

THE STUDY ON ISLAMIC CREDIT CARDS
(PRACTICE BY ISLAMIC BANKS IN MALAYSIA)

By

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ABSTRAK

Penggunaan kad kredit Islam hari ini masih diperdebatkan di kalangan ulama-ulama Islam terutama mengenai dengan kontrak dan keberkesannya untuk mencapai masalah. Kajian mengenai kad kredit Islam adalah sangat penting dan beberapa kajian telah dilakukan di atasnya. Walau bagaimanapun, kajian tentang perbandingan pelbagai produk kad kredit Islam yang diamalkan di Malaysia pada tahun baru-baru ini masih terhad. Oleh itu, kertas ini ingin menangani isu ini dengan membandingkan pelbagai produk Kad Kredit Islam di Malaysia. Hasil kajian, pengkaji mendapati bahawa umat Islam di Malaysia tidak boleh lari diri isu faedah dan kredit, tidak terkecuali negara-negara Islam yang lain, malah ada yang berfikir hanya untuk menggunakannya walaupun ia menyalahi undang-undang Syariah. Walau bagaimanapun, adalah sangat penting untuk umat Islam mencuba untuk mengelak dan mencari pegangan, dan jalan tersebut sentiasa ada jika umat Islam mencari dan mereka memegang pegangan tersebut dengan keikhlasan. Daripada menyerah diri dengan godaan menggunakan kad kredit, umat Islam perlu mengambil kira alternatif yang jelas, misalnya kad debit untuk melarikan diri dari perangkap riba. Selain itu, kad debit boleh memupuk disiplin kewangan yang kad kredit, dalam kebanyakan kes, memusnahkan. Dengan kad debit, semua pembelian dan perbelanjaan secara langsung ditolak daripada akaun perbankan pelanggan. Jadi, perbelanjaan sentiasa terhad kepada apa wang dalam akaun perbankan mereka boleh menampung Begitu juga, kelebihan utama kad debit ini adalah pelanggan tidak dihantui, dengan pembelian atau kewangan lain yang mereka dibuat pada masa lalu. Oleh itu, penggunaan kad debit bukan sahaja akan mengelakkan faedah, tetapi ia juga akan membolehkan umat Islam untuk menjadi lebih kuat dalam mengawal perbelanjaan kewangan mereka.

ABSTRACT

The practice of Islamic credit cards nowadays is still debatable among Muslim scholars especially regarding to its contracts and its effectiveness to attain *maslahah*. Study about Islamic credit cards is very essential and some studies have done on it. However, studying about the comparison of the various product of Islamic credit cards practiced in Malaysia in the recent year is still limited. Therefore, this paper would like to tackle this issue by comparing the various product of Islamic Credit Cards in Malaysia. From the research, the researcher found that Muslim in Malaysian cannot completely escape interest and credit even in Islamic countries, some may think it is just better to go with the flow and use it anyway, despite it being unlawful in the light of *Shariah*. Nevertheless, it is highly essential to try as best as possible to avoid it and the venues are available if Muslims look for them and embrace the sincerity to pursue them. Instead of submitting into the temptation of using credit card, Muslims should consider a clear alternative, for instance the debit card in order escape from the malicious trap of *riba*. Apart from that, debit cards can instil financial discipline that credit cards, in most cases, destroy. With a debit card, all the purchases and expenses are directly deducted from customers' banking account. So, the expenditures are always limited to what the money in their banking account can cover. Likewise, the primary advantage of this arrangement is that customers do not get haunted, by purchases or other financial decisions they made in the past. Therefore, the usage of debit card will not only evade interest, but it will also enable Muslims to be more vigorous in controlling their financial expenditure.

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CHAPTER 1

INTRODUCTION

1.1 Introduction

Islamic banking can be described as the *shariah* or Islamic law consistent way of banking. There are certain strict rules that should be observed in Islamic banking. If these fundamental rules are breached, the concept of Islamic banking would be lost. In Islamic banking, *riba* (interest), *maysir* (gambling) and *gharar* (uncertainty) shall be eliminated. Apart from it, the investments made, shall also be for shariah compliant products, which shall not include commodities classified as *haram* (prohibited) like alcohol and pork.

Islamic banking refers to a system of banking that complies with Islamic law also known as *Shariah* law. The underlying principles that govern Islamic banking are mutual risk and profit sharing between parties, the assurance of fairness for all and that transactions are based on an underlying business activity or asset.

These principles are supported by Islamic banking's core values whereby activities that cultivate entrepreneurship, trade and commerce and bring societal development or benefit is encouraged. Activities that involve *riba* (interest), *maysir* (gambling) and speculative trading *gharar* (uncertainty) are prohibited.

Through the use of various Islamic finance concepts such as *bay' al-inah*, *tawarruq* and *ujrah*, financial institutions have a great deal of flexibility, creativity and choice in the creation of Islamic finance products. Furthermore, by

emphasizing the need for transactions to be supported by genuine trade or business related activities, Islamic banking sets a higher standard for investments and promotes greater accountability and risk mitigation.

The nature of Islamic banking is different from conventional banking as the activity it carries is beyond the functions of a conventional bank. Islamic banking creates multi-contractual relationship between the customer and the bank depending on the nature of the contract to which they enter. For example, Islamic bank may enter into a partnership agreement with the customer and do trade and share profit. If so, the Islamic bank and the customer would be considered as partners and the partnership law of the country would be applicable to their relationship.

Islam is the way of life which brings happiness of human life at all times and places in terms of its flexibility. One of the clearest manifestations of this flexibility is in the field of transactions that is based on the concept of permissibility in principle provided that it does not involve prohibited objects. Muslim jurists usually find no difficulty in arriving at suitable ruling on any new developments in such field.

In this globalization time, the need of sale transaction is easier than previous years ago. Credit card is one of the easy facilitation which is provided by banks as intermediary institution. Today, the needed of the credit card becomes more important and essential in economy because in terms of safety than holding cash money.

Islamic finance that has garnered tremendous interest in the face of almost two years of global economic crisis will have an important role to play. Regardless, Islamic credit card is issued by the Islamic banks especially to convenience of Muslim customers to make transactions without holding any cash on hand. It is also for security on customers behalf. Nowadays customers are more conscious about the usage of the Islamic credit cards. Not only this credit card is interest-free, but there is no profit charges if full payment is made before the due date.

In Malaysia, the Islamic credit card was first launched by Bank Islam Malaysia in 2003, namely Bank Islam Card (BIC) used *bay' al-inah* as a contract. After that, in April 2009, HSBC *Amanah* launched the first Islamic credit used *ujrah* as a contract, namely *MPower* Credit Card-i. This paper attempts to discuss, compare and analyse the position of contract for Islamic Credit Cards adopted by the Islamic Bank in Malaysia. Therefore, some literatures are referred from journals, books, and articles related with the Islamic credit card.

The structure of this paper is as follows, the researcher will introduce the reader with the development of Islamic Banking in Malaysia, where it is important for the reader to understand the concept of Islamic banking, before it continues with an introduction the history of conventional credit card and historical background of Islamic credit card, system of conventional credit card, types of Islamic credit card and the Islamic source of these Islamic credit card types. Chapter 3 will compare the various products and attempts to suggest the preferred structured to minimise the controversies. Chapter 4 will discuss problems,

opportunities and challenges of Islamic credit cards practiced in Malaysia. Chapter 5 part is conclusion, where the researcher will propose an ideal model for Islamic credit cards for Malaysian financial institutions.

1.2 Research Background

Islamic credit card has been recognized as the *Shariah* compliant product by *Shariah* Advisory Council of Bank Negara Malaysia (BNM). It was constituted by the Bank Negara Malaysia under the Guidelines of Islamic Credit Card dated on 1st August 2004. Generally, a number of models have been applied to produce the Islamic credit card around the world which is based on *Bay' al-inah*, *tawarruq*, *hiwalah*, *murabahah*, *ijarah* and *kafalah* or wakalah. In Malaysia, the Islamic credit card is executed by using the contract of *Bay' al-inah*, *Tawarruq* and *Ujrah*.

The *Bay' al-inah* model has been introduced by four Islamic financial institutions which are Am Bank “*Al-Taslif* Credit Card” launched in December 2001, Bank Islam Malaysia Berhad “Bank Islam Card” launched in July 2002, Bank Simpanan Nasional “*Al-Aiman* Card” launched in December 2006 and Maybank Islamic “*Ikhwan* Card –I” launched in 2008.

The *Tawarruq* model has been introduced by Bank Rakyat and this practice is followed by Bank Islam Malaysia Berhad (BIMB) by the end of 2008.

Recently, the model of *Ujrah* has been introduced by the HSBC Amanah and EON CAP Islamic Bank Berhad.¹

On 29th June 2007, Bank Negara reported that, until May 2007, the total financing given by Islamic banking institutions through the Islamic credit card product had reached RM577 million. It could be said that Islamic credit card has played a vital role in the development and success of Islamic banking in Malaysia.

Through this product, Muslims as well as non-Muslims are able to have their personal financing and make payments for high value items, foreign currencies and items over the internet without being involved with *ribawi* (interest based) loans which are prohibited in Islam. At the same time, the Islamic credit card provides the added element of security through the Islamic Insurance (Takaful). However, since the implementation of Islamic credit card in Malaysian financial institutions, a large number of criticisms have been made regarding its compliance to the principles of *Shariah*. It has been said that the structures and operations involved in its application are not Islamic and merely a ploy (*'ilah*) to legitimize interest. Therefore it is the intention of this research to look into the area concerned.

1.3 Problem Statement

Any Islamic banks that wish to operate in Malaysia has to conduct thorough research of services, places, and be prepared to offer services that will be

¹ The former Chairman of Shariah Advisor of HSBC Amanah, Dr. Mohammad Akram Laldin said that the implementation of *Ujrah* concept in Islamic credit card has been approved by HSBC Shariah Advisory board.

both *Shariah* compliant and yet competitive from the market point of view. One of the big dilemmas for Islamic products is the issuance of Islamic credit cards. Credit cards have been known as the most convenient device in electronic money transaction. The user will have to bear the cost with the interest added if they failed to pay the debt within prescribed time period. The conventional credit cards encounter fundamental problem under *Shariah* law. This credit card concept is unacceptable under the principle of interest (*riba*).

Meanwhile, Islamic credit cards present a different type of credit cards structure. Nevertheless, there are still ongoing debates on the status Islamic credit cards because different region of the world offers different contract to govern Islamic credit cards. Credit cards issued by Islamic banks in Malaysia are said to be non-*Shariah* compliance. Therefore it presents a continuous challenge to Islamic banks in Malaysia to strike the balance between ensuring its compliance with *Shariah* principles and maintaining its competitiveness with conventional credit cards. Whether a credit card issued by Malaysian Islamic banks ever be halal despite the various shades of grey interpretation?

1.4 Research Questions

Among the questions this research intends to answer are:

1. What is the difference between conventional and Islamic credit cards?
2. What are the structures and models of the current Islamic credit card in Malaysia today?
3. What are the operations and procedures involved in implementing the Islamic credit card?

4. What are the alternative and more *Shariah* compliant structure for Islamic credit card?

1.5 Research Objectives

The main objectives of the study are;

1. To identify the differences between Islamic and conventional credit card.
2. To produce a clearer picture of the current structures and models of Islamic credit card in Malaysia.
3. To shed light on the operations and procedures made in issuing Islamic credit card.
4. To find the proposed model for Islamic credit card for Malaysian financial institutions

1.6 Justification of the Study

The researcher of this project paper has chosen the topic because there has been no comprehensive study on Islamic credit cards. The researcher has surveyed the terms and conditions of Islamic financial institutions in regard to the product of Islamic credit card. To the best of researcher's knowledge, this study is needed to recognize the status of some *Shariah* issues raised in the case of Islamic credit card especially the *bay' al-inah* and *tawarruq* modes of financing. This research is useful to increase the body literature on Islamic finance. The soundness and validity of these modes of financing are very crucial. This is also due to the fact that most of the literature either condemns or supports the practice of Islamic credit card using *bay' al-inah* and *tawarruq* concepts which were not written in such detail and often lacks of objectivity.

1.7 Research Methodology

1.7.1 Research Design

In order to answer the research questions and to achieve the research objectives, the researcher intends to adopt historical approach to answer the first objective, the descriptive and exploratory studies to answer the second objective. A comparative study will then be carried out. Lastly, the researcher will resort to analytical and critical studies on the results obtained in order to answer third objective and reach to the conclusion and answer the fourth objectives.

1.7.2 Research Method

1.7.2.1 Historical Study

Historical study involves an objective study of the past facts and the historical development of law in any specific area². Islamic credit cards have been widely used and developed over the century. The researcher will seek from materials obtained from available literary works which include books, papers, articles and internet sources, in order to ascertain the trend of the Malaysian Islamic Banking in dealing with Islamic Credit Cards. This will answer first objective of the research.

1.7.2.2 Descriptive and Exploratory Studies

Descriptive approach seeks to ascertain the state of affairs in respect of the research questions. An exploratory study the researcher works on a relatively novel topic or area of knowledge with purpose of finding out unknown or partly

² (Yaqin Anwarul 2007)

known facts. The researcher will carefully examine the models of Islamic credit cards that have been adopted in Malaysia which are using the contract of *bay' al-inah*, *tawarruq*, and *ujrah*.

1.7.2.3 Comparative Study

The use of comparative research method is to present the application of Islamic credit cards whether it comply with the *shariah* requirements. The holder of the Islamic credit cards are only permitted to carry out halal transactions, which exclude transactions related with six categories that do not meet *shariah* requirements. These categories are bars, discos, night clubs, purchase of beers, escort and massage services and gambling. Operation of Bank Islam Islamic credit cards, involves three *aqad* (contract), namely *Bay' al-inah*, *Wadiah* and *Qard al hasan*.

According to Islamic Legal literature, *bay' al-inah* has normally been described as an arrangement whereby a person sells an asset to another for deferred payment. Subsequently, the seller buys back the asset from the buyer before the full payment of the deferred price, and for cash payment which is of a lesser amount than the deferred price.

However, as the industry moves along, some of the specific practices of Islamic banking in Malaysia have been subjected to quite strong criticisms by other parties.³ Therefore researcher will study the practice of “sale and buy-back”

³ (Rosly 2005)

(*bay' al-inah*), and the practice of discounting in the sale of debt receivables (*bay' al-dayn*) in order to analyse the possible solutions in moving forward.

