

An Analysis of al-Bay' Bithaman Ajil Contract in Islamic Financing Products: A Case Study in Brunei

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Abstract

The purpose of this study is to analyse factors influencing the application of the al-bay' bithaman ajil (BBA) contract which is still dominating financing instruments in Islamic financial institution in Brunei Darussalam (Brunei). This study employs case study research design which entirely concentrates on qualitative analysis from interview technique as a primary data collection method. There were 10 respondents selected in this study working in Tabung Amanah Islam Brunei (TAIB). The results suggest that respondents were very optimistic and hold positive ideas towards the implementation of other forms of Shariah contracts in Islamic financial products, which have now been introduced in other countries. The article provides valuable contribution to the development of Islamic finance in Brunei. Following the controversy surrounding the use of BBA contract in other countries, the result of this study will offer Islamic financial institutions and regulators in Brunei positive development in the effort to diversify Islamic financing products and services which are universally accepted according to current demands.

Keywords: Brunei, al-bay' bithaman ajil, Islamic Banking, Islamic financial contract

I. Introduction

The Nation of Brunei (Brunei) is one of the countries which has adopted and accepted the *al-bay' bithaman ajil* (BBA) contract for its financing products. BBA was the first *Shariah* contract introduced for the Islamic financing products in this country. Historically, BBA contract was introduced and adopted as one alternative to interest (*riba*) based loan scheme offered by conventional banks for the past 30 years. But at the same time, we also knew that BBA contract was not accepted globally, especially by the Middle East and Central Asian countries (Rahman, 2009). However, despite the refusal by those countries, the use of BBA contract still

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dominated Islamic financing products in Brunei. Some of the financing products offered under this contract were financing for personal, education, real estate whether to purchase land, to finance the construction of a house, to finance a completed house, and for refinancing a house, either from Islamic financial institutions and banking or from conventional banking.

In reality, the implementation of BBA contract is increasingly criticised and that various issues have been raised from the usage of this contract. Discussions and debates on this issues have been put forward many times at conferences or at seminars and it was even included and written in books, journals, and articles by making an in-depth analysis of the BBA contract (ISRA, 2009a; Ruse, 2012). This situation was further complicated by an increase in cases related to Islamic finance. The cases were dragged and challenged in the civil courts as has happened in Malaysia, an example being the case between Bank Islam Malaysia Berhad and Adnan bin Omar in 1994⁶. It was well known that the BBA cases were tried in court initially due to the failure of the creditors to settle their debts but the focus was not on the amount of debt that was not settled, but instead it was on the BBA operations itself. The public in general and the lawyers, in particular, have begun to question the validity of the BBA contract between banks and customers.

Although BBA related cases were still considered as isolated cases in Brunei, it was feared that if this trend were to continue, the credibility of Islamic banking and financial institutions and other related parties would be affected and tarnished. The two BBA related cases that were tried at the Brunei civil courts were between Perbadanan Tabung Amanah Islam Brunei (TAIB) and Morsima Sdn Bhd and Wong Yep Meng⁷, and between Bank Islam Brunei Darussalam and Hj Abd Halik bin Hj Ahai in 2009⁸.

Therefore, this study is conducted to investigate the reason why BBA contract is still amongst the top choice in one of the main financial institution in Brunei, which is Tabung Amanah Islam Brunei (TAIB). For a more detailed explanation of the aforesaid issue, this study puts forward three research questions namely; (1) How is the respondent's understanding of BBA contract? (2) What are the factors driving the management of TAIB to choose BBA contract for its financing products? and (3) How is the future plan for financing products that use BBA contract?

II. Literature Review

2.1. Islamic Banking in Brunei

In the past three decades, the global Islamic finance and banking industries has grown tremendously (Zarrouk *et al.*, 2017) particularly in the Middle East, Southeast Asia and other Muslim countries. In Brunei, the idea to establish an Islamic financial system was first voiced by various parties since the 1980's. The establishment of the Islamic financial system was intended to fulfil the Muslim religious obligation as well as to provide the

⁶ High Court of Malaya, Kuala Lumpur (1994) 3 CLJ 735

⁷ Court of Brunei Darussalam March 8, 2008

⁸ Civil Suit No. 68 of 2009, High Court of Brunei Darussalam February 6, 2010

opportunity for Muslims to perform *muamalah*⁹ according to Islamic teachings. The matter has been referred to in the decree of His Majesty Kebawah Duli Yang Maha Mulia Paduka Seri Baginda Sultan dan Yang Dipertuan in the Brunei Islamic Religious Council meeting on 25 September 1990.

