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## Sales Contract of Commodity Murabahah Via Tawarruq Arrangement in Supporting Maqasid of Shariah in Economy

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### Abstract

Commodity Murabahah contract via Tawarruq arrangement is a replacement of debatable contract of Bay al 'Inah where the later involving only to two parties, to which involving the third party in order to obtain cash. Commodity Murabahah via Tawarruq arrangement also play important role in supporting the financial and economic activities in Malaysia for depository purposes such as Term Deposit-i thus it generate economic activities and promoting the growth of related commodity. On the other hand, the financing product such as Term Financing-i from Islamic financial institutions is example of fund application or utilization from the Islamic Bank. This product offered to retail customers for their personal need and usage. The cash facility will support the business expansion of Small Medium Enterprise (SME) or small business owner, and grow their business which later will contributing to increase of Zakat's collection. By offering the Islamic Finance Product, not only it obliges in obeying Allah's instruction in avoiding riba' (usury), the applicant also may use for the purpose of better standard of living, improving financial status and avoiding illegal loan shark. Thus, this practice also accordance to the objective of Maqasid Shariah in protecting the life, as well as protecting the wealth.

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### Introduction

Commodity *Murabahah* was the latest and currently the most innovative Islamic Finance's product in helping the Islamic Banking Industry to offer financing services either to public as well as corporate clients. Commodity *Murabahah* has been discussed and being a subject of debates among muslim scholars since early 2000. Seeing this approach as foreign to Islamic applications, there were some criticisms on the Commodity *Murabahah's* application in Islamic Financial Institution. Datuk Zukri Samat thru his article "*Debate over Commodity Murabahah*" in 2009 which been published by The Star Online, stated that Islamic Fiqh Academy of Rabbithah 'Alam

Islami, Makkah ruled in 2003 that any product structure based on the commodity *murabahah* or *tawarruq munazzam* concept should be considered as haram, or forbidden by Islamic law. (Samat, 2009).

The criticisms were arising when *tawarruq* concepts was introduced in order to give an alternative to *Bay Al Inah* which reportedly creating some controversial issues for Islamic Financial Institutions. According to Shaharuddin (2012) in his article entitled “*The Bay’ al-’Inah Controversy in Malaysian Islamic Banking*”, majority of classical Islamic Scholars disapproved the *Bay al ’Inah* contract based on the *athar* of Saidatina Aishah which in the *athar*, Saidatina Aishah clearly condemn the transaction made by the servant of Zaid bin Arqam. Another reason of disapproval of *Bay al ’Inah* was the legal stratagem issue. Amir Shaharuddin also summarized that *Bay al ’Inah* was failed to eradicate the element of *riba’* in the current banking system as well as the approach was seen inappropriate to maintain the growth of industry.

Creation of *tawarruq* also seen as a solution for Islamic Banking Industry in meeting the demands from public especially when come to financing facilities. According to Monthly Highlight and Statistics until September 2019 from Central Bank of Malaysia as shown in Diagram 1.1 below, total of financing until September 2019 was amounted RM3.4 Billion. This huge amount of financing surely will be benefiting to the Muslims as well as the consumers of Islamic Banking, and indirectly fulfilling the objective of *Maqasid Shari’ah*. This study will look into the evolution of Commodity *Murabahah* via *Tawarruq*, the implication to *Maqasid Shari’ah*, the relevant sources of *Fiqh* and legal maxim, as well as the application of the product to Islamic Banking Industries.