1.7.2.4 Analytical and Critical Studies

Analytical approach involves a careful examination and evaluation of an issue in order to understand or explain it or draw inferences and conclusions from it. In critical approach, the researcher examines and analyse the data obtained carefully, access whether there are inadequacy, drawbacks or disadvantages in that area of law.

The researcher will then make analytical and critical studies based on the information obtained from the various method adopted. The purpose is to analyse and examine the Islamic credit cards models adopted by Malaysian Islamic Banking meet with *shariah* compliance. Thus answer objective number three and four.

1.7.3 Data Collection

The research will collect the data from the primary sources in the form of written documents including the relevant statutes and judicial decisions. Study will also be carried out on the data available in the secondary sources such as the writing of legal commentators in the form of legal journals, articles and other relevant textbooks to supplement the primary sources. The collection of these data will be carried out mainly in the local library on materials relevant to the study.

Data collection will also be carried on the websites in the internet in order to gain access to the collection of research materials.

1.7.4 Data Analysis

In analysing the data, the rule relating to statutory interpretation will be applied in order to analyse the data obtained in the current research. Examples of the statutory interpretation include the Literal Rule, the Golden Rule, the Mischief Rule and the Purposive Approach. The doctrine of binding precedents will also be resorted to in ascertaining the weight and value of the cases.

1.8 Scope and Limitation of the Study

This research will focus on a contract that governs Islamic credit cards. Despite the challenges to strike the balance between *Shariah* compliance and competitiveness, Islamic banks in Malaysia continue to grow duplicating conventional bank products. The product offered by Islamic banks was originally introduced by conventional bank to their customers. This research will discuss the position of Islamic credit cards via its contract and whether this contract is permissible in the context of Islamic banking.

1.9 Literature Review

In the book title “Islamic Finance: Law, Economics and Practice”, the author has defined the noun “Islamic finance”. The word suggests that Islamic financial markets and institution deal with the allocation of financial credit and risk. Thus, Islamic finance must be essentially similar to other form of finance. On the other hand, the adjective “Islamic” suggest some fundamental differences

between Islamic finance and its conventional counterpart. He presents those observers of the theory and practice of Islamic finance sense the inflexibility between attempt to be essentially similar to conventional finance (emphasizing competitiveness and efficiency) and attempts to preserve a uniqueness in Islamic character. But, according to him, Islamic peculiarity often can be preserved at cost and minimization of that cost.⁴

Islamic finance was entirely based on divine sources where the primary sources of Islamic finance was well elaborated in the book “Islamic Banking: Theory, Practice and Challenges” by *Fuad Al Omar* and *Mohamed Abdel- Haq*. It was stated the sources derive from Quran and the *Sunnah*. The word *Sunnah* means a manner of acting, an established rule of conduct or practice. There are in addition to these two primary sources of law that is two dependent sources namely *ijma’* (consensus) and *qiyas* (reasoning by analogy) that be the laws that binding upon Muslims.⁵

As Quran is a complete book to guide Muslim, Islamic scholars are able to make the laws deriving from the provision inside the Quran and the *Sunnah* for all problems relevant at all times. There are few schools of thought that make the law for Muslims. In *Muamalat* (financial) matters, different school of thought offers different view as it based on stringency to interpretation. Nevertheless the fundamental belief is the same. Islam came as a religion of kindness and guidance,

⁴ (El Gamal 2009)

⁵ (-Haq 1996)

to rectify unconventionality of belief and to guide life into righteousness and goodness. Thus, the ban on usury was a basic rule in all financial transaction.⁶

Exploring the practical world of Islamic banking system, *Rosnia Marzuki* wrote an article on Islamic finance in Malaysia. Islamic bank first established in Malaysia about more than 30 years. The enactment of the Islamic Banking Act 1983 enabled the country's first Islamic bank to be established. The efficiency of the banking system has been one of the hot issues in financial atmosphere. Since their products and services are of an intangible in nature, it is hard to quantify the efficiency of financial institution. According to her, many researches have attempted to measure the productivity and efficiency of the banking industry using outputs, cost and products.⁷

The status of Islamic credit cards reviewed in "A study on Islamic Credit Cards Holders". This journal has described a credit card usually used as an essential mode of payments in modern world society. People used credit cards for various reasons namely to obtain credit facility, cash advance, easy payment, charge card and status.

There are a few issues arise in comparing conventional credit cards with Islamic credit cards such as it offers more value of money, lower penalty rate and annual fee waiver. Islam itself permits the use of credit cards so long it does not involve interest element. But to what extent the permissible element of usury can be controlled by the Islamic banks. If the credit card serves as a charge card,

⁶ (Hmomoud 1985)

⁷ (Rosnia Marzuki 2013)

where the holder only pay the principle amount plus the service charge, the transaction is permitted when it does not impose any element of usury.⁸

There are some debatable issues which have been addressed not only in terms of the numbers of credit flooding the nation's economy, but the amount transaction that ends up with payment default and the numbers of credit cards □ fraud has been recorded which threatened the economy. *Norudin Mansor* has studied the relationship between demographic factors and the usage of Islamic credit card.⁹

Abd al-Wahab Ibrahim Abu Sulayman, al-Bitaqat al-bankiyyah al-igradiyyah wa al-sahb al-mubasyir min al-rasid (Credit and Debit Cards)¹⁰. This book formerly was a research presented to *Majman Al-Fiqh Al-Islami* in Jeddah. This book covers quite well both aspects, operational and the *fiqh* side of the credit card. The focus of the research is the analysis study of credit and debit cards in the Islamic legal perspectives. The author discusses a lot of *Shariah* issues about credit card. Besides giving fatwas and conditions in implementing Islamic credit card, he also gives a few suggestions on how to resolve the issues. However, the study is limited only to the context of Islamic banks in the Middle East. Some of the new applicable contracts of Islamic credit cards have not been discussed, such as *tawarruq* and *bay' al-Inah*.

Muhammad Abd al-halim Umar, al-Jawanib al-syariyyah wa al-marafiyyah wa al-mahasabiyyah li bitqat al-i'timan, (Shariah, Banking and

⁸ (Hamid n.d.)

⁹ (Mat n.d.)

¹⁰ (Sulayman 1997)

Accounting Aspects of Credit Cards)¹¹. The focus of the book is on the transaction of Islamic credit card in several perspectives such as *Shariah*, banking and accounting. The author explains more on *Shariah*'s perspective of Islamic credit card. However, the author only explains the proposed *Shariah* concepts that are to be applied in Islamic credit card. He does not raise the issues of contemporary Islamic credit card.

Syed Alwi Mohamed Sultan, "Islamic Credit Card: A Framework of Implementation in Malaysia"¹². This paper examines in detail the application of credit card which results in a comprehensive product solution, covering both the *Shariah* and commercial aspects. The information about credit card is too general to cover both the *Shariah* and commercial aspects. The suggestions from the author are not inconsistent with the pragmatic approach in the operations of Islamic card credit by Islamic banking nowadays. He raises some of the *Shariah* issues but the solutions are not stated and suggested to be discussed among the jurists such as Islamic credit card using the contract of *bay' al-Inah*.

Aboubacar Salihou Kante, "Credit Cards from the Islamic Legal Perspective"¹³. He notes about historical development, importance in contemporary societies, and relationship between parties, *Shariah* issues and types of credit cards. However, the author does not totally explain about credit card in Islamic legal perspective. Nevertheless, he includes some historical background of credit card in the Western viewpoints. Actually he elaborates the comparison between Western and Islamic Law involving credit cards. The *Shariah* issues are

¹¹ (Muhammad Abd al-halim Umar 1997)

¹² (Sultan 2001)

¹³ (Kante 2006)

insufficient and are not directly discussed. Moreover, there are not many fatwas from the Muslim scholars. He only refers to a certain contemporary Muslim scholars' name.

The author discusses the *Shariah* rulings in three types of credit card which are debit card, charge card and credit card. The element of usury inherited in credit card, whilst the other two are free from the interest charges and considered permissible by Muslim scholar. The author also extensively discusses about the relationships among parties in credit card transactions and studies them in comparative way between conventional and Islamic perspectives.

This book tries to justify every single relationship among bank issuer, card holder and merchants in 4 perspectives. Actually, the information has been discovered and discussed by the contemporary Muslim scholar, and the author seems to reproduce the information since non-Arabic speaking bankers do not have qualms about it. In addition, some information about the parties are inconsistent with the practical approach both in conventional and Islamic banking.

*Abd al-Sattar Abu Ghuddah, Bitaqat al-i'timan*¹⁴. The topic of Islamic credit card is only discussed by the author in one chapter. The author elaborates on the relationships between the parties according to *Shariah* principle. There are also some lacks of information about new applications of Islamic credit card in contemporary Islamic banks. But there are some important points which need to be explained by the researcher in terms of the profit charged on the cardholder as the repayment is beyond the grace period.

¹⁴ (Ghuddah 2002)

Muhammad ibn Su'ud, al-Bitaqat al-lada'iniyyah tarikhuha wa anwa'uha wa ta'rifuha wa tawsifiha wa mazayaha wa 'uyubuha (Credit Cards: The history, types, introduction, description, privileges and shortcomings)¹⁵. The author focuses on the historical background of credit card, the general picture and operations of credit card which consists of conventional and Islamic credit card. The benefits and shortcomings of credit card are also discussed. The weakness of this article is the author does not directly raise the issues of *Shariah*. By the way he gives the substance and form of Islamic credit card which are useful for the jurist to analyse the operations and structures in accordance to the *Shariah* principles.

Abd al-Ruzaq Ala' al-Din, al-Taqabud fi al-Fiqh al-Islami wa atharahu ala al-buyu al-mu'sarah.¹⁶ The chapter consists of introduction and kinds of credit cards. He raises the *Shariah* issues rooted in implementing the credit cards as general. The explanation about *Shariah* views are also presented. For example, the legality of Islamic credit card with certain concepts such as *al-kafalah*, *al-daman* and *al-hiwalah* and the justification of *al-qabd* (possession). However, the shortcoming of the author is that he fails to mention the concepts of *bay' al-Inah* and *tawarruq*.

Mohd Masum Billah, "Islamic Credit Card in Practice".¹⁷ This article discusses mainly about the contemporary application of Islamic credit card in Malaysia which adopts the concept of *bay' al-Inah*. The author stresses that Muslim scholars in Malaysia adopted the concept of *masalih al-mursalah* to

¹⁵ (ud 2003)

¹⁶ (al-Din 2004)

¹⁷ (Billah n.d.)

legitimize the contract of *bay' al-Inah* since the contract is not mentioned in Al-Quran and Hadith. To the best of the researcher's knowledge, this information is not accurately studied. The concept of *bay' al-Inah* is stated in Hadith. The Malaysian recognized *bay' al-Inah* as not a loan but a sale. They depend on the form of the contracts but not on the substances of it.

Manzoor Ahmad Al-Azhari, "Credit Cards in Islamic Legal Perspective".¹⁸ The objectives of the article are to present and analyse contemporary Muslim scholars' opinions about the legal adjustment of credit cards. Furthermore, it explains the history of credit cards. The author answers about the acceptability of credit card's transaction, issuance and the annual fees. Generally, this article tries to explore the position of Islamic credit card in modern financial markets. It presents the meaning of credit card in various perspectives, for example the procedures, types, parties' card system and agreements involved in credit card transaction. From this article, we can understand that Muslim scholars have decided that credit cards transactions are acceptable from the *Shariah* standpoint. The transactions are regarded as contracts which can be divided into *al-kafalah* (guarantee), *al-wakalah* (agency), *al-iqrad* (debt), *al-hiwalah* (transfer of debt) and commercial papers. The weakness of this paper is the explanation about the *bay' al-Inah* and other Malaysian Islamic Financial Institutions' (IFIs) models were not included. This is the purpose of the research, to justify the transaction of Islamic credit card implemented in Malaysia.

¹⁸ (Al-Azhari 2006)

CHAPTER 2

HISTORICAL DEVELOPMENT AND CHARACTERISTIC OF CREDIT

CARDS

2.1 Introduction

The use of credit cards originated in the United States in the 1920s¹⁹. Hence, this chapter will shed light on the development of credit cards, their advantages and disadvantages, the types of cards that can be used as a method of payment and finally, the provider of the cards globally.

2.2 Historical Development of Credit Cards

Man has been involved with trade and commerce since the beginning of history. As this area has expanded and become more important, different methods of exchange have been developed. From barter trading, to money as a medium of exchange and now the World is moving towards credit cards. In this age of rapid technological advances, it is only natural that man should seek out a new, more

¹⁹ (E.Sayer 1988)

efficient system of carrying on trade and commerce. This system appears to be the use of credit cards.²⁰

Credit cards are not new. They, or some equivalent, have existed since the early part of this century. Some time before 1920, some large department stores began to issue “credit coins”²¹. These coins were a small piece of metal, which displayed the name of the merchant and a series of numbers identifying the customer's account. They were issued to good customers and allowed them to purchase merchandise on credit in the store. About the same time, oil companies began to issue charge plates (usually made of metal) to their customers for the purchase of gasoline, oil and the likes at the companies' service stations²². All this development notwithstanding the yield, was relatively insignificant until 1950.

In 1950, the Diners' Club introduced the first independent credit card plan. This plan involved an agreement between the club and its members and between the club and the merchants. The members agreed to pay the club to obtain a card and then agreed to pay a monthly billing as it came in. The merchant agreed to honour the card and then forward his credit vouchers to Diners' Club for payment once a month. The members thereby were able to get service from many types of establishments by carrying only one card and were able to pay for it at the end of the month. The merchant, on the other hand, was relieved of having to have his own plan and was also likely to increase the volume of his business since card holding members would find it more convenient to deal with him than with a

²⁰ (Sloan 1987)

²¹ (Ferrier 1984)

²² (Samen 2002)

merchant who would not honour his card²³. The success of the Diners' Club plan was such that the American Express Company entered the field in 1958, while Hilton Credit Corporation initiated the "Carte Blanche" plan the following year²⁴.

In 1951, the First National Bank of Long Island became the first bank to offer its customers a credit card plan. This area was not very important, however, until the late 1950s when the Bank of America and the Chase Manhattan Bank issued their cards. In 1966, the Midwest Bank Card System was started²⁵.

With the advent of the bank credit card, the range of goods and services available on credit became staggering. They range from the normal expenditures of food and clothing, shelter, entertainment and travel²⁶.

