	BBA BBA
	BMMB	Muamalat House/Shop House Financing (BBA)-i Muamalat Home Financing (Istisna')-i Property Financing (Tawarruq)-i	BBA <i>Istisna'</i> <i>Tawarruq</i>
	CIMB Islamic	Home Financing-I Flexi Home Financing-i Ijarah Property Financing-i	BBA BBA <i>Ijarah Muntahiyah Bittamlik</i>
	Hong Leong Islamic	Hong Leong Flexi Property Financing-i Skim Rumah Pertamaku	BBA BBA
	Maybank Islamic	Commodity Murabahah Home Financing-i Commodity Murabahah Shophouse Financing-i Home Equity-i Shophouse Equity-i Home Financing-i Shophouse Financing-i MaxiHome-i maxiShop-i	<i>Murabahah (Tawarruq)</i> <i>Murabahah (Tawarruq)</i> <i>Musharakah Mutanaqisah</i> <i>Musharakah Mutanaqisah</i> BBA BBA BBA BBA
	Public Islamic	Home Equity Financing-I ABBA Variable House Financing-i	<i>Musharakah Mutanaqisah</i> BBA
	RHB Islamic	Equity Home Financing-i	<i>Musharakah Mutanaqisah</i>
Foreign Ownership	Al Rajhi Bank	Home Financing-i	Shariah Compliance
	Asian Finance Bank	Home Financing-i	Shariah Compliance
	HSBC Amanah Malaysia	HomeSmart-i	Musharakah Mutanaqisah
	Kuwait Finance House (Malaysia)	Musharakah Mutanaqisah Home/Property Financing-i	<i>Musharakah Mutanaqisah</i>
		Murabahah Home/Property Financing-i	<i>Murabahah</i>
		Istisna' Home/Property Financing-i	<i>Istisna'</i>
		Ijarah Mausufah Fi Zimmah Asset Acquisition Financing-i	<i>Ijarah Mausufah Fi Zimmah</i>
	Ijarah Muntahiyah Bi Tamlik Asset Acquisition Financing-i	<i>Ijarah Muntahiyah Bi Tamlik</i>	
	OCBC Al-Amin Bank	Manarat Home-i	<i>Musharakah Mutanaqisah and Ijarah Muntahiah bi Al-Tamlik</i>
Standard Chartered Saadiq	Saadiq My Home-i	<i>Musharakah Mutanaqisah</i>	

Source: Islamic banking institutions website

Based on Table 2, five Islamic banking institutions of local ownership which are Affin Islamic, Alliance Islamic, AmIslamic, Bank Islam Malaysia Berhad (BIMB) and Hong Leong Islamic are fully using BBA concept in their products. Meanwhile, RHB Islamic is only using the concept of

musharakah mutanaqisah. The other four Islamic banking institutions that is Bank Muamalat Malaysia Berhad (BMMB), CIMB Islamic, Maybank Islamic and Public Islamic are providing several alternatives of Shariah concepts in home financing such as *istisna'*, *ijarah muntahiyah bi tamlik* (IMBT) and *tawarruq*. Whereas, for Islamic banking institutions of foreign ownership, five Shariah concepts are being used that is *musharakah mutanaqisah*, *murabahah*, *istisna'*, *ijarah mausufah fi zimmah* and *ijarah muntahiyah bi tamlik*. However, Al Rajhi Bank and Asian Finance Bank do not clearly state the Shariah concepts used. It also shows that BBA is not practiced in the Islamic banking institutions of foreign ownership. Instead, this concept is a key concept of home financing in Islamic banking institutions of local ownership. Overall, the Islamic banking institutions in Malaysia are offering home financing based on eight Shariah concepts that is BBA, IMBT, *ijarah mawsufah fi al-zimmah*, *istisna'*, *murabahah*, *murabahah (tawarruq)*, *musharakah mutanaqisah* and *tawarruq*.

Based on Table 3, BBA becomes a key concept that has been practiced in this product. This concept is only used by nine Islamic banking institutions of local ownership consist of Affin Islamic, Alliance Islamic, AmIslamic, BIMB, BMMB, CIMC Islamic, Hong Leong Islamic, Maybank Islamic and Public Islamic.