“It is an example of something which is related to the Islamic financial system, which is very popular today, that is the Islamic Bank. It is no longer a dream or wishful thinking, but news has it, that currently there are already 50 Islamic Commercial Banks in Muslim countries. In my opinion, it is also one of the Muslim obligations for all countries, and our country Brunei Darussalam is no exception”.

Hence, on 29 September 1991, Perbadanan Tabung Amanah Islam Brunei (TAIB) was formally established. This was followed by the inauguration of the second Islamic Bank on 13 January 1993, which was the Islamic Bank of Brunei (IBB). It was later followed by the establishment of the Islamic Development Brunei Berhad (IDBB) on 11 November 2000. However, both the Islamic banks, IBB and IDBB, were merged on 31 January 2006 and was later named as Bank Islam Brunei Darussalam (BIBD). This means that Brunei currently has only two institutions that serve Islamic banking and financial products and services, namely TAIB and BIBD. Vehicle financing was the first financing introduced using the BBA contract. It was followed by other financing products such as for real estate, personal, education, educational kits and settlement of credit cards.

2.2 The definition of al-bay' bithaman ajil (BBA)

The term *al-bay' bithaman ajil* (BBA) is derived from the Arabic word, *al-bay'* which means selling; *bi* which means with; *thaman* which means price; and *ajil* which means deferred or delayed (Abd. Wahab, 2005). It is public knowledge that BBA is for trading (buying and selling) with instalment or delayed payment. Al-Zuhayli (1997) defined BBA as trading on instalment as the exchange or trading of existing goods, with the delivery of goods traded in cash, and the settlement of the price or the payment being deferred, in whole or in part, to an already determined or known period in the future – usually for a period of one month for household goods, and some yearly, or every three months, or every year. Therefore, if the overall price is deferred to a predetermined period such as a year or less, it is termed as deferred trading (buying and selling). Normally, prices in an instalment or deferred trading are higher compared to prices in cash sale. Both types of trading are daily occurrence, and each of these is highly preferred to get the intended needs.

The Islamic scholars have all agreed on the necessity of deferred trading based on the general al-Quran verse in *surah al-Baqarah* verse 275 on trading with the meanings: “Whereas Allah has permitted trade and has forbidden interest” (Al-Zuhayli, 1997). Even so, no doubt the Islamic scholars have agreed on the necessity of deferred trading, it cannot be denied that the majority of Islamic scholars worldwide do not allow BBA to be an Islamic banking product since it contains the *bay' al-inah* element¹⁰ (Rahman, 2009). The controversy on BBA is not a new thing but has started since it was first introduced in the banking industry. Disputes arising from the implementation of the BBA contract covered a wide range of issues related to *Shariah* or law. Ironically, BBA financing was criticised for being considered as an unfair business transaction instrument and that the BBA

⁹ *Muamalah* refers to commercial and civil acts or dealings under Islamic law.

¹⁰ *Bay' al-inah* is a contract which involves the sale and buy-back transaction of assets by a seller.

financing method, too was full of flaws. In addition, since the shariah issues were still in the BBA contract, this has caused a decrease in the popularity of the BBA contract.

2.3 Controversies Surrounding al-bay' bithaman ajil (BBA) Contract

The BBA contract has become polemic in the Muslim world in its acceptance as well as its rejection especially amongst academicians and industry players. If previously, the BBA disputes were only related to genuine *Shariah* issues but when the BBA cases were tried in civil courts, questions arose on issues relating to compliance in terms of *Shariah* and the law. The basic dispute over the use of BBA was due to its function as an instrument for financing contract and its implementation which allegedly resembled a conventional loan.