By at least the beginnings of the 1970s, the personal (as well as the corporate) credit card had become a fixture in the nation's economy. Today more than 60 million credit card accounts exist in the United States, and seven out of ten households possess at least one credit card. By 1988 outstanding balances on credit card accounts total more than \$80 billion²⁷.

In the United Kingdom however, things did not start to happen until 1963 when American Express issued its first sterling American Express card. The first UK bank issuing credit card was Barclays Bank which issued Barclays card in 1965. Barclays had reached an agreement with Bank Americard (Visa) so that the Barclaycard could be used internationally. The Barclaycard was, and is, a full

²³ (Sloan 1985)

²⁴ *ibid*

²⁵ *ibid*

²⁶ *ibid*

²⁷ (Fowler 1995)

bank credit card. The other major clearing banks took no action, thinking that the Barclays Bank initiative would be nothing more than a very expensive folly. There were counter-moves in the form of a cheque guarantee card. Upon the presentation of a cheque with the card, the bank would give a collateral guarantee that the cheque would be met regardless of whether there were sufficient funds in the account or whether the customer had given instructions not to pay²⁸.

In 1970, National Westminster, Midland and Lloyds Banks realized that their individual cheque guarantee cards were not likely to withstand the competition from the Barclays' credit card. They were also worried of the situation that Barclaycard was recruiting their customers. At the end of that year, a joint Working Group was established as a consequence of which the three banks (later joined by Williams and Glyn's Bank and the Royal Bank of Scotland) formed the Joint Credit Card Company Limited to counter the market domination by Barclays, as the sole bank credit card issuer. In 1972 they launched the Access Credit Card Scheme (Access). The location selected for Access was Southend-on-Sea. By May 1972, 50,000 sales outlets had joined the scheme and Access was underway. By 1979, over 4 million cards had been issued²⁹.

The economic situation affected the growth of Access although turnover increased from 136 million in 1973 to 973 million in 1979. Cards issued increased from 302 million in 1975 to 4.05 million in 1979³⁰.

²⁸ *ibid*

²⁹ *ibid*

³⁰ *ibid*

Faced with the need to match the international acceptability of Barclaycard, Access tried to join Interbank but negotiations foundered on the problem of reciprocal arrangements because Access did not have the data processing capability. For a time it joined the Eurocard System but agreement was reached in June 1974 and in April 1975 Access became part of Interbank (later MasterCard)³¹.

In 1987, the first major debit card was issued in the UK. Once again, Barclays Bank was the bold trail-blazers. Their debit card is called "Connect". It can be used in the same way as any other Visa card. However, rather than the card holder's account being "overdrawn", the card holder must keep his account in credit and the card is used to access that account. Retailers resisted the introduction of the card as Barclays expected them to pay the same rate of service charge or discount as they would for a credit card transaction. Retailers, perhaps not unreasonably, said that they did not mind paying a certain rate if the card used was allowing credit to be given so as to facilitate the purchase of goods which might otherwise have been unaffordable³², but that the debit card was simply an alternative to a cheque. If the transaction was for a reasonably large amount, the cost to the retailer could well exceed the amount that would have to be paid to clear a cheque.

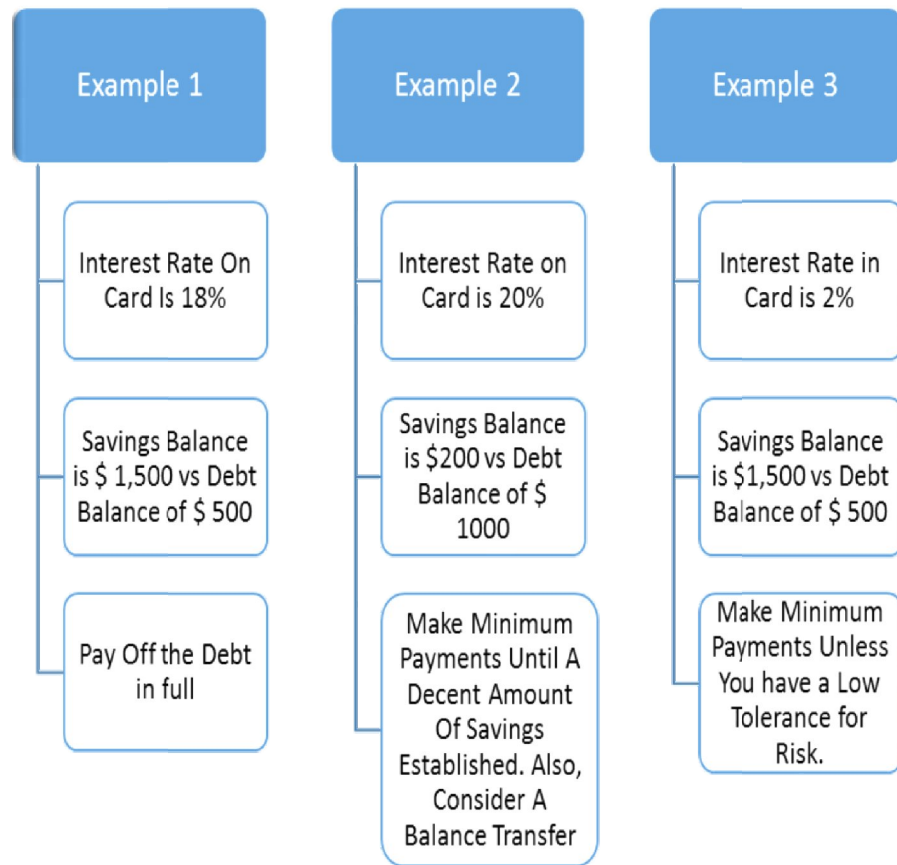
2.3 Structure of Conventional Credit Cards

Under this plan, holders of a valid card have the authorization to buy goods and services up to a prearranged amount, called a credit limit. The vendor

³¹ *ibid*

³² *ibid*

receives vital information from the cardholder, the bank issuing the card actually reimburses the vendor, and eventually the cardholder repays the bank through orderly monthly payments. If the entire balance is not paid in full, the issuer can legally charge interest fees on the unpaid portion.³³



This is a sample diagram to show the debt scenario in conventional credit cards system.

Individual banking institutions have their own policies when it comes to a credit card application. Customers may seek either a secured or unsecured card, depending on their individual repayment accounts, or credit rating. A secured card

³³ ibid

requires the applicant to deposit an amount of cash equivalent to the credit limit chosen. A deposit of RM 1500, for example, should be enough to be issued a card with a RM 1000 to RM 1500 spending limit. If the customer fails to make sufficient payments, the deposited money will be utilized to satisfy the debt. The deposited unsecured credit card, on the other hand, is generally issued to those who have a worthy credit history and have demonstrated an ability to repay the accumulated debt on time. Credit limits are determined on an individual basis, and may be upraised or lowered based on performance. An unsecured card is basically a pre-approved loan, with interest rates greater than a similar personal bank loan.³⁴

2.4 Prohibition Conventional Credit Cards In *Shariah* Law.

The question is whether or not Muslims can utilize credit cards since the loan is clearly based on interest (*riba*). The whole notion of the conventional cards is unacceptable on religious ground. Interest payments made when the outstanding balance is not repaid in full payment are *riba* payments. However, there are various grey areas of interpretation that enable some Muslims believe that credit cards usage can be done within religious belief by repaying off the full outstanding balance every billing month and never transfers any balance to the next statement period so that *riba* can be avoided.

Nevertheless, according to *Shariffa Carlo Al Andalusia*, an Islamic scholar, has debated such interpretation or practice as “not holding water” since the signing of a credit card agreements is the signing of an agreement paying *riba*, if the cardholder fails to make scheduled payment. This Islamic scholar went to

³⁴ *ibid*

argue that “we are agreeing to commit major sin, under certain circumstances, which we cannot guarantee will not happen and which are improbable”. Actually, if we consider the payment and the purpose, it seems acceptable, but for the clause *riba* in the contract which makes it unacceptable³⁵.

Another two scholars whose comments on the issue of prohibition of using credit cards for Muslims are *Dr. Imran Usmani* and *Syakh Ibn Uthaymeen*. *Dr. Imran* is of the opinion that, interest imposed on the card users when there is late payment is non-Islamic. “The premium charge constitutes *riba*”. If this element is absent, the card becomes Islamic. Meanwhile, *Syakh* agree with the rest of scholars when he contends that a contract of this nature is not permissible, because it involves *riba* which is the price of the card, and it also means committing to pay interest if payment is overdue (Syakh 2002). He has issued fatwa pertaining to this matter. What this renowned scholar believed is though one believes or it is expected that he will settle the debt before the period is overdue, the circumstances may change.³⁶

There are two problems arose pertaining to the issuance of conventional credit cards. According to *Dr. Monzer Kahf*, the problem is one for the issuer and the other for the user. Users are not signing a loan contract with interest but they are signing a contract that gives range of making the interest to be applied or not. Superficially, if the users know that they can be sure to use it without incurring

³⁵ (Andalusia 2006)

³⁶ (Bakshi 2006)

any interest, they are just making the interest clause useless, thus Muslims are permitted to sign such contract.³⁷

However, different or dissenting view was taken by Justice *Maulana Muhammad Taqi Usmani*, a renowned *Shariah* scholar, where he authorizes the use of a credit card by any consumers and declares that it is allowed in *Shariah* regardless which institution issued the card on the condition if the system of direct debit is not arranged, one must always be cautious to pay the bills within restricted time without fails, so that no interest is added.

Moreover, according to the majority of the modern scholar (*fuqaha*), the usage of credit cards is permitted as long as the card holder is certain that he has the capacity and will truly pay off the debt to the provider before any interest becomes outstanding.³⁸

Thus, we can be sure that *riba* constitute main injunctions in Islamic law, accordingly makes conventional credit cards inoperative for Muslims. Though some scholars argued conventional credit cards are allowed but the limitation enforced seems hardly to carry out by the Muslims customer. The rulings or views have triggered the Islamic banks around the world to find an alternative for credit cards by issuing Islamic credit cards. So, what we need to understand is what constitute *riba* and why it is prohibited in Islam.

2.5 History of Credit Card in Malaysia

³⁷ (Kahf n.d.)

³⁸ *ibid*

In Malaysia, the first card was introduced in the mid-1970s (Loke, 2007). At the early stage, credit card was only issued to professionals or those considered successful business persons by card issuing companies. By the end of 1970s, an estimated 20,000 cards were issued. During that time, owning a credit card was considered a symbol of prestige. However, with the passage of time, eligibility criteria for obtaining credit cards have been increasingly relaxed. As a result, the numbers of cardholders reached to about three million by the turn of the last century (Zafar U. Ahmed & et al., 2010).

According to the Central Bank of Malaysia (2012), there are 26 credit card issuers in Malaysia where 22 of them are banks while 4 of them are non-banks. The demand of credit card can be seen from the report of Central Bank of Malaysia. The report from the Monthly Statistical Bulletin of Central Bank of Malaysia (2012), states that credit card is increasingly popular in Malaysia with the total of 57.7 million credit cards at the end of 2012. It is quite a big number since credit cards have become very common nowadays and are integral part of our lives.

2.6 The Emergence of Islamic Credit Card in Malaysia

On 23rd of July 2003, Bank Islam Malaysia Bhd has issued a *shariah* compliant credit card named Bank Islam Card (BIC). This first Islamic credit card in Malaysian market was issued in response to the need of its Muslim clients. It is also the first credit card in Southeast Asia adopting the Europay-Mastercard-Visa (EMV) Smart Card with the “chip” technology. The card has all features as

payment instrument. However, profit rate is only charged to clients who fail to pay back the minimum repayment within the 20 days grace period³⁹.

Malaysia is considered as one of the developers of the Islamic banking and finance system and has continued a lead position in the field. In this chapter we are going to study how Islamic banks in Malaysia introduce credit cards as well as the point of view of Islamic scholars pertaining to this issue.

2.7 Definition of Islamic credit cards

Massey defined Islamic credit card as a payment instrument that meet with at least three criteria of Islamic principles. Firstly, the card must meet the *shariah* requirements on lending, which vary from region to region. In general, it must avoid the three essential prohibitions in Islamic finance, which are *riba*, *gharar* and *maysir*. *Riba*, as applied in the interest concept, is clearly proscribed in the Holy Qur'an and the Hadith of Prophet Muhammad peace be on him.

Therefore, an Islamic credit card is not allowed to charge any interest to payments even if the user is late in paying. *Gharar*, or uncertainty, in the practice of Islamic credit card should be avoided by excluding a charging scheme where the monthly repayment or service charges are variable based on a number of factors. *Maysir* or gambling is also prohibited. Thus, apart from preventing the card holder to access sites such as online gambling, Islamic cards need some other form of insurance cover. Secondly, an Islamic credit card must have certainty to be accepted widely. It has to use international payment schemes, such as MasterCard or Visa.

³⁹ (Ilham Reza Ferdian n.d.)

Besides that, the card should provide facilities that are not available on debit cards such as CVV numbers for “card not present” transactions and hold amounts. Furthermore, the merchant charges and issuer’s fees should not be withheld. Thirdly, an Islamic credit card should not encourage behaviour that is considered haram. This includes all manner of forbidden behaviours and transactions of an inappropriate nature⁴⁰.

To look forward on the application of Islamic credit card, this paper will discuss the practice of Islamic credit cards in Malaysia, by taking a closer look on Islamic Credit cards which are issued by Ambank, Bank Simpanan Nasional, Maybank and HSBC Bank.

2.8 Sources of Islamic Banking

The primary sources of Islam are derived from Holy Quran and *Sunnah* of the Holy Prophet (PBUH). The Quran is considered the direct word of Allah, as revealed to and transmitted by Prophet Muhammad. All sources of Islamic law must be in conformity with the Quran. When the Quran itself does not identify directly certain subjects, only then Muslims allowed to refer to alternative sources of Islamic law. *Sunnah* is the practices of the Prophet Muhammad which includes his word, action and judgments. During his lifetime, people asked the prophet directly for rulings on various matters. All of these details were passed and recorded and some scholars make a compilation of it to be referred in future legal rulings. Quran and *Sunnah* are considered as primary sources of Islamic law while

⁴⁰ (Massey 2007)

the secondary sources may differ depending on the schools of thought that interpret a specific piece of law⁴¹.