Table 3: The Total of Islamic Banking Institutions by Shariah Concept Offering in Home Financing

Shariah Concept	Islamic Banking Institutions	Total of Islamic Banking Institutions
BBA	Affin Islamic, Alliance Islamic, AmIslamic, BIMB, BMMB, CIMC Islamic, Hong Leong Islamic, Maybank Islamic, Public Islamic	9
<i>Ijarah mawsufah fi zimmah</i>	Kuwait Finance House	1
IMBT	CIMB Islamic, Kuwait Finance House, OCBC Al Amin Bank	3
<i>Istisna'</i>	BMMB, Kuwait Finance House	2
<i>Musharakah Mutanaqisah</i>	HSBC Amanah, Kuwait Finance House, Maybank Islamic, OCBC Al Amin Bank, Public Islamic, RHB Islamic, Standard Chartered Saadiq	7
<i>Murabahah</i>	Kuwait Finance House	1
<i>Murabahah (tawarruq)</i>	Maybank Islamic	1
<i>Tawarruq</i>	BMMB	1
Shariah Compliance (Internationally)	Al Rajhi Bank, Asian Finance Bank	2

For this research, a total of nine respondents were involved. They are the Shariah advisors of Islamic banking institutions that offer BBA home financing in their institutions which are the BIMB, BMMB, Hong Leong Islamic, Maybank Islamic dan Public Islamic. To protect the confidentiality of respondents' information, the respondents are labeled as SA referring to 'Shariah Advisor'. For instance, SA1 refer to 'Shariah Advisor 1', SA2 for 'Shariah Advisor 2' and so on until SA9 for 'Shariah Advisor 9'.

3.0 ISSUES IN BBA HOME FINANCING

Although there are various concepts of Shariah used in home financing, the discussion of this paper would only focus on the issues in the BBA. BBA refers to the purchase of a deferred payment. This concept was introduced in 1983 by BIMB and is still applied until now. BBA home financing applied by Malaysian Islamic banking institutions was however rejected by Middle East Shariah scholars. This BBA concept was seen as not parallel to the original BBA concept due to the combination between *bai` inah* (sale and buy back) and *bai` muajjal* (sale with deferred payment and installment) (Zaharuddin Abd. Rahman, 2009: 42). In addition, BBA home financing have also been found to have a number of other issues being debated including the concept of housing used, the method of calculation and pricing, Shariah compliance, justice, social welfare and customer satisfaction (Dzuljastri Abdul Razak & Fauziah Md. Taib, 2009: 2). However, the BBA concept is still dominating the home financing in Malaysia.

4.0 SHARIAH ADVISOR'S VIEW ON BBA CONCEPT IN HOME FINANCING

In general, the views of Shariah advisors on BBA home financing can be divided into two groups, that is those who agrees and those who disagrees as illustrated by Table 4.

Table 4: The Shariah Advisor's Acceptance towards BBA Home Financing

Shariah Advisor	The Acceptance towards BBA Home Financing	
	Agree	Disagree
SA1		√
SA2		√
SA3	√	
SA4	√	
SA5	√	
SA6		√
SA7		√
SA8	√	
SA9		√
Total (person)	4	5
%	44	56

Based on Table 4, only four Shariah advisors (44%) agreed with the BBA home financing practiced compared to six others (56%) that did not agree with the practice. Those who agreed are SA3, SA4, SA5 and SA8 while the respondents who disagreed are SA1, SA2, SA6, SA7 and SA9.

In this group of Shariah advisors who agreed with the BBA home financing, the views given are not so concrete. They are still seen showing the elements of dissatisfactions despite agreeing on the

concept practiced nowadays. However, the respondent SA3 fully accepted the practice of BBA concepts. In his view, the concept can be implemented since it is permissible according to Islamic law.

