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**AN IMPLEMENTATION OF *BAY' AL- DAYN BI AL SILA'* IN
MALAYSIA**

NOR AMIRAH SHAARI



**Master in Islamic Finance and Banking
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AN IMPLEMENTATION OF *BAY' AL- DAYN BI AL SILA'* IN MALAYSIA

**By
NOR AMIRAH SHAARI**



**Research Paper Submitted to
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Master in Islamic Finance and Banking**



Pusat Pengajian Perniagaan Islam
ISLAMIC BUSINESS SCHOOL
كلية إدارة الأعمال الإسلامية
Universiti Utara Malaysia

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ABSTRACT

The issue of selling debt is a controversial sale contract in many of its implementation due to the subject matter of the contract. *Bai al dayn* contract is not widely implement by the other Islamic banks especially in Middle East countries beside Malaysia due to the issues that the sale of debt has been sell at discount price, and debt cannot be considered as asset. Furthermore, there are very few researches been done related to *Bay' Al-Dayn* and *Bay' Al-Dayn Bi Al-Sila''s* (BDBS) contract. Therefore, this study attempt to investigate and explore the issues and challenges in implementing BDBS from practitioner's, expert's, and client's perspective and the goal is to show process flow of BDBS current implementation in Malaysia. The research design used in this study is qualitative approach through in-depth interview. Several sets of open-ended questionnaires have been developed and interviews were conducted and analyzed using content analysis based themes. In-depth interview has been done with nine (9) informants who involve indirectly with the contract. The informants that involved in this study including four practitioners from industrial practitioners, two informants are experts or scholars, and another three informants are clients. Based on the interview, most of the informants agree on the enhancement of the new contracts. However, to change into the new system, many challenges and impact have to be considered especially on cost, staff training and more documentation needed on the new process. These impacts affect the practitioner more rather than the clients itself where as industrial practitioners they have to ensure the changes made align with *shariah* compliance requirement. The implication of this study is the sale and purchase of the commodities from BDBS contract is indirectly help the cycle of economies in our country. This also could help small and medium entrepreneur to explore more on the *shariah* compliance financing facilities and other Islamic product which more suitable and ready to be used.

Keyword : dept, implementation, issues, challenges, practitioners.

ABSTRAK

Isu penjualan hutang adalah kontrak penjualan yang menimbulkan kontroversi semasa perlaksanaanya kerana hutang itu sendiri menjadi isunya. Kontrak *Bai al Dayn* tidak banyak dilaksanakan oleh sistem perbankan Islam lain terutama di negara-negara Timur Tengah. Namun begitu, kontrak ini telah diamalkan di Malaysia. Antara isu yang menghalang perlaksanaanya di luar negara ialah penjualan hutang yang dijual pada harga diskaun, sedangkan hutang tidak boleh dianggap sebagai asset. Di samping itu, penyeldikan yang berkaitan dengan kontrak *Bay' Al-Dayn* dan *Bay' Al-Dayn Bi Al-Sila'* (BDBS) adalah sangat kurang. Justeru, kajian ini bertujuan untuk meneroka isu dan cabaran dalam mempraktikkan BDBS dari sudut pandang pengamal industri, pakar, dan pelanggan dan seterusnya menunjukkan proses bagaimana BDBS dilaksanakan dalam industri di Malaysia. Reka bentuk kajian ini menggunakan kaedah kualitatif melalui temu-bual berstruktur. Beberapa set soalan terbuka berstruktur telah dibangunkan dan temu bual dijalankan dan dianalisis mengikut tema yang ditetapkan. Temu bual telah dilaksanakan kepada sembilan (9) orang pemberi maklumat (informant) yang terlibat secara langsung dengan kontrak. Mereka termasuklah empat orang pengamal industri, dua orang pakar bidang dan tiga orang pelanggan. Berdasarkan temu bual tersebut, sebilangan besar responden bersetuju dengan pembangunan kontrak baru. Namun, perubahan kepada sistem baru, banyak isu dan cabaran yang harus dipertimbangkan seperti kos pembiayaan pelaksanaan kontrak, latihan kepada kakitangan pelaksanaan dan lebih banyak dokumen yang diperlukan semasa pelaksanaan kontrak baru. Perubahan ini memberi kesan yang ketara di kalangan pengamal industri memandangkan pengamal industri perlu berubah mengikut keperluan syariah yang telah ditetapkan. Implikasi daripada kajian ini adalah penjualan dan pembelian komoditi dari kontrak BDBS secara tidak langsung membantu perkembangan kitaran ekonomi di negara kita. Ini juga dapat membantu pengusaha kecil dan sederhana untuk meneroka lebih banyak produk dan kontrak berkaitan kemudahan pembiayaan yang patuh syariah syariah.

Kata kunci : hutang, pelaksanaan, isu, cabaran, pengamal.

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LIST OF ABBREVIATION

AAOIFI	Accounting and Auditing Organization for Islamic Financial Institution
BDBS	<i>Bay' Al-Dayn Bi Al-Sila'</i>
BNM	Bank Negara Malaysia
BSAS	Bursa Suq Al Sila' System
BMIS	Bursa Malaysia Islamic Services Sdn Bhd
CBM	Central Bank of Malaysia
IBFIM	Islamic Banking & Finance Institute Malaysia
IFI	Islamic Financing Institution
INCEIF	International Centre for Education in Islamic Finance
KFH	Kuwait Finance House
P2P	Peer-to-peer
SAC	<i>Shariah</i> Advisory Council
SME	Small and Medium Entrepreneur



CHAPTER 1

INTRODUCTION

1.0 INTRODUCTION

The issue of selling debt is a controversial sale contract in many of its implementation due to the subject matter itself which is considered by most jurists as *ribawi* item (Amin, 2007). He also cited from Haron and Shanmugam (2001) explained that the principle of *Bay' Al-Dayn* contract is not widely implemented by the other Islamic Bank especially in Middle East countries but in Malaysia, it has been implemented.

The Malaysia *Shariah* Advisory Council in its 117th meeting held on 19 October 2011, a new mechanism has been announced to replace *Bay' Al-Dayn*. The new mechanism, BDBS has been approved for debt financing by using commodity as consideration.

Through an article wrote by Mumin and Johari (2012), Malaysia has been keep criticized by many scholars, especially those from the Gulf Cooperation Council countries due to the controversial products in the market such as *Bay' Al-Dayn* and *Bay' al- 'Inah*. In this articles also mentioned that since Malaysia is one of the leaders in Islamic finance sectors, this issue has been mitigated by suggestion from some of the scholar on the implementation of new contract which is *Bay' Al-Dayn Bi Al-Sila'* (BDBS). The idea is trading the debt through a commodity.

Throughout the study, more explanation and comparison between *Bay' Al-Dayn* and BDBS will be done. The investigation on issues and challenges practicing BDBS faced by the practitioners, scholars, financiers and also clients will also be elaborated.

1.1 BACKGROUND OF THE STUDY

Debt financing or *Bay' Al-Dayn* is one of the financing services offered in the Islamic Finance product line. (Abdul Aziz and Abdullah, 2009) mentioned that *Bay' Al-Dayn* based Sano Koutoub Mustafa which defined *Bay' Al-Dayn* financing occur when the creditor sells his payable right upon the debtor either to the debtor himself or to a third party. This is another alternative for Small and Medium Entrepreneurs to survive in challenging business environment.

The word *dayn* in Islamic Jurisprudence means debt, financial liability or monetary obligation (Saad and Alhabshi, 2019). They further mentioned that,

“Abu Hurairah has narrated The Prophet said: The believer’s sold is suspended by his debt until it is settled for him”.

(Jami’ At-Tirmidhi, Hadith 1078)

In this *hadith*, the writer cited from the *hadith* to show that the Prophet discouraged the implement of debt. However, it does not mean that Islam prohibit debt. In fact, there are certain scholars who approve sale of debt with few conditions. Rosly and Sanusi (1999) mentioned in their study that *Malikis*, *Hanafis* and some *Shafi’s* jurist allowed selling *al-dayn* to the other party. The creditor has the right to sell it to the debtor and the creditor also has the right to sell it to the third party as long as they full fill the condition that has been agreed. The conditions set by those scholars mentioned previously are that particular *dayn* must be a confirmed debt and must be perform on the spot. Besides, the debtor must be a financially capable, must accept and recognize the sale. This is to avoid from default of payment of that particular debt. Last condition is the sale should not be based on selling gold with silver or opposite and the price of the debt should be equal in terms of amount.

In Malaysia, the implement of *Bay' Al-Dayn* contract can be found in factoring services in Malaysia. Factoring services in Malaysia for government bodies will need to follow as per *Pekeliling Perbendaharaan Malaysia* as issued by Ministry of Finance. This guideline has stated that those contractors who have intentions to do factoring have to write a transfer of payment to the third party to those particular government agencies. This letter is known as notification letter or deed of assignment and can be act as *Al - Hawalah*. *Al - Hawalah* means transfer in Arabic. Saad and Alhabshi (2019) also mentioned in their research based on the opinion by *Sheikul Islam Taimiyah, Ibnul Qiyim* and some *Shafii* scholars, al *hawalah* is transferring of right and that is why Prophet Muhammad did not indicate a sale contract in the *hadith*, what he mentions was only the transfer of debt, he said:

“Procrastination (delay) in paying debts by a wealthy man is injustice. So, if your debt is transferred from your debtor to a rich debtor, you should agree.”

(Sahih al-Bukhari, Book 38, *Hadith* 1).

By the existence of the notification letter that signed by the authorized person in the ministries and the content of the letter that transfer all the payment from the government agencies to the financial institutions, debt financing seems to be legit enough to be implemented within the Islamic finance industry.

Even though in Malaysia *Bay' Al-Dayn* is permitted and can be execute freely within the industry, but the more conservative *Shariah* scholars in the Gulf Cooperation Council (GCC) do not allow *Bay' Al-Dayn* as they have the opinion that in this contract, the subject matter which is debt is a *ribawi* item (Wilson, 2009). They strongly disagree with the implement of debt is being sold as the discounted price. Rahim et al (2013) stated based on the study done by Azhar and

Mahmood (1999), when the Middle East refuse to accept *Bay' Al-Dayn*, there were lack of capital supply from the investors in the Middle East towards Islamic Bond Market. Radzali et al (2019) found from the product disclosure sheets and official website of the bank which originally coming from Middle East such as *Al-Rajhi* and Kuwait Finance House avoid *Bay' Al-Dayn* and use the other financial instruments which are less controversial.

To solve the problems, the idea of trading debt via commodity came to enhance the previous contract. Mumin and Johari (June, 2012) have deliberately mentioned on how BDBS works. BDBS means purchase of debt using asset. Asset in this term can be classified as commodities. In short, BDBS is trading debt via commodity. Debt will be sold to the new creditor, but the payment will be going to the original debtor in the form of commodities (crude palm oil, rubber, and airtime). When payment is made via commodities, the issue of *riba* will be eliminated because the payment is in the form of a commodity and not money. Commodities can be traded at any price agreed by both parties and need not necessarily to be equal to the amount of debt. This transaction will be involving 4 parties; the financial institutions will act as agent, client as a buyer, commodity trader as the commodity provider and purchasing broker as the purchaser of the commodity.

The original debt was between the debtor (ABC) and the original creditor (XYZ), but XYZ wants to realize the money tied up in ABC's debt and not due until a future date. To do this XYZ proposes to sell the debt to new creditor LMN, a third party. Prior to the purchase of the debt, LMN purchases commodities from the Bursa Suq al Sila', worth the amount it is agreed will be paid to XYZ. XYZ sell the debt to LMN for the total amount of the principal plus the profit due in the future and LMN make the payment to XYZ immediately in the form of the commodity with no mention of the monetary value. The reason why the buyer purchases the debt without

mentioning the monetary value of the commodity is to eliminate the element of a cash payment. When payment is made in terms of the net weight value of commodities, it can be at any price agreed between the seller and buyer, whether that is at a discounted or premium rate. Finally, the debt is transferred to the new creditor (B) and the seller (A) can sell the commodities in return for cash. The debt obligation of the debtor (C) is conveyed to (B) as the new creditor.

Bursa Suq Al Sila is not the only commodity trader and commodity provider. Bursa Suq Al-Sila' System or Commodity Murabahah House has been launched by Bursa Malaysia on 2009 and has been operated by Bursa Malaysia Islamic Services Sdn Bhd. Through this platform, bids and offers of the commodity are done daily and trade is matched electronically. The transaction is governed by a set of trading rules based on the best market practices and *Shariah* principles. However, since they were created under Bursa Malaysia, they have more stock on commodities with cheaper price compare others commodity provider. In this platform, their approved commodities are crude palm oil, plastic resins (three types; A, B and C), palm olein, timber-softwood and timber hardwood.

Mumin and Johari also mentioned that RHB Islamic Bank is the first bank in Malaysia to organize a deal to sell its receivables to a third party using such instrument. However, until 2019, some big Islamic bank has implemented Bai Ad Day Bi Al Sila such as Maybank Islamic Bank, Public Islamic Bank and Bank *Muamalat* Malaysia Berhad.

1.2 PROBLEM STATEMENT

First, the issue is the sale of debt has been sell at discount price. Amin (2007) share in his writing that there some opinion that considered debt similar as money and some Islamic countries do not implement *Bay' Al-Dayn* as debt can be consider as *riba* bearing which refer to *riba al-*

buyu in particular. On his opinion *riba al buyu* should be sold at par and for cash or on the spot. Amin also cited from Harun and Shanmugam (2001) that the principle of *Bay' Al-Dayn* concept is not widely used by other Islamic Banks especially in Middle Eastern countries. Based on Radzali et al (2019), they had found out from the product disclosure sheets and official website of the bank that bank that originally coming from Middle East such as *Al-Rajhi* and *Kuwait Finance House* avoid *Bay' Al-Dayn* and use the other financial instruments which are less controversial.

Second problem is in Islamic perspective, debt cannot be considered as asset. Rahim et al (2013) mentioned in their writing that neither old scholars nor contemporary scholars especially in Middle Eastern countries did not allow debt to be sold at discount. They have opinion that debt cannot be considered as asset and it is monetary liabilities to the creditor. Since sale and purchase transaction should happen with the physical product, can the invoice consider as an asset. Any additional and deduction that happened during the transaction could lead to *riba* which the one that all Islamic finance and banking practitioner try to avoid. Aziz and Abdullah. (2009) quoted in their study that debt is type of right. Through the definition that they elaborated, debt is right of the owner to get certain amount of money. They quoted based on the opinion from majority of the jurists such as *Maliki*, *Shafiee* and *Hambali* stated that the property right is known as a sound property since, in reality, the property itself is not intended, but its value is intended in people's transactions. Meanwhile, *Hanafies* thinks that it is not a sound property since the benefit of the property cannot be owned, and once understood, it will no longer be an abstract thing that will be eventually demolished.

Third problem is related to the BDBS which there is very few research related to this new contract. We could find the discussion and issue related to *Bay' Al-Dayn* but for BDBS, there is only minimal discussion on this in Malaysia. In study written by Radzali et al (2019), we can see

that they mentioned about the implementation of BDBS to avoid further debate on debt financing but there are no further explanations from the said study. This contract might have been implemented currently. However, further discussion and argument on the implementation on this contract is hardly found. The contents that stated in the *Shariah* Advisory Council by Bank Negara Malaysia is too limited and is hard to get more information on the announcement as the information is only at the surface level.

1.3 RESEARCH QUESTIONS

- a. What are the issues and challenges in implementing BDBS from practitioners' perspective?
- b. What are the issues and challenges in implementing BDBS from scholars' perspective?
- c. What are the issues and challenges in implementing BDBS from clients' perspective?

1.4 RESEARCH OBJECTIVES

- a. To investigate the issues and challenges in implementing BDBS from practitioners' perspective.
- b. To explore the issues and challenges in implementing BDBS from scholars, financiers and client's perspective.
- c. To explore the issues and challenges in implementing BDBS from clients' perspective.

1.5 SCOPE OF STUDY

In this study, the main focus is to explore BDBS implements in Malaysia and find out how does the implementation on the factoring financing in Malaysia. The target audience will be the users of the contract, company who implemented the contract, the financier who oblige their client to implement the contract and the academician. Issues and challenges will be investigated within clients, companies, and financiers to know what they had face during the period of implementation. In the academician aspects, there is gap between theory and implement that need to figure out. This could at least help both parties to have a better understanding in the system implementation.