Islamic banking and finance refers to those financial activities that comply with the rules of Islamic law known as *Shariah*, or Fatwa. Although, trade is allowed in *Shariah*, Islamic law prohibits transaction which includes Riba (interest), *Maysir* (gambling) and *Gharar* (uncertainty) in transaction. Islamic institutions therefore have to structure their products accordingly to make sure these prohibitions are not violated⁴².

2.9 Definition of Riba

Literally, *riba* means increase, addition, expansion or growth⁴³. It is to be noted, however, that not every increase or growth is prohibited in Islam. The basis of the prohibition is related through the manner through which an addition is gained. Therefore, it was the task of the Prophet (s.a.w) to explain how *riba* could take place in commercial matters, because otherwise the *Quranic* injunctions that were previously quoted would be meaningless because the explanation of *riba* was not given in the Qur'an. Before we proceed further, it is relevant to note that many contemporary books and articles on *riba* have misled readers on the meaning of *riba*. Most of these books or articles simply define *riba* as the premium that must be paid by the borrower to the lender along with the principal amount, as a condition for the loan or for an extension in its maturity. Equally popular is an

⁴¹ (Abdel-Haq 1996)

⁴² (Ariff n.d.)

⁴³ (al-Qurtubi n.d.)

attempt to define *riba* as an excessive premium imposed on the borrower in a loan transaction.

The above attempts are not totally wrong but they lack the precise definition of *riba*, a fact that can mislead the readers to infer something which is baseless from an Islamic law perspective. For example, one may deduce that *riba* is only limited or confined to loan transactions i.e. money which is exchanged for money for an extra counter value or consideration. Likewise, one may infer from the qualification of “an excessive rate” that a fair or a reasonable premium or additional payment may be deemed lawful because it is not excessive.

The right approach however, is to look at the source from which *riba* is originated. As *riba* was widely practised in the time of the Prophet (s.a.w), the explanatory reports of the Prophet (s.a.w) will be of paramount importance and relevance. The most comprehensive report on this matter is the hadith reported on the authority of ‘*Ubadah b. al-Samit*’;

*“Gold for gold, silver for silver, wheat for wheat, barley for barley, dates for dates and salt for salt, like for like, equal for equal, and hand-to-hand. If the commodities differ, then you may (sell) as you wish provided that (the exchange) is hand-to-hand”*⁴⁴.

This *hadith*, it is respectfully submitted, offers a very precise and accurate definition of *riba* that is easy to understand and appreciate. It will be shown later that the criterion is not related to any specific rate or manner of extra payment because otherwise the understanding on *riba* would be uncertain, as the rate and

⁴⁴ (Muslim n.d.)

manner of *riba* are open to variation. The above *hadith* introduces two elements which, from the Islamic legal theory perspective, qualify to constitute the ‘*illah*,⁴⁵ i.e. cause or reason of a ruling (known as *ratio decidendi* in English common law). These two elements are the deferment in the time of exchange and different counter values in the exchange of two similar *ribawi* items. Put differently, these two elements are the time factor as well as the quantity factor.

The explanation of the above theory is as follows. Islamic law defines *riba* in two perspectives, which are *riba* by virtue of deferment in the time of exchange, known as *riba al-nasiah* and *riba* by virtue of excess in terms of the quantity of one of the counter values, known as *riba al-fadl*. If gold is exchanged for gold, then the exchange must comply with these two factors, namely it must be of spot exchange and of equal quantity. Should the exchange lack the first element, it amounts to *riba al-nasiah*. If it lacks the second element, it falls under the category of *riba al-fadl*. It goes without saying that should the above transaction lack both of these two conditions, then *riba al-nasiah* and *riba al-fadl* would be jointly applicable. Having said that, the basis of *riba* in Islam is still time of exchange and quantity considerations. The same explanation is relevant to other commodities and items listed in the *hadith* if they are exchanged for one another i.e. wheat for wheat and so forth.

One may question the validity and basis of the above theory. Therefore, it is more than appropriate to shed some lights on the mechanism of the law finding

⁴⁵ In this connection Ibn Taymiyyah says in his “Fatawa”: The topic here is the ‘*illah* of *riba* in dinars and dirhams. The most accepted ‘*illah* is *al-thamaniyyah* (price) and not weight as is indicated by most scholars. See Ibn Taymiyyah, “Majmu’ *al-Fatawa li Ibn Taymiyyah*”, Mutabi al-Riyadh, Riyadh, 1383H, XXIX, p474

process in Islamic law to show that Islamic law has been always consistent, logical and rational. To ensure the rationality and consistency of Islamic law, Allah Almighty, the Lawgiver, has always furnished signs in the *Qur'an* and the *Sunnah* from which the Muslim scholars might find guidance to understand and elaborate the laws intended by the Lawgiver. This applies to almost all areas of law in Islam, particularly in commercial law transactions. The central element of both rationality and consistency in Islamic law is the discussion of '*illah* or *ratio decidendi*, and how this ratio is extended to cover new cases not textually pronounced or prescribed in both the *Qur'an* and *Sunnah*. The later process is known as ratiocination. However, before and one could apply ratiocination, it is crucial to be able to identify the accurate legal cause intended by the Lawgiver in a given ruling or situation.

Generally speaking, there are five features of a valid legal cause in Islamic law. A cause in Islamic law must meet at least all of these five features before it could qualify as constituting a legal cause of a particular ruling. In the case of *riba*, we are already aware of the divine ruling prescribed on the practice of *riba* that is it forbidden (*haram*). However, at this stage at least, we are uncertain as to what actually renders the practice prohibited. Is it the rate of the premium or the type of the commodity involved, or the manner of imposing the premium or the disunity in time of exchange or is it the inequality of two counter values? Obviously, one or all of the above prepositions could be relevant. Is there any indication to help us to be more certain on the position of law in this regard? The answer is in affirmative.

It is in this context that the features of a valid cause shall be stated. These five features are the evident attribute, constant and regular attribute, extensive attribute, an attribute that is co-extensive and an attribute that is co-exclusive. For an attribute that is evident, it should be ascertainable and perceivable through human senses. Hidden considerations such as intention, consent, good will, justice and fairness, etc., are not to be considered as accurate legal causes since they are not ascertainable. The legal cause for a valid contract, for example, is the offer and acceptance (*ijab wa qabul*) rather than the buyer's and seller's actual consent, simply because consent is non-perceptible. Since the offer and acceptance are evident, they qualify to become the legal cause for a valid contract. Thus, an attempt to consider a certain rate of interest as a determining point in *riba* is meaningless as the attribute of being excessive or otherwise cannot be perceived. Following this explanation, one can conclude that any definition that tends to associate *riba* only with excessive charges on the use of financial resources is not acceptable. The rate charged is irrelevant in the discussion on *riba*.

Next, the legal cause must also be a constant and regular attribute that is applicable to all cases without being affected by the difference of persons, times, places and circumstances. In the case of the concession granted to travellers to break the fast during the daytime during *Ramadhan*, it had been established that the legal cause was the journey itself, as it is constant and regular. An attempt to base this ruling on the consideration of difficulty faced by travellers will be wrong as the difficulty differs from one person to another, not to mention the variation caused by different times and places. There are many scholars who argued that, while *riba* is prohibited in consumption loan, it is allowed in productive loan.

Again, this argument is invalid because the legal cause proposed is variable according to the nature and purpose of the loan. In other words, people may agree on the nature of a loan on one occasion, but they may not be able to agree on this issue on other occasions.

Another element is that the legal cause should be transient or extendable. Should the legal cause be in extendable, i.e. not transferable to other similar cases, the legal cause is lacking one of the features of a valid legal cause. Next, the legal cause should also be co-extensive in a way that whenever the legal cause exists, the rule of law will also exist. Finally, the legal cause should also be co-exclusive, i.e. if the legal cause does not exist, the rule of law will also not apply.

It seems that the elements of time and quantity are compatible to all these features. Accordingly, *riba* will take place even if the rate is minimal as there is inequality in one of the counter values. This definition takes into consideration neither the purpose of the loan nor the rate of interest imposed on borrowers. Thus, the meaning and application of *riba* will be obvious, constant and fixed throughout the centuries. No one will find difficulty in ascertaining the concept and meaning of *riba* as the determining point is very structured. This is the very essence of the *hadith* of the Prophet (s.a.w) that was quoted earlier. As such, *riba* cannot be simply defined in one or two sentences, as its definition must incorporate *ribawi* items, inequality of counter values and disunity in the time of the exchange. Therefore, the most comprehensive definition, to the best of the writer's knowledge, is *Nabil Salih's* definition. He notes that "*Riba* in its *Shari'ah* context can be defined, as generally agreed, as an unlawful gain derived from the

quantitative inequality of the counter values in any transaction purporting to effect the exchange of two or more species which belong to the same genus and are governed by the same legal cause”.

Deferred completion of the exchange of such species, or even of species which belong to different genera but are governed by the same *'illah* (legal cause), is also *riba*, whether or not the deferment is accompanied by an increase in any one by the exchanged counter values”⁴⁶. We may add that *riba* also includes both inequality of the counter values and deferment in exchange, as in the case of modern *riba*. In modern times, a loan is lent out for an extra repayment to be settled sometime in the future. Thus, it involves both quantity and time factors.

⁴⁶ (Saleh 1990)

CHAPTER 3

COMPARISON WITHIN ISLAMIC BANKS CREDIT CARDS

3.1 The Bay' al-inah

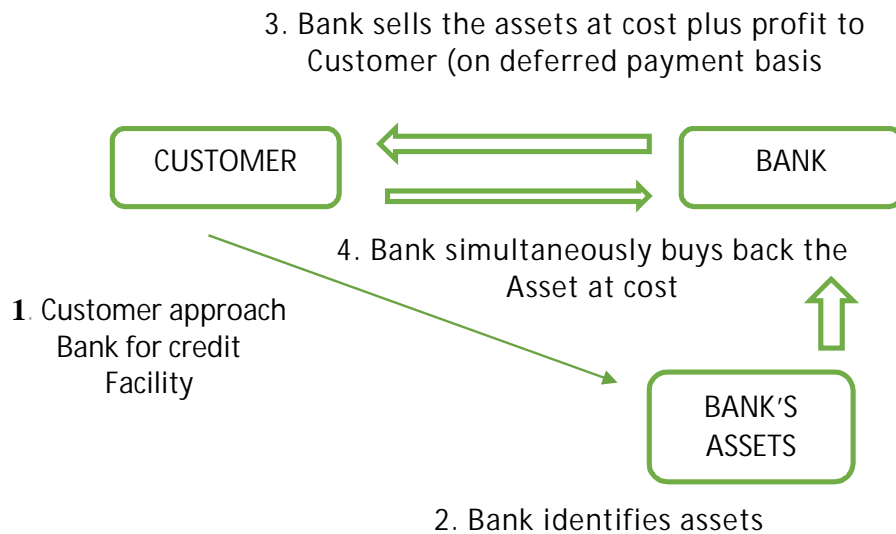
3.1.1 The Bay' al-inah Structure Applied in Bank Islam Card and Its Business Operational Framework.

The *Shariah* Advisory Council of Bank Negara Malaysia (BNM) in its 18th meeting held on 12th April 2001/22nd Muharram 1422 resolved that the mechanism of Islamic credit card which applies *Bay' al-inah* concept to generate funds for credit purposes by a customer who request for Islamic credit card is permissible.

Bay' al-inah has been defined as to sell a commodity and buy it back or the bank purchases a commodity from its client on a spot basis and sells it back to the client at a cost-plus price and on a deferred basis. The *Shariah* Advisory Council of BNM in its meeting held on 12th December 1998/23rd *Syaaban* 1419 resolved that *bay' al-inah* transaction is permissible based on the condition that *bay' al-inah* transaction must strictly follow the mechanism which is accepted by *Shafie* School.

Although *Bay' al-inah* is permissible and has been widely used in the issuance of Islamic Credit Card in Malaysia, some of the specific practices of *Bay' al-inah* in this product have been strongly criticized by scholars mostly from Middle East.

The diagram below explains the structure of Bay' al-inah in Bank Islam Card (BIC) introduced by Bank Islam Malaysia Berhad (BIMB).



The bank will sell an identifying asset to the customer i.e. the cardholder at a price consisting of the principal price plus profit to be paid by the customer on deferred payment.

Subsequently, the bank will buy back the identifying asset at principal price by way of cash payment. This cash money will be credited to the customer's

account called *Al-Wadiah* Account through Bank Islam Card (BIC). The *Wadiah* Account has its own financing limit based on the type of BIC offered to the customer. The customer then can utilize the card up to its financing limit.

3.1.2 First Stage: Application of Bank Islam Card by the Customer

The new applicant has to complete and sign the application form accordingly. The submission of the application must be attached with required documents; which are a photocopy of the Identification Card, 2 month's pay slip and the EA form or EPF statement. For self-employed applicant, an additional document needs to be submitted which is the business registration.

3.1.3 Second Stage: Processing and Approval by the Bank

The applications will be submitted to Bank Islam Card Centre and the officer in charge will process the application and make the evaluation and assessment of customer's credit profile. The customer's ability to make payment will be assessed through a proper review of the customer's salary or monthly income and their track record with each and every financial institution in Malaysia. Once the application has been approved, an offer letter will be issued to the customer.

3.1.4 Third Stage: Acceptance and Execution of Agreements

All the approved Bank Islam Cards will be sent to the branches. In this stage, the buying and selling contract (*aqad al bay' al-inah*) will be concluded. Prior to the execution of *aqad*, the underlying asset which is a piece of land will be identified. The land will be divided into small lots, according to the financing

limit registered in the card. The existence of the identified land is a must and it's being recorded in the finance book. The value of the land has been computerized in the system and has been approved and achieved the standard required by Bank Negara Malaysia.

During the sale agreement, when the system is tagged based on financing amount, the Bank will use and show the Share Certificates to check which lot of land is equivalent with the financing limit. Then, during the 'buy back' agreement, the customer or card holder will sell the land to the Bank, and the ownership of the land is transferred to the Bank. The proceeds of the sale will be deposited into the customers' *Wadiah* Account.

3.1.5 Fourth Stage: Activation of the Credit card

When the *aqad* is done, the Bank Islam Card will be activated and it will abide by the *Shariah* requirement. All business and usage of the card which contradict the *Shariah* are not allowed by the Bank.