Unlike the other three respondents, namely SA4, SA5 and SA8 who highlight the discomfort even though they still agreed with the practice of the BBA. SA4 for example agreed with the concept of BBA practiced with consideration of the amendment made by BNM on the conditions of its implementation. This view shows that he rejected the BBA home financing undertaken before. He expressed it this way:

“Konsep BBA sebelum 31 Januari 2013 adalah *bai al-inah* yang tidak mengikut secara penuh ketetapan dan syarat-syarat yang ditentukan oleh ulama yang membenarkan konsep tersebut. Namun, setelah BNM meletakkan beberapa syarat untuk *bai al-inah* i.e. BBA, maka ia sekarang lebih menepati kehendak pandangan ulama tersebut.” (Original transcript)

"The concept of BBA before January 31, 2013 is the *bai al-inah* which is not in a full accordance with the rules and conditions set by Islamic scholars who justify the concept. However, after BNM put some conditions for the *bai al-inah* i.e BBA, it is now more likely meets the requirements of the Islamic scholar's views. "

For respondents SA5, the necessity for the practice of BBA is based on holding the Shafi'i's school of thought. It must also take into account the factors such as the relationship of the parties involved in the transactions and the legal factors. His statement is as below:

“Aplikasi BBA adalah pilihan awal sejak perbankan Islam dimulakan di Malaysia pada tahun 1983 berdasarkan amalan dalam hubungan pelanggan-pemaju-perbankan pada ketika itu. Selain itu, kerangka perundangan yang berjalan pada ketika itu khususnya Akta Kontrak dan Kanun Tanah Negara turut memainkan peranan dalam pemilihan kontrak tersebut. Pada asasnya, BBA yang diamalkan adalah berasaskan kontrak *bai` inah* yang diterima sebagai harus mengikut Mazhab Al-Syafii.” (Original transcript)

"The BBA application is the initial choice since the introduction of Islamic banking in Malaysia in 1983 based on the customer-developer-banking relationship at that time. In addition, the legal framework at that time, especially on the Contract Act and the National Land Act also played a role in the selection of the contract. Basically, BBA adopted is based on the *bai` inah* contract accepted as required by Al- Shafi'i's school of thought."

Even so, SA5 was seen to fully disagree towards this BBA practice. This is seen when he proposed the use of other Shariah concepts rather than BBA. He added this:

“Walau bagaimanapun, sudah tiba masanya untuk institusi perbankan menawarkan produk pembiayaan perumahan berasaskan kontrak-kontrak lain juga, khususnya dalam pembiayaan rumah dalam pembinaan.” (Original transcript)

"However, it is time for the banking institutions to offer home financing product based on other contracts as well, particularly in the financing of under construction houses."

This SA5 statement is seen as if the practices of BBA in home financing, especially for the houses that are under construction are not in accordance to Shariah compliant. His proposal to introduce new Shariah concepts also shows that the BBA concept applied is not well established.

Another respondent agreed with the BBA is SA8. In the meantime, he expressed dissatisfaction with the imbalance in the transaction. The benefits fall only to one party is seen as not meeting the tolerance attribute that should be practiced in the transaction. This is expressed through his following words:

"Bagi saya OK. Kita kalau boleh, cadangan yang paling baik adalah apabila berlaku peminjam yang ingin meminjam, biar jangan pihak sebelah sahaja nampak dapat untung banyak. Antara yang untung banyak biasanya bank lah. Jadi, kita nak kalau boleh sekurang-kurangnya ada juga sifat bersifat menolong." (Original transcript)

"For me it was OK. If we can, the best suggestion is, when borrowers want to borrow, do not let only one party gets the profit. The one who get lots of profits is usually the bank. So, we want it at least to be helpful. "

The importance of tolerance in banking reaffirmed by SA8 has recourse to the verse of Allah SWT. He added as below:

"Seperti firman Allah, 'Allah rahmat seseorang itu apabila dia jual dia bersifat pemurah, bersifat toleransi dan apabila dia beli pun dia bersifat toleransi'. Jika ini dapat dibuat dalam masyarakat maka saya rasa jauh lebih baik. Kita yang masalahnya adalah sistem perbankan Islam ni nampak tidak berapa mesra dengan pihak pelanggan berbanding bank-bank konvensional dari satu segi. Komen saya, kalau boleh ubah sikit kadar keuntungan yang boleh meraikan sedikit kepada pembeli, saya rasa ia satu langkah yang baik." (Original transcript)

"As the word of God, 'a God give mercy to anyone, when he is selling, he is selling with a generous nature and tolerance and when he is buying, he is also buying with tolerance '. If this can be done in the community, I would feel much better. Our problem is the Islamic banking system is not so friendly with the customers compared to conventional banks in a sense. In my opinion, if we can make a little change with a rate of profit that favours the buyer, it would be a good step. "

In the group that disagrees with the BBA home financing practice, a majority of respondents refused the BBA due to the element of *bai` `inah*³. However, those who reject these views are divided into two categories. First, the respondents who rejected the BBA practice directly. Second, the respondents who rejected the BBA practice indirectly. The respondents categorized as rejecting the BBA practice explicitly are SA1, SA7 and SA9.