The study will be done in Malaysia to see how the implementation implemented in Malaysia. Since the implementation is not compulsory by Bank Negara Malaysia, the implement can be seen through few huge banks in Malaysia such as Bank Kerjasama Rakyat Malaysia, Maybank Islamic Berhad, Public Islamic Bank and few more. We can see few argument and support been made through *Bay' Al-Dayn* paper within research in Malaysia. But for BDBS, the coverage is less compared to *Bay' Al-Dayn*. The study also could find out what will be the impact of implementation of this contract on the non-financial sector in Malaysia.

The methodology of the study will be in the qualitative survey through phenomenological method to obtain information by using guided questionnaire with open-ended structure. Interview will be done to the users of the contracts, company who implemented the contract and the experts to dig further information on this matter.

1.6 SIGNIFICANT OF THE STUDY

The reason of the study been conducted is to foresee how far issues and challenges face by all parties that using BDBS. At the side of the users, we would like to see how the contract affects

their business. This indirectly could help the industrial practitioner (company) and the financier to find out what is the difficulty face by their client. The new contract might be for the enhancement of the *Shariah* purposes, but it might trouble the clients due to lot of documentation procedure needed which could drag the disbursement period.

Aside from that, the study could help those who involve such as policy maker or regulator to use the findings of the study as the guideline for the operation of the company at least for a better implementation in future. Any difficulty found during this study hopefully can be mitigating to have a better procedure implementation and better understanding for all party involve. We would also want to find out what makes BDBS better than *Bay' Al-Dayn* in view of operation processes.

In the view of the experts, more knowledge could be transfer and share during this study. Sharing of information between theory and implement could lead a greater impact on the implementation as this can help on a better implementation through those with experience in the industry and those in the academic field. This indirectly could give the exposure to the academicians to share about new contract with the student and reducing the information gap between academicians and practitioners.

1.7 KEY DEFINITION TERMS

For the purpose of this study, the following terms are being used and the terms involved are much related to the research study.

Factoring

Factoring is explicitly linked to the value of a supplier's accounts receivable, and receivables are sold, rather than collateralized, and factored receivables are not part of the estate of a bankrupt firm¹.

Bay' Al-Dayn

A deferred liability that arises from a contract involving an exchange of value of goods and/or services, which is halal whereby the payment is in future date.

Bay' al-Dayn Bi Al-Sila'

A deferred liability that arises from a contract involving an exchange of value of goods and/or services tied up with the sale of commodity which is halal, whereby the payment is in future date settled through the transfer of the Assigned Receivables by the Customer.

Purchase Price

The gross invoice value of the Receivables less Profit Payable or as determined by the Factoring Company

Receivables

Means the existing and future right to receive payments and all other right in respect of a transaction being a sale made work done or a service rendered by the Client and all rights in respect of any goods which are the subject of such transaction and in respect of which payment is made from or any part thereof which has been approved by the Factoring company itself.

Client

Means and include persons deriving title thereunder and its successors in title and permitted assigns.

¹ Klapper, L. (2005). *The role of factoring for financing small and medium enterprises*. The World Bank.

The Creditor

Means the party liable to make payment in respect of the transaction to which the Assigned Receivable relate and shall include any accepted Customer hereof which may be a Government/Private contract awarder.

Assigned Receivable

Means the past, present, or future obligation of a Customer to the Client to pay all or any moneys for goods sold and services rendered by the Client as evidenced by the copy invoices to be submitted in accordance with this Agreement and accepted by the factoring Company.

Murabahah

Means the *Shariah* principle of sale based on cost plus profit whereby the profit margin has to be disclosed to the purchaser.

Shariah

Means the law of Islam in any recognized sector.

1.8 ORGANIZATION OF STUDY

This study will be delivered and discussed in five (5) chapters. The first chapter is introduction chapter which discussed several important topics including background of this study, problem statement, research objectives and scope of the study. In Chapter 2, the discussion focused on literature review which few issues will be discussed further based on previous study

done. Definition *dayn* in Islamic finance, arguments on *Bay' Al-Dayn* in Middle East countries and implementation in Malaysia and implement of BDBS also discussed in this chapter. Meanwhile Chapter 3 discussed the methodology implemented in this study. The discussion included the research design, guided questions development and data analysis technique. The following chapter which is Chapter 4 discussed the finding of this study and also the discussion based on the finding. And the final chapter is the Chapter 5 which is conclusion which discussed the summary of the finding, the suggestion and policy implications as well as suggestion for future research.



CHAPTER 2

LITERATURE REVIEW

2.0 INTRODUCTION

In Chapter 2, the theory and concept of *Bay' Al-Dayn* and BDBS will be reviewed through the previous researcher. The objectives of the study are to explore the issues and challenges of the implementation of BDBS through practitioner scholars, financiers and clients' perspectives. *Dayn* and *Bay' Al-Dayn* topics are the topics that used to be discussed among academicians. However, for BDBS, the topic seems to be new to the industry and the discussions among the academicians are lacking compare to *Bay' Al-Dayn* contract. The discussion in this chapter organized in eight (8) sections, the first section will be discussed on understanding and implementation of the *Bay' Al-Dayn* concept, followed by classical and contemporary view by the Islamic scholars. The next section will discuss on the previous study on *Bay' Al-Dayn*. After finish go through on *Bay' Al-Dayn*, the study will cover on BDBS in the capital market and governance and regulatory of the product. Next section will elaborate on the contract of financing that related to these contracts and the summary of this chapter provided at the end of the chapter.

2.1 UNDERSTANDING AND IMPLEMENTATION OF *BAY' AL-DAYN*

According to book *Contracts and Deals in Islamic Finance* by Kureshi and Hayat (2015), *Bay' Al-Dayn* is a contract of the sale of debt. Hence, the party involve must be the legitimate of contracting parties and there is offer and acceptance and there should be a subject matter of sale, a price, and a delivery of asset. In this case, the asset is the debt. Both of them cited from *The Majelle* which defined *dayn* is a matter of due that is money that is owed by the certain debtor. Any types of receivables owed by one party to another party whether generated from deferred credit sale, a contract of rent or a contract of loan is considered to be debt.

Yunus et al (2017) define *Bay' Al-Dayn* in their paper as the selling of a debt by the debtor's creditor to the debtor or a third party. They added more in their paper by way of *hiwalah*, the Sharia allows the sale of debt for the equal sum (transfer of debt to another party).

Manan and Kamaluddin (2010) stated that *Bay' Al-Dayn* is commonly used in the trade financing and factoring. In their paper cited from Usmani, (1992) and Kamali, (2002) definition of *dayn* (debt) as a debtor's obligations, whether in the form of money or a commodity. *dayn* (debt) refers to a payable right that normally arises out of contracts of exchange or *uqud almu'awadat* such as trade financing (based on underlying *Murabahah* contract) or asset sale (based on the underlying contract of *bay' bithaman ajil*) which are securitized. The authors also quote from Rosly and Sanusi (1999) by defining *Bay al-dayn* as the selling of debt by the debt holder back to the debtor himself or to any third party. The *shariah* permits the selling of debt at its equivalent amount by way of *hiwalah*. This debt trading is accepted by all *madhahib* (Schools of Islamic law) provided it is paid in full and gives no benefit to the purchaser.

Saad and Alhabshi (2019) mentioned in their paper on the different arguments of the implementation of *Bay' Al-Dayn* outside of Malaysia. In their research stated out that Islamic Jurist agree the sale of debt at the same value and the transaction done must be made on the spot. Deferred payment of the debt financing is not widely acceptable by Islamic scholars as this could lead to the *riba* and *gharar*. Another opinion that they found out is the sale of debt to the third party. Saad and Alhabshi cited from *Imam Al-Kasani* (2005) that there is scholars who against it and there is scholars who agree with the implementation as long as the transaction full filled the conditions that they have put. The *Hanafi's* scholars gave the opinion that delivery is one of the essentials items in Islamic Contract. However, the contract of sale of debt to a third party is not deliverable as the creditor not in the positions to ensure delivery of the debt can be made to the third party.

However based on the *Jami at-Tarmidhi, Book 14, Hadith 112* under the same study stated, *Maliki's* scholars accept the sale of debt to the third party within three conditions. First conditions, the transaction should be free from *riba'* and *gharar*. Second, it should not be based on the future payments to avoid selling debt for debt. And last is the fee should be equivalent to the debt sold to avoid *riba'* in sales.

In Malaysia, *Shariah* Advisory Council (SAC) has allowed the implementation of *Bay' Al-Dayn* as one of the concept that helps in developing Islamic Market in Malaysia. Decision made by SAC is based on the current economic condition in Malaysia. However, they have their own opinion in justifying the reason on forbidding this contract. One of the reasons is because of the risk towards the purchaser if there is any default in payment. There is also uncertainty in the transaction, no acceptance and Riba during the sale of the receivables at the discount price. Accounting and Auditing Organization for Islamic Financial Institution (AAOIFI) and *Majma' Fiqh Islami* did not allow *Bay' Al-Dayn* Contract. *Shariah* Standard AAOIFI no 17 *Sukuk* Investment stated that; 'it is not permissible to trade in *Murabahah* certificates after delivery of the *Murabahah* commodity to the buyer. However, trading of *Murabahah* certificates is permissible after purchasing the *Murabahah* commodity and before selling it to the buyer.' Meanwhile, *Majma' Fiqh Islami* resolution has stated, the sale of debt through immediate payment to the other parties other than the debtor is not permissible as this could lead to *Riba*.

2.2 CLASSICAL AND CONTEMPORARY VIEWS

The study will discuss classical juristic opinions and contemporary juristic opinions that have been discussed in articles wrote by Amin (2007) on analysis of the classical and contemporary juristic opinions on *Bay' Ad Dayn*. In the article has been stated there is two opinions from classical

scholars which will be break into few other details opinion. Meanwhile for contemporary opinion, there is nine issue should be consider before proceeding to the purchase of debt.

According to Amin (2007), in classical opinions, the opinions have been break into two conditions; the sale of debt to the debtor (*bay al-dayn li al madin*) and the sale of debt to a third party (*Bay al-Dayn li ghayr al madin*).

Under sale of debt to the debtor there is three breakdown; allowed, not allowed and depending to the types of the debt.

Amin (2007) quoted from Moustapha (2001) which stated that Scholar *Hanafi*, *Maliki*, *Shafi'i* and *Hanbali* agreed that the sale of debt to the debtor is allowed as the creditor has the full right to sell his debt to the debtor at any price he likes. However, the debt must be raised from cost of damage, qard, price of commodity, cost of services or dowry of a woman. Since the creditor has the full right to waive or annul his debt at any points of time he wants to, he also has the same right to sell it to the debtor at any price that he would like to charge.

The opinion issued is also contributed by the hadith narrated by Ibn Umar. Ibn Umar reported that he came to see the Prophet (pbuh) and told him:

“I sell camels in Baqi in dinars (debt) and accept dirhams (payment), and I sell in dirhams (debt) and accept dinars (payment)”. The Prophet the reply, “ It is okay, but you should try to accept it at the day price for each before you conclude your contract”.

(Kitab Al-Buyu, Book 16, Number 3348)

Selling a debt to the debtor is permissible if certain conditions are met, as per this hadith. For example, if delivery was not feasible, the sale would not be permitted, but in this case, delivery of the item to the buyer is not required. As a result, the sale is permitted.

Second opinion cited by Amin (2007) from Moustapha (2001) is based on the *Zahiri's* school of thought which he has the opinion that debt is not allowed either to the debtor or to a third party. Reference to his opinion is based on the hadith by Prophet (pbuh) which stated,

” Do not sell gold for gold except if they are the same, and do not sell silver for silver except if they are the same, and do not sell that which is absent for that which is present”.

(Sahih Bukhari, Volume 3, Book 34, Number 384)

This hadith that has been mention by the Prophet (pbuh) that selling of debt is prohibited since debt always be the absent one which will lead to the uncertainty. And the Prophet (pbuh) has prohibited the sale of uncertainty bay” al gharar). In this context, the argument is the sale of debt is a sale of uncertainty. Thus, it is not allowed. The element of uncertainty also coming from the debtor side which if the debtor refuse to settle the debt, the person might be ignoring the debt and this indirectly will affect the creditor who is buying the debt.

Third opinion stated by Moustapha (2001) the permissibility of the sale is subject of the type of debt. There is necessity to differentiate between confirmed and non-confirmed debt based on the *Hanbali's* school of thought. Some of the *Hanbali's* scholars agreed that debt can be sold however, two conditions have been added up to strengthen the opinion to allow the sale of debts. First, the debt must be certain and the other one is the exchanging goods should be possessed on the spot. Hence, if the debt is confirmed, the amount is certain and the transaction is happen on the spot, the sale of debt can be allowed. Meanwhile, if the debt is not confirmed such as cost of labor or services before completion and the amount can't be decided in advance, thus, the transaction is not allowed as per *Hanbali's* thought.

Second condition is the sale of debt to a third party. Moustapha (2001) stated in his book cited by Amin(2007) define that selling of debt to a third party refers to a sale of debt to a non-debtor at a discount price but normally the transaction happen on the spot basis. This happen sometimes when the creditor may not be willing to wait for the date of receiving the debt to be pay and might need some fast cash to roll the money for the business. To speed up the process, the debtor will sell it to the third party at a discount price on cash payment. Under the sale of debt to a third party, there is three breakdowns same as per the sale of debt to debtor. Those three breakdowns is allowed, not allowed and allowed based on the conditions.

Moustapha mentioned first opinion was agreed by some *Shafi*'is and *Hambali*'s scholars like *Ibn Al- Qayyim*. The sale of debt to the third party is allowed only if the creditor has the right to sell the confirmed debt to the debtor or to a third party. This opinion is based on the few arguments. There is no authentic source that prohibits such kinds of selling or giving. Thus, the transaction should be allowed. Besides that, the creditor has the full right on possession and full right to sell it to a third party. Last opinion is based on the legal maxims which states all the transaction is permissible until the transaction are proven as non-permissible by an authentic source. Scholars thought since there is no authentic sources prohibit this transaction, and then it should be allowed.

Moustapha (2001) also mention on second opinion by *Hanafi*'s, some of *Shafi*'i's scholars, *Hambali*'s and *Zahiri*'s did not allowed the sale of the debt to the third party even the debt is a confirmed debt. The opinion is based on the hadith of the Prophet (pbuh) which clearly states.

"Don't sell what you don't possess".

(At-Tirmidhi, Hadith 1232)

Another hadith also mention that it is prohibits to sell or give an item that the seller or giver is unable to deliver to the buyers which refer to the non-confirmed debt. In short, the transaction might create a conflict between the debtor and the buyer of the debt. The debtor might be refusing to pay the debt to the new buyer and also to the person to who the debt was given. Hence, this has create a greater risk as the money should be receive from the debt created will not be received as the debtor might have some doubt on releasing the payment to the third party.

Third opinion is coming from the *Shafi'i*'s scholars namely *Al-Shirai*, *Al-Subki* and *Al-Nawawi* which allowed the transaction based on the three conditions mentioned by Amin (2007) cited from Moustapha (2001). First, the debt itself must be a spot debt in nature. Second, the debtor must be a rich person and he has to accept the sale or there must be strong evidence to prove the existence of the debt in case of any denials from the debtors. This could ensure the third party received the payment as per arrangement between the creditor and the third party. And the third conditions are the buyer must pay the price of the debt on spot basis, otherwise, the sale will be considered as invalid and illegal.

Amin (2007) also elaborates on contemporary opinions which are built by latest scholar in the industries but considering the classical opinions as well. In classical opinions, there is some scholars agree to the sale of debt and there is also think that sale of debt is not permissible. Amin (2007) discussed few issues that need to be considered within the industry. Amin (2007) the Islamic Financial institutions and banks in the Middle Eastern countries should review their rejection of the sale of debt and they should be more open towards this financial instruments based on the sale of debt. Besides that, they should consider *maqasid shariah* approach that should be as basis of all reactions or acceptances of these new forms of contract and transactions. The benefit that could be gain from the new review should be shared and spread to the industry and this

indirectly help the industry to grow as well. Few positive things could be happening behind the permissibility of this investment and financial transactions.