The disputes amongst the earlier Islamic scholars with regards to BBA were due to its contents of three *shubhah*¹¹ matters. First: it's contained surplus interest or *riba al-faql*¹², second; the time delay and the third, sales were included in the law of prohibition of two prices in one sale or two offers in one offer. They considered *bay' al-ajil* or deferred selling as trading interest which contained *riba al-faql* since there was an increase in the sale price. The contemporary Islamic scholars were of the opinion that one could not resell to the original owner with a deferred payment at a price higher than the purchase price. Although the buyers and the sellers did not intend to conduct the first trading in order to be able to trade in the second place, but there exist ways and connections to interest, and the way that leads to interest is prohibited (Abdul Maqsud, 2008).

In addition, the use of BBA contract was claimed to contain *gharar* element. According to Razali (2008), the probability of the occurrence of *gharar* in BBA contract is very high, especially in relation to the purchase of assets that do not yet exist, i.e. for the financing of real estate to be constructed or still under construction. He added that there were three causatives which might lead a BBA contract to *gharar*. Firstly was the type of contract which did not fulfil the conditions for the sale of goods under the Islamic law of contract, secondly, it resembled *bay' al-ghaib*¹³ and thirdly, it would result in significant losses to the purchaser. This argument is also shared by Hanafi and Kasim (2006), Ali (2007), Dahlan and Junid (2010) and Hashim and Hassan (2011) who argued that the implementation of BBA contract for the financing of house construction was not valid because the status of the houses, collaterals, ownerships, purchasers, banks, and developers were not clear and this may lead to *gharar*.

BBA was also said to be the disguise of the loan transaction since it involved the practice of sell and buy back. Therefore, it could be said that the BBA trading activity implemented by Islamic financial institutions and banking did not reflect the real BBA (Hanafi and Kasi, 2006; Ali, 2007). The use of documents such as the Property Purchase Agreement (PPA) and the Property Sale Agreement (PSA) was claimed to be only complementary to give effect to the BBA transactions. This happened because when the customer came to sell assets under the PPA, he was not the actual owner of the asset/goods for sale since the said customer only paid a portion of the price of the overall total asset (Rosly *et al.*, 2000). For example, 10 per cent amount of deposit to be paid to developers under the PSA. The sole reason for the practice of selling and buying back under the PSA

¹¹ *Shubhah* is doubtful or unclear of its permissibility status.

¹² *Riba al-faql* occurs when the commodities exchanged are of different weights, measurements or numbers and are exchange at the same time.

¹³ *Bay' al-ghaib* refers to buying asset(s) which is not in existence.

and the PPA was to obtain cash to be paid to the seller. In this case, the banks could only act as the financier and not the seller.

In addition, BBA is said to be the *hilah* or the pretext for interest. This claim was based on the statement by a high court judge who said that the current BBA practice was a form of financing rather than trading (buying and selling). The said judge was of the opinion that BBA was *hilah* since the contract had the element of a loan cum interest transaction which was made lawful through the Islamic trading (buying and selling) method. It was also said that there was *inah* transaction whereby the original seller repurchases the real estate/asset from the buyer. Termed as “cash sale”, *bay' al-inah* was opposed by several school of thoughts (*mazhab*) which has termed this practice as the back door for interest by using the ruse and trickeries in law (*hilah*) from trading that seemed to justify an illegal transaction that was prohibited, to appear legal (*halal*) (Hashim, 2011). This was due to the presence of two contracts which could not be separated from the asset. Therefore, when this happened, the business transaction did not act as sales because the intentions of the parties clearly showed that the purpose of the contract was to provide loans with profits. The ownership in BBA transaction was also often disputed. Possessing the goods to be sold is the condition in trading (buying and selling) but it was found that in the implementation of BBA currently, there was no clear evidence to prove that the bank holds the ownership of the asset that was traded (Hashim, 2011). This was because there was no transfer of ownership to the bank in the title deed of the said asset.