³ *Bai` `inah* is a transaction contract (buy and sell) that followed with rebuying by seller at a different price (Bank Negara Malaysia, 2010:216).

For respondent SA1, the concept of debt used in BBA home financing is the root cause of the problem. Although he accepted the BBA practice for ready-built houses financing, the BBA home financing was seen to have similar implications at the end because it is financed by a debt. He put it this way:

‘BBA, kalau untuk rumah siap tak ada masalah. Yang jadi isu bila jual rumah yang belum siap. Jadi, bank pun dah pindahkan risiko secara 100 *percent* kepada *customer*. Yang satu, rumah siap. Rumah siap, kalau *customer* tak boleh bayar pun, bank boleh lelong rumah tadi. Jadi, kat situ yang timbul isu, kalau rumah tak siap, bank jual apa kepada *customer*? Itu isu sebagai jual *dayn`* tu. Kemudian, dia jual beli lebih mahal. Itu isu Syariah di situ. Lepas tu, kenapa saya kalau kata saya tidak setuju kalau rumah yang belum siap. Yang jadi isu jual beli hutang secara premium, itu satu isu. Satu isu lagi isu kezaliman sekiranya rumah terbengkalai. Cuma dalam dua-dua konsep ni, kalau tidak ada *default*, masih ada masalah kalau BBA lah, walaupun rumah siap atau tidak siap disebabkan *selling price* tu, harga jualan yang tinggi, Cuma Bank Negara dah *settle* ni dengan *ibra`* (mewajibkan bank bagi *ibra`*). Kalau dalam akad tidak sebut wajib bagi *ibra`* pun, bank wajib bagi konsep yang *sale based*.” (Original transcript)

'BBA, for a completed house, there would be no problem. The issue lies when selling an incomplete house (house that is under-construction). So, the bank already transfers 100 percents risk to the customer. One situation is when the house is completed. For a completed house, if the customer cannot pay the debt, the house can be auctioned by the bank. So, the issue here is when the house is incomplete, then, what did the banks sell to the customer? That will become an issue of *dayn`* selling. In the end, he transacted at a more expensive value. There would be a Shariah issue here. Then, there is a reason as to why I said that I disagree with incomplete houses. The issue is with the transaction of a debt with premium. Another issue is the issue of injustice if the house is abandoned. For these two cases, if there is no default, there are still some problems with BBA, because even if the house is completed or not completed, the selling price is still high, though the Central Bank already settled this with *ibra`* (requiring banks to give *ibra`*). Even though in the contract did not call for a mandatory *ibra`*, banks are obliged to give a sale based."

For respondents SA7, he recommended other Shariah concept as a replacement of BBA in home financing now which contain *bai` `inah*. SA7 is seen more likely to lean towards *murabahah*⁴ concept by saying this:

“Saya tidak berminat dengan BBA. BBA mengandungi unsur *bai` `inah*. Walau bagaimanapun, sekiranya betul-betul melaksanakan BBA mengikut apa yang disarankan oleh Imam Syafii, OK. Juhur ulama tidak bersetuju dengan BBA kecuali ulama Malaysia. Dari segi *fiqh*, makruh, tidak haram. Saya lebih bersetuju dengan *murabahah*.” (Original transcript)

"I'm not interested in BBA. BBA contains *bai` `inah*. However, if BBA is properly implemented according to what was suggested by Imam Shafi'i, it would be OK.

⁴ *Murabahah* is a transaction contract which is the asset cost price and profit margin are told to the buyers (Bank Negara Malaysia, 2010:221).