Another opinion that has been discussed in Amin (2007) paper is related to the contracting requirement. The formation of a sale contract in Islamic Law requires the existence of certain essential elements such as offer and acceptance, contracting parties, commodity and price. Except for the commodity, these entire requirement are met in *Bay Ad-Dayn* and therefore its implementation should be allowed within the industry.

The debtor should be given the option to buy before any third party is given the option to buy at discounts before offer it to the third party. If the debtor is willing to the offer, the offer should be without any conditions. If not, the debt should be allowed to be sold to the third party at the discounted price. This is where real implementation has been implemented in Malaysia currently. It does help those small and medium contractors to survive with the fast cash that they received.

His study also mention that the school of Islamic Law has to clarify what is the condition to allow the concept of *Bay Al Dayn* and the debt must be selling at cost price or at discount. These need further justification and clarification to ensure the whole process was without element of *riba'* and *gharar*. However, there will be no reason for the people to buy a forward debt for cash at its cost, meaning that the people will only be interested in buying the forward debt if it is sold at discount.

Another issue that highlighted in the paper is the implemented by the Islamic institutions whether financial or non-financial and banks are based on the selective approach (*talfiq*) which is all the implementation is based on the selective basis. Those who implements are using the opinions of some other *Shafi'*s scholars who permit it based on the conditions that have been

stated in the classic opinion. Since this opinion has been the source of implement, no full attention is paid to these conditions.

Another discussion on the paper is looking into the lawful transactions and permissible financial activities such as *musharakah*, *mudharabah*, *murabahah* and others, this has shown that Islam does allow this kind of transactions and activities on order to maintain growth and continuous increase of wealth for individual business and also for the countries as well. Another benefit of the implementation is that enhancing the continual distribution of the wealth in the society.

2.3 PREVIOUS STUDY ON *BAY' AL-DAYN*

This section will be elaborated previous study been done related to focus of this study which is *Bay' Al-Dayn*. Aziz and Abdullah (2009) mention in their study as stated by *Imam Qurtubi* regarding definition of debt, he defined debt as the transaction of the exchanging items is paid in cash and the obligation need to be paid later. Hence, the cash price among the Arabs is which is present and the debt is which is present. The writers also compare what is the different between *Qard* and *dayn*. According to the writer, *dayn* comes into existence as a result of any other contract or credit transaction. The transaction could happen due to the purchase of good or sale of contract which leave a future obligation to pay. Compare to *Qard*, which have the same definition with *dayn* but different implementation in financial mechanism. *Qard* is a voluntary willingness to lend money to the other party and the payback will not be included with any profit. *Qard* has been a mechanism for welfare and not for business transaction. In financial sector, the terminology that has been used is *Qard Hassan* which loans that has been given which will be returned as per agreed period without any interest or share in profit or loss.

Amin (2007) has written on the analysis of the classical and contemporary juristic opinions on *Bay' Al-Dayn*. Based on the paper cited from book of Moustapha (2001), it has been stated there is two conditions from classical scholars which will be break into few other details opinion. Meanwhile for contemporary opinion, there is nine issue should be consider before proceeding to the purchase of debt.

2.4 BAY' AL-DAYN BI AL-SILA' IN CAPITAL MARKET

SAC in the 117th meeting at 19 October 2011 has passed the proposal of new mechanisms on buying debts using commodities as the collaterals also known as redeemable convertible unsecured Islamic debt securities. This new mechanism named BDBS. In this context, commodities are considered payment in-kind on behalf of the issuer of the commodities to the owner of receivables. The receivables are based on the obligation from the issuer and there is no *Shariah* issue in the value of the transaction as long as the sale and purchase transaction is made known to the both party involve.

In the International Islamic *Fiqh* Academy Resolution 158(7/17), they had given decision on selling debt. The Resolution has decided that the sale of debt is permissible if the creditors sell his debts in another state currency at its day rate or selling debt for a specific good or sale of debt for the benefit of a specific kind.

Mumin and Musa (2016) explained in details on BDBS. Through Islamic Factoring services, this new contract applies where the debt is sold to the new creditor and the payment made to the original debtor is made in the form of commodities such as crude palm oil and rubber. The commodities can be traded at any price as long as the price has been agreed by both parties and not necessary to be equal with the amount of debt as it is not money.

Hashim and Muhammad (2011) in their research paper did mention the necessity for the Islamic Financing industry to grow and compete with conventional contract. They proposed in their research paper to facilitate the debt financing by using commodities, as opposed to cash, to settle or pay for the said trading of debt which will involve commodity *hawalah* mechanism. They have opinion that the commodity *hawalah* mechanism will be able to address the concern of *Bay' Al-Dayn*'s issue. Hashim and Muhammad (2011) stated that the commodity *hawalah* is useful during the sale of transfer of debt from the original lender or beneficiary to another party by using commodities. The *hawalah* mentioned on the study has two type which is *hawalah al-dayn*(the transfer of the debt obligation) and *hawalah al-haqq*(the transfer of the rights to the debt). The commodity *hawalah* mechanism could eliminate the issue of *riba*' because cash is not used to settle the trading of the debt; instead, consideration is in the form of a commodity that is not of the same category of wealth as the debt.

The *Hanafi*'s fear that debt purchaser will have to bear great risks due to the supervision and control as per stated by Hashim and Muhammad (2011). The *Hanafi* and *Hambali*'s scholars are among the scholar who did not agree with the old contract financing. Saad and Alhabshi (2019) cited from *Imam Al- Kasani* (2005) in their study that both the *Hanafi* and *Hambali*'s did not agree with *Bay' Al-Dayn* as they hold on principle that delivery is one of the essentials in a Islamic Contract. The debt sale contract to a third party is not deliverable, and the borrower is unable to ensure that the debt will be sold to the third party.

The argument by The *Hanafi* and *Hambali* can be solve by using commodity *hiwalah* mechanism as the commodity transaction is actually control by *Bursa Suq Al Sila* (BSAS) under governance by Bursa Malaysia Islamic Services (BSAS). Mazlan et al (2015) have made an analysis on how does the operation of *Bursa Suq Al Sila*. To avoid *gharar* element in the

transaction and to ensure that the commodity is exist and enough as per order request, BMIS try to mitigate the issue by doing tagging on the commodities and issued a certificate that has complete information related to the commodities that been trade in BSAS. The information stated in the certificate are bidding number, time for that particular commodities been issued in BSAS, valuation date, product code, unit, total, currency, price and type of currency.

2.5 GOVERNANCE AND REGULATORY OF PRODUCT BDBS

On 19th of October 2011, SAC has approved the proposal of sale and purchase of debt by using commodities. The decision is because there is no argument on Syara' in the change or sale and purchase with physical assets or commodities with the same value, higher value or discounted value from the amount of debt based in the mutual agreement between the buyer and the seller.

On 25th November 2014 on the 153rd meeting of SAC of BNM, SAC has recommended BNM to explore the feasibility of implementing BDBS for the transaction of debt-based securities in meeting the shortfalls of inter-bank GIRO transaction settlements in the future.

24th January 2017 on the 173rd meeting with BNM, SAC has approved the proposal of Islamic purchase with recourse scheme by Cagamas. The SAC has approved the proposal with floating rate to facilitate the available financing products based on the floating rate structure in the market.

31st December 2020, through resolutions of the SAC of the Securities Commission Malaysia, another proposal has been made on Redeemable Convertible Unsecured Islamic Debt Securities (RCUIDS). The proposal involved the issue of BDBS where the obligation of the issuer to pay debt which arose due to the issuance of RCUIDS was undertaken by exchanging the *dayn* (RCUIDS) with commodity. The product was treated as payment "in kind" by the issuer to

the RCUIDSholders in this case, based on the issuer's duty under the RCUIDS. As a result, the Sac resolved that BDBS is permissible.

2.6 TYPE OF COMMODITY

Mazlan et al (2015) has made a discussion on the *Bursa Suq Al-Sila's* framework analysis. They explained in their study on what is *Bursa Suq Al-Sila'* System (BSAS), Bursa Malaysia Islamic Services Sdn Bhd (BMIS), their operation and type of commodities allowed in their system.

The author mentioned on their paper based on the research made by Sulaiman (2013) which stated BSAS is created in order to smooth the commodity transaction and also to mitigate any *Shariah* issues that exists in the London Metal Exchange's platform. Previously, the implementation of Tawarruq which needed the commodities transaction is being done through London Metal Exchange and there are few *Shariah* issues during the transaction. This is the introduction of how does BSAS exist. BSAS is supervised and governed by BMIS which is under Bursa Malaysia. On 2009, BSAS had officially run the operation and they are governed based on the *Shariah* standard guideline. The participation that involve within BSAS transaction are Bursa Malaysia, Islamic Banking and commodity supplier. Monitoring and supervision of the platform start on the time commodities being place in the market until the ownership of those commodities has been transferred.

In this study also mention on the commodities that has been offered in the BSAS platform. There are four main commodities that has been trade in the BSAS platform which is crude palm oil, plastic resin, RBD Olien and timber.

They add more that the condition of commodity to be approved by BMIS which is the quality specification must follow as what BMIS requested. Besides that, commodities supplier must ensure that all the commodities offered has been kept in the decided places state by BMIS. Then BMIS will decide on the fee and payment to the supplier. Supplier can appoint agent to act on behalf of them with the condition that they have to put an offer to sell the commodities that has been approved; transaction is being done through the “commodity house” system and issued any related documents if the physical deliveries is needed. Information on the deliveries must contain decided location, evaluation date (if available), statement on the approved commodities and any related information as requested by BMIS.

2.7 OTHER CONTRACT FINANCING

This section will continue with the discussion on the other contract of financing which are *Murabahah* financing, *Tawarruq* financing Bay’ Inah financing and Bay’ Bithaman Ajil financing.

2.7.1 MURABAHAH FINANCING

Wilson (2009) mentioned in his writing on the GCC has invented and perfected the most common Islamic financial products, such as *Murabahah* and *Ijarah*. Although investment *Mudaraba* deposits were first established in Jordan, the idea quickly spread to Kuwait, Bahrain, Qatar, and the United Arab Emirates. In his paper stated that *Murabahah* took off in the 1970s and now accounts for the bulk of Islamic bank financing in the Gulf Cooperation Council. Kuwait

Finance House, which began operations in 1977, and the Bahrain Islamic Bank, which began operations in 1978, both relied on *Murabahah*. *Murabahah*, on the other hand, was widely panned by both early proponents of Islamic finance and a sceptical general public, who saw the mark-ups charged as proxies for interest and the trading transactions as having no financial purpose. Wilson (2009) quoted based on Ahmad (2005) about the similarities with lending became apparent as the merchants' payments were deferred. This may explain why the modern Islamic banks initially attracted only a small share of financial industry, and why rising market share has proven difficult, even in the GCC's most religious states.

Yunus et al (2017) stated in their paper on the definition of *Bai Murabahah*. *Murabahah* is a sale with a markup price. A vendor sells a product by stating the cost of the item as well as a profit margin to the customer. The payment could be made in cash or on a deferred basis. *Murabahah* is a term used in Islamic banking to describe how a bank purchases a product on behalf of a customer. The client will approach the bank with a detailed explanation of his financial requirements. They cited from Tahir (2006) which stated this concept is the most widely used in Islamic Banks for cater the customer needs on the financing and based on the citation from Usmani (2002), 66% of the investment transaction is done worldwide.

2.7.2 TAWARRUQ FINANCING

The Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI) defined *Tawarruq* as the process of purchasing a commodity for a deferred price determined through a *musawamah* (bargaining) transaction or *Murabahah* (markup sale) transaction and selling it to a third party for a spot price in order to obtain cash (AAOIFI, 2010). Ahmad et al (2020) cited from Siddiqi (2007) mention that *Tawarruq* transaction often creates more debt than the cash it transfers to the client and the IFI. They cited from Mohamad and Rahman (2014) which

said that in Islam, traditional *Tawarruq* was acceptable as a means of meeting cash needs. An individual in need of money (*mustawariq*) buys something at a higher price for deferred payments and sells it at a lower price for immediate payment. *Tawarruq* in its classical form was considered appropriate by the OIC *Fiqh* Academy in theory.

Nasrun (2014) mention in his paper *tawarruq* is a hybrid contract which consists of a credit and cash sale, which is similar to the concept of *Inah*. The contract is considered as an alternative instrument to *Bai Inah*. *Tawarruq* is the sale and purchase transactions within the trading contract that have been widely used in the Gulf region. A profit margin is usually included in a credit sale, which is generally done using the *Murabahah* principle. Meanwhile, a *tawarruq* is someone who buys a product with deferred payment and then sells it for cash to someone other than the seller, at a lower price, in order to get cash. In other terms, using a third party to buy on credit and sell for cash.

Ndiaye et al (2017) in the paper wrote about the issue with use of *tawarruq* in Malaysia. The writers mention in the paper that *Tawarruq* is seen as a must by banking professionals. One explanation is that, under its current framework, it offers Islamic Financial Institutions liquidity management solutions (IFIs). Another explanation is the need to provide “*Shari'ah-compliant*” working capital to Muslim customers in the absence of collateral. *Tawarruq* supporters argue that it is particularly useful in circumstances where a bank customer requires cash but does not have any collateral to offer his lender.

2.7.3 BAY' INAH FINANCING

Rosly & Sanusi (1999) define *bay' inah* in their paper as a sale based on the transaction of *Nasi'ah* (delay). The (potential) debtor sells an item to the (potential) creditor in exchange for cash that is payable immediately; the debtor then buys the same object for a higher price at a later date.

The different amount of the money from debtor and the creditor in the future date has create two prices which represent the interest.

Meanwhile Sawari et al (2018) in their writing quoted from ISRA on the definition of *Bay' Inah* is a situation in which an individual sells a product or asset to another for a specific price with payment deferred or differed until a specific date, and then buys it back from him for a cheaper price in cash. From the definition, the writers extract few important elements that involve in *Bay' Inah*. First, buying and selling transaction involves two parties only which are buyer and seller. Then the first buyer will then sell back to the first seller or the other way. The underlying commodities or asset that involved must be owned by the seller and buyer, and that asset must be *Shariah* compliant product. Lastly, the purchase and sale contract must be done in the correct sequence.

Both of the articles mentioned that *Shafies* School allowed this kind of transaction. However, *Shafie* school of thought did not easily allow that kind of transaction. In order to implement the contract, no party is allowed to force any person to repurchase the assets and must be free to sell to anybody. In addition, this contract is involving purchase and sale contract. Thus each steps need to be follow in proper order to avoid a back door to *riba*'.

2.7.4 BAY' BITHAMAN AJIL FINANCING

Rosly et al. (2017) define *Bay' Bithaman Ajil* (BBA) is a sale contracts in which the buyer agree that the payment of the product price shall be deferred on installment basis. The due time of payment can be fixed either with reference to a specific date or specify the period but it cannot be fixed with reference to an uncertain date. The deferred rice can be more than the cash price but it must be decided during the sale arrangement. Once the price has been set, the amount cannot be

reduced in the case of early settlement and cannot be raised in the case of late payment or default. In order to ensure the buyer pay the installment accordingly, one set of wa'ad letter which promise letter will be issued to be sign by the buyer. And there is situation of default payments the money charge due to the default will be donated to the charity.

Meera et al (2005) stated that BBA is sale contracts which give benefit to the buyer through the installment type of payment but the deferred price of the sale object have additional profit. In the writing has mentioned that this type of contract is widely used in Malaysia, Brunei, Indonesia and few other countries, but it has been a controversial subject to the most of the Middle East scholars due to its interest based issues. However, the writer has quoted from Council of Islamic Ideology (Pakistan) on the conditional implementation. The council has allowed on the implementation of the contract but to eliminate the interest charge to the customer in order to avoid opening a back door of dealing with *riba*'.

2.8 SUMMARY

In summary, few opinions from scholars did reject the implementation of *Bay' Al-Dayn*. We can see based on the previous research, there are quite a number of arguments been argued in the Middle East for *Bay' Al-Dayn* contract due to the process that can lead to *riba*' and *gharar*. Besides, the other mentioned that sales of debt did not fully fill what should sale and purchase process should have. But from previous review, SAC has allowed the implementation of the new contract in order to help the development of the industry as well. Since Islamic financing is a small industry in Malaysia, hence the prohibition of sale of debt will immediately reduce the Islamic Market in Malaysia. Proposal of BDBS did help much in factoring financing in Islamic Market and at the same time has widened the market as this contract is allowed worldwide including middle east countries compare to the previous Islamic contract. However, due to the limited materials on

BDBS in Malaysia searching scope, the literature review for the BDBS process is having limited explanations.