**Sistem Perbankan Islam: Jumlah Pembiayaan Melalui Akaun Pelaburan<sup>1</sup> Mengikut Tujuan dan Sektor**  
*Islamic Banking System: Total Financing funded through Investment Account<sup>1</sup> by Purpose and Sectors*

RM juta / RM million											
Pada Akhir Tempoh  <i>End of Period</i>	Tujuan <i>Purpose</i>										Jumlah pembiayaan  <i>Total financing</i>
	Pembelian sekuriti  <i>Purchase of securities</i>	Pembelian kenderaan pengangkutan  <i>Purchase of transport vehicles</i>		Pembelian harta kediaman  <i>Purchase of residential property</i>	Pembelian harta bukan kediaman  <i>Purchase of non-residential property</i>	Pembelian aset tetap selain tanah dan bangunan  <i>Purchase of fixed assets other than land and building</i>	Kegunaan persendirian  <i>Personal use</i>	Pembinaan  <i>Construction</i>	Modal kerja  <i>Working capital</i>	Tujuan lain  <i>Other purpose</i>	
		Jumlah  <i>Total</i>	antaranya: Pembelian kereta penumpang  <i>of which: Purchase of passenger cars</i>								
2019	13,057.0	3,257.0	2,702.4	12,057.8	1,458.5	359.3	2,309.8	2,552.1	33,816.3	8,628.6	77,496.6
1	8,308.6	2,180.1	1,626.4	19,014.2	1,517.2	359.3	2,609.2	2,563.8	32,744.2	8,090.1	77,386.6
2	13,325.7	1,954.7	1,415.5	13,269.0	1,595.5	399.2	2,836.2	2,680.8	33,191.1	8,093.1	77,266.4
3	11,738.7	1,671.0	1,126.0	13,769.2	1,623.9	329.2	3,202.0	2,960.3	32,035.1	8,283.9	75,613.4
4	10,653.6	1,684.3	1,129.9	15,184.7	1,690.7	329.4	3,229.9	2,962.2	31,434.7	8,227.6	75,416.9
5	10,458.3	1,768.9	1,237.9	15,584.8	1,710.5	329.2	3,331.4	2,987.3	32,131.0	8,435.2	76,736.6
6	10,649.8	1,763.1	1,230.5	15,647.3	1,722.4	329.0	3,203.3	2,989.1	31,780.4	8,453.7	76,538.1
7	10,106.9	1,702.4	1,156.7	14,781.3	1,556.5	328.8	3,254.9	4,195.5	32,857.6	8,181.1	76,965.0
8	9,916.2	2,357.2	1,831.5	14,692.1	1,828.9	327.3	3,539.1	4,197.0	32,147.5	8,180.9	77,186.1
Total	642,844.4	213,266.5	187,550.3	518,555.2	90,276.2	27,942.3	99,028.0	106,055.6	1,432,023.6	286,912.8	3,416,904.6

Nota:  
 1. Mulai 1 Julai 2015, bank Islam berlesen di bawah Akta Perkhidmatan Kewangan Islam 2013 (IFSA) dan bank berlesen dan bank pelaburan berlesen di bawah Akta Perkhidmatan Kewangan 2013 (FSA) yang dibenarkan di bawah seksyen 15 FSA untuk menjalankan perniagaan perbankan Islam dikehendaki menunjukkan secara berasingan wang yang diterima sebagai deposit Islam atau akaun pelaburan.  
 2. Termasuk pembiayaan yang diekodkan di dalam dan luar kunci kira-kira.  
 3. Pada Jun 2019, data telah disemak untuk mengambill kira 'penganbilbilhan' Asian Finance Bank Berhad oleh Malaysia Building Society Berhad bagi menubuhkan MBSB Bank Berhad. Data yang disemak merujuk kepada data dari bulan April 2018 dan seterusnya.  
 4. Nota:  
 5. Beginning 1 July 2015, licensed Islamic banks under the Islamic Financial Services Act 2013 (IFSA) and licensed bank and licensed investment bank under the Financial Services Act 2013 (FSA) approved under section 15 of the FSA to carry on Islamic banking business are required to present separately monies accepted as Islamic deposit or investment account.  
 6. Includes those which are recognised on and off-balance sheet.  
 7. In June 2019, the data was revised arising from the 'acquisition exercise' of Asian Finance Bank Berhad by Malaysia Building Society Berhad to form MBSB Bank Berhad. The revised data refers to data from April 2018 onwards.