Majority of Islamic scholars do not agree with BBA except for Islamic scholars from Malaysia. In terms of jurisprudence, it is *makruh*, not prohibited. I would agree more with *murabahah*. "

For respondents SA9, he explicitly stated that the practice of BBA is a fraud because it is properly in accordance with the concept suggested. He put it this way:

"Konsep BBA dan MM tipu semua. BBA konsep hutang. Beli berhutang. Pasal apa tak beri hutang betul. Duk tipu-tipu macam cina buta. Jadi bila beli berhutang, risikonya ditanggung oleh pelanggan sahaja. Bank sentiasa untung." (Original transcript)

"The concepts of BBA and MM are both a fraud. BBA is a concept of debt. Buying with a debt. Why don't they give loans directly. Cheating like *cina buta*. So, when purchasing using debt, the risks will be held only by the customer. Banks will always gain profits. "

The remaining respondents in the group which rejects the practice of BBA home financing is those who disagree indirectly. They are SA2, SA6 and SA7. SA2 disagree with the BBA due to the 'good sold' status which refers to a house under construction. His opinion is like this:

"BBA hanyalah cara pembayaran hutang yang dilakukan secara tangguh. Jika hutang yang terbit daripada jual beli biasa maka berlaku keberhutangan. Jika terbit daripada *bai` al-`inah* maka produknya *bai` al-`inah*, begitu juga jika *al-tawarruq* maka produk *al-tawarruq*. Isunya, jika rumah tidak siap sudah dijual, apa 'subject matter' yang dijual? Jadi, pembiayaan perumahan mesti jelas 'subject matter'nya. Jika tidak, maka apa sebenarnya yang dijual?" (Original transcript)

"The BBA is a payment mode of debts with deferment practices. If the debt arises from the normal transaction, the indebtedness will happen. If it is rising from *bai` al-`inah*, so the product is *bai` al-`inah*, if it is *al-tawarruq*, we call it as *al-tawarruq* product. The issue is, if the incomplete house is sold, what is the 'subject matter' of the sale? So, the home financing must be clear on its 'subject matter'. If not, then what exactly is being sold?"

Respondents SA6 and SA7 are both stressed on the *bai` inah* issue. From SA6 view, BBA home financing basically is a good concept. However, the critics on the concept of *bai` inah* until BNM issued a new requirements in the implementation of the BBA concept reflects a defect in the application of the concept. The view was expressed as follows:

"The *bai` bithaman ajil* (BBA) concept in housing financing is a good concept in general. However, BBA home financing has two major issues now:

1. The BBA is based on the incorporation of *`inah* contract in the BBA home facility which brought a criticism to the practice in Malaysia. Even though *`inah* is a debated issue among the Shariah scholars.
2. The new requirement of Shariah Advisory Committee (SAC) of BNM on the inter-conditionality in *`inah* which must be avoided in all legal documents represent a very serious challenge that put the BBA home financing in Malaysia as product on

the way out. The new guideline of SAC of BNM on *`inah* is a clear sign to face out the BBA related product including BBA home financing from the market.”

Overall, the views of the respondents on BBA home financing can be summarized into two groups, those who agreed and disagreed. Although there were four respondents agreed, but only SA3 accepted this concept without criticism. The respondents who agreed on the necessity of the application of this concept were based on two reasons. First, it must be permitted in Islam. Second, the necessity must really follow the outline by Shafi'i's school of thought.

In contrast, those who reject the concept of the application have submitted two factors. First, the application of BBA concept in home financing contains *bai` `inah* which is opposed by most Islamic scholars. Second, the application of the BBA concept in the transaction business of under-construction house is unable to meet the Shariah requirements. The conclusion of their views, it can be said that the majority of Shariah advisors rejected the BBA home financing concept.

5.0 CONCLUSION

Application of Shariah concepts provide significant implications, especially for the parties involved. It is not only a matter of justice that must exist in Islamic transactions, but the bigger issue is implementing the business for the sake of Allah SWT. Overall, the BBA does not get full support from the Shariah advisors, although theoretically all of them agreed that the concept is good. This was seen as in contrast to the practices of Islamic banking institutions as reflected in Table 1 which widely practice the BBA home financing.

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Respondent	Islamic Banking Institutions	Date of Information
SA1	Hong Leong Islamic	Interview on October 11, 2012
SA2	Hong Leong Islamic	Questionnaire on February 1, 2013
SA3	BIMB	Questionnaire on February 4, 2013
SA4	BIMB	Questionnaire on February 6, 2013
SA5	BIMB	Questionnaire on February 10, 2013
SA6	Maybank Islamic	Questionnaire on February 18, 2013
SA7	Hong Leong Islamic	Interview on February 19, 2013
SA8	BMMB	Interview on February 27, 2013
SA9	Public Islamic	Interview on February 28, 2013