CHAPTER 3

RESEARCH METHODOLOGY

3.0 INTRODUCTION

In this Chapter 3, method that been used to achieve the objective of the thesis study will be discussed in details in this chapter. The research is to find out what are the issues and challenges of practicing *Bay' al-Dayn Bi Al-Sila'* faced by practitioner. The other objectives of the research is to explore the issues and challenges in view of scholars and client's perspective and to find out the framework of *Bay' al-Dayn Bi Al-Sila'* that has been implemented in Malaysia. Therefore, this chapter will be divided into six (6) sections. The first section will elaborate on the conceptual framework of Bay' Al-Dayn which is the previous contract practice by the industrial practitioner. The second section is about research design. Next will be explanation on data collection method and questionnaire design. After that, data analysis technique will be discussed deeper and the conclusion is made after the five sections have been elaborate deliberately.

3.1 CONCEPTUAL FRAMEWORK

The conceptual framework defines as final result of combining a variety of similar principles to describe or forecast a specific event, or to provide a more comprehensive interpretation of a phenomenon of interest. The process of conceptual framework is involving an individual that are collecting pieces of information in order to telling people a bigger picture of possible relationship. The conceptual framework guides an analysis in this study to explore the issues and challenges faced by the practitioner, scholars, financiers and clients which later will

develop implement that suit and ease all the parties involves. This framework describes what is the relationship between the variables identified in the study and will outlines the input, process and output of the whole study.

The figure below showed how does the contract has been executed previously. Throughout the previous contract, the enhancement has been done and been discussed in the study.

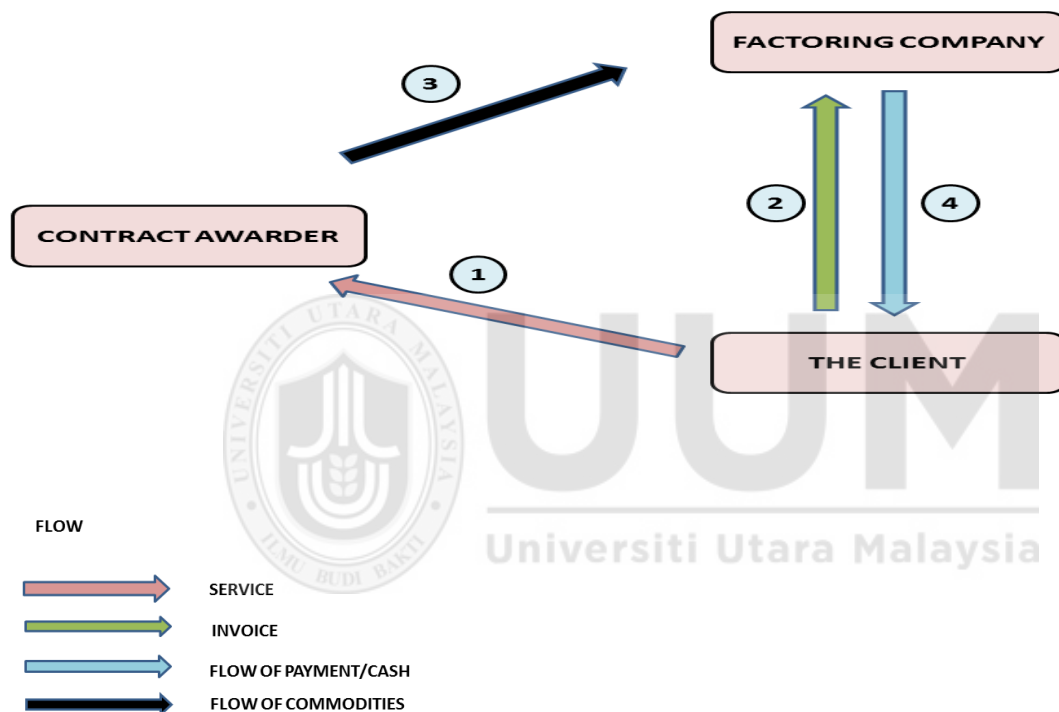


Figure 3.1
Bay' Al-Dayn Process Flow

In *Bay' Al-Dayn* concept, once the Contract Awarder award a project to The Client and The Client would like to sell the receivables to the Factoring Company due to the tight cash flow, The Client need to enter into factoring agreement which using the concept of *Bay' Al-Dayn*. The processes start as below:

- 1) The Client need to provide the service as according to the requirement stated in the contract award by the Contract Awarder.
- 2) Once job is done, The Client needs to issue the invoice for the work done in three copies. Each party will receive the invoice. When the Factoring Company received the invoice, they will cross check with the Contract Awarder regarding job done by The Client in order to ensure that the work has been done. This is to ensure that the payment will be directly from Contract Awarder to the Factoring Company. Once confirmed, the Factoring Company will issue payment to The Client at 80% of total invoice.
- 3) After certain period of time, the Contract Awarder will pay the receivables that they owed to The Client. Since The Client has sold the receivable to the Factoring Company, hence, the payment will be directly transferred to the Factoring Company.
- 4) The Factoring Company will make the refund from balance of payment that The Client should receive which is 20%. After calculated the profit and service charge, the Factoring Company will give back whatever balance to The Client.

3.2 RESEARCH DESIGN

In this study, qualitative survey through phenomenological method has been executed to obtain information by using guided questionnaire with open-ended structure. According to Gronewald (2004) quoted from Kvale (1996) the method is to have an interchange of views between two persons conversing about a theme of a mutual interest. The method also is to understand the world from the informants' point of view throughout their experience. The appropriate strategies and appropriate steps are developed to create a diligent study. Since the informants coming from the various type of background, thorough steps were developed to ensure

the ultimate objective of the study is achieved and the informants did not feel any offensive during the gathering information session.

The initiation of research is started with identify the research problem, developing the research question and find out research objectives for the study. Considering BDBS contract is new to the researcher, a sound understanding on the implementation and view from various aspects was deemed necessary. Once the main objective has been set out, research design and planning are crucial to ensure that the research could achieve the objective. A qualitative method is choosing by interviewing the practitioner, the experts and the clients to get to know how the contract impacts on their business.

The aim of the literature review was to help the researcher identify the study's broad context. Furthermore, the researcher was able to discern what had been reported and accomplished in the field of analysis and what could be further explored and accomplished by reviewing and synthesizing the current literature in order to get to know what the implementation *Bay' Al-Dayn* is and BDBS contract. The literature review also helps in reviewing other new contract developed in the Islamic financing and banking industry. After that, conceptual framework of *Bay' Al-Dayn* is mention in order to know the previous contracts that the industry used to implement.

In order to get the information related on the BDBS contract, in-depth interview has been done to get the necessary data. There is few reason of doing in-depth interview. One of the reasons is to gain extensive information on the subject matter. Besides that, this type of method provides an immediate and precise response to the phenomenon for analysis. Hesse-Biber and Leavy (2011) said that this method is beneficial when the researcher has a particular phenomenon to focus on and gain information from the individual(s). Finally, the in-depth interview approach allows the researcher to collect a significant amount of data from the interview session. The information

obtained might not available in any documentation, book, or audio-visual material using this tool. To get right answer for the questions provided through the open-ended questions in this research followed qualitative research approach. This kind of study can use semi structured, unstructured, interviews and questionnaire (Ghauri and Gronhaug, 2005).

Informants for the interview are picked based on their experts related to the contracts in order to achieve the main objective of the study and to find out what is their opinion on the implementation of the contract. All informants involve are practitioner, scholars, financiers and clients. Those informants are involved in the implementation of the BDBS contract either directly or indirectly. The questionnaire is developed and has been verified through running the pilot test.

The research design is important to examine the input of the informant by responding to the questionnaire. The information gather throughout the interview session and the result is analyzed to generate the outcomes as well as the suitable framework. The summary of the research has been illustrated in Figure 3.1.

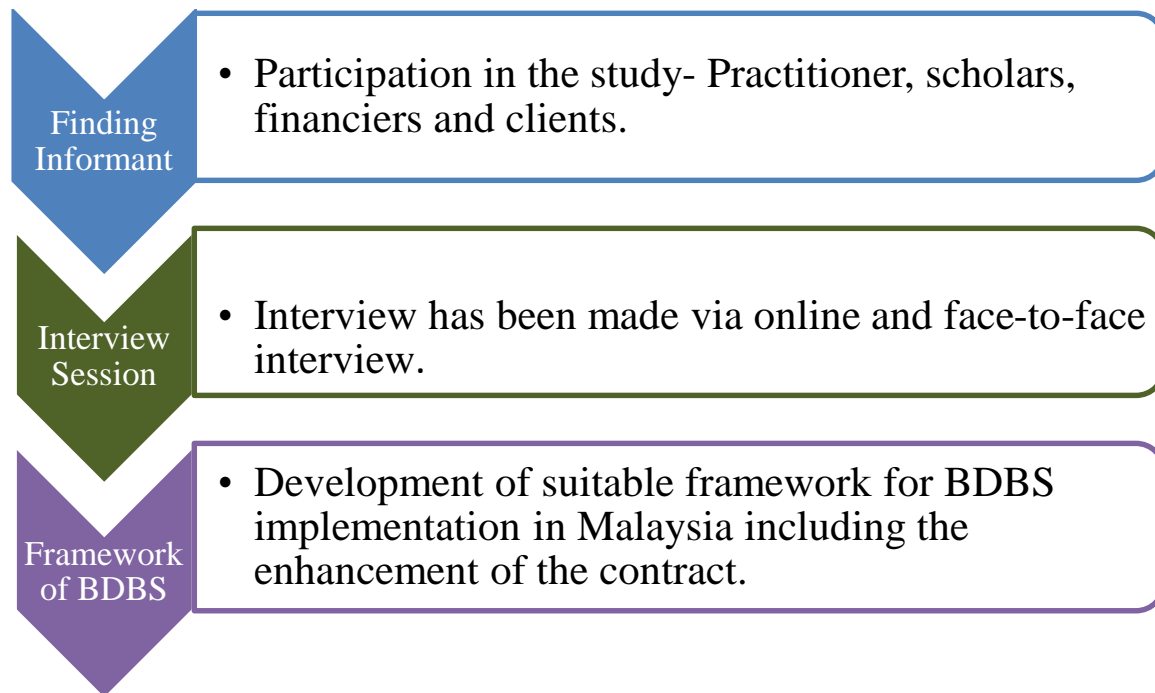


Figure 3.2
Research flow of process

3.3 DATA COLLECTION METHOD

Data collection method in this study is using informant to get the information. Since the contract is not something that well developed in Malaysia, hence, the opinion needs to be gathered from those who instruct and implement this contract. Besides, opinion from the scholars also need to be considered to get an opinion of how does the gap between industrial and academic sectors can be reduce on this Islamic contract.

The collection of data has been made in two ways which is through face-to-face interview and online conversation. Due to the Movement Control Order that has been implemented by Malaysia's government starting middle of March 2020, face-to-face interview is quite difficult to execute. Hence, suggestions are made to the all informant to do either video call or by using

WhatsApp's conversation as according to their preferences as long as the objective could be achieved.

The study is focusing on the Islamic Factoring Financing industry. The informants are picked based on their experience related to the BDBS's contract. Three categories of informants have been established which is practitioner, expert and clients. Practitioners consist of factoring financing company who run Islamic factoring financing and a financial institution who suggest on that new contract. Two companies are choose based on the suggestion of the consultant who did their legal documentation of the change of contract from *Bay' Al-Dayn* to BDBS. Meanwhile the financial institution that pick is the one who instruct their client to change based on the advice from their *Shariah* board.

The experts are chosen based on their expert in their own field. The first expert is coming from the industry itself meanwhile the other one is from the academic field. The reason of choosing both person is to get an opinion between the implement that has faced by the industry and the point of view from the academician. The study would like to see how does these two a different industry but dependent to each other through this type of interview. Both of the experts could share their own opinion on how the implement can complete the implement.

The next informants' categories are the clients. Three clients are choose based on their experienced with the factoring financing company. The clients are picked randomly based on the data from the factoring company. Two clients are doing cleaning services and the other one is doing security services. The reason of pick clients as the informants are because, the study would like to know how much the client know what type of contracts that they are entered and are they aware on the new process and procedure that has been implemented. By interviewing them, the

study can know how much the factoring company educates the clients on the new contracts that they implemented.

3.4 QUESTIONNAIRE DESIGN

The questionnaire has two separated section which is section A and B. Section A is about the background of the informant. The question is more on the education level of the informant, the background of their workplace and also the service period on their workplace.

Meanwhile in Section B is on the technical question to get the information of the contract. The entire question in the Section B is more on the implementation of the contract, challenge and issues during the implementation, advantage and effect of the implementation of the BDBS's contract and their opinion on the implementation. All this question is to achieve the research objective and if possible, to come out with the best implement of BDBS's contract.

Three objectives have been created in the early chapter of this study. Based on the research questions and research objective that has been set, a set of question has been develop in order to answer all the question. The set of questionnaires has been split into three set of question. One set for the practitioner, one set for the experts and the last set for the clients.

For set of questions for practitioners, the questions have been set into 3 sections. First section is on the background of the informant, second section details background of the institution the informants work for and the last section is related on the contract BDBS. In the last section, the question is more on the implementation and opinion by them when practicing the contract. The set of question for industrial practitioner can be referred in Appendix A for structured question and Appendix B for probe questions. Below are the details on the question to the practitioner:

1. Explain on the implementation of the BDBS's contract in the company.
2. Explain on the advantages and impact of the implementation of the contracts towards the company.
3. Explain on the issue and challenge of the implement towards your company.
4. Give opinion and suggestion related to the implementation and implement of the contract in the financial sector in Malaysia.

On the practitioner point of view, the study would like to know how the implementation in the company. Researcher also would like to explore on the advantages, impact, issue and challenge that has been faced by the practitioner and how does the contract affect the business operation. The view of the practitioner might be seen through their cost, staff training and also the system implementation as these three things is a crucial part when a company is having change on the system.

For set of questions for experts, the set of question has been divided into 2 sections. First section is on the background of the company and the next section is more on the opinion of the implement within the industry and the opinion on the Islamic financing and banking syllabus in the academic sectors. The set of question for experts can be referred in Appendix A for structured question and Appendix B for probe questions Below are the details on the question to the experts:

1. Opinion on the current status of the implementation of the BDBS contract in the financial company in Malaysia.
2. Explain on the issue and challenge of the implement.
3. Opinion on the BDBS Contract in the Islamic Financial and Banking syllabus in Malaysia.
4. Opinion on the need of BDBS in the Malaysia's financial sector in future.

This set of question is to explore what does the opinion on the experts on the implementation of this contract and the syllabus in the Islamic financial and banking. The study would like to have the opinion from the scholar who involve directly with the academic sector and the experts who are in the industry itself.

Last set of question is set for exploring on the awareness of the client. This set has been divided into three section. First section is on the background of the informant, second section details background of the institution the informants work for and the last section is related on the contract BDBS. The set of question for clients can be referred in Apendix A for structured question and Appendix B for probe questions. Below is the details on the question to the clients:

1. Explain on the implementation of the BDBS's contract in the company.
2. Explain on the advantages and impact of the implementation of the contracts towards the company.
3. Explain on the issue and challenge of the implement towards your company.
4. Give opinion and suggestion related to the implementation and implement of the contract in the company.

This part is to see the awareness level of the client of the financial company. Are the clients aware on type of contract that they enter into and did them aware what are the process and procedure involve during the financing period that they have with that factoring company.

3.5 DATA ANALYSIS TECHNIQUE

This study is using qualitative method of study to achieve the objective. In order to obtain primary data from the informants, the phenomenal logical approach was used. Later, the interviews

were transcribed into written form. The knowledge was then evaluated using material and logical analysis techniques based on the themes set in the earlier stage to suit with objective outlined.

All conversation and interview session that has been done is recorded based on the informants' permission. The questions are established based on the theme set in order to answer all the questions based on the objective of the study. Different sets of informants will be receiving different set of question.

For industrial practitioners' perspective, three (3) themes have been developed and that three themes consist of 1) implementation of BDBS, 2) advantage or impact they faced and lastly issues and challenges that they faced during the transition period. These sets of questions are to assist in viewing in detail on the practitioners' point of view.