The absence of a Novation Agreement (NA) in the BBA contract was also said to have affected the validity of the BBA contract. NA is an agreement involving three parties namely: between customers as the temporary purchasers, developers, and banks as the financiers. The use of NA in BBA contract would enable the financing bank to purchase the said house on behalf of the customer. In addition, it was also thought to be closer to the requirements of the Islamic business transaction which is not only aimed at giving out loans alone. However, due to the refusal of the developers involved in the BBA contract to sign the NA, the NA has been eliminated and replaced with PPA and PSA. Therefore, the absence of NA has affected BBA contract in terms of legislation (ISRA, 2009b). This was due to the fact that, if the financing tenure has matured, the financing bank was entitled to get the total amount of the sale and if the financing has not reached maturity, the financing bank was only allowed to claim the amount of debt at the time the debt was settled. The replacement of NA with the PPA and PSA was claimed as invalid trading (buying and selling).

Othman *et al.* (2011) further argue that BBA contract was not seen as complying with *maqasid shariah* which eliminates the element of difficulties (*raf al-haraj*) and prevents the harm (*daf al-dharar*). This was because the customer had to face financial burden of paying the monthly instalment, even before completion, since he was involved in the debt contract with the bank at the onset.

III. Past Studies

Liquidity Studies relating to the implementation of BBA in the Islamic banking and financial sector were very limited. The preliminary study was conducted by Mohd. Nor (2002) who studied the extent of the BBA

contract as practiced by Bank Rakyat, which was in accordance with the Islamic law of contract. In 2003, Mahmud conducted a study on the implementation of BBA products by analysing the strength and weaknesses in the effort to attract people to use the BBA principle, particularly at Bank Muamalat Malaysia Berhad (BMMB). Meanwhile, Dahlan and Al-Juned (2010) have, in their report, put forward several issues related to the BBA contract from the perspective of Shariah as well as common law. They opined that the implementation of house financing under the BBA concept in Malaysia was not valid because it involved the element of *gharar al-fahish*¹⁴, especially for financing transaction for a house under construction. Other study by Nazah et al. (2013) have listed five issues relating to disputes between financial institutions and customers in BBA financing, namely, (i) the issue of bay' al-inah, (ii) the trading (buying and selling) of goods not in existence, (iii) conditional sale and purchase and, (iv) *ibra*¹⁵ for early termination. On the contrary, this paper is aim specifically to report on the latest situation in the implementation of the BBA contract at TAIB in Brunei and it future plans for their financing products.

IV. Research Methodology

The This research adapted a qualitative approach in the form of a case study. The case study design applied in this research was the single-case study, involving only a single case but at a holistic level. Typically, single-case research is conducted when there are no other cases that can be obtained for sampling (Zainal, 20017) and this type of research is conducted to find the answers to questions of 'why' and 'how' (Yin, 1994). Tabung Amanah Islam Brunei (TAIB) was selected as the only institution to be studied in this research. Meanwhile, data collection method was chosen through the technique of in-depth interview in an unstructured manner.

This research carried out non-probability sampling through purposive sampling procedure. Sampling is intended to refer to sampling procedure where, based on knowledge and the specific objectives of this research, a group of subjects possessing certain characteristics were selected by the researcher to be the respondents of this study.

Overall, there were a total of 10 respondents involved in this study as shown in Table 1. They were grouped into four categories comprising (i) the management team of TAIB, (ii) the members of the Shariah Advisory Committee of TAIB, (iii) lawyers and, (iv) members of the Shariah Financial Supervisory Board (SFSB) and the Brunei Darussalam Monetary Authority (AMBD). All the respondents who became the subjects of this research were each assigned a code to hide and protect their identities.

¹⁴ *Gharār al-fahish* is defined as an uncertainty which is so great that it becomes unacceptable; or it is so vague that there is no mean of quantifying it. For example, asset or product cannot be delivered or is not according to the specification (Khir et al., 2008).

¹⁵ *Ibrā* in financing agreement is the concept of giving a rebate for early settlement.

Table 1: Breakdown of the respondents

Managem nt of TAIB	JKPS Members	Lawyer	SFSB & AMBD
res po nd en ts	r e s p o n d e n t s	r e s p o n d e n t	r e s p o n d e n t

The interview instrument for this research was adapted and modified from the research conducted by Brian (2005) and Mohd. Nor (2009). There were a total of 8 questions posed to the respondents in this research, which were divided into 4 criteria – attitude, knowledge, motivation and perception. The questions mainly revolved around the respondents' views of the BBA contract and factors of its implementation in TAIB (Table 2). Each listed respondent was assigned with an identification code for the purpose of data analysis process (Table 3).