3.1.6 Procedures in Bank Islam Card Transaction

3.1.6.1 The Financing Limit

The cardholder will get the Bank Islam card with the financing limit which has been placed in *Wadiah* Account. The financing limit given by the bank is based on the type of the card (Platinum, Gold or Classic). The minimum amount given is RM3, 000 and the maximum amount is RM100, 000.

The financing limit in *Wadiah* Account is considered as the cardholder's money. The amount can be utilized accordingly by the cardholder within three

years. The Bank will charge for profit within the first three years and it is based on the usage and mode of payment.

Significantly, the cardholder's ability to use the *Wadiah* Account can be said to be 'revolving'. When the cardholder makes repayment (e.g. RM 1000) within the grace period, another RM1, 000 will be 'topped up' or added in *Wadiah* Account.

3.1.6.2 The Profit Charge

The bank will charge 18% per annum of the outstanding amount of all the purchases by the cardholder if no payment is made after the due date stated in the Statement of Account. The Bank also will charge 18% per annum of the outstanding amount on the cash withdrawal if no payment is made, calculated on a daily basis from the transaction date until full repayment. The Profit Charge (18% per annum) which accrued by the bank is according to the first sale (the sale with deferred price). The percentage of the charged profit is stated in BNM regulation. It is always argued that the financing given by the Bank to the cardholder is taken from stakeholders funds. The bank has to take care of the business and funds of the stakeholders.

3.1.6.3 Mode of Payment

If the repayment is made within the grace period (20 days) from the date of the monthly Statement Account, the Bank will not charge any profit or interest.

The minimum monthly repayment is 5% of the total outstanding balance as at the Statement of Account processing date or RM 50.15

3.1.6.4 Default Payment

Bank Islam's Card calculation of profit is not compounding interest-based charge. As such, if the cardholder's outstanding amount in the month of January is RM 10, 000, and he fails to make the repayment within 20 days (default), the Bank will charge 1% from the amount. If the cardholder fails to pay the following month (February), the Bank will only charge the profit on the outstanding amount, not on the minimum amount due.

The calculation of the profit is as below:

The outstanding amount	=RM10, 000.
The profit charge for default payment in January	=RM100 (1% x RM10, 000)
The overdue amount in January	=RM10, 100.
The profit charge for default payment in February	=RM100 (1% x RM10, 000)
The current balance in February	=RM10, 200 (RM10, 100+RM100)

3.1.6.5 Annual fee

Through the annual fee waiver plan, the bank will only waive the annual fee if the cardholder swipes a minimum of 12 times a year, regardless of amount.

3.1.6.6 Cash withdrawal fee

The cardholder will be charged RM 12 for every cash withdrawal or part thereof made at any Bank Islam ATM (Automatic Teller Machine). A fee of 3%

of cash withdrawal amount or RM50 (whichever is higher) is charged for every cash withdrawal made at other bank ATMs.

3.1.6.7 Compensation Handling Fee

Compensation handling fee of 1% from the minimum payment or RM 5 (whichever is higher) will be charged on the cardholder if no payment is made after the due date or payment made is less than the stated minimum payment of 5%.

3.1.7 Privileges given to Cardholders

i) Takaful Coverage and Benevolence Expenses

The BIC Takaful coverage guarantees the settlement of the cardholder's outstanding balance. If the cardholder passed away, the Bank will pay the premium to cover any outstanding amount inside the deceased's BIC account. The benevolent expenses ensure the cardholder's family will be relieved of any financial burden.

ii) Worldwide Acceptance and Cash Advance

The cardholder can enjoy the card acceptance and emergency cash from any ATMs over the world. Card transaction which is affected in currencies other than Ringgit Malaysia will be converted into US Dollar and determined by

MasterCard International or Visa International on the date the transaction is received and processed by the Bank. The value of the US Dollar is then converted into Ringgit Malaysia. The exchange may vary according to the market fluctuations and the amount converted is subject to the exchange rate at the processing time.

3.1.8 Details of Bank Islam Card

The holders of the card are only permitted to carry out halal transactions, which exclude transactions related with six categories that do not meet *shariah* requirements. These categories are bars, discos, night clubs, purchase of beers, escort and massage services and gambling. Operation of BIC involves three *aqad* (contract), namely *Bay al inah*, *Wadiah*, and *Qard al hasan*.

Bay al inah consists of two agreements. In the first agreement the customer buys merchandise from the bank at a stipulated price. Whereas, the bank buys back the merchandise from the client at a lower price. The bank's profit from this transaction is derived from the difference of the two prices. The profit rate levied by Islamic bank is known in advance.

Furthermore, the cash proceeds of the second agreement are deposited into the *wadiah* account of the customer. *Wadiah* is a contract of safekeeping where the custodian is not allowed to use or benefit from the asset. However, if the asset is destroyed or damaged he is not held liable unless proven negligent. The *wadiah* account is created and maintained by the bank. Then, the customer can use his or her card to purchase goods and services same as the conventional credit card. The

only difference is that BIC card is backed by cash held in the *wadiah* account⁴⁷. The last contract used by Bank Islam in the operation of BIC is *qard al hasan*. The bank enables the customer to withdraw more than the available balance in his *wadiah* account. No financial charge is levied on that extra amount used. However, the client is required to settle it in a specific time later. Moreover, for BIC the profit is calculated monthly and it is based on the sum of transaction made during that particular month, the profit is not compounded unlike conventional bank and the total profit cannot be more than the profit stated in the contract of *bay al inah*. However, for conventional credit card the interest rate imposed is undetermined.

Similarly, the fee charged for withdrawal service is not exorbitant as compared to conventional bank because when a client withdraws RM 1,000 or below, a fee of RM 12 is charged. On the other hand, in the case if conventional credit card, a fee of 3% or RM 50 is charged for every withdrawal⁴⁸.

3.1.9 The Figure of *Bay Inah* in Bank Islam

First of all, *bay al'inah* as the underlying contract consists of two separate contracts, the property sale agreement and the property purchase agreement, which are executed separately with a difference in both selling price. The transaction of the said contract works in the following fashion:

⁴⁷ (Jeddah 2005)

⁴⁸ *ibid*

- Step 1: Bank sells the asset to the customer (hereinafter called card holder) on a deferred repayment basis. This transaction effects the debt payable by the customer to the bank.
- Step 2: Bank buys the same asset from the card holder on cash basis at a lower price than the price it sold under step 1.
- Step 3: The bank disburses the amount of cash proceeds from the “buy back” transaction into the card holder’s *wadiah* marginal account.
- Step 4: The bank creates an Islamic credit card account for the card holder.
- Step 5: The credit card is issued to the customer to utilize the balance available in the *wadiah* marginal deposit account
- Step 6: The card holder makes a credit purchase from a merchant. In cases where the card holder makes purchases over the financing limit and exceeds his available balances, the bank in its jurisdiction, will decide whether or not to give the card holder *qard al hasan* on a case-to-case basis. If the bank decides to allow the card holder an overdraft, he will not be levied with extra charges or fees but will be required to repay the amount used.
- Step 7: The merchant transfers his right to claim the debt to the bank under the contract of *hawalah mutlaqah* (absolute transfer to debt).
- Step 8: The card holder settles his outstanding balance and that results in his line of credit being revolved⁴⁹.

Suppose Alia intends to obtain BIC card from BIMB. Firstly, she will be asked to fill up an application form, notifying her annual income to the bank. Based on Alia □ financial circumstances, the bank will offer different types of

⁴⁹ (Bank Islam Islamic Credit Cards Brochure n.d.)

BIC card. Premium card (gold or platinum) with large amount of credit will be offered if her annual income is pretty high. Let us assume that Alia is qualified to have a gold BIC card with credit facility up to RM11, 000. In granting the said amount to Alia, the bank will execute a *bay' al-Inah* transaction. BIMB will identify a specific asset, for example a piece of land which will then be sold to Alia, say for RM 15, 000 in deferred sale. Immediately, the bank will buy back the land from Alia for RM 11, 000 in cash. When the second transaction is executed, Alia who formerly came to the bank with empty pocket now will have a substantial amount of cash to spend with. The bank will disburse the cash (RM11, 000) which is the proceeds of the second agreement into Alia's BIC *wadiah* account. Having the money, Alia now can use her BIC card for various commercial transactions just similar to the conventional credit card. She is required to pay back the money she had used from the account within a given period. Otherwise, the bank will impose additional payment for the late settlement.

BIMB contends that its additional payment for the late settlement is legitimate since it is regarded as profit not interest. The profit is referred to the difference between the sell and the buy back prices (RM 15, 000 – RM 11,000) in the *bay' al-Inah* transaction executed earlier. In other words, through the act of selling land to Alia, BIMB is actually entitled RM 4000 of profit. However, the profit is only claimed on Alia when she struggles to pay her debt on time. The maximum additional payment however is fixed (RM 4000 in our example). According to BIMB, the fixed maximum profit demonstrates BIC card main advantage over its conventional counterparts. This is because in the conventional credit card system,

the interest is perpetual as it is charged compounded until cardholders outstanding debts are settled.

3.1.10 *Bay' al-inah* according to Muslim scholar

The main issue here is how does the *Shariah* regard such a contract: should the sale be allowed or disallowed because motive behind the sale is to legalize that which is illegal or usurious? There are two different opinions on this matter.

3.1.10.1 First: Shafie Opinion

According to Imam Shafie, “if a man buys from another goods on debt which he received it from the seller, there is no harm that the buyer sells it back to the same seller or to another person either at a lower price or higher one. There is no relationship between the first sale and the second one⁵⁰.” The contract is valid as long as the condition of the contract is fulfilled. The real intention is left to God there is no way we can discover it. The unlawful intention (*niyah, qasd*) of the parties is immaterial and it is dose not invalidate their act, unless expressed in the act. For that *Shafie* takes the example of someone who marries his wife for a short term. This marriage, however, is valid because others do not know the real intention. Although the said marriage is reprehensible (*makruh*), it is valid, whereas a temporary marriage (*mutah*) is invalid⁵¹. Furthermore, *Shafie* above view is only applicable in the case where the true intention of the parties is hidden and unknown.

⁵⁰ (shafi'I 1973)

⁵¹ ibid

According to *al-Imam Nawawi*, *Bay' al-inah* is not of the prohibited sale. It is to sell a person an item on deferred payment and hand over the item to him. Then the seller buys it from the same person on the spot with a lower price cash before receiving the previously agreed upon payment. Likewise, it is permissible to purchase an item on cash and later sell it back with an increased price on a deferred basis, regardless of the fact whether the first seller received the price or not and whether or not the *inah* becomes the dominated culture in the country⁵².

3.1.10.2 Second: Hanafi, Maliki and Hambali Opinion

Hambali and *Maliki* assert that the contract of *inah* is not valid. According to them, the permissibility of the contract is determined by the motive of the parties. In the case of BIC, the motive of the parties is to get the loan. Hence, invalid. And the sale is not valid because it constitutes a legal device (*hilah*) to obtain a loan with interest which should be averted at all cost according to the *Shariah*⁵³. Another *Hambali* scholar said that if someone sells his grape to someone else and knew that the buyer would use it for the purpose of making wine, this contract is void. This is analogy of *bay al inah*. Furthermore, nowadays there are documents indicating the objective of the contract. Since the sale and contract is a cover up to give a loan, then this is considered as invalid contract⁵⁴.

The *Hanafi* view is base on a narration pertaining to Aisha's disapproval of Zaid bin Arqam's practice of *bay' al-inah*:

⁵² (Sharaf 2000)

⁵³ (Rushd n.d.)

⁵⁴ *ibid*

ي هو : امنع مللا يضر قشئاع ءديسلا عم مقرا نب ديز تصق نم يور امل
متأرم او مقراً نب ديز دلو ما ان أو تلخد : تلاق عفي تنب ءيلاعل نا
تععب ينا) : مقراً نب ديز دلو ما تلاقف , امنع مللا يضر قشأع يلع
هنم هتيرتشا مئ , اعاعلا يلا مهرد ءئامنمئب مقراً نب ديز نم امالغ
امسئب و تيرش امسئب : قشئاع تلاقف (قلاح يا) : مهرد ءئامنمئب
هيع مللا يلص مللا لوسر عم هءاهج لطلبأ دق هنأ اديز يغلبأ , تيرش
سانلا نض اءا : ملسو هيع مللا يلص لاقو (بتي مل نا ملسو
اوكرتو , رقبلا بانءأ اوعبتاو , ءنيلعاب اوعبتاو , مهردلو رانيءلاب
اووعجاري ىتح هعفرى الف , ءالب مهب مللا لزنأ , مللا ليلبس يف ءاهجلا
مهنيد.

'Aisha binti Awfa' said: the wife of Zaid, the mother of his child and I visited Aisha, then the mother of his child said: "I sold 'Aisha's slave to Zaid ibn 'Arqam in exchange for 800.00 Dirhams deferred, then I bought him back for 600.00 Dirhams in cash", Aisha said: "Woe to what you sold and what you bought, tell Zaid that he has voided his jihad with the Prophet unless he repents". 'The Prophet, may Allah bless him and grant him peace, said: When people are miserly with their Dinar and Darhams and silver coins, (comprising the currencies being used at his time), trade in *ina*, follow the tail of cows, and dissert the striving in the cause of Allah, Allah will send unto them a suffering that he will never lift until they rediscover their religion"⁵⁵.

In *bay' al-'inah*, the object of sale is made to exist only to fulfil the requirements of contract (*'aqad*) as the buyer has no intention to use the object of sale (*mahallul 'aqdi*). Likewise the seller too is interested to conclude the deal as

⁵⁵ (Sunan al- Dar Qutni 2003)

doing so brings profits to the bank. He can only make a loan with a contractual extra payment. However, both will not enter into a contract of debt bearing a contractual returns, but will use the contract of sale (al-bay') to achieve the same end as any profits made from sale is deemed permissible (halal) in Islam.

Now, some may say the intention of the buyer and seller is not sincere, as there is no real intention to consume or utilize the object of sale. The object ('ain or 'in) holds a mere fictitious function. This transaction is pursued only to legalize making loan with interest. At least this is what many Middle-eastern jurists have been saying all along.

Whatever suspicion one has about *bay' al-'Inah*, the *Shafie* School of *fiqh* still considered legal and valid contract. The *Shafie* School says the intention or *niyyah* is not a significant element in determining the validity of a contract. This is the viewpoint taken up by the *Shariah* scholars in Bank Negara and the Securities Commission. However, the *niyyah* element is a crucial factor in the *Hanafi*, *Hambali* and *Maliki* schools⁵⁶.