For experts' perspective, four (4) themes have been established. Those four themes are 1) opinion on implementing BDBS, 2) opinion on the *Islamic* financing syllabus in academic sector, 3) advantages or impact and 4) issues and challenges. This themes are build to see what are experts opinion on the implementation of the contract.

Lastly, based on the clients' perspective, three (3) themes have been developed and that three themes consist of 1) implementation of BDBS, 2) advantage or impact they faced and lastly issues and challenges that they faced during the transition period. The themes are to give more information to the study on the contract implementing on the clients.

3.6 SUMMARY

In short, this chapter is describing on the method to gain the information to achieve the objection of the research. The framework helps to view the whole research as a whole in short and the research design is to identify which method is suitable for this kind of research. Since this

contract is something new in the industry, hence the literature review in Chapter 2 could not be much help to find out the real implementation of the contract. The interview session from those who implement the execution of the contract in the industry is showing the real implementation and how does it impact the entity that implemented it.



CHAPTER 4

RESEARCH FINDING

4.0 INTRODUCTION

Further discussion and finding will be elaborated upon this Chapter 4 are all based on interview done towards the practitioners; scholars, financiers, experts and also clients which involve with BDBS contract directly. This chapter also will discuss on the framework of the implementation of the contract in the industry. The remaining sections in this chapter will be divided into six (6) sections. The following section is the background of informants of this study and brief about their institutions. The next section is the finding to answer the objective number 1 which is related to industrial practitioners' perspective followed by experts' perspective in the following section. The discussion will be continued to the clients' perspective on as based on the information which have been analysed in the previous section. The final section will be the conclusion of this chapter.

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4.1 BACKGROUND OF INFORMANTS AND THEIR INSTITUTIONS

This study manages to interview nine informants from eight institutions which divided into three categories which are industrial practitioner, expert and client as outlined in the research methodology chapter. They are four industrial practitioners from three different institutions, two experts from two different institutions and three clients from three different companies which have involved in this study. The interview sessions have been conducted face to face and also virtual platform like Zoom meeting, video call and WhatsApp in order to get the information from selected informants due to the movement control order that has been announced starting March 2020 and also to reduce the exposure of the covid-19 virus. Furthermore, the sessions also have been recorded as permitted by informants. The summary of the informants' background and their institutions has been tabulated in Table 4.1.

Table 4.1

Institution and description of informants based on category

I. Informant of Industrial Practitioner Category

Informant	Institution	Description
Practitioner 1 (P1)	Institution 1 (I1)	Executive Director
Practitioner 2 (P2)		CEO
Practitioner 3 (P3)	Institution 2 (I2)	General Manager
Practitioner 4 (P4)	Institution 3 (I3)	<i>Shariah</i> Review Executive

II. Informant of Expert Category

Informant	Theme	Description
Expert 1 (E1)	Institution 4 (I4)	Director & Principal Consultant
Expert 2 (E2)	Institution 5 (I5)	Syariah advisor & scholars

III. Informant of Client Category

Informant	Theme	Description
Client 1 (C1)	Institution 6 (I6)	CEO of cleaning services business Company A
Client 2 (C2)	Institution 7 (I7)	CEO of cleaning services business Company B
Client 3 (C3)	Institution 8 (I8)	CEO of security services business Company C

4.1.1 Informant industrial practitioners category

Industrial Practitioners 1(P1) and 2 (P2) are coming from Institution 1 (P1). Both informants have been served the company in average of 8 years. P1 is having educational background from SPM but has started her career in conventional banking industry at the age of 30. After she resigned from the bank, she then joins I1 until now as Executive Director of the company. Without a proper background in Islamic finance and banking, she succeeds in directing an Islamic financing product and manages the company with the assistance of the relevance consultant to advice on the Islamic contract implementation especially in BDBS.

Meanwhile for P2, he is a Chief Executive Officer for the Institution 1. He has wide experience in accounting field and has served Housing Appliances Company, Koperasi FELCRA Holding Berhad, Island and Peninsular Berhad and open his own sport rim's factory before joining

I1 as a finance officer. His experience with I1 is about 14 years in finance department and has been promoted as Chief Executive Officer in 2019. He also does not have any background on Islamic finance and banking product and he follow what has been advice by consultant to ensure the company is following the right track in implementing and practicing Islamic finance and banking contract.

I1 started from 1993 and has actively providing Islamic factoring facilities since 2006. In 2004, the company had change to the new name which is the current name that they are using at the moment. With the paid-up capital of RM10,000,000, they are actively providing post financing services to the companies which providing services or goods to government and its agencies, Government Linked Companies, reputable Public Listed companies and also public universities in Malaysia. As one of Bumiputera financial company that helps most of Bumiputera's companies and funded by fully fledged Islamic cooperative bank, the contract used in the Islamic factoring is crucial in order to comply with *Shariah* requirement and also to fulfill requirement from the funder as well. Due to the requirement by their financier, the company has to comply the requirement in order to sustain the fund that they have received.

For the next industrial practitioner, the study had selected the general manager of the Institution 2. Industrial practitioner 3 (P3) of the Institution 2 (I2) has been in the banking and finance industry for about more than 20 years and has started exploring further on Islamic banking and finance since he was started working in the I2. He also starts with the conventional banking experience and initiated the Islamic contract with the assistant of the relevant consultant. I2 was established in 2007 and has started invoice financing business in 2014 by using *Bay' Al-Dayn* Contract and in 2018, they have changed into BDBS. The interview session with P3 has shown how much committed the company to implement and comply towards *Shariah* requirement.

In order to get exact picture on the reason why the contract has to be implemented, explanations from the instructor need to be gain. Industrial practitioner 4 (P4) from Institution 3 (I3) which holds position as *Shariah* Review Executive has been chose to explain further on the reason of implementation of the contract to their customer. The informant was graduated from International Islamic University in Master of Law in Islamic Banking and Finance and has provided his service in I3 starting from year 2012. He is one of the staff who assisting the client on converting into the new contracts and review the implementation of the contract fulfill up to the funder requirement or not. The instruction implementation of the contract to the factoring services is due to the new enhancement of the contract that has been approved by *Shariah* Advisor Council by the Central Bank of Malaysia. I3 is one of the biggest Islamic Cooperative banks in Malaysia with total asset of RM109.62 billion as at end of December 2019 and has transformed from conventional bank to Islamic banking system in 2002².

4.1.2 Informant of Experts Category

Further details on the implementation and the enhancement of the contract are found out through the interview session with experts. In this study, we use one of the licensed of *Shariah* advisors under the Securities Commission of Malaysia. From the interview session with (I1), the study found that the appointment of this advisor was under the advice by the bank itself. Hence, all the process from the review of previous contract into adapting to the new contract and until the execution of the contract is assisted by this advisor under the supervision by the bank's *Shariah* review department.

² <https://www.bankrakyat.com.my/c/about/corporate/overview-1>

The advisor of a company that has been interviewed for this study is Institution 4 (I4) where this institution has been established in October 2015. As the representative of the company, we choose one of their director which also the Principal Consultant for the company. The Expert 1 (E1) has wide experience related to Islamic banking and finance, capital market in Malaysia and also Middle East countries. He is a chartered professional in Islamic Finance and graduated in Bachelor of Laws (Honors) and Bachelor of Laws (*Shariah*) (Honors) from International Islamic University Malaysia. He is also a master graduated from INCEIF Malaysia in Islamic Finance. He has served a major local Islamic Bank assigned to the *Shariah* Department, whereby he oversees *Shariah* compliance aspect of the banking products, offerings, procedures and system.

I4 is providing the services to the customers around the world through the presence in the Malaysia, Sultanate of Oman, the Middle East and North Africa. The company registered under Securities Commission of Malaysia that allow them to advice any matters related to *Sukuk* Islamic unit trust, investment funds, real estate investment trust(i-Reit), exchange-traded funds, crowdfunding and peer-to-peer (P2P) issuances. They also provide consultancy, research, training and professional services in the area of Islamic banking, capital market, Islamic wealth management, takaful and halal.

Beside the expert in the industry, the study also takes into consideration the opinion from the view of scholar which is expert in the Islamic finance and banking field. In this study, one of the experts in Institution 5 (I5) has been selected. The Expert 2 (E2) has wide experience as the member of both *Shariah* Advisory Council of Central Bank of Malaysia and Securities Commission of Malaysia which is major regulator of Islamic finance and banking industry. He also has been published articles related to *Bay' Al-Dayn* contract and many more journal related to the Islamic finance and banking especially from *Syariah* perspective. The view from the scholar

is important in this study in order to find out what is the perception of an academician on BDBS and how does the Islamic financial and banking industry being parallel with the taught in the academic line.

4.1.3 Informant of Clients Category

Last but not least, the study would like to also seek the view and opinion from the clients of the practitioner of the contract. This is to oversee how much awareness that clients have on the Islamic contract and does the implementation impacted the business. Three informants from the different business services have been pick out to do the interview session. These informants are indirectly connected with the contract. However, due to their financing implementation requirement, they need to sign the contract to smoothen their financing process.

The informants from client's category involve in cleaning services and security services business and named as Client 1(C1) from Institution 6 (I6), Client 2 (C2) from Institution 7 (I7), and Client 3 (C3) from Institution 8 (I8). All of them have been awarded with the central contract by government agencies. The duration of the contract is maximum 36 months depending on the services and the term of payment from the contract awarder usually taking two to three months to be received after works settled. Hence, they choose invoice financing due to the financial constraint that they have faced and to avoid any cash flow problem during completing their business. All of them started implement *Bay' Al-Dayn* contract in the first phase and has changed the contract to *Bay' Al-Dayn* to BDBS as informed by their financier.



4.2 INDUSTRIAL PRACTITIONERS' PERSPECTIVE

The discussion in this section is on the practitioner's view on the issues and challenges faced by them in implementing the *Bai*

Ad Dyn Bi Al Sila contract. The analysis based on the theme established has been summarized in Table 4.2.

Table 4.2

The practitioner's views on implementation of the BDBS

Theme	PRACTITIONER 1 & 2 (P1& P2)	PRACTITIONER 3 (P3)	PRACTITIONER 4 (P4)
Implementation of the BDBS (T1)	<ul style="list-style-type: none"> Client sign into BDBS Contract including related document on commodity transaction. Client submit the invoice to factor the claim. Factoring company process the invoice. Any sell and purchase of commodity is done as there is appointment letter sign by the client to instruct the factoring to act on behalf of the client. 	<ul style="list-style-type: none"> Client sign into BDBS Contract including related document on commodity transaction. Client submit the invoice to factor the claim. Factoring company process the invoice. Any sell and purchase of commodity is done as there is appointment letter sign by the client to instruct the factoring to act on behalf of the client. 	<ul style="list-style-type: none"> Not applicable on the Institution 3. They only instruct their client on changing of the documentation in order to follow <i>Shariah</i> guideline set by the <i>Shariah</i> board. The client needs to follow in order to maintain the financing services provided.
Advantages or Impact (T2)	<ul style="list-style-type: none"> More <i>Shariah</i> compliance 	<ul style="list-style-type: none"> More <i>Shariah</i> compliance 	<ul style="list-style-type: none"> More <i>Shariah</i> compliance In legal view, BDBS is a bit fragile. Hence, new contract is being proposed for the enhancement of the BDBS.
Issues and Challenges (T3)	<ul style="list-style-type: none"> More documentation Staff Training 	<ul style="list-style-type: none"> More documentation Staff Training 	<ul style="list-style-type: none"> More documentation Staff training Cooperation from the clients. Cost for the client to bear

Based on the Table 4.2, the first theme been discussed in this study is the implementation of BDBS in industrial practitioners' perspective. Starting with consultation with the expert consultant in the industry related to the contracton early of 2019, P1 and P2 manage to run the new contract on end of year 2019. Other than meeting the consultant, they also need to have a meet up session and also training session with Bursa Suq Al Sila(BSAS) for the sale and trading of commodity. Since BDBS contract required the commodity transaction, hence, the implementation of the new system is alsoneeded. Training from BSAS is provided and they taught on how to make thesale and purchase of the commodity to counter any error such as the delivery of the real commoditiesto the premise, mistake on the amount of the commodity on sale and purchase transaction and many more. Once the training to the staffs is done and the documentation of the new contract complete,the transition period from *Bay' Al-Dayn* to BDBS takes place.

Compare to *Bay' Al-Dayn*, BDBS need more documentation as proof of transaction and to validate the sale and purchase of commodity. According to the P1of Institution 1, the additional documents such *Waad* letter (Agency letter), purchase undertaking and confirmation of transaction for every disbursement to the client is important as each of the document represent the *Shariah* compliance for that transaction. *Waad* letter is functioning as appointment of the factoring company from clients to be an agent on behalfof the client to do sale and purchase transaction of the commodity. Purchase undertaking is used to show how much commodities is been purchase according to the amount that agreed to be disburse to the client. Meanwhile the confirmation of transaction is the certificate of buying and selling commodities which issued after sale and purchase of the commodities in the system that has been set up by BSAS. Other document such as invoice, purchase order and report on the project

progress also need to be attached together with the three additional documents as per mention previously. All the documentation needs to be complete and check thoroughly before payment to the client is made. For the standard documentation such as letter of offer, factoring and services agreement, letter of guarantee, statutory declaration and also client signature sample will be executed same as the execution of *Bay' Al-Dayn* which on the day first the client register with the factoring company. The following excerpt proved the above findings:

“The implementation of BDBS is not much change from the previous contract. The additional documentation is minimal and the new process also did not trouble the company...we would like to have a better implementation in the shariah implement to avoid being question in the after life for not implement a better way because as a leader, we are responsible on the management of the company...(P1,I1)”

For I2, P3 mention that I2 is experiencing the same implementation with I1. However, they are converting towards new contracts one year earlier than I1 which is on 2018. Using the same consultant with I1, the execution on the additional documents is the same as what Institution 1 has been through. They also are being consulted and assisted by the same consultant and BSAS staff for the sale and purchase transaction. The main intention of the implementation of the BDBS is because they found another contract that more *Shariah* compliance which makes them feels that they should converting into new contract. Previously, they received *Shariah* certification from Islamic Banking & Finance Institute Malaysia (IBFIM). The above finding is supported by the following excerpt:

“....What we implement is about the same as what previous company is done as we are using the same consultant...The decision to change into new contract is due to the requirement to oblige what shariah has instruct and to bring the company to the better implement in shariah...” (P3,I2)

The implementation of BDBS is different between I1 and I2 with I3 as I3 is a full-fledged Islamic banking. Hence they have put some requirement on their own client. For those clients

who received fund from them, the client needs to run a 'Halal' business or services and this including the contract that the clients use on running the services. According to P4, their decision on instructing the client to change on the new contract is based on the decision from the bank's *Shariah* board. Their concern is that the clients æfulfilling the *Shariah* requirement when become their customers. They will be instructing the client to change the contract into the new contract and will give some period for the clients to execution processes. At the same time, the bank *Shariah* team will make a visit to the client's place and give proper training and explanation reasoning of changing the new contracts. After the client received the certificate confirming the change of contract, then they will request a copy of certificate and will make the review on the documentation for new contract's implementation. The reason of why bank instruct the changes is because they as they found out the better contract and the bank has been advice by their *Shariah* advisory board to instruct the clients to change. The following excerpt explains the above findings:

“....before the bank decides on the implementation of the new contract, they need to get the approval from the Shariah advisor board of the bank. Once approve, the proposal need to be submit to Bank Negara for the next level of approval by Shariah Advisory Council....once approved we will let all the related customer know and made the changes within the specific time we provide and inspection will be done to check on the implementation...” (P4,I3)

Referring to the Table 4.2 on the second column of the theme, the study is based on the advantages and impact in industrial practitioners' perspective on implementing the product. P1 has shared her opinion on the advantages and also the impact of the implementation the new contract. She proudly said that now the company has been enhanced in view of *Shariah* as the company already adapted into new contract. Even if in the future there is another contract that could enhance the contract and makes the process and procedure easier, the company will adapt it as according to the *Shariah* requirement and advice. Meanwhile in view

of P3, he mentions that their advantages on implementing new contract are BDBS is accepted worldwide due to the commodities transaction that the contract used. He was aware that by using *Bay' Al-Dayn*, there are few speculation and arguments on the implementation and that makes the company would like to change into the new contract. Even though new contract involves additional documentation and also additional procedure; which is sale and purchase the commodities, but he said that changes does not impact the operation of the company.