Table 2: Interview questionnaire

Criteria	Items	
Attitude	.	What are your views on BBA?
	.	What are your views about customers' reception of the BBA contract?
Knowledge	.	What do you understand about BBA?
	.	The practice of applying BBA in financing products has been strongly disputed. What are your comments on this statement?
Motivation	.	What are the factors which led to the selection of BBA as the main form of financing contract in TAIB?

	.	Does TAIB intend to continue with implementing BBA contract for its financing products? If ‘Yes’ why? and if ‘No’ why?
Perception	.	The use of BBA contracts still dominates financing products in Brunei. What are your comments?
	.	What are your views about the forms of Syariah contracts which are now being applied in financing products?

Table 3: Listing of codes for respondents

Respondent	Code
TAIB management	PT
Members of JKPS	PS
Lawyers	RL 1
Members of SFSB & AMBD	RL 2

V. Results of the Study

5.1 Attitude: This section analyses respondents’ views and perception of BBA contracts in general.

5.1.1 Respondents’ Views on BBA Contracts

Generally, based on the research findings, the respondents collectively agreed that BBA was the usual form of contract used in financing products, especially in Malaysia and Brunei. One of the extracts of respondents’ views is as follows:

“BBA is one of the products which are commonly used by Islamic banks in Malaysia and Brunei. Essentially, it is a sale and purchase application where payment is deferred. However, Islamic banks use it as a method of financing and also for the issuance of şukūk.”
(PS)

However, the respondents had differing views on the application of the BBA contract. Table 4 below sets out several respondents’ clashing opinions regarding the BBA contract:

Table 4: Differences of opinion among respondents on the application of the BBA

PT1	<p>BBA is very suitable to be used for simple, non-complex forms of financing such as personal financing.</p> <p><i>“BBA depends on the type of financing offered. BBA is very appropriate to be applied for personal financing but is less suitable for home financing.”</i></p>
PT3	<p>The implementation of the BBA contract in Brunei is a duplicate of the financing products offered by conventional banks.</p> <p><i>“The implementation of BBA in Brunei is mostly influenced by conventional banks, whereby it is a duplicate of products offered by conventional banks.”</i></p>
PT4	<p>BBA contracts should rightly be used for social economic growth and is productive especially for home financing.</p> <p><i>“Not to say that BBA isn’t good, what is clear to me is that for certain transactions, BBA is intended for social economic growth and productivity, for example for home financing, but because a part of the transaction also involves sale and purchase between husband and wife, parent and child or vice-versa...”</i></p>
PT6	<p>BBA serves as an alternative to interest-based (<i>riba</i>) loans and it is thus <i>fardhu kifāyah</i> for the Islamic banks to implement it for the good of the Muslim community specifically.</p> <p><i>“An alternative to taking loans in conventional banking system. It is a fardhu kifāyah obligation of Islamic banks towards the ummah.”</i></p>
RL1	<p>BBA is not compatible with <i>maqāṣid al-shariah</i> because the intention of the transaction is clear (BBA <i>munaẓẓam</i>) and also due to the purpose of the facility.</p> <p><i>“In my personal opinion BBA goes against maqāṣid al-shariah because the intention of the transaction is clear (BBA munaẓẓam) as well as the purpose of the facility.”</i></p>
RL2	<p>BBA has its own potential and is categorised as an alternative product in shariah compliant financing. However, from a legal perspective, BBA contract is still said to be weak as cases of accumulated debts would still be referred to the jurisdiction of the civil courts. BBA contracts are said to be highly appropriate for financing items such as computers and home furniture, but are not suitable to be used for personal financing.</p> <p><i>“In a legal context, currently it is still weak compared to conventional banks since the jurisdiction of the court to enforce the law relating to Islamic financial products specifically have not yet been carried out or implemented.”</i></p>

Based on the interviews conducted, it was found that the use of BBA contracts still has its weaknesses and disadvantages, whether in terms of its compliance with shariah or from a legal perspective. This is admitted

to by respondents PT3, RL1 dan RL2. The view offered by RL2 suggests that BBA financing is an unfair transactional instrument which is full of weaknesses, especially from a legal perspective.