Diagram 1.1: Monthly Highlight and Statistics until September 2019, Central Bank of Malaysia

## Literature Review

Islamic Banking Industries saw some rapid growth over the last decade. Islamic banking industries was not only attracting Muslims, but also non-Muslims. Islamic Banking industries also giving significant contribution to Malaysia's economic. Empirical study being conducted on the relationship between Islamic banking and economic growth in the long-run and the result was Islamic bank financing is positively and significantly correlated with economic growth and capital accumulation of Malaysia (Furqani & Mulyany, 2009). The practise of Malaysian Islamic Banking Industry may be having correlation on the application of the *Maqasid Shari'ah* framework in determining the objectives of Islamic economics and Islamic banks. *Maqasid Al-Shari'ah* was defined as the objectives and the rationale of the *Shari'ah* (Abozaid & Dusuki, 2007). It is also according to Ibn Al-Subki as a comprehensive and careful examination of the *Shari'ah* rulings entails an understanding that *Shari'ah* aims at protecting and preserving public interests (*maslahah*) in all aspects and segments of life.

Meanwhile, Ashur (2006), a great Islamic Scholar, explained in his book entitled "*Ibn Ashur - Treatise on Maqasid al-Shari'ah*" that the knowledge of *Maqasid al-Shari'ah* is important for mujtahids to not only understand or interpret the texts of *Shari'ah*, but also to derive solutions to contemporary problems faced by Muslims and provides a clear guidance and framework to the process of ijtiḥād in solving the issues conforming to the human interest while complying with the will of God. Generally, *Maqasid Shari'ah* are divided into three (3) according to the 'levels of necessity', and these three (3) categories are:

*Daruriyyat* (Necessity). Necessity are essential and basic elements for human being. The absence of these elements may bring danger, and could cause harm and damage to human life. The examples of necessities such as shelter, food, and clothes. The necessities are further classified by the scholars into five elements of protections. The objective of *Maqasid Shari'ah* is mainly to protect these five elements from any harms. These protections are known as:

Protection of Faith or Religion (*Al - Iman*)

Protection of Life (*An - Nafs*)

Protection of Lineage (*An- Nasl*)

Protection of Intellect or Mind (*Al - 'Aql*)

Protection of Property or Wealth (*Al - Mal*)

*Hajiyyat* (Needs). Needs is less important compared to necessity. Even though needs are less essential for human being to live without, not having the needs still can be impacting the way human live. Example of needs are marriage, healthy foods, transportation and communication tools. Islam encourage and guides on how to address this needs after ensuring all elements of *Daruriyyat* was being fulfilled.

*Tahsiniyyat* (Luxury). Luxury is the last element should be any Muslim considered to be fulfilled. Having luxury is to allow human being live comfortably and as additional values to human lifes. Example of *Tahsiniyyat* is a luxury car, big bungalow house, and branded outfits.

Mohammad and Shahwan (2013) discovered that attention of *Maqasid Shariah* given by Malaysian Islamic Banking Industry is to the protection of dignity (*al-Muru'ah*), protection of

mind (*al- 'Aql*) and protection of wealth (*al-Mal*). In protecting properties or wealth, most of the efforts and transactions will involve financing facilities offered by Banking or Financial Institutions. Initiating the effort of establishing Islamic Banking and Financial Services in Malaysia, Banks Islam was introduced in 1983 followed by Central Bank of Malaysia introduced "Interest-free" banking scheme ten (10) years later.