P1 also share that it takes some time to be familiar with the new contract as the new contract need to have more documents and more transaction relating to the commodities, but things get better after the staff has been used to the system she said. P3 has the same understanding and with P1 as there is assistant from BSAS's staff and also consultants

P2 mention that other impact during the implementation is not affecting much the company. For example, the time frame payment made to the client is still within the range as previous contract. The additional document and the sale and purchase of commodities do not affect that transaction and client still get their money within the stipulated time. Looking at the company view on the profit, the sale and purchase transaction did not affect the company profit at all as the charge from BSAS is on the minimal rate which for RM 1,000,000 transaction will be charge RM15 according to P2. Looking at the view of profit in I2, P3 said that since the charge of the commodity transaction is minimal, these never be a burden to them or their client. The above finding is supported by the following excerpt:

"...The additional documentation which is agency letter and purchase undertaking and the additional process of sell and buy back the commodity makes the whole process is shariah compliance. That is what we understand based on the explanation by our shariah advisor and as people who does not have Islamic Finance background, we believe that was the best suggestion that we should to improve as a factoring company that use Islamic contract...."(P1,I1)

Since Islamic contract keep evolving towards a better implementation, P3 mentioned that his institution is now using the new contract name Tawaruq and *Hawalah* contract. What makes this new contract is an enhancement from BDBS is there is additional document which is *Hawalah* letter that is transfer of assignment letter and the rest of process and procedure of both contract is the same. The company would be change toward the better contract if there is any enhancement of the *Shariah* requirement in the contract. As for them, the compliance of the *Shariah* requirement is important as they would like their effort is worth and always keep track in the correct way of how other Islamic finance and banking services survives in the industry.. The following excerpt explains the above findings:

“..We do not have any expertise in Islamic contract. Thus, when the consultant introduce on the new enhancement of the contract, we proceed as per suggestion..”(P3,I2)

As the person who involve in the *Shariah* review unit, P4 believe there will always advantage and impact on the implementation of the new contract. The advantage on the implementation of the new contract is they will always know that their client will be on the *Shariah* track. Even though that is the requirement set by their *Shariah* team, but at the least they can do to educate their client on the Islamic finance and banking contract to go for the ultimate goals of what *Shariah* would be.

P4 also shared on their finding on the new contract to replace BDBS and this new contract has been discuss with the consultant get the approval by the bank's *Shariah* advisory board.

Based on the table 4.2, P4 stated that BDBS is a fragile contract due to the ownership transfer. The new contract which is *Tawarruq* and *Hawalah* is established and has almost the same *modus operandi* with BDBS except there is additional *Hawalah* letter and there should be two different persons signing on behalf of the factoring company for the agency letter; one as the agent to sell and the other one as the agent to purchase. Compare with BDBS, the agency will be signing by one of the representatives of factoring company to be an agent of sell and purchase. On the function of *Hawalah* letter, it represents the transfer of the assignment between the sellers of the debt to the purchaser of the debt. *Tawaruq* is to create the money and *hawalah* is to get the receivables. According to Saad and Alhabshi (2019), *hawalah* is define as an instrument to transfer of debt liability to another. Both cited in their writing that the Hanbali and their counterparts from Hanafi Madhab have different opinion on the use of *hawalah* which allow the usage of *hawalah* and take *hawalah* as a dependent contract. In the writing also mention that these scholars allow *hawalah* to be apply to cater special need. This is to suit the documentation between *Shariah* and legal to avoid any future consequence. By complying legal requirement through complete document, this will at least secure the transaction. As an example, given by him, in *Shariah* aspect, if there is no document, the transaction is not valid as the document is the proof for the transaction. The above finding can be proved by the following excerpt:

“Tawaruq contract is an alternative to the BDBS Contract. Tawaruq is to create the cash. We are entitling to take the receivables is through hawalah. Hence, hawalah is used together with Tawaruq contract to get the transfer of receivables. BDBS is not meeting the features of the products. Literally, the concept that BDBS hold is purchase of the receivables and there is no transfer of the receivable...”(P4,T2)

For issues and challenging during the implementation of the new contract stated as table 4.2 as the third theme for this section, P1 and P3 stated that they are not having much issue during the implementation as they always remind the staff to adapt with the new changes and the changes made is not as huge as changing the whole system. As to the client, the contract between the

existing client need to be renewed and the existing client is inform earlier regarding the change of the contract through the renewal letter. Meanwhile for new client, staff does not having any problem to let the new client know about the new contract as there is client who did not concern at all about what contract that they enter as long as their financing application is approved and the charge on commodities transaction is not bear by them.

P2 also share his opinion on the new contract. They are glad as there is an enhancement of the previous contract and if in future there is any enhancement, they will be changing the contract into the new one. They are aware that there are not many factoring houses that convert into new contract or still practicing the conventional contract but for them as long as they are following *Shariah* guidance as per mention in *Quran*, they feel they are in a good track in running the business. The above finding is supported by the following excerpt:

“The transition period to the new contract has involved many things that the company needs to consider. Even though the cost of commodities related transaction did not cost much but the cost of hiring the consultant is expensive. We as the management team also need to consider staff training to ensure the staff understand what kind of documentation involve to avoid misunderstanding with the clients in the future....”(P2,I1)

“The issues and challenges are something common for any company who decide on using new contract. However, this matter can be handled nicely when BSAS staffs and the consultant help them to adjust with contract implementation...”(P3,I2)

Meanwhile P4 did mention that they will always keep updating and discussing on the contract with the consultant in order to ensure any contract implementation is follow as what *Shariah* need. There will always have the evolving of the new contract in the Islamic Finance and Banking as there in no definite ways of implementation of the contract. If there are any loopholes on the current agreement, they will discuss on the enhancement and the execution. Their jobs as

the *Shariah* review department needs them to always keep update on this kind of thing to avoid any misunderstand in implementation of the contract.

. However, the consequences that they need to bear are to explain to the client what the need of the change the contract. For each evolving process of the contract, they have to let the clients know and change even though it takes a lot of cost to hire the consultant, to go for the training as not all the clients' staff familiar with the Islamic finance's documentation and also to explain the client why there is need for changes. The transition period is not an easy process for the client. They understand any hardship that the clients have to face, but from the bank side, they need to ensure that all the clients fulfill the *Shariah* requirement. He admits that as an executive, he used to be scolded by the client because of this kind of changing. Since, there is no exact rules apply in the financing and banking sector specific stated in the *Shariah* aspect. Hence, what can he do is updating what is the best contract can be used, review it and advice client to implement it. The above finding can be proved by the following excerpt:

“...things in not simple when it comes to legal. First on documentation, second the system and last things is the staff. The staff needs to be train but that is the challenge. In order to go heaven, the steps are not easy...We have to take the steps. Allah see our efforts not our results in fight on His way. And on reality not only Islamic financing and banking, but conventional banking also faced the same things which is changes...”(P3,I3)

In the nutshell, as the organization that implement new concept, they have to be more thorough in implementing new type of contract. Many aspects need to be considering when an organization chooses to improve their system. For an example, cost of implementation, training of staff, educate clients and implement new software just to adapt with the changes. Other than that, all the informants from all the institution agreed that BDBS is an enhancement of product and since they are practicing Islamic financing product, *Shariah* compliance is crucial to keep their company and their own product remain in the Islamic financing and banking industry.

4.3 EXPERTS' PERSPECTIVE

This section will discuss on the finding based on expert's view on the implementation of BDBS as summarized in Table 4.3.

Table 4.3
The expert's views on the implementation of BDBS

Theme	EXPERT 1 (E1)	EXPERT 2 (E2)
Opinion on the Implementation (T1)	<ul style="list-style-type: none"> • More <i>Shariah</i> compliance • There are asset to be considered and can be exchange instead of the receivables itself. • Enhance the contract through Tawaruq and <i>Hawalah</i> concept. 	<ul style="list-style-type: none"> • For invoice financing, there should be another contract that might be suit to be implement such as Musyarakah or Mudarabah. • Due to the risk that the financing company will bear, might be the reason for the financing company implement BDBD's contract.
Opinion on the Islamic Financing Syllabus in academic sector (T2)	<ul style="list-style-type: none"> • Should be include in the Islamic financing syllabus and be put under contract innovation. 	<ul style="list-style-type: none"> • This contract has been included under the sale and purchase contract.
Advantages or Impact (T3)	<ul style="list-style-type: none"> • The enhancement of the contract gives more space on the <i>Shariah</i> compliance. • In legal view, BDBS is a bit fragile due to the documentation and transfer of ownership. Hence, new contract is being proposed for the enhancement of the BDBS. • Many small companies could enjoy using Islamic financing contract by the enhancement of the contract. 	<ul style="list-style-type: none"> • Any enhancement of the contract will make both the expert in the industry and in the academic sector sit together and discuss on the implementation.
Issues and Challenges (T4)	<ul style="list-style-type: none"> • Since <i>Fiqh</i> in Mualamat in not fix stated in one book, hence there will always innovation of the contract for the better implement. • They should be more alert on the changes that happen and need to let the other practitioner alert on the changes. 	<ul style="list-style-type: none"> • There will always issue and argument on the financing contract but the academicians and those in the industry will sit down together to discuss on the best implement.

Based on the Table 4.3, the opinion on the implementation from view of the experts has been summarized. E1 explains how BDBS entering Islamic finance and banking industry in Malaysia does. Start with *Bay' Al-Dayn* contract which the purchase of debt through invoice financing services, the concept is accepted in Malaysia even though there is argument with the concept. 2005, where there is bank who acquired international Islamic banking license entered into Islamic financial market in Malaysia such as Kuwait Finance House and Al Rajhi Bank, they argue on the *Bay' Al-Dayn* concept that used to implement before this. So they started with Tawaruq concept and in 2009, the tawaruq concept that they used has open many person in the industry to develop new contract to solve *Bay' Al-Dayn* issue which is sell the invoice as represent to the debt but did not trigger argument from the *Shariah* aspect. RHB Islamic is part of body that develops the paper on this new contract. This is where BDBS is being introduce and been implement. In this new contract, debt by the debtor or contract awarder to the client who run the service is through the invoice which the debtor needs to pay for any job done by the client. The invoice issued then will be factor to the factoring house and factoring house will do some sell and purchase commodity transaction and give the money to the client based on the transaction. The concept is factoring company will be the trustee to bought the commodity and sell back to get the money equal to the amount invoice factored which is included with margin as per agreed by the client.

However, later on they found out that on the legal definition, if there is any argument on the receivables, the court will not see the amount sale of receivable. But what makes the court concern on the transfer of the assignment. Based on his story, there is one court case that the assignment of receivables is not complete even though the debt has been sold to the factoring company and in this case, the court try to find the assignment of the receivables. Since there is no deed of assignment in the transaction, then court considers that documents as assignments. So as

the conclusion, they found out that in the *Shariah* point of view, there is sale of debt but in civil point of view, the court try to find the assignment of receivable to make the transaction solid in the sense of documentation. Hence, as the consultant company, E1 has develop new modul that they call *Tawarruq* and *Hawalah* concept which carried the same concet of BDBS but it has been improvise by adding more documentation in term of transfer document which is *hawalah* letter.

The above finding can be proved by the following excerpt:

“ ...Based on our finding, either it is conventional or Islamic implement, when it comes to sales of receivables, court did not find the sale part but they want to see the assignment. They will argue on the assignment which the assignment will be assigned together with deed of assignment. There is one court case that the assignment of receivables is not complete even though the debt has been sold to the factoring company and in this case, the court tries to find the instrument of transfer the receivables... ”(E1,I4)

E2 has shared his thought on the controversial implementation of *Bay' Al-Dayn* and BDBS based on wide experience with Islamic financing and banking industry. Both of these contracts are using deferred contract. *Bay' Al-Dayn* itself is a controversial contract where the process of transaction is selling debt at discounted or premium price which the difference of the discounted or premium price of the debt with the total debt might have *riba'* elements. If the transaction happens at par, the contract can be done with no issue. According to him, the Central Bank of Malaysia allowing the concept to be applied in Malaysia is because of the financial right for the sake of everyone especially those who have small and medium business. *Bay' Al-Dayn* is still not be accepted in Middle East and in fact, there is also scholars in Malaysia did not agree with this contract. Therefore, invoice financing is allowed if the debt that sold the financing company is the debt that are recognized and very sure will be paid back by the person who owe the money. For example, the debt of RM10, 000. For fast liquidation, the person sold the debt by the price of RM 9,700. In order to reduce the risk of *riba'* element due the discounted price, the person sold the

debt by using commodities which the same value as the debt that has been discounted previously. This commodity is *sila'* that been used as the exchange of the debt to the person who like to buy the debt. Originally debt cannot be sold at discounted or premium price. Debt purchase can be done as long as the debt itself is sold at par price and most importantly that is the debt that can be paid back. The above finding can be proved by the following excerpt:

“...Bay’ Al-Dayn is a controversial issue when the receivables is exchange with cash with discounted or premium amount which the riba’ issue. Bank Negara allows the transaction previously as Bay’ Al-Dayn is financial right. If the receivables are sold at par price, there will be no issue on that..(E2,I5).”

As the person who involve in the *Shariah* board in *Shariah* Advisory Council in Central Bank of Malaysia, E2 has an opinion that for invoice financing or factoring financing can just use any Islamic contract such as *mudarabah* or *musyarakah* contract. The factoring company can be a *mudarib*(funder) to the client and client can run their service based on the capital provided by the *mudarib* under the *mudarabah* financing concept. BDBS also has their own argument when the transfer of ownership of the commodities is not complete. In order to make sure the ownership go to the right person, *Shariah* committee need to go thoroughly the process and procedure and see the legal agreement that the factoring company has signed to ensure that the transfer of ownership is complete. The above finding can be proved by the following excerpt:

“...Factoring financing can use Musyarakah or Mudarabah contract instead of using Bay’ Al-Dayn. Under Musyarakah contract, factoring company share the capital with the contractor. But the active partner is the contractor. So factoring company will be deciding the profit rate that they will be received.....or under Mudarabah contract, factoring company will be the mudarib (capital provider) and decide on the rate of profit later..(E2,I5).”

This subsection will tell more on the advantages or impact in experts’ perspective as based on the Table 4.3.

By having details explanation from *Bay' Al-Dayn* to BDBS and next come out with another contract of modul which is *Tawaruq* and *Hawalah* contract, E1 concluded that the advantages of the existence of BDBS is giving more space to *Shariah* compliance. The previous concept, *Bay' Al-Dayn* which has been argue previously now can be considered settle as the transaction has been complete by purchase and sell back of commodity and by using *hawalah* letter to show the transfer of assignment. And the challenges that they face is since there is three models which might be confusing the company who will be using the contract. However, he did mention that if the factoring company who would like to maintain to BDBS instead of *Tawarruq* and *Hawalah* contract, there is no problem as the concept is still acceptable in Malaysia. In term of documentation, even if a bit extensive compare *Bay' Al-Dayn*, as the Islamic financing consultant, they are trying their best to simplify the method to make the process and procedure easier to implement within the factoring company who do not have any Islamic finance background. The above finding can be proved by the following excerpt:

“The first advantage with the existent of BDBS’s contract is it give more space on the Shariah compliance. Bay’ Al-Dayn which is being condemn previously, now has been settle with structure that has been discussed just now. Either BDBS or Tawarruq and Hawalah. But the challenge we have now is there are 3 different modules...(E1,I4)”

For issues and challenges in the view of the experts, the summary is tabulate in the Table 4.3 under theme number 4. One of the challenges that E1 have to face is that the practice of *Fiqh* in *Muamalat* does not depending on one book. You have to read as much as possible and innovate the new things that are more *Shariah* compliance. Basically, in the *Fiqh Muamalat*, every single transaction is allowed unless there is clearly stated that particular item is prohibited in *Quran* and *Sunah*, and then it should not be implement. Compare to *Fiqh* in prayer, we could not perform our *Solah* as our own wish. There already guideline that has been set up and we should follow it

accordingly. In addition, this innovative product has produced *Tawarruq*, *Musyarakah Mutanakisah* and many more hybrid contract that has been issued due to the innovativeness. As the result, they have succeeded in finding solution to the industry which previously creates so many arguments, but now other businesses could enjoy invoice financing with more *Shariah* compliance product.