Meanwhile, PT6's views supported the explanation previously given by the Managing Director of Bank Islam Malaysia Berhad (BIMB), Dato Abdul Halim Ismail, where he quoted verse 282 of Surah al-Baqarah which decrees: *"Oh you who believe, when you contract a debt for a fixed period, write it down..."*. He opined that in this verse lies the alternative solution to the problem of loan financing method of the conventional banking system. This is the basic argument put forward by Islamic banking to support financing by way of BBA since BIMB opened its doors to the public on 13 May 1983.

5.1.2 Customers' Perception towards BBA

The research findings showed that there were three categories of respondents' opinions on customers' reception towards BBA contracts. In the first category, the view taken was that a majority of the customers are indifferent about the concept or contract used by TAIB. The customers' main concern is to obtain the financing facilities. The following is an extract of a respondent's opinion on the matter:

"It is observed that customers do not actually care what concept is used because they do not understand these concepts, what is of priority to the customer is the customer service, how fast service is delivered, because only certain people have knowledge about contracts or Shariah concepts." (PT1)

The second group of respondents expressed their view that the level of customers' awareness of BBA contracts was still low. When signing up for the financing facility, customers do not actually care about the type of contract applied by TAIB. The customers' priority is their ability to pay the loan and obtain the financing. At the same time, the respondents acknowledged that this was due to TAIB's failure and its lack of initiative to provide any explanation about BBA contracts to customers. Among the respondents' views extracted about this topic is as follows:

"In Brunei, awareness of BBA is still lacking, I don't see BBA performing any role for the customers because what is important to them is that they get the financing facility which they applied for. How the financing is processed is also not important to them." (PT4)

In the last category, the opinion held was that customers who have a clear knowledge about the use of BBA contracts are able to either accept or reject the transactions made based on BBA contracts. The following is an extract of a respondent's opinion on this topic:

"...there are two lines of thinking, the first claiming that BBA is not shariah compliant and second; accepting BBA contracts because it is a good contract for certain products." (PT2).

It is the responsibility of the customer to know and to understand the BBA contract he is entering. To place full responsibility on the Islamic banking and financial institution is unwise because customers also play a role in deciding their own behaviour.

5.2 Knowledge: This section analyses the extent of the respondents' understanding and knowledge of the differences in BBA contracts compared to other *Shariah* contracts. Further, the analysis also discusses respondents' awareness of the controversy surrounding BBA.

5.2.1 Respondents' understanding of BBA

The following is among the extract of respondents' views which reflects their collective understanding of BBA:

"It is a deferred Islamic sale and purchase contract structured by way of instalment payments according to a fixed time, as agreed by both parties." (PT6 and PS)

In addition, respondents also claimed that BBA has similarities with *bay' al-inah* contracts. This contention was put forward by respondents PT2 and RL2. It supports the research done by Ali (2007) and Rahman (2009) which claimed that BBA contracts contain elements of *bay' al-inah*. Meanwhile, the profit imposed on customers is said not to take into account the risk potentially faced by the Islamic banks especially in the event of breach. In addition, it is also claimed that BBA contracts have been used as an easy way for customers to obtain cash for their personal use.

5.2.2 Respondents' views on the controversy of BBA in financing products

The research findings showed that a majority of the respondents were aware of the existence of dispute and debate regarding the implementation of BBA as a financing product. This awareness was driven by their own experience when attending seminars, especially those held outside Brunei. Table 5 below provides comments of selected respondents regarding the dispute involving BBA contracts.