As Islamic Banking dan Financial Services was operated based on *Shari'ah* principles such eliminating *riba'* (usury), *gharar* (uncertainty) and *maysir* (gambling) in all transactions, according to Ariff (2017) for there is much more to Islamic banking than the absence of interest (*riba'*). Elimination of *riba'* from all transactions was crucial in Islamic teaching and fundamental. *Riba'* was strongly forbidden by Allah swt in Holy Quran as stated follow:

Translation:

*"Those who eat the Ribâ (Usury) will not rise from their graves except as one rises who is being beaten by Satan into insanity. That is because they say: "Trading is only like usury; however, Allah*

الَّذِينَ يَأْكُلُونَ الرِّبَا لَا يَقُومُونَ إِلَّا كَمَا يَقُومُ الَّذِي يَتَخَبَّطُهُ الشَّيْطَانُ مِنَ الْمَسِّ ذَلِكَ بِأَنَّهُمْ قَالُوا إِنَّمَا الْبَيْعُ مِثْلُ الرِّبَا وَأَحَلَّ اللَّهُ الْبَيْعَ وَحَرَّمَ الرِّبَا فَمَنْ جَاءَهُ مَوْعِظَةٌ مِنْ رَبِّهِ فَانْتَهَى فَلَهُ مَا سَلَفَ وَأَمْرُهُ إِلَى اللَّهِ وَمَنْ عَادَ فَأُولَئِكَ أَصْحَابُ النَّارِ هُمْ فِيهَا خَالِدُونَ ﴿۲۷۵﴾

*has made trading lawful and forbidden usury". To whomsoever then the admonition has come from his Lord, then he desists (from usury), so what has already passed (usury he had taken before) is for him and his affair belongs to Allah; and whoever returns (to usury), these are the inmates of the Fire; they shall abide in it forever."*

Implementing, taking and to do anything related with *riba'* also was seriously prohibited by Prophet Muhammad p.b.u.h as narrated in His hadith:

*From Jabir RA, he said: "Rasulullah SAW cursed the receiver and the payer of ribā, the one who records it and the two witnesses to the transaction and said: they are alike (in guilt)" - Narrated by Muslim: 1598*

Besides verse from Al Quran and Hadith from Prophet Muhammad s.a.w as primary sources of jurisprudence (*Usul al -Fiqh*) as stated above, Islamic Banking products also being created and designed referring to Legal Maxim or also known as *Al-Qawā'id al-fiqhīyah*. There are five leading maxims (Sanusi, 2012), such as "matters are determined according to intentions", "certainty is not overruled by doubt", "hardship begets facility", "harm must be eliminated" and "custom is a basis for judgment". Islahi (2013) when reviewing book entitled "Shariah Maxims Modern Applications in Islamic Finance" written by Muhammad Tahir Mansoori, he mentioned that in Chapter 2 is on "Intention and motivating cause of contract" that plays 'a pivotal role in determination of its legal status the contract. The author of the book also fully explains these maxims and demonstrates their applications in the field of banking and finance as well as on how these rules correct positions of controversial contracts like *Bay al 'Inah*, *Bay al-Wafa*, *Tawarruq*, Commodity *Murbahah*, and sale and lease back *Sukuk* can be determined.



*Bay al 'Inah* was among the initial Islamic Banking products were offered to public in Malaysia. According to Azahari (2013), *Bay al 'Inah* is defined as a sale with immediate repurchase. In early 2000, financing product under Islamic concept of *Bay al 'Inah* was reported to received high demand from customers compared to other Islamic Financial Product such *Bay Bithaman Ajil* (BBA), *Ar Rahn* etc (Bank Rakyat 2002). *Bay al 'Inah* was permissible under opinion of *Shafi'i* School of Fiqh but abhorrent, with certain conditions and do not involve Riba, uncertainties and gambling. However, the practise and implementation of *Bay al 'Inah* was being opposed by other majority of other Muslims Scholars such as from Maliki School of Fiqh, Hambali School of Fiqh as well as Hanafi Schools of Fiqh. Great Imam Ibnu Taymiyyah also declared that the contract is void, haram and sinful, for such a transaction is *Riba* or hidden usury. The argument from majority other Muslim scholars who opposed *Bay al 'Inah* is that the form of the contracts of sale in "*Bay*" are nothing but to allow what is intrinsically illegal by *Shari'ah*, which is loan with interest. While *Bay al 'Inah* brought some controversial and criticism especially regarding elimination of *riba'*, *Tawarruq* was designed as replacement to *Bay al 'Inah* which claimed by some scholars had less *Hilah* (tricks) compared to *Bay al 'Inah*. Jamaludin (2018) in his article "*Why in Favor of Tawarruq not Bai Al - Inah in Personal Financing Product*" concluded that even though *Bay al 'Inah* and *Tawarruq* having the same purpose, but *Tawarruq* having less *Hilah* in its practices.