E2 said that there are always issues and challenges in implementing in whatever contract is Islamic Financing industry. However, the academicians and those in the industry will sit down together to discuss on the best implement. Their discussion is playing an important role within the industry to ensure what is the best implement should be done in the real case situation but based on their mutual consensus on the specific point of discussion.

In short, as the expert in their own area, informants in both of the institutions have the opinion that by practicing BDBS Contract, in exchange of *dayn*, commodities (*Sila*) is used to be replaced in the transaction and this is allowable as the *dayn* itself has been valued with the same value of the commodity bought. E1 agreed that any innovation should be added in the current syllabus of the Islamic financing and banking study. Meanwhile E2 did mention that any enhancement of the contract has been included under the Sale and Purchase syllabus. However, due to the time constraint, not all lecturers have ample time to cover the entire syllabus. But in order to make it balance, both in the finance industry and academic industry will sit down and discuss on the best implement that should be done practically.

4.4 CLIENTS' PERSPECTIVE

The clients' perspective on the implementation of the BDBS will be discussed in this section. The summary of the finding based on theme is shown in Table 4.4.

Table 4.4:

The clients' view on the implementation of the BDBS.

Theme	CLIENT 1 (C1)	CLIENT 2 (C2)	CLIENT 3 (C3)
Implementation of the BDBS(T1)	<ul style="list-style-type: none">• Register as client• Do the job• Issued invoice• Submit the invoice to claim for factoring financing• Leave the rest to the factoring company	<ul style="list-style-type: none">• Have been told that the factoring company will change into new contract but they are not directly involved.• Aware with the advance documentation which is letter of agency and purchase undertaking which will be needed during the disbursement of their money.	<ul style="list-style-type: none">• Did not aware with the change of the contract.• During the signing session, they already sign the agency letter and purchase undertaking.• Just follow what the staff has instructed which is submitting the claim as usual.
Advantages or Impact (T2)	<ul style="list-style-type: none">• More stable• More <i>Shariah</i> compliance	<ul style="list-style-type: none">• Enhancement from the previous contract• The new contract did not affect their business.	<ul style="list-style-type: none">• The new contract did not affect their business
Issues and Challenges (T3)	<ul style="list-style-type: none">• No issues and challenges as the commodity transaction did not involve them	<ul style="list-style-type: none">• Lengthy documentation	<ul style="list-style-type: none">• No issues and challenged as they did not involve with the transaction directly.

First theme in this subtopic is on the implementation on the new contract in view of the clients based on the Table 4.3. All three clients have different opinion on the implementation of the products. C1 from I6 has shared that the only process and procedure that he know from the invoice financing is that he did all the job required by the government agencies, produce a report on the work done and issue 3 copies of invoice; one for the factoring company, one for government agencies and the other one for their safekeeping. They are aware that the factoring financing services that they currently used is transforming to more *Shariah* compliance contract. The new contract is using commodity in exchange of the invoice to the money that they should receive. However, as far as they concern, the commodity transaction is not involving them. In fact, the cost of the commodity transaction also has been bear by the factoring company. As long as the process did not incur any additional cost and does not drag the duration of the disbursement of money to them, they do not have any problem on following whatever contract that they should enter. The above finding is supported by the following excerpt:

“....We know about the new contract is during our renewal of our agreement with Zikay Factoring Sdn Bhd. The staff has informed us clearly on the new agreement and nothing has changed as the commodity transaction does not involving them. What we need to do is sign the new agreement and additional documents for the purpose of documentation...”(C1,I6)

Meanwhile C2 from I7 which also run cleaning services with Ministry of Education, share his opinion on the implementation of the new contract. Even though they are not involved with the implementation of the new contract physically, but they aware with the change of new contract. The factoring company did tell them in advance in order to execute the letter of agency and purchase undertaking in order to proceed with their disbursement. Even though he is not aware what is the function of the letter that he signs, but acknowledge that at least the factoring company inform them on the change of the contract and they are involving on more *Shariah* compliance services. There is

no different on the routine. Same routine still applied with the new contract exactly like C1 practice.

The above finding is supported by the following excerpt:

“The procedure is the same as the previous contract but we have to sign more documents to let the factoring company represent us during the commodities transaction. This is what the staff has mentioned to us before sign agreement...” (C2,I7)

The last informant, C3 is running security services with the government agencies. Her company has been registered with the factoring company by end of the 2019 which the factoring company is just implementing the new contract. C3 shares with us that she does not aware with the change of the new contract as during her company registration, the authorized signatories already sign the agency letter and purchase undertaking letter in 10 copies for both letter during the signing agreement session. She just does as per told by the staff in charge of what she need to do by submitting the claim and wait for the money to be received. She could not differentiate between *Bay' Al-Dayn* and BDBS as the company do not experiencing how *Bay' Al-Dayn* operates. The above finding can be proved by the following excerpt:

“ I did not know what type of Islamic contract that my company has sign with the factoring financing. I just submit the invoice the claim for the service we had done and the staff is processing it as usual. Since I am new in this financing, the disbursement period seems not affecting the business...”(C3,I8)

4.5 PROCESS FLOW OF BDBS IN FACTORING FINANCING

Based on the point of view from the practitioners, both of the practitioners agreed on the new contract implementation is for the sake of the *Shariah* requirement. The implementation to the enhancement of *Bay' Al-Dayn* is the journey of the invoice financing industry to expand and also to be accepted as per what *Shariah* wants. The lengthy documentation and additional system added in the procedure of BDBS can be accepted even at the early stage of the implementation is a bit hard.

The assistance from all the parties involved has helped these companies to cope with the transition period.

At the view of financier and experts, the active participation from the practitioner did help them to fulfill what is best for Islamic finance and banking industry and what kind of gap can be reduce to complete the new contract. Besides that, these groups of professional is important to be active within the industry to ensure that any lacking that faced by the practitioner or the client who indirectly is the user of the contract can be improve for the sake of every single user of the new contract. And these groups are actually help in the evolving and enhancement process of the Islamic contract such as *Bai' Inah*, *Bai' Bithaman Ajil*, *Musyarakah Mutanakkisah* and more hybrid contract that produce is the result of collaboration of these professional group. Even though there will be argument based on their own opinion but these what makes that particular contract can be good to be implement and implement by the public who did not have any knowledge on the Islamic contract.

In this study, we can see how the *Bay' Al-Dayn*'s contract been enhance to BDBS's contract and there is more enhancement to *Tawarruq* and *Hawalah*'s contract. Below are the details of the all concepts being explained in the diagram as been implemented by I1 & I2 previously. This diagram has been explained in the Chapter 3 in the figure 3.1. However, for the comparison purposes, the process and procedure is being mention again in this chapter to see differences between *Bay' Al-Dayn* and BDBS. In *Bay' Al-Dayn* concept, once the Contract Awarder award a project to The Client and The Client would like to sell the receivables to the Factoring Company due to the tight cash flow, The Client need to enter into factoring agreement which using the concept of *Bay' Al-Dayn*. The processes start as below:

- 1) The Client need to provide the service as according to the requirement stated in the contract award by the Contract Awarder.

- 2) Once job is done, The Client needs to issue the invoice for the work done in three copies. Each party will receive the invoice. When the Factoring Company received the invoice, they will cross check with the Contract Awarder regarding job done by The Client in order to ensure that the work has been done. This is to ensure that the payment will be directly from Contract Awarder to the Factoring Company. Once confirmed, the Factoring Company will issue payment to The Client at 80% of total invoice.
- 3) After certain period of time, the Contract Awarder will pay the receivables that they owed to The Client. Since The Client has sold the receivable to the Factoring Company, hence, the payment will be directly transferred to the Factoring Company.
- 4) The Factoring Company will make the refund from balance of payment that The Client should receive which is 20%. After calculated the profit and service charge, the Factoring Company will give back whatever balance to The Client.

However, in BDBS, there is additional transaction that involves commodities transaction. The concept and process flow were the idea from the consultant and bank based on the suggested by their own *shariah* board.

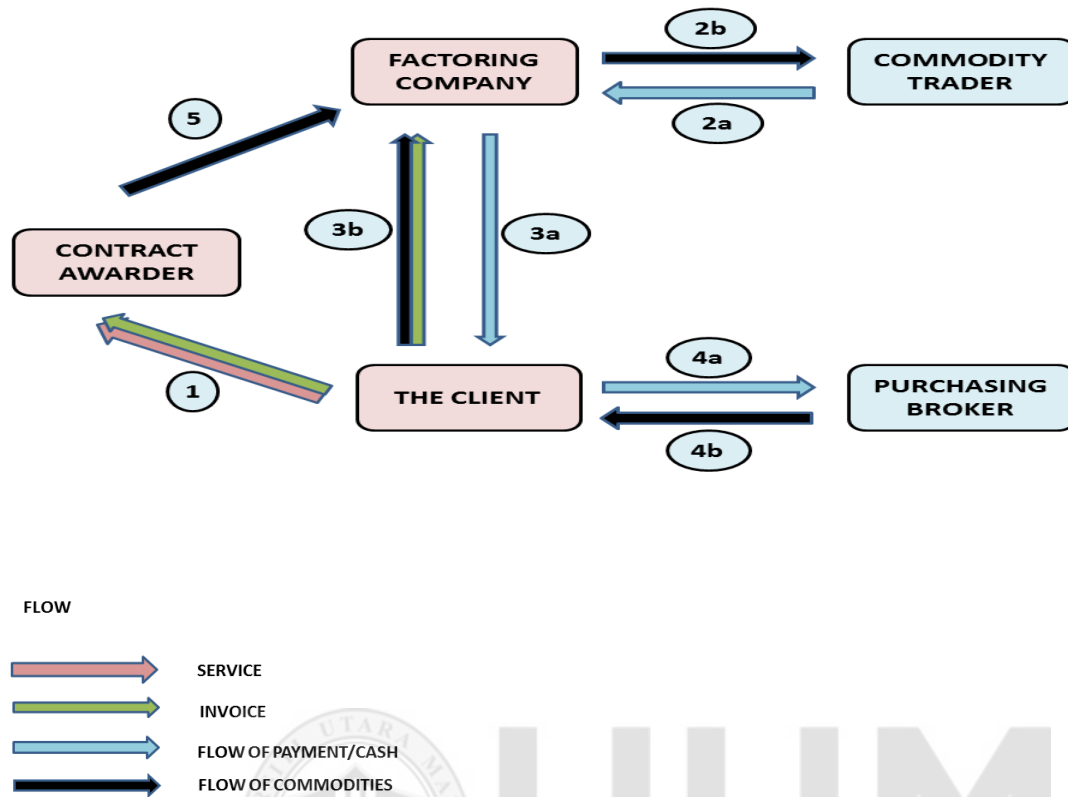


Figure 4.1
Process Flow of BDBS

Same as *Bay' Al-Dayn* concept, once the Contract Awarder award a project to The Client and The Client would like to sell the receivables to the Factoring Company due to the tight cash flow. But what makes BDBS difference from the *Bay' Al-Dayn* concept, there is commodities transaction in the BDBS. Refer to the Figure 4.1 on the process flow of the new contract. When The Client sign the factoring agreement between The Factoring Company and The Client, The Client will have to sign the agreement itself, letter of offer, letter of guarantee, statutory declaration and specimen signature card which exactly as what *Bay' Al-Dayn* implement. However, there are additional documents that need The Client to sign along during the signing session to ease the sale of receivables in the future. Those additional documents are letter of agency and purchase undertaking letter. These additional documents will be compiling along with the invoice and report when they would like to sell the receivables. The processes start as follow:

- 1) The Client need to provide the service as according to the requirement stated in the contract award by the Contract Awarder.
- 2) a) Once job is done, The Client needs to issue the invoice for the work done in three copies. Each party will receive the invoice. When the Factoring Company received the invoice, they will cross check with the Contract Awarder regarding job done by The Client in order to ensure that the work has been done. This is to ensure that the payment will be directly from Contract Awarder to the Factoring Company. Before issuing payment to the Client, Factoring Company will buy commodities from Bursa Suq Al Sila through the BSAS system. The amount of commodity is equivalent with the amount of receivables (RM X).
b) The Factoring Company will pay cash (RM X) for the purchase of commodities to the commodity trader.
- 3) a) The Factoring Company then will sell the commodities to The Client with the amount of commodities plus factoring fee charged by The Factoring Company (RM Y).
b) RM Y to the Factoring Company will on the deferred payment with the receivables owed from the Contract Awarder.
- 4) a) The Factoring Company on behalf of the Client will sell back the commodities to the Purchasing Broker worth the receivables amount (RM X)
b) The client then will receive the cash amount RM X.
- 5) At this point, The Contract Awarder is obligate to pay the Factoring Company the value of the invoice.

This financing concept process flow is developed by Tawafuq Consultancy Sdn Bhd which is one of the informants in this research. The concept has been developed and innovate by the original practice of BDBS in capital market. This concept has been enhance to *Tawarruq* and *Hawalah* contract which involve additional letter known as *Hawalah* and act as the instrument of transfer the

receivables between the clients to the factoring Company. The new concept is slowly penetrating the market in Islamic Factoring industry.

4.6 SUMMARY

In the nutshell, this chapter has summarized the finding based on the objectives of the study. The first objective of the study is to find out the issues and challenges faced by the practitioner during implementing the new contract. They are well aware on the consequences of the implementation but in order to fulfill the requirement set by the *Shariah* they have to follow the instruction. For them, once all the staff has been familiar with the contract and the implementation, there will be no problem on explaining to the client on what contract that they will enter into.

For the second and third objectives of the study, the focus is more on the view of the expert and also the client. The opinions from these groups are crucial in order to ensure the process of implementation for BDBS operates smoothly. All of the questions based on the themes established have been summarized in the Table 4.2, Table 4.3 and Table 4.4 according to industrial practitioners, experts and clients respectively.

Referring to the view and respond from the financier, and the expert, we can conclude that there are reason the implementation was not made compulsory by Central Bank of Malaysia. In *Muamalat* concept, there is no definite concept of the implementation of the contract. As long we follow what Allah had stated in *Quran* that is He allow all sell and buy transaction but prohibited *riba*'. Hence, as long there is any potential improvement to be made in the previous contract, these professional group would be discussing among each other to get one conclusion. This will keep continuing until the best implement is found and that might as well ease the client to get the financing services from the Islamic Financing and Banking industry.

CHAPTER 5

CONCLUSIONS

5.0 SUMMARY OF THE FINDING

This study achieves the first objective of the study which is to investigate the issue and challenges of practicing BDBS are faced by the practitioner in Malaysia. The usage of the contract is new within the industry. Hence, there are not many companies that implement this Islamic contract. And based on the study, the company who use the contract is implementing by using the factoring financing concept. During the interview session, they did mention that the implementation has improve their confident in the *Shariah* compliance product and even though there are many things to consider during the implementation, but these companies did not feel any burden as this contract is enhancing their existence contract and the contract can be accepted worldwide. Besides, the argument in exchanging money to money is already cleared by P4 from I3. In view of the practitioner as the funder, they are financing other business to run the services, the contract that allowed by *Shariah* is important as they are governed by their own *Shariah* board and been supervised by *Shariah* advisory council in Central Bank of Malaysia.

The second objective of the study is to explore the issues and challenges in practicing the contract in view of experts' perspective also has been achieved. Scholars and experts are those who have the crucial position on the implementation any of new contracts. Their opinion on any contract especially in the Islamic contract is important as the knowledge that they have is needed to validate the correct way for the implementation of the contract. The finding of having both sides during the interview session found out what make Bai *dayn* Bi Al Sila contract is permissible and is an enhancement from the previous contract. In addition, the experts also share the new contract that

coming out to the enhancement of the BDBS contract. Hence we could see how does an expert in the industry see and compare how an expert in academic view BDBS does.

The third objective of the study is to explore the issues and challenges in practicing the contract in view of clients' perspective also has been achieved. In view of the clients, the study found out that during the implementation of the client, the clients is involving directly to the contract and they just follow the requirement set by the company eventhough there are some steps and documentation they are not aware of. And there is also client who did not aware of the implementation and clueless what is the contract all about.

After gathering the information from the related parties, the study find out the process flow of BDBS in the factoring financing in Malaysia. The idea is coming from the experts and financiers which considering in *Shariah* aspect that need to be fulfilled and also implementation on the clients so it would be easy to follow.