Table 5: Respondents' views on the controversy surrounding implementation of BBA contract

PT1	<i>"Although other Islamic banks such as Bank Islam Brunei Darussalam (BIBD) have started to replace BBA contracts with other shariah contracts, if BBA is still considered valid in Brunei, not troublesome and not incompatible with shariah, it can still be applied as long as there has not been any formal statement issued by any party in Brunei declaring BBA to be illegal."</i>
PT2	<i>"BBA is said to be similar to interest-based loan products and more expensive compared to other financing products offered by banks which do not comply with the canonical laws of Islam. Among the reasons for the dispute is that a few cases relating to BBA contracts had been tried and challenged in court, as can be seen happening in Malaysia."</i>

PT3	<i>“There seems to be no end to the issue surrounding BBA. This is because BBA contracts are not accepted by the countries in the Middle East, but they are still implemented by Malaysia, Indonesia and Brunei. If the countries in the Middle East dare to rule BBA as forbidden in the context of Brunei who will say that BBA contracts can no longer be applied and who will issue guidelines on the matter? The practice now is to wait and see what happens with neighbouring countries. Therefore, if the countries in the Middle East could bring themselves to rule that BBA contracts are forbidden, surely there must be something wrong with it.”</i>
PT4	<i>“The dispute about BBA happens due to the lack of consensus on it. BBA is supposed to involve 3 transacting parties.”</i>
PT6	<i>“BBA contracts are not recognised as permissible by a majority of international Islamic scholars due to the elements of bay’ al-ṭinah. Therefore, when faced with something regarded as shubhah, we are encouraged to avoid it.”</i>
PS	<i>“Although a majority of scholars allow the increase in price due to deferred payment, by right it should be that the Islamic banks can impose varying profit rates based on what their customers can afford. To sell something which has not come into being particularly for the financing of houses/buildings which are still under construction is also an issue which has been disputed.”</i>
RL1	<i>“The dispute is between those who accept maqāsid as a guide to make rulings and those who do not look to maqāsid. They only look at the form of “al-syaklu” and it is not certain whether they take into consideration reasons of “asbab.”</i>
RL2	<i>“Apart from the fact that BBA transactions have similarities with bay’ al-ṭinah, it has been said that some contemporary scholars have taken the view that BBA contracts are justifiable only in terms of method, given that the transaction can be likened to taking loans at banks which do not adhere to the canonical laws of Islam.”</i>

The view given by respondent PT1 shows that BBA still will be implemented up to a point when there is an Islamic legal ruling which prohibits it. Meanwhile, the statement by respondent PT2 is in support of the report written by Hassan (2008) and Yaacob (2011) where they had listed out the total number of BBA cases registered in the civil courts of Malaysia.

Meanwhile, the statement by respondent PT4 was in line with the views of Shahrudin (2013) who highlighted that the variation in interpretation of *Shariah* has led to the differences in practical approach in the Islamic financial industry. As for the explanation offered by respondent PT6 and RL2, these were in support of Ali (2007), Dahlan and Al-Juned (2010) and Hashim (2011), all of which stated that BBA contracts contain elements of *bay’ al-ṭinah*.

5.3 Motivation: Questions containing motivational elements were asked in order to uncover the factors influencing the selection of BBA contracts and TAIB's future plans on its utilisation.

5.3.1 Factors influencing the selection of BBA as the main contract for financing in TAIB

The respondents believed that there were five factors why BBA has been selected as the main form of contract for TAIB's financing products. First; it is easy to implement, second; the officers and staff are already familiarised with it and the BBA procedure is easy to understand, third; its suitability with products, fourth; it is easy to market and fifth, TAIB is already comfortable with BBA contracts. The following are among the extracts of opinions given by respondents:

"...the officers and staff are already accustomed with BBA contracts, the transaction is simple." (PT1)

"The suitability of BBA contracts with the products on offer, easy and straightforward, the process is not complicated for any one product." (PT2)

"TAIB is comfortable with BBA contracts, the officers and staff are very well-versed with the process, this is due to its features which make it easy for TAIB to market it." (PT3)

Based on the above extracts, it is clear that BBA contracts do not only dominate financing products in TAIB, in fact there appears to be a very high level of dependence on it among the management staff of this institution. Rosly (2005) believed that if a bank limits its financing products only to BBA instruments, it would be quite difficult for it to compete with its competitors.

5.3.2 TAIB's plans on use of BBA contracts for its financing products

From the interviews conducted, a majority of the respondents took the view that TAIB does not intend to continue using BBA contracts for its financing products. TAIB has plans to replace BBA contracts with other forms of Syariah contracts which are accepted by the public.