In credit card transaction, the doctrine of *Bay' al-inah* is used to validate the transaction. The argument of validity of *bay' al-inah* is debated between Muslim scholars. The doctrine of *bay' al-inah* or buy back sale is not recognized by some scholars including the Ulama from the Middle-East. But in Malaysia, the doctrine of *Bay' al-inah* is recognized, and is used as one of the basis to justify the implementation of credit card under the *Shariah* discipline⁵⁷.

⁵⁶ (Rosly 2005)

⁵⁷ (Billah n.d.)

In the primary sources there are no clear indications of validity in *Bay' al-inah* transaction. But there is one hadith saying that this type of transaction is not valid however the authentic of the hadith and the class of the hadith is unknown⁵⁸. In the context of *bay' al-inah*, the use of doctrine *Al Masalih Al Mursalah* is adopted in order to justify the using of such transaction in the credit cards. In the new era of globalization, many financial dealings were not exactly the same to the practice in time of prophet (peace be upon him) People try to innovate a new thing that can make life better off. This is not only goods and service innovation but to the financial products as well. The idea was to ensure a comfortable life, which is also a wish of Allah (s.w.t.) as evident in the following ayat:

“Allah (s.w.t.) intends every facility for you; He does not want to put you to difficulties”⁵⁹

The used of *Masalih Al Mursalah* can be applied in the credit card transaction, since Allah want us to have easiness in the life but off course to be harmonized with the Quran and *Sunnah* so it will not deviate from the *Shariah* teaching.

3.2 The Structure of Tawarruq Model applied in "Credit Card-i" introduced by Bank Rakyat and Its Business Operational Framework.

Tawarruq is defined as the type of transaction where a person buys a commodity with a deferred price, then sells it to a third party (other than the original seller) for an immediate cash price. The purpose of this contract is to obtain cash immediately and it is considered a reprehensible (*makruh*) sale in the

⁵⁸ ibid

⁵⁹ (Al Quran, surah Al Baqarah 2:185 n.d.)

opinion of Malik and one of the two opinions narrated on behalf of Ahmad. The OIC Islamic *Fiqh* Academy in its 17th meeting clarified its stand that *Tawarruq masrafiy* or organized *Tawarruq* is disallowed.⁶⁰

In the context of Malaysia, the IFIs have the different justification about *tawarruq*. The BNM Shariah Advisory Council in its 51th meeting held on 28th July 2005/21 *Jamadil Akhir* 1426 resolved that the deposit and financing product which applies the *tawarruq* concept is permissible⁶¹.

In the traditional books of Islamic jurisprudence, *tawarruq* has been discussed mainly by the Hambali and Shafie jurists but they also differentiate it from *bay' al inah*. The different between *al inah* and *tawarruq* is that “*mutawarriq*” (the person who acquires liquidity) sells the commodity to a third party, while in *al inah*, the buyer resells it to the same seller from whom he had bought the commodity with a difference in the sale and purchase price.⁶²

In the recent time, the concept of *tawarruq* is identified in two different figures which are the *tawarruq haqiqi* or *fardiy* (traditional *tawarruq*) and the *tawarruq masrafiy* (organized *tawarruq*).

3.2.1 The Commodity

The commodity which has been used in the transaction of Bank Rakyat's *Tawarruq* model is the crude palm oil (CPO). The Bank has decided that Broker A be the permanent producer or the first trader of the CPO whenever it is needed or ordered by the Bank. For example, when the Bank Rakyat has to fulfil the

⁶⁰ (Resolution of OIC Fiqh Academy, 17th Conference 2007)

⁶¹ (Resolution of National Shariah Advisory Council of Bank Negara Malaysia 2007)

⁶² (Ayub 2007)

customers' financing limit of about one million (RM1, 000, 000) on 14 December 2008, they will order the CPO on that measure from the first trader. Instead of buying the CPO in individual, the Bank will purchase it in a big amount or in a bulk to make the tagging system easier.⁶³

Instead of *bay' al-inah* transaction, for the purpose of giving credit card financing to a certain customer, the *tawarruq* process acquires the Bank to purchase the commodity from the first trader and sell the commodity to the second trader on behalf of the customer. The Bank will buy another unit of commodity to be sold to the second trader on behalf of the next cardholder or customer.⁶⁴

3.2.2 The First Broker or Trader

The first trader is identified as a big company which trades the CPO and it is not only subject to Bank Rakyat, but also provides commodity to other institutions or companies. In the process of purchasing the CPO, the ordered commodity will be sent to the Bank's industry port by/in a container. The trading system is done by issuing the invoice number. The customer will be provided with the Log Number in Bank Rakyat's Credit Card-i Financing Commodity Table which is attached with the Letter of Offer. In addition, the customer will be informed of the commodity. Normally, the Bank will state the commodity type such as "OC-BLACK RESIDUE".⁶⁵

3.2.3 The Second Trader

⁶³ *ibid*

⁶⁴ *ibid*

⁶⁵ *ibid*

The second trader acts as the third party which has been selected by the Bank to the permanent buyer of the commodity. Actually, the Bank has made certain agreement with both of these traders. The first trader acts as the producer of the commodity, and the second trader acts as the purchaser. From the information given, these traders are identified as different entities. The trader will pay the Bank on the cash basis at a price equivalent to the amount of Bank Rakyat's Credit Card-I Financing as Bank Rakyat deems fit.⁶⁶

Furthermore, from the interview session made by the researcher with the management, the Bank will sell the CPO to the second trader at the Purchase price plus profit. The profit will be credited to the Bank and the Purchase Price will be credited to the customer's *Wadiah* Account. According to the management, the customer has appointed the Bank to make the trading on behalf of him, so any action must be subjected to the decision of the Bank.⁶⁷

3.2.4 *Wadiah* Account

The Purchase Price paid by the second trader will be credited to the customer account called the *Wadiah* Account. The amount is known as the financing limit of Bank Rakyat's Credit Card-i. According to the Bank's Terms and Conditions, the Bank will incur 18% profit charge annually from the outstanding amount for the purchases and cash withdrawal if there is no payment made by the customer after the due date stated in Monthly Card Statement.⁶⁸

⁶⁶ *ibid*

⁶⁷ *ibid*

⁶⁸ *ibid*

The *Shariah* issue arises after the bank incurred the profit on the "Purchase Price" placed in customer's *Wadiah* Account, as the commodity belongs to him and Bank only trades it to the second Broker on behalf of the customer.

The bank management would argue that the Bank has the right to charge profit on the customer's outstanding amount because he has to settle the deferred payment which had been agreed between them on the first sale (after the promise (*wa'ad*)). He also claimed that the Bank did not take the profit at the first sale. And they will only take the profit in the first sale when the customer uses the card and fails to make the payment before the grace period. If the customer makes the repayment of the credit card before the grace period, the Bank's profit at the first sale will be rebated by the Bank.

3.2.5 The Operational Framework of Bank Rakyat's Credit Card-i

3.2.5.1 First Stage: Application for Islamic Credit Card

The customer has to fulfil the sequent of the application regarding to the *aqad* stated by the Bank. First, the customer has to promise to buy or purchase the certain commodity offered by the Bank. Second, there will be the appointment of Bank Rakyat Credit Card Centre as the buying and selling agent, and they will act on behalf of the customer.

3.2.5.2 Second Stage: Islamic Credit Card Process

The application will be assessed by the Credit Card Centre officers and they will check the creditworthiness of the customer. Hence, the applicant must fulfil the requirement stated by the Bank which are; the Principal Cardholder must be 21

years and above, the Supplementary Cardholder must be 18 years and above, the income is not less than RM 18, 000 per annum for Classic Card applicant and RM 36, 000 per annum for Gold Card applicant.

3.2.5.3 Third Stage: *Tawarruq* Process

3.2.5.4 Fourth Stage: Preparation of Issuing for Islamic Credit Card

The bank will prepare some documents to be mailed to the customer. The documents are carrier card, Received Account Card and Terms and Conditions. The pin number of the credit card will be impressed and delivered to the customer.

3.3 Ujrah Model

3.3.1 The Structure of Ujrah Model applied in “Credit Card-I” introduced by HSBC Amanah.

The Bank will give the credit facility to the Customer through the Credit Card Account and maintains the credit card facility and charges the fees (ujrah) for the services. The Customer will pay the charges according to the usage of the Card.

According to the discussions made by Dr Wahbah al-Zuhayli, the loans are permitted as a form of charity, where the lender gives up the usage of the goods for the period of the loan. Loans are forbidden if they do not serve such a

charitable cause. For example if the lender gets some benefit out of extending a loan.⁶⁹ Ibn Abbas narrated a hadith:

"Lending something twice is better than giving (once and for all) it in charity"⁷⁰

Analysing the operation and business framework of *MPower Credit Card-I* which has been introduced by HSBC Amanah Malaysia Berhad (HBMS), we can understand that the bank is applying the Islamic instrument of Qard (giving a loan) and charging fee (*Ujrah*) for it.

3.3.2 The Shariah Justification of Actual Management Charge

As mentioned earlier, when the application is completed, an amount of credit limit will be issued to the customer's account and at the same time the bank will condition the management charges in accordance to maintain the account which has been used by the customer through credit card. The charges are known as the Fixed Management Charge and Actual Management Charge.

The example of Calculation of Monthly Management Charge of *MPower Credit Card-i* is presented as below:

Credit Limit	:	RM 5,000.00
Fixed Monthly Management Charge	:	RM 1,500.00
Outstanding Balance on Utilisation	:	RM 2,000.00
Actual Management Charge Benchmark	:	18.00 %
No of Day	:	30 DAYS

⁶⁹ (al-Zuhayli 1997)

⁷⁰ *ibid*

The Fixed Charge: Fixed Monthly Management Charge : RM 1,500

The Actual Charge : Outstanding Balance X Benchmark X No of Days/365 days

: RM 2,000 x 18.00% x 30/365: RM 29.59

The Rebate : The Fixed Charge - The Actual Charge

: RM1, 500.00 – RM29.59 = RM 1,470.41

Amount owing for customer will be : RM 2,000.00 + RM 29.59

= RM 2,029.59.

3.3.3 Withdrawal and Over limit Charge

Referring to the withdrawal charge, the bank will accrued RM 50 for every cash withdrawal transaction and the amount is capped at RM1000 per transaction.

Let say the customer's credit limit is RM3000 and he does three cash withdrawal transaction to fulfil his need, at the end of the month, the bank accrued RM 3000 plus RM150. One may argue that RM150 can regard as the benefit of the loan. If the practitioners argue that it is used to manage the operating cost while doing the transaction why the cash withdrawal transaction by the debit card is not being charged by the bank?

In addition, the Bank will incur RM 25 per month for every additional spending amount. The bank must identify the justification of the fee which can be regard as the benefit of the loan.

CHAPTER 4

RESEARCH FINDINGS AND ANALYSIS

4.1 Some Of Islamic Bank Which Offer Credit Card-I

4.1.1 Maybank Islamic Berhad

Currently, Maybank Islamic Berhad, a wholly owned subsidiary and the Islamic banking arm of Maybank Group, commenced its operations on 1 January 2008 in conjunction with the transfer of Islamic banking business of Maybank. It was the first commercial bank to offer Islamic banking products and services through a window concept in 1993. The setting up of Maybank Islamic is also in

support of the Government's effort to position Malaysia as an international Islamic financial centre through the MIFC initiatives.

PETRONAS *Ikhwan* Visa Cards, this is one of the Islamic credit cards issue from Maybank Islamic. It is a joint-venture between Maybank Islamic Berhad and PETRONAS Dagangan Berhad. PETRONAS *Ikhwan* Visa is an Islamic card based on the *Shariah* principle of *Bay' Al Inah* or "sale with immediate repurchase". This principle governs the payment of the facility over a fixed period of time. This card can be used like any other card and has global acceptance. There are 2 kinds of PETRONAS *Ikhwan* visa cards, Maybank Islamic PETRONAS *Ikhwan* Visa Gold and Maybank Islamic PETRONAS *Ikhwan* Visa Platinum. Some benefit has by PETRONAS *Ikhwan* Visa cards as follow:

1. No annual fee and condition attached
2. Save on non compounding charges every month
3. Other benefit such as al *Tawfir* (savings), ziarah (travel arrangement for Muslim and non Muslim use this card can access to wide variety of tour destinations), charity (giving selected *sadaqah* more easily via donation with *Ikhwan* card-i), use for *musharakah*, and *takaful*.

As mention earlier, the PETRONAS *Ikhwan* Visa card is formulated on *Shariah* principles: In Islamic Banking, the profit rate is non-compounding as compared to a conventional credit card. The PETRONAS *Ikhwan* Visa is based on *Shariah* principles, and so it cannot be used for transactions prohibited by *Shariah* such as gambling, liquor, etc.

It is governed by the concept of economic justice and card holders avoid interest or riba in their banking transactions. Based on Maybank website, it is easy to apply for this Islamic credit card. Some of the requirement is:

1. Malaysians and expatriates with a minimum annual income of RM30, 000
2. Principal cardholders: those between 21 to 65 years old
3. Supplementary cardholders: at least 18 years old

4.1.2 Bank Simpanan Nasional (BSN)

Currently, BSN has more than 5,000 employees and more than 350 branches around Malaysia. Permodalan BSN Berhad and Prudential BSN Takaful Berhad are the subsidiaries of BSN. It also provides automatic teller machine (ATM) and Cash Deposit Machine (CDM) nationwide. BSN has more than 7 million customers spread throughout the country has an Islamic fund size of about RM6.09 million and with savings more than RM 8 billion.

Islamic credit card in Bank Simpanan Nasional (BSN) is known as *Al-Aiman* Credit Card. Al-Aiman in Arabic word means fortunate ones was launch by Second Finance Minister Tan Sri Nor Mohamed Yakcop⁷¹. There are two types of cards namely classic and gold card. The minimum approved credit limit for classic card is RM 3000 to RM 11000 while in gold card is RM 12000 to RM 75000.

Al-Aiman credit card is based on *bai al-'Inah* concept where the financier sells an assets to the customer on specified deferred payment and the assets is immediately repurchases by the financier for a cash discount which is declared

⁷¹ (Bernama 2006)

during the process of *Aqad* (offer and acceptance)⁷². *Al-Aiman* Credit Card is fully compliant with *Shariah* principles where it eliminates the elements of *riba* (interest), *gharar* (uncertainty), *maisir* (gambling) and *zulm* (oppression). Muslim and non-Muslim may apply for the credit card where it cannot be used at premises that are not listed under the *Shariah* Council.