As alternative to *Bay al 'Inah*, *Tawarruq* has been explored and redesigned in Malaysian Islamic Banking Industry and called as Commodity *Murabahah* via *Tawarruq* which is not only for cash financing, but also is exercised for others financing such as house, auto and trade financing. (Ahmad et al., 2017). *Tawarruq* in modern definition is to selling asset in order to get liquidity or cash assistance. Professor Dr. Abdur Rahman Yusri Ahmad (2009) defined *tawarruq* as seeking *wariq* (silver dirham), where the silver dirham (money) is profitable cash in the past. According to Bouheraoua (2009), there are two (2) kinds of *tawarruq* which are classical *tawarruq* (*Al-Tawarruq at-Fardi*) and organized *tawarruq* (*Al-Tawarruq al-Munazzam*). Classical *tawarruq* is defined as the purchase of a commodity possessed owned by the seller for a delayed payment, whereupon the buyer resells the commodity for cash to other than the original seller in order to acquire cash (*al-wariq*).

In short, today's meaning of *tawarruq* is "seeking cash" (circulating cash, whatever the type of the currency may be). Even though the latest development of the product involving buy and selling commodity, most of Middle East countries called the transaction as *Tawarruq* since the real intention of customers was not to buy the commodity, instead to sell the commodity or assets in order to get cash as soon as possible. (Othman Cole et al). *Tawarruq* concept also has been discussed and cannot run from being criticized by some Muslims Scholars. Countries adapting *Shafi'i* School of Fiqh such as Malaysia and Indonesia were implementing *Tawarruq* concept in their Islamic Banking Industry. The classical scholars of the *Hanafi*, *Shafi'i* and *Hanbali* School of Fiqh looked *tawarruq* as legally permissible transactions (Hosen and Nahrawi, 2012). According to Al Zuhaili (2006), the evidences of Muslims scholars who permit *tawarruq* arrangement was based as followed:

Verse of Quran "Allah has made trading lawful and forbidden usury" Al Baqarah (275). From this verse, Muslims Scholars who favour toward *tawarruq* concept distinguishing *tawarruq* and usury activities. They also regard *tawarruq* as permissible buy and sell activities with certain conditions.

Authentic Hadith narrated by Imam Bukhari regarding governor of Khaibar who brought to him an excellent type of dates (from Khaibar) and barter one Sa' of the excellent date for two Sa's of their existing dates and two Sa's of the excellent for three of their existing dates. Allah's Messenger said, "Do not do so (as that is a kind of usury) but sell the mixed dates (of inferior quality) for money, and then buy good dates with that money". From this hadith some Muslims scholars argued that it is permissible to sell assets to obtain money and the first contract was not same with the second contract. There is also another hadith narrated by Imam Muslim, Prophet Muhammad p.b.u.h said "Sell that good dates by commodity and then buy whatever dates you want". The second hadith claimed as Muslims Scholars as support for the first hadith as well as the verse from Holy Quran as discussed above.

The Muslims Scholars who favour toward *tawarruq* also referring to legal maxim that says, "The original rule about all things is permissibility". However, Prof Dr Wahbah does not agreed with the application of this legal maxim and disagreed with implementation of *Bay al 'Inah* and *Tawarruq* as there is a legal maxim that clears the previous maxim, which is, "The original rule about all useful things is permissibility and the original rule about all harmful things is prohibition". In his opinion, both *Bay al 'Inah* and *Tawarruq* arrangement are bridging to *riba'* and considered prohibited.

Last evidence or basis from Shafi'i and Hanafi Scholars to approved *tawarruq* concept is the contract was validated by Sales and Purchase's Pillar and Conditions.