Among the reasons offered by respondents is that the use of BBA contracts has impacted on TAIB's balance sheet. Other than that, from a strategic perspective, BBA contracts are not helpful for TAIB since the underlying asset used for transaction is not owned by TAIB. This fact is especially glaring at times when TAIB is in need of liquidity and yet the underlying asset cannot be utilised by TAIB as security, whereas the scenario would be different if TAIB were to use *ijarah* contract. The following is among the extracts of respondents' views on the matter:

"Certainly to replace it, to not continue with BBA, this will affect the balance sheet. The underlying asset used in BBA contracts are not owned by TAIB to be used as security. Therefore, strategically, BBA contracts are not helping TAIB." (PT4)

There were also respondents who took the view that TAIB will maintain its use of BBA contracts. These views were based on the premise that as long as there are no objections by the authority bodies in Brunei, then BBA will be used due to its simple procedures. The following is one of the extracts of respondents' views on this subject:

"...for as long as there is no restriction formally prohibiting BBA, it will continue to be used, to me the BBA transaction is very simple." (ST1)

Given that BBA contracts are still popular, dominating financing products in Brunei and in TAIB particularly, this section will touch on respondents' perception towards BBA and also other *Shariah* contracts which have the potential to be introduced in Islamic financing products.

5.4 Perception

5.4.1 The domination of BBA contracts in the Islamic financial industry in Brunei

The research findings indicated that there were two schools of thought on this issue. A majority of the respondents agreed that BBA contracts still dominate the Islamic financing products in Brunei. Despite efforts made Islamic financial institutions to replace BBA with other syariah contracts, the level of success is seen as rather insignificant. For example, Bank Islam Brunei Darussalam (BIBD) has initiated efforts to replace BBA with other syariah contracts which are more well-accepted by the public.

Another view contended that Islamic institutions in Brunei have, in stages, moved towards more acceptable forms of contract, such as *tawarruq* contracts. The following is one of the extracts of respondents' views on this subject:

"Not really, since at this point of time, BIBD has started to implement the concept of tawarruq in its financing products, which is done in stages." (RL2)

In conclusion, efforts towards the use of other *Shariah* contracts other than BBA should be given recognition and supported because it will pave the way for the Islamic banking and financial industry in Brunei to become more dynamic, innovative and competitive.

5.4.2 Respondents' views on the application of Shariah contracts other than BBA

The research findings indicated that all respondents fundamentally had an open mind towards *Shariah* contracts other than BBA, which have begun to be implemented in the Islamic financial sector in Brunei. The following are among the extracts of respondents' opinions on the matter:

"A good development in diversifying Islamic banking products based on current needs and this certainly demonstrates that Islam is all-encompassing and well-rounded, promoting progress in all aspects of life including financial activities." (RL2)

“A positive innovation which brings pride, as long as it does not go against the canonical laws of Islam.” (PT6)

VI. Closing

The outcome of the interviews clearly showed that respondents have a positive reaction towards other forms of *Shariah* contracts which have now been introduced in the market. This shows that the staff in TAIB have already made some preparation in advance, in case the Bruneian authorities or the top management in TAIB decide to make changes to the type of financing contract used.

Since the introduction of BBA contract in Brunei Darussalam, its application in financing products has clearly been favoured by Islamic financial and banking institutions. This phenomenon is especially seen in TAIB, where BBA contracts still dominate as compared to other *Shariah* contracts. However, of late, Bank Islam Brunei Darussalam (BIBD) has been gradually moving away from BBA contracts to other *Shariah* contracts for the financing products that it offers.

Generally, the research findings have indicated that the respondents were very optimistic about the application of other *Shariah* contracts apart from BBA for the Islamic financial products. At the same time, TAIB is in its early stages of making efforts to explore and introduce new *Shariah* contracts following the controversy surrounding the use of BBA. This is a positive development in the effort to diversify Islamic financing products and services which are universally accepted according to current demands. Therefore, the commitment and support of all parties are required to migrate away from the use of BBA contracts for financing products. Lastly, it is hoped that the Islamic financial and banking industry in Brunei will continue to develop to become dynamic, innovative and able to compete with other countries.

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