Al Aiman BSN Credit Card-I provide for cash advance in over 500,000 banks and other financial institutions including BSN branches and ATM nationwide. The profit charge calculated on daily basis from the transaction date until full repayment date.

4.1.3 HSBC Amanah Berhad

The credit card facility designed to help Muslims purposely to let Muslims access accordance to *Shariah* principle. Indeed, concept of *bay' al-Inah* is commonly practiced in most of Islamic banking product as well as Islamic credit card. However, many people argued on this concept and it is more controversial than other concept offered like *tawarruq*.

Therefore, HSBC *Amanah* bank has taken initiative to overcome this issue and try to offer other concept to replace the current practice by introducing the concept of *Ujrah* for their credit cards product.

MPower Visa Credit Card-I HSBC has considered the benefits and looking for the faster growth of Islamic credit cards. In Malaysia, concept of *Ujrah* is newly used in Islamic banking product specifically in credit cards. Accordingly, HSBC *Amanah* has successfully attracted people with their *MPower* Credit Card-i

⁷² (National 2014)

which is the first Islamic credit card in Malaysia used the concept of *Ujrah* or fee based product. Additionally, HSBC *Amanah* came up with two types of credit card based on *Ujrah* which is *MPower Visa Credit Card-i* and *MPower Visa Platinum Credit Card-i*.

4.2 Review on Islamic Concept of Inah and Ujrah

4.2.1 Concept of Inah

Inah is a contract of sale where a person sells an article or commodity on credit and then buys back at a lesser price for cash or in other words it refers to trading whereby the seller sells his assets to the buyer at an agreed selling price to be paid by the buyer at a later date. After that, the buyer immediately sells back the assets to the Bank at a cash price, lower than the agreed selling price, other principle of amount. For example, somebody buys a commodity from a seller at the deferred price of let say; RM 1000 and the buyer resell at the cash price of RM 900.

Here is some of the *Inah* definition by some classical and temporary scholars. According to the *Hanafi* School of Thought, *Inah* is when someone buys something at a known price (on deferred basis), and then resells it to the original seller for cash, in which the second sale price is less than the deferred sale price⁷³. According to the *Maliki* School of Thought, *Inah* happens when someone sells a commodity of ten Dinar in cash to another person. He then buys it from him (the same person) at twenty Dinars, i.e. on deferred basis or vice versa. According to the *Hambali* School of Thought, *Inah* happens when someone

⁷³ (Ibrahim 2010)

sells a commodity at a deferred price. He then buys it for cash (from the same purchaser) at a lesser price or vice versa. According to the *Shafie* School of Thought, *Inah* happens when someone sells a commodity to another on deferred basis (for a known period, and then buy its back from him at the price lesser than the deferred price⁷⁴.

There are different views on 'Inah. Majority were of the opinion that 'Inah was not permissible because it was the way or legal excuse to legitimise usury or riba'. In fact, we can see that actually 'Inah is a fake sale and not conclude a genuine sale. Generally, the jurists who ruled against 'Inah justified their assessment on based two main arguments. Firstly, the prohibition is indicated in the fatwa of Companions and hadith and secondly, the practice of the contract was seen merely as hiah (legal stratagem) to legalise riba⁷⁵.

The *Maliki* and *Hambali* school of thought was of the opinion that 'Inah is rejected, unlawful and considered it as invalid. The basis for the opinion of the majority of the Islamic jurists was the hadith dialogue between *Aishah* and the slave *Zaid bin al-Arqam* which showed the prohibition of *bay' al-Inah*. It was reported that *Aishah* was asked about a transaction conducted by the slave of *Zaid bin Arqam*. Acting on behalf of her master, the slave sold another slave of *Zaid* at 800 dirham in credit to *Ata'* and bought back the slave at 600 dirham in cash. Ruling the transaction, *Aishah* said, "It was very bad sale and inform *Zaid* that his conduct has eliminated all his rewards for participating in jihad with the

⁷⁴ ibid

⁷⁵ (Amir 2010)

Prophet if he does not repent". According to the majority of jurists, *Aishah* assertion clearly indicated that *'Inah* was unlawful contract.

Maliki also said that *'Inah* is impermissible and their evidence is based on what Ahmad said in "*az-zuhdi*", narrated from Ibn Umar, "There is a time that comes toward us and we find that none of us says that he has the right of Dinar and Dirham from his Muslim brother⁷⁶. There are also a few past scholars prohibited *'Inah*. They said that, *Inah* is the sister of *riba*. If the buyer sells to a non-seller at an instance, it is also *Inah*, but it is allowed by the consensus. According to Muhammad bin Al-Hassan, *'Inah* is impermissible. He said that, "In my heart, this sale is like mountains invented by *riba* dealers.

In contrary, the *Hanafi* school of thought was of the opinion that *'Inah* was permissible only if it involves a third party, which acts as an intermediary between the seller (creditor) and buyer (debtor). The *Shafie* school of thought and *Zahiri* also viewed *bai' Inah* as permissible⁷⁷. A contract was valued by what is disclosed and one's intention was up to Allah S.W.T. to judge. They criticised the hadith used by the majority saying that it (the hadith) was weak and therefore could not be used as the basis for the *hukum*. Besides, *Abu Daud*, and *Abu Thur* also is in the side that *Inah* is permissible.

However, *Shafie* only allowed *'Inah* if there is no condition between the seller and the buyer about the price. *Abu Yusof* also justifies that *'Inah* is permissible but it is not encouraged⁷⁸. *Imam An-Nawawi* also ruled for the

⁷⁶ (Khayat 2010)

⁷⁷ *ibid*

⁷⁸ *ibid*

permissibility, saying that The '*Inah sale* (i.e. credit sale) is not among the prohibited things, as it is whereby a man sells and delivers something to another at a delayed price, then buys it again before taking the price with the cash price lesser than that of the previous price'⁷⁹.Some of the Muslim scholars indicate that there are 24 kinds of `Inah. Among the permissible '*Inah* are:

1. A sale which is followed by a subsequent sale but without any intention to have '*Inah* arrangement.
2. '*Inah* that involves two contracts of sale in which the price of each contract (either cash or deferred) is similar to the other.
3. '*Inah* which is concluded on an asset with a gap of time between the two contracts, the purchase and sale contracts.
4. '*Inah* which is concluded on an asset which has changed in certain aspect.

In Malaysia, the *Shariah* Advisory Council (SAC) decided to accept the opinions of the *Shafie* and *Zahiri* mazhab who permit *bay al-Inah*. The Council in its 18th meeting held on 12th April 2001 / 22nd Muharram 1422 resolved that the mechanism of Islamic credit card which applies *bay' al-Inah* concept to generate funds for credit purposes by a customer who requests for the Islamic credit card is permissible.

However, there are resolutions regarding this issue of '*Inah*. The Regional *Shariah* Scholars Dialogue which was held on 28th and 29th June 2006 aims at harmonising and promoting understanding amongst the *Shariah* scholars who are

⁷⁹ (Taqi 2010)

involved in Islamic finance. The dialogue had specifically focused on finding the best solution to resolve the issue of the use of *'Inah* and *tawarruq* in Islamic financial system. The Council and the participating *Shariah* scholars had taken a comprehensive approach with regard to *'Inah* and *tawarruq* transactions⁸⁰.

The Malaysian *shariah* scholars legalise the practice of *Inah* based on two main justifications⁸¹. Firstly, they argue that the contract was not clearly prohibited either in the *Quran* or in the *Sunnah*. They do not accept the validity of the *athar* and the hadith which indicate the prohibition of the contract. For them, the attar of *Aishah* is considered as weak evidence due to unreliable narrator in its chain of narrators.

Secondly, the Malaysian scholars argue on the basis of *maslahah*, in which refers to the need or interest of Muslims contemporary society. The scholars accept the argument that credit card has become an important banking facility for majority of Muslims. In today's world, the card is crucial for daily business dealings and commercial transactions.

Considering this need, the scholars support the bank's initiative to create a credit card that is *shariah* compatible. In this regard, *'Inah* is viewed as a key contract since it provides a mode of problem solving. The contract can help the society as well as the Islamic banks achieve their respective goals. The application of *'Inah* and *Ujrah* in banking system will be further discussed in the next section.

4.2.2 Concept Of *Ujrah*

⁸⁰ (B. N. Malaysia 2010)

⁸¹ *ibid*

According to Securities Commission, *Ujrah* can be defined as a financial charge for the utilization of services or *manfaat*. In the current economy context, it can be in the form of salary, wage, allowance, commission and alike⁸².

The legality of *Ujrah* is not being discussed extensively by the *Shariah* jurists. Therefore, the basis ruling of permissibility and impermissibility of *Ujrah* concept can be further explained in the *Mudharabah* Capital Guarantee and *Kafalah* or *Dhaman* Contract.

4.3 Legal Status of *Ujrah* (fee) for *Mudharabah* Capital Guarantee

Basically, the issue of *Ujrah* (fee) in *mudharabah* capital guarantee is not discussed yet. Contemporary jurists merely discuss on *Ujrah* on *dhaman* or *kafalah* contract whereby some jurists permit *Ujrah* on *dhaman* and some do not.

As some jurists have allowed the permissibility of *Ujrah* on *dhaman*, thus it also can be applied in capital guarantee of *mudharabah* capital (third party guarantee) because it is a part of *dhaman*⁸³. The only forbidden guarantee in *mudharabah* is the one made by the entrepreneur himself. The *Shariah* Advisor Council (SAC) in its 36th meeting held on 6 February 2002 concluded that, *Ujrah* (fees) paid for third-party guarantees in *mudharabah* is allowable on the condition that the investor cannot claim for any repayment from the issuer should bear any losses incurred in the investment. The investor is also permitted to request for collateral from the issuer to cover against any likelihood of losses due to gross negligence by the issuer.

⁸² (Commission 2004)

⁸³ (B. N. Malaysia 2010)

4.4 Legal Rule on *Ujrah* in *Kafalah* or *Dhaman* Contract

There are different views regarding the *Ujrah* on *kafalah* (guarantee) contract. Some are permitted and some are forbidden to charge fees on that contract. In this respect, the discussion will be divided into two parts. First is permissibility and second impermissibility is of *Ujrah* on *kafalah* contract.

4.5 Views That Allow *Ujrah* in *Kafalah* or *Dhaman* Contract

Referring to *Wahbah Zuhaili*, it is permissible to charge an *Ujrah* for *dhaman* or *kafalah*. In its original ruling, it is not chargeable since *kafalah* falls under category of *aqd al-tabarru'*. However, it becomes permissible due to *maslahah* and needs of the community in order to cater the needs of people⁸⁴.

Syeikh Ahmed Ali Abdullah expressed his opinion in his presentation to the OIC *Fiqh* Academy that charging *Ujrah* for *dhaman* is permissible. In the original rule, *dhaman* is *tabarru'* but it become *Istithaq* if the contract has been stipulated with charging of fee. Therefore, it is regarded as a valid and enforceable because the contract is not a kind of *qardh* but *Istithaq*. He emphasized that *kafalah* contract is not *qardh*. Thus, the charge fees for guarantee services do not fall under the forbidden practice. He has supported his view with the application of *qiyas* on the permissibility of *akhz al-ajr `ala al-jah* (taking a fee for using one's good reputation) and *akhz al-ju`l `ala ruqyah min al-Quran* (taking a fee for a spell from the verses of al-Quran)⁸⁵. Some of the classical scholars have allowed these factors for charging the fees. Hence, the rule can also be applicable to charge fees for providing a guarantee service.

⁸⁴ ibid

⁸⁵ ibid

According to *Dr. Nazih Hammad*, the rules for charging of *Ujrah* for any guarantee service subject to the guarantor's liability towards the debt, are categorized as below⁸⁶.

1. If the guarantor did not make any payment for the settlement of debt to the creditor,
2. Either because of the debtor has settled the debt or the creditor has written the debt, it is allowed to charge *Ujrah*.
3. If the guarantor settles the debt, while at the same time the guarantor also indebted to him and the amount of the guarantor's debt is equivalent to the amount he has paid for the settlement of debt, it is permissible for him to charge *Ujrah*. This is due to the occurrence of *muqasah* between the guarantor and the guaranteed party.
4. If the guarantor is in the same situation as above, but the amount of guaranteed debt that is paid to the creditor forms part of the amount of debt owed by the guarantor to the guaranteed person, charging an *Ujrah* is allowed. However, the guarantor must settle the balance of his debt to the guaranteed person.
5. If the guarantor settles the debt of the guaranteed person and the guarantor does not owe to the guaranteed person, it is allowed to charge a fee for the guarantee, provided that the guaranteed person must not delay in refunding to the guarantor the guaranteed amount paid by the guarantor.
6. If the guarantor settles the debt of the guaranteed person and the guarantor has no debt owed to the guaranteed person, but the guaranteed person fails to

⁸⁶ *ibid*

pay the guarantor the guaranteed amount paid by the guarantor within reasonable time, then it is not allowed to charge any fee or *Ujrah*. This is due to the *Ujrah* charged in this situation is deemed as a *hilah* for *riba al-nasiah* since it involves deferment in settling the debt owed by the guaranteed person to the guarantor.

In a nutshell, the features of *kafalah* differ with the *qardh*, thus it implies that *Ujrah* is not similar to the practice of *riba* and not contrary to the principles of *Shariah*. Besides that, the original rule of *kafalah* is similar with *tabarru'* contract but it does not hinder the guarantor from charge a fees for services that be provided especially in present, it is impossible or difficult to find the service which is free of charge. In present system, *tabarru'* is no longer relevant as there is no such free of lunch anymore. For instance, a *wakalah* contract was originally being offered free of charge but now it becomes one of the sources of income for Muslims. Therefore, the scholars nowadays recognize the need of *Ujrah* for the purpose of current needs of the community.

4.6 Views That Disallow *Ujrah* in *Kafalah* or *Dhaman* Contract

The majority of earlier Islamic jurists did not allowed the charging of fees on *kafalah*. This view is based on the argument that *kafalah* contract in its nature is “*uqud tabarru'*” which is voluntary and benevolent. Thus, no fees should be charged on that. Some of the scholars add that if a *kafalah* or *dhaman* is stipulated with a charge of *Ujrah*, it tantamount to a practice of *riba*.