5.1 SUGGESTION AND POLICY IMPLICATION

Based on the finding of this study, the researcher would like to suggest the government to explore more on this contract especially under the factoring financing. This indirectly could help more Small and Medium Entrepreneur to enter a contract of Islamic Financing with a cheaper rate rather than having working capital in the financial institution. The requirement set by factoring financing is usually low than the bank has set. Government should oversee the implementation and put extra governance on the implement so that it will be easier to implement and many small business could enjoy *Shariah* compliance products.

Under the implementation of the same contract, the sale and purchase of the commodities is indirectly helping the cycle of economies in our country. The commodities transaction by using BSAS

as the main platform of sale and purchase is helping demand and supplies of the commodities to always balance and remain active. The suppliers of the commodities will always producing the product without any worries as there is always demand on the BDBS's transaction. As BSAS is charging minimal rate to the all their user, this could encourage all the seller and buyer to use BSAS and this indirectly helping our capital market to expand more.

Besides that, the study will give an exposure on how does the contract is implement. This writing is contributing to the new knowledge of the implementation of the contract within the industry. Since the paper is sharing the idea from those who implement the contract and also the idea from the professional group on what is the contract all about and how does the contracts meet the *Shariah* requirement set by the *Shariah* advisory council.

The study could also give an idea what is the BDBS implement in invoice financing services and give an exposure to the student get to know how the implement does is all about. The students and also those who involve in the industry on the related topics can have more understanding on the contracts.

Besides that, the Islamic financing and Banking students could have more information on how does the contract is used in the factoring financing. The students could have an exposure on the new Islamic contract and how does it work. This could help them to getting know that one Islamic concept can be applied to many Islamic financing product depending on the concept implementation.

5.2 LIMITATION OF THE STUDY

Since the contract is new in Malaysia and only a few Islamic factoring financing services use the contract, hence, it is hard to find informants to get the information on the implementation of the new contract in their company. In addition, due to the virus that hit Malaysia currently, there is also

factoring company that been impacted and not operating at the moment due to the lack of business. The study could cover two of the companies and these two companies cooperate well in sharing the information.

Besides that, since the contract is not been implement in the Middle East as per share in by the expert in the study, the related journal and articles are insufficient to support the study. Through out the study, the reference related on the contract is limited and guideline issued by *Shariah* Advisory Council is also lack of information based on the finding. In fact, the paper on *Bay' Al-Dayn* is also lacking but still can be used during the research process. Hence, the explanation from the experts and scholar is needed in order to get the proper implementation and how does it meet the *Shariah* requirement.

5.3 FUTURE RESEARCH

For future research, more study should be made in the international level, Middle East country specially to find out how does their small and medium enterprise survive without having invoice financing contract. Another contract as the alternative can be share to be improved how does Malaysia is doing currently. As per share by the experts, new contract has been issued due to the enhancement of the BDBS. The contract is *Tawaruq and Hawalah* contract. More study could be made in order to give an exposure to the other financing services on how does the contract works and what made the contract is enhancing more than the previous contract in term s of *Shariah* compliance and also procedure of the financing process. This might help the industry to expand more the business to be enjoy by the small and medium entrepreneur in the Islamic financing services.

More research can be made within the country but in different product which is applicable. This study is focusing more on invoice purchasing or factoring financing. If there is other researcher would like to dig more on the contract, they could explore on other product by using the same concept such as

bill of exchange and banker's acceptance. In order to give more opportunities to expand within Islamic Financing and Banking, more research and exploration is needed to give more option to the clients and the industry will have more Islamic finance and banking product to offer in market.

5.4 CONCLUSION

In the nutshell, this study is to find out how does the implementation of BDBS's contract and how does the implementation impact those who into factoring financing and other stakeholders which related either directly or indirectly with the contract. The opinions from the related stakeholders are important as to find out are the implementation of the contract affect their business. In view of the experts and scholars, the contract may be enhancing in any way as long as complying *Shariah* requirement and could serve the industry for the better product innovation.



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APPENDICES

APPENDIX A

STRUCTURED QUESTIONS

Protokol Temuramah	: Pelaksanaan dan Penggunaan Kontrak BDBS di Malaysia.
Tarikh dan masa	:
Tempat	:
Penemuramah	:
Peserta	:
Jawatan	:

Kajian ini adalah bertujuan untuk menerokai dan memahami pelaksanaan dan penggunaan kontrak BDBS di Malaysia.

SOALAN TEMURAMAH PENGAMAL INDUSTRI - INSTITUSI KEWANGAN YANG MENGAMALKAN PERLAKSANAAN KONTRAK BDBS

A. Latarbelakang responden

1. Latarbelakang pendidikan
2. Sejarah perkhidmatan

B. Latarbelakang institusi

1. Maklumat umum institusi.

C. Pelaksanaan dan penggunaan kontrak BDBS

1. Jelaskan pelaksanaan dan penggunaan kontrak BDBS dalam syarikat tuan.

2. Jelaskan kelebihan atau kesan pelaksanaan dan penggunaan kontrak BDBS kepada syarikat tuan.
3. Jelaskan isu dan cabaran pelaksanaan dan penggunaan kontrak BDBS kepada syarikat tuan.
4. Kongsikan pandangan dan cadangan tuan berkaitan pelaksanaan dan penggunaan kontrak BDBS dalam sektor kewangan di Malaysia.

SOALAN TEMURAMAH PAKAR BIDANG – AHLI AKADEMIK

A. Latarbelakang responden

1. Latarbelakang pendidikan
2. Sejarah perkhidmatan

B. Pelaksanaan dan penggunaan kontrak BDBS

1. Pandangan terhadap status semasa pelaksanaan dan penggunaan kontrak BDBS dalam syarikat kewangan di Malaysia.
2. Pandangan tentang kontrak BDBS dalam kurikulum pendidikan Kewangan Islam di Malaysia.
3. Pandangan tentang keperluan penggunaan BDBS dalam sektor kewangan di Malaysia di masa hadapan.

SOALAN TEMURAMAH PENGAWAL SELIA-BKRM

A. Latarbelakang responden

1. Latarbelakang pendidikan
2. Sejarah perkhidmatan

B. Latarbelakang institusi

1. Maklumat umum institusi

C. Pelaksanaan dan penggunaan kontrak BDBS

1. Pandangan terhadap status semasa pelaksanaan dan penggunaan kontrak BDBS dalam syarikat kewangan di Malaysia
2. Jelaskan kelebihan atau kesan pelaksanaan dan penggunaan kontrak BDBS.
3. Jelaskan isu dan cabaran pelaksanaan dan penggunaan kontrak BDBS.
4. Kongsikan pandangan dan cadangan tuan berkaitan pelaksanaan dan penggunaan kontrak BDBS dalam sektor kewangan di Malaysia.

SOALAN TEMURAMAH PAKAR INDUSTRI

A. Latarbelakang responden

1. Latarbelakang pendidikan
2. Sejarah perkhidmatan

B. Latarbelakang institusi

1. Maklumat umum institusi

C. Konsep BDBS

1. Pandangan terhadap status semasa pelaksanaan dan penggunaan kontrak BDBS dalam syarikat kewangan di Malaysia.
2. Jelaskan kelebihan atau kesan pelaksanaan dan penggunaan kontrak BDBS.
3. Jelaskan isu dan cabaran pelaksanaan dan penggunaan kontrak BDBS.
4. Kongsikan pandangan dan cadangan tuan berkaitan pelaksanaan dan penggunaan kontrak BDBS dalam sektor kewangan di Malaysia.

SOALAN TEMURAMAH PELANGGAN

A. Latarbelakang responden

1. Latarbelakang pendidikan
2. Sejarah perkhidmatan

B. Latarbelakang institusi

1. Maklumat umum institusi

C. Pelaksanaan dan penggunaan kontrak BDBS

1. Jelaskan pelaksanaan dan penggunaan kontrak BDBS dalam syarikat tuan.
2. Jelaskan kelebihan atau kesan pelaksanaan dan penggunaan kontrak BDBS kepada syarikat tuan.
3. Jelaskan isu dan cabaran pelaksanaan dan penggunaan kontrak BDBS kepada syarikat tuan.
4. Kongsikan pandangan dan cadangan tuan berkaitan pelaksanaan dan penggunaan kontrak BDBS dalam sektor kewangan di Malaysia.



APPENDIX B

PROBE QUESTIONS

Protokol Temuramah

Protokol Temuramah	: Penggunaan Kontrak BDBS di Malaysia.
Waktu	:
Tarikh	:
Tempat	:
Penemuramah	:
Peserta	:
Jawatan	:

Kajian ini adalah bertujuan untuk menerokai dan memahami pelaksanaan dan penggunaan kontrak BDBS di Malaysia berdasarkan aspek pengguna yang berbeza

SOALAN TEMURAMAH PENGAMAL INDUSTRI - INSTITUSI KEWANGAN YANG MENGAMALKAN PERLAKSANAAN KONTRAK BDBS

A. Latar belakang responden

1. Latar belakang pendidikan
2. Sejarah perkhidmatan

B. Latar belakang institusi

1. Maklumat am institusi, kedudukan secara umum.
2. Tujuan penubuhan, visi, misi, keanggotaan, perundangan, pelaksanaan, enakmen, pembentukan modal, lain-lain perkara berkaitan.
3. Jumlah pekerja di dalam bahagian tersebut.

C. Pelaksanaan dan penggunaan kontrak BDBS

1. Jelaskan aplikasi BDBS dalam syarikat anda – sejak bila, process pembentukan product.
2. Apakah yang membuatkan pihak syarikat mengambil inisiatif untuk melaksanakan BDBS?
3. Jika dibandingkan dengan kontrak yang digunakan sebelum ini, yang manakah yang lebih baik dan apakah yang menyebabkan kontrak tersebut lebih baik?
4. Apakah isu dan cabaran yang dihadapi sepanjang pelaksanaan kontrak baru?
5. Adakah penggunaan kontrak baru memberi perubahan ketara dalam syarikat? Sebagai contoh dalam keuntungan syarikat, kos dan bilangan pelanggan syarikat.(strategi and impact)

6. Dalam proses pelaksanaan dokumentasi dan operasi, terdapat penambahan kepada dokumen yang mana diperlukan untuk memenuhi standard ketetapan *shariah*. Adakah perkara ini mempengaruhi kadar pusing ganti untuk pembayaran yang akan dibuat kepada pelanggan? Bagaimana pula dengan penerimaan pelanggan?
7. Melalui pengalaman penggunaan kontrak lama, bolehkah anda cadangkan pengukuhan untuk kontrak baru sekiranya ada.
8. Adakah client tahu tentang perubahan kontrak.
9. Apakah pandangan tuan tentang transaksi BDBS.

SOALAN TEMURAMAH PAKAR BIDANG – AHLI AKADEMIK

A. Latar belakang responden

1. Latarbelakang pendidikan
2. Sejarah perkhidmatan

B. Pelaksanaan dan penggunaan kontrak BDBS

1. Pelaksanaan BDBS dalam syarikat kewangan di Malaysia.
2. Konsep BDBS dalam kurikulum pendidikan Kewangan Islam di Malaysia.
3. Pandangan terhadap penggunaan BDBS dalam sektor kewangan di Malaysia.
4. Apakah yang anda tau tentang BDBS?
5. Bilakah idea ini tersebar?
6. Bagaimanakah kontrak baru wujud? Apakah yang membuatkan kontrak baru lebih patuh kepada syariah jika dibandingkan dengan kontrak lama?
7. BDBS kelihatan lebih sukar untuk dilaksanakan memandangkan proses tersebut melibatkan beli dan jual komoditi yang mana pihak lain selain daripada pelanggan dan pembiaya akan terlibat. Apakah pandangan anda.
8. Kita telah melihat bahawa Barisan Penasihat *Shariah* telah mengumumkan bahawa BDBS dibenarkan dan mereka tidak mewajibkan perlaksanaanya kepada syarikat yang melakukan perniagaan penjualan hutang. Sekiranya kontrak yang baru adalah lebih mematuhi syariah, mengapakah mereka tidak mewajibkan penggunaan kontrak baru ini? Bolehkan anda berkongsi pendapat anda?
9. Kita dapat lihat dalam bidang akademik, BDBS kontrak masih kelihatan janggal berdasarkan pencarian artikel dan jurnal. Akan tetapi secara praktikalnya, kontrak ini telah dilaksanakan beberapa tahun lepas di Malaysia. Pada pandangan anda, wajarkah kontrak baru dan juga kontrak hybrid ini dimasukkan sebagai silibus dalam subjek Kewangan Islam?
10. Jika dilihat ada keadaan semasa, terdapat jurang yang besar antara para akademik dan para pengamal dalam industry Kewangan Islam. Pada pandangan anda, apakah yang perlu

dilakukan untuk mengurangkan jurang tersebut dan juga untuk memperkenalkan bidang ini kepada individu yang tiada pengalaman tidak kira sama ada berkaitan atau tidak berkaitan dengan tajuk perbincangan kita.

SOALAN TEMURAMAH PENGAWAL SELIA

A. Latar belakang responden

1. Latarbelakang pendidikan
2. Sejarah perkhidmatan

B. Latar belakang institusi

1. Maklumat umum institusi

C. Pelaksanaan dan penggunaan kontrak BDBS

1. Pelaksanaan BDBS dalam syarikat kewangan di Malaysia.
2. Pandangan terhadap penggunaan BDBS dalam sektor kewangan di Malaysia.
3. Secara terperinci, apakah BDBS?
4. Bagaimanakah idea penjualan komoditi ini tercetus?
5. Sejak bilakah pelaksanaan BDBS dijalankan?
6. Apakah yang membuatkan BDBS lebih mematuhi *shariah* jika dibandingkan dengan kontrak sebelum ini?
7. SAC telah mengumumkan bahawa BDBS dibenarkan di Malaysia Namun, apakah yang membuatkan anda sebagai pembiayaa utama mewajibkan pelaksanaan ke atas pelanggan anda?
8. Melalui pengalaman penggunaan kontrak lama, bolehkah anda cadangkan pengukuhan untuk kontrak baru sekiranya ada.
9. Apakah isu dan cabaran yang dihadapi sepanjang pelaksanaan kontrak baru?

SOALAN TEMURAMAH PAKAR INDUSTRI

A. Latar belakang responden

1. Latarbelakang pendidikan
2. Sejarah perkhidmatan

B. Latar belakang institusi

1. Maklumat umum institusi

C. Konsep BDBS

1. Perlaksanaan BDBS dalam syarikat kewangan di Malaysia.
2. Pandangan terhadap penggunaan BDBS dalam sektor kewangan di Malaysia.
3. Bilakah idea ini tersebar?
4. Bagaimanakah kontrak baru wujud? Apakah yang membuatkan kontrak baru lebih patuh kepada syariah jika dibandingkan dengan kontrak lama?
5. BDBS kelihatan lebih sukar untuk dilaksanakan memandangkan proses tersebut melibatkan beli dan jual komoditi yang mana pihak lain selain daripada pelanggan dan pembiaya akan terlibat. Apakah pandangan anda.
6. Melalui pengalaman penggunaan kontrak lama, bolehkah anda cadangkan pengukuhan untuk kontrak baru sekiranya ada.
7. BDBS kelihatan lebih sukar untuk dilaksanakan memandangkan proses tersebut melibatkan beli dan jual komoditi yang mana pihak lain selain daripada pelanggan dan pembiaya akan terlibat. Apakah pandangan anda.

SOALAN TEMURAMAH PELANGGAN

A. Latar belakang responden

1. Latarbelakang pendidikan
2. Sejarah perkhidmatan

B. Latar belakang institusi

1. Maklumat umum institusi

C. Perlaksanaan dan penggunaan kontrak BDBS

1. Jelaskan tentang aplikasi BDBS di syarikat tuan.
2. Adakah mereka sedar tentang pengukuhan baru yang telah di buat daripada kontrak *Bay' Al-Dayn* ke Kontrak BDBS?
3. Apakah pendapat mereka tentang perlaksanaan kontrak baru ini?
4. Apakah isu dan cabaran yang di hadapi semasa perlaksanaan kontrak baru?
5. Adakah anda sedar bahawa kontrak baru melibatkan pembelian komoditi dan memerlukan proses dokumentasi yang lebih banyak jika dibandingkan dengan kontrak yang lama?
6. Adakah kontrak baru ini mempengaruhi proses dan procedure semasa penjualan hutang (invois) di lakukan?
7. Berikan pandangan tuan tentang perlaksanaan BDBS