On the other hand, the Muslims Scholars who oppose the *tawarruq* concept such as the Maliki School of Fiqh, Umar bin Abdul Aziz, Ibn Taimiyah, Ibn Alqiyym, Mohammed bin Al'asan Alshaibani and Al'alkafi from the Hanafi School of Fiqh forbid 'inah and tawarruq. They referring to several evidence and arguments such as:

Tradition of one of Prophet companion Ibnu Umar (*may Allah swt pleased with him*) where Ibn Umar says "If people hoard dinar and dirham, deal with 'inah, indulge in cultivating and planting, and leave jihad, Allah sends ordeal down on them and He does not remove the ordeal unless they adhere to Islam", Another tradition is based on the *athar* of Saidatina Aishah which in the *athar*, Saidatina Aishah clearly condemn the transaction made by the servant of Zaid bin Arqam as mentioned earlier. In the *athar*, Saidatina Aishah disagreed with Mother of son of Zaid bin Arqam bought from Zaid a slave at 800 deferred price and I sold him to Zaid at 600 cash price and ask Saidina Zaid to repent to Allah swt.

In the opinion of these Muslim Scholars, *tawarruq* is actually like the sale of a forced person (*Talji'ah* or *Bay al-Mudtar*) and he does not have any choice. The Scholars who opposed *tawarruq* especially Ibnu Taimiyah claimed that the 'illah of *riba* is achieved in *tawarruq* and this is worse than *riba*, because *tawarruq* entails a higher cost and losses.

The development and innovation in Islamic Banking Industries continued to evolved and new arrangement called Commodity *Murabahah* via *Tawarruq* was being introduced. Commodity *Murabahah* via *Tawarruq* consist of two sales contract and purpose. The first contract is mainly to create debt via purchase through deferred payment, and the second contract was to offer the

products or commodity to other parties in order to create cash or liquidity. Commodity *Murabahah* via *Tawarruq* according to Yusof Mahmud is one of the Islamic fund item as to store financing, liquidity financing and individual financing and utilized *Murabahah* and *Tawarruq* as an item within the specific exchange (Aljamos et al, 2018).

*Murabahah* was defined by Central Bank of Malaysia as a sale and purchase of an asset where the acquisition cost and the mark-up are disclosed to the purchaser. (Central Bank of Malaysia, 2013). In short, it is means that the seller of the asset disclosed to the buyer the cost of asset and the profit margin if the seller agreed to buy from him. When Commodity *Murabahah* via *Tawarruq* was designed and introduced, the underlying asset used in the transaction was commodities such as metal, crude oil, etc. In Malaysia context, Commodity *Murabahah* programme (CMP) was designed to be the first ever commodity-based transaction that utilises the Crude Palm Oil (CPO) based contracts as the underlying assets (Dusuki, 2007).

### **Application**

In Malaysia's Islamic Banking and Finance industry, the application of Commodity *Murabahah* via *Tawarruq* might be differ from other country. Diagram 3.1 shown on how Commodity *Murabahah* via *Tawarruq* being financed with deposit of money from customers and works with difference parties involving in the process of debt and cash creation.

As we can see in the diagram, the parties involved in the process was at least four (4) parties which are Customers, Islamic Bank as Islamic Financial Institutions, Broker A who will offered the commodities to the Islamic Bank and lastly the Broker B which is the last buyer who might buying directly either from customers or from the Islamic Bank if customers appoint the Islamic Bank as their *wakalah*. Customers may come from retail sector as well as corporate sector. Islamic Bank in the other hand, was the depository institution and offering deposit account facilities such *Wadiah Yad Amanah* or *Wadiah Yad Dhamanah*. Some of the Islamic Bank also offering *Wakalah Bil Istismar* account for customers who looking for return rather than just normal custody. The money from this depository depending on the type of account, will be used in buying the commodity for offering Islamic Finance Product such as Commodity *Murabahah* via *Tawarruq* for customers who applying financing facilities.