The OIC *Fiqh* Academy in its second meeting on 22nd to 28th December 1985 has debated on the issue of *Ujrah* charge on *dhaman* or *kafalah* because they

have two contradict views on that matter. At the end of the meeting, the Academy resolved to prohibit the charge of fees in *kafalah* as it is based on *tabarru'* (voluntary) concept. They argue that by charging *Ujrah* on *kafalah*, it will change the contract from *tabarru'* to *qardh* (loan) with stipulated benefit which totally prohibited in Shariah. The AAOIFI *Shariah* Board has also discussed on the same issue and resolved to disallow to charge fees for *kafalah* or *dhaman*. Moreover, the OIC *Fiqh* Academy and AAOIFI *Shariah* Board only allows the guarantor to claim for any cost incurred in guarantee contract.

4.7 Criticism on *Inah* and *Tawarruq* structure

Issue 1: The Fictitious Transaction

The issue of fictitious transaction will be raised when the transaction of ownership is not genuine and done between the bank and customer. As has been discussed in the previous chapter, the transformation of the commodity is only being informed to the customer through the issuance of invoice number stated in the offer letter. The customer also did not know the period of the ownership transference, even the price of the commodity until the receipt of the offer letter. This is because the ownership transference is only done through the tagging system.

Issue 2: The Pre-arrangement of Sale

From the discussion, we can analyse that the *Tawarruq* process which has been practiced is organized and it is arranged by the bank. These are because of some reason; firstly, both of the brokers are permanent entity (although

both of the traders are different), secondly, the customers requests not the commodity but the financing limit in credit card.

Issue 3: The Profit is charged on the first sale

There is another issue which needs to justify which is the profit charges accrued on the first sale of *bay' al-Inah*. This can be derived from the Article I and Article III of *Bay', al- Inah* Sale Agreement. “Profit margin” means the difference between the Sale Price payable herein and the BIC Financing and the method of recognition of the profit margin as the Bank's income shall be in accordance with the bank's accounting policy prevailing at the material time.

The Sale Price or such part thereof remaining unpaid shall be paid by the Card member in accordance with the Card Statement issued by the bank under the BIC Financing Agreement on the Payment Due date either in the amount constituting the Minimum Payment Due or in such other amount as stated therein in the Card Statement.⁸⁷

From the clause we understand that the Bank will charge the Profit according to the mode of payment by the Cardholder. The Cardholders get the Financing Limit via the *Wadiah* Account and this transaction is done when the Bank buys back the asset from the Customer by cash and at the principle price (the second transaction). The question arises when the Bank accrued the profit through the Sale Price (the first transaction) which is considered as deferred payment (*Bay' al-ajal*) and logically it is not related to each other.

⁸⁷ (Bank Islam Islamic Credit Cards Brochure n.d.)

As for *tawarruq*, the bank will charge some profit on the unpaid repayment of the credit card given to the customer. One may ask that on what basis the bank can charge the unpaid repayment of the credit limit. This is because the 'profit' which credited to the customer's account is the sale prices from the Broker A (third party) and not from the bank. Why it is regard as the credit limit of the bank? Why the bank simply accrued profit from the unpaid repayment? The first sale is cannot be related to the second sale. If there is any relation, it seems to be an arrangement to give the financing limit or cash to customers and the profit is charged upon the cash (indirectly).

Issue 4: The Revolving Credit Limit

The 'topped-up' or revolving credit limit which will be given by the bank after full repayment within the grace period may appear as a serious issue, which is related to the prohibition of combination between a sale and a loan. The operation statement shows that after the sale and repurchase of *bay' al-Inah* has been done; the agreed financing limit will be credited into the customer account. The amount (e.g. RM 3000) is considered as the price of the asset which has been used in the sale. When the Bank revolves the amount or makes some addition in the customer's account, it is not considered as sale price but appears as a 'loan'.

Ibn Qudamah said in his book *Al-Mughni*⁸⁸:

"And if the person sells (the item) with a condition to give credit or a loan or conditioned something as such to the purchaser so it is

⁸⁸ (Qudamah n.d.)

forbidden, and the sale is defeated. And this is what had been decided by *Malik* and *Shafie* and I don't know any disputation (about this matter) between them"

Ibn Qayyim in his book *I'lam almuwaqin*, also said:

"The Prophet S.A.W prohibited someone who combined a loan (or credit) with a sale and that is the soundest hadith and known, if the person separate between both, it is hold good. The reason is the conjugation of one to another is pretence to give someone a loan RM 1000 and at the same time sells to him an asset RM 1800. So it is likely the seller gives the purchaser RM 1000 and an item priced RM 800, in the way to get RM 2000 and this action brings the meaning of interest."

Particular Criticism on Tawarruq Structure

Issue 1: The Appointment of the bank as an Agent.

The customer would appoint the Bank as his agent under the contract of *Wakalah* to act on his behalf to sell the commodity to third party identified by Bank Rakyat on cash basis. The appointment of seller (bank) to be the agent of sale (*Wakalah*) in *Tawarruq* transaction had been discussed and justified by some Muslim scholars. Many others like *Sheikh Syubayli* in his fatwa said that the appointment of the seller (bank) as the agent to sell to the third party is considered as forbidden. He defines *tawarruq* in two categories which are *Tawarruq al-Jaiz* (permissible *tawarruq*) and *Tawarruq al- Muharram* (prohibited *Tawarruq*). Permissible *Tawarruq* is when a customer buys a commodity in deferred payment and sale the commodity after the possession of the asset by cash to the third

party⁸⁹. The prohibited *Tawarruq* is when the customer buys an asset with deferred payment and appoints the seller as his agent by cash payment without the possession of the commodity. This matter has been resolved by the OIC Academy *Fiqh* in 17th Conference⁹⁰.

Issue 2: Reselling non-possessed merchandise

Analysing the Bank Rakyat's *Tawarruq* model, generally we can understand that there will be two different contracts applied in the transaction. First *aqad* is when the customer buys the commodity with the deferred payment, and second *aqad* is when the customer appoints the bank to resell the commodity to the Broker B (third party). One may argue that there will be an element of excessive risk and uncertainty when the transaction is combined or not separated. The transaction of ownership is not actually done between both sides, the bank and the customer. In other words, the possession of the commodity by the customer is not really happen.

The Muslim scholars decide that the resale a movable or an immovable object before receipt is forbidden. *Hanafi* ruled unanimously that it is not valid to resell a movable object of sale before receipt. *Muhammad, Zufar* and *Al-Shafie* ruled that it is not valid to sell an immovable property prior to receiving it due to the generality of the Hadith's prohibition of selling what has not been received, the inability to deliver the object of sale and the existence of excessive risk and uncertainty⁹¹.

⁸⁹ (shubily)

⁹⁰ (Session Seventeenth Conference of OIC Fiqh Academy 20/10/1424H)

⁹¹ (al-Zuhayli 1997)

Issue 3: A Sale and purchase contract is concluded by one party for itself and on behalf of the counter party at once.

Referring to the information given, the Credit Card Centre will act on behalf of the customer, and the Treasury Department will act on behalf of the bank. The *Shariah* issue may rise when the account is not being separated between the customer and the bank. If the separation of account is not being done by the bank (as the bank acts as two entities), they may involve in fictitious transaction, give the guaranty on itself or *wakalah ala nafsihi*. If the bank appoints the customer (*Mutawarriq*) its agent to purchase the commodity on its behalf and then to sell the same to himself, the transaction will not be valid, as the two transactions of purchase and sale are interdependent and the bank has not taken the possession and the business risk. However if the bank appoints him as an agent only for the purchase of a commodity on behalf of the bank, then, once it is purchased ; the bank itself sells it to him through a separate contract with proper offer and acceptance, the transaction is valid.

4.8 Criticism on the *Ujrah* Model

The charges which are imposed on the customer's utilization of credit financing given by the bank may appear as a benefit of a loan if it is not accurately mentioned by the bank. One may ask some questions which are; what is the justification of the Actual Management Charge which is imposed on the customer's account? Is it actual, logic and not fictitious?

As mentioned earlier, the lender cannot make any benefit from the loans (in cash money or property) as it constitutes *riba*. In addition, in the Islamic Banking context, we can see that an Islamic bank will only apply a financing product which is profitable and can generate money or income to the bank.

The cardholders who pay in full on or before the payment due date of the previous month's statement will enjoy management charge-free period of 20 days for all retail transactions for current month only. Furthermore, the cardholders who only partially settle their previous month's outstanding balances on or before the payment due date will be charged an actual management charge as per applicable tiered structure for all retail transactions from posting date of the said retail transactions⁹². One may question that what is the justification of the charges which imposed on the borrower who partially settle their loan (*qarġ*)? The charge is imposed because of the late payment or the operation cost of the delayed payment? Is the delayed payment may constitute some costs? If the charge is imposed because of the delayed or partially payment, it is considered as the beneficial of the loan which is strictly forbidden by the *Shariah*.

Most of the *Hanafis* have ruled that any loan that results in a benefit to the lender is forbidden if the benefit was stipulated as a condition. However, they ruled that if the benefit was not stipulated as a condition, and was not expected based on convention, then there is no harm⁹³.

The *Malikis* ruled that any loan that results in a benefit to the lender is defective (*fasid*), since it constitutes *riba*, thus, it is forbidden to benefit from any

⁹² (Ayub 2007)

⁹³ (al-Zuhayli, Ibn Abidin (Hanafi) Rud Al-Mukhtar 1994)

property of the borrower. They permit increases the quality in repayment of loans if they were not conditioned, promised or expected⁹⁴. Yet, the repayment of debt with increase is permitted unconditionally in amount or quality, before or after maturity of the debt.

CHAPTER 5

CONCLUSIONS AND RECOMMENDATION

5.1 Conclusions

Islamic credit card is in highly demand as many people are aware with its benefit and additional features as compared to the conventional credit card. The concept of *Bay Inah* was the envisioned structure for Credit Cards which the researcher feel meets the requirements for Islamic Credit Cards. The structure is feasible on the premise that there is an underlying transaction involving an Asset

⁹⁴ *ibid*

for the purpose of creating debt. The debt is created based on the assumed use of the whole limit, at the maximum profit rate charged, throughout the whole tenure.

However, from the analysis the researcher found that there are several disadvantages to this structure, due to the Sale Price nature of the facility. Firstly, the transaction will result in Cash proceeds and this is an argument by the Sharia that this is essentially the Customer's cash money. It cannot behave as an Authorised Limit or Approved limit, and the flow of Cash should be recorded somewhere in account. There are also limitations when the Selling Price is breached, for example in request to increase limits and temporary top-ups, this is problematic as new *Aqad* on the commodity needs to be performed. Other concerns are such as Annual Fees or other charges, as essentially, this is not a facility but a disbursement of cash therefore additional fees charged are difficult to justify.

Likewise *Tawarruq*, is used by some Banks in the Malaysia and based on an approved facility limit. The initial purchase of any items via this card is made on the basis of *Qardh* (interest free loan) and after a certain period, if the loan is not paid, a *tawarruq* is made based on an agreed profit rate and payment tenure. An instalment is agreed upon and the customer pays this over time. For each purchase not settled, this *tawarruq* will be done, either monthly or daily. Operationally tedious unless there is a ready system to support this. Some banks managed to squeeze in a cash advance facility,

However the research found that the cash advance will just remain as a *Qardh* and will be charged a fixed, one-time cash advance fee. This is a popular

feature as the customer only pays one fee and it's an "interest-free loan" for the remaining tenure.

Ujrah card works on the premise that the Bank is providing a payment mechanism for purchases via a card issued by the Bank. By providing this service, the customer is charged a fixed service fee for each transaction. Regardless of the amount of charge, a fixed fee is charged for the use of card, and the total amount outstanding is to be paid over an agreed period of time at no further "profit charge". This also becomes a *Qardh* once incurred, the Bank only earns the fee for the transaction. The Bank usually price this fee on a high side, to compensate the cost of funds, but this becomes unpopular for small purchases. And since the use makes sense for bigger purchases, the risks of default becomes higher on bigger amounts, and the Bank is not allowed to charged additional fee or penalties as the amount remains a *Qardh*. Other recourse is to convert this default amount into a term structure based on *Tawarruq*, but this will require customer's explicit consent to convert. This can be a problem to execute. For cash advances, this card becomes an attractive "personal loan" facility where no subsequent interest can be charged.

Overall, the model of Islamic credit cards used in Malaysia shows promise to match the conventional proposition. Hopefully, there will be continuous development to improve acceptance, features and usage. And over time, the concerns that the industry may have will be fully addressed.

As for the conclusion, the researcher found that *ujrah* is more *Shariah* compliance. This is because, instead of the fee is charged based on transactions,

the fee is charged based on the Bank providing the customer with the service to purchase goods, via a payment instrument i.e. Credit Card. This fee is determined yearly, upfront at the point of *Aqad*. The fee, which the customer will have to agree to, is calculated based on the authorised limited with the assumption that the customer agree to this service for 1 year. Providing this service to the customer is the discretion of the Bank, renewal of the service depends on the yearly review.

Some Islamic scholars were not fans of the rebate structure being used by many in Malaysia. This method has been used in various products such as the Islamic floating rate home financing, revolving credit and overdraft. Bank Negara Malaysia has been very supportive of this structure and has issued the *Ibra'* Guidelines to outline the rules for rebate. The Researcher personal view is that this is workable structure so long as the rebate formula is clearly made known to the customers and agreed upon. Technologically, the system is able to support the *Ibra* requirements, and the researcher feel this is an important feature to ensure a competitive product can be designed.

Ujrah makes the Credit card structure as simple as can be, with the ease of use and the bundling of various service into an attractive package and also easy to revise most terms, such as increases in credit limits.

5.2 Recommendation

It is highly applauded that Islamic banks are trying to offer product of conveniences to customers in order to assist them in daily transactions. There are certain advantages that will be gained through the usage of Islamic credit cards. Nonetheless, the permissibility of credit card in the light of *Shariah* is ambiguous

since the very nature of credit card is to provide a loan and benefited from it. Therefore it is suggested that the business operations and the models should be reviewed from time to time towards more *Shariah* compliant. The *Shariah* committees and the *Shariah* scholars might have approved some structure on the interim basis while more studies are done on finding the alternatives. In this light a due diligent *Shariah* compliant inspection and audit are necessary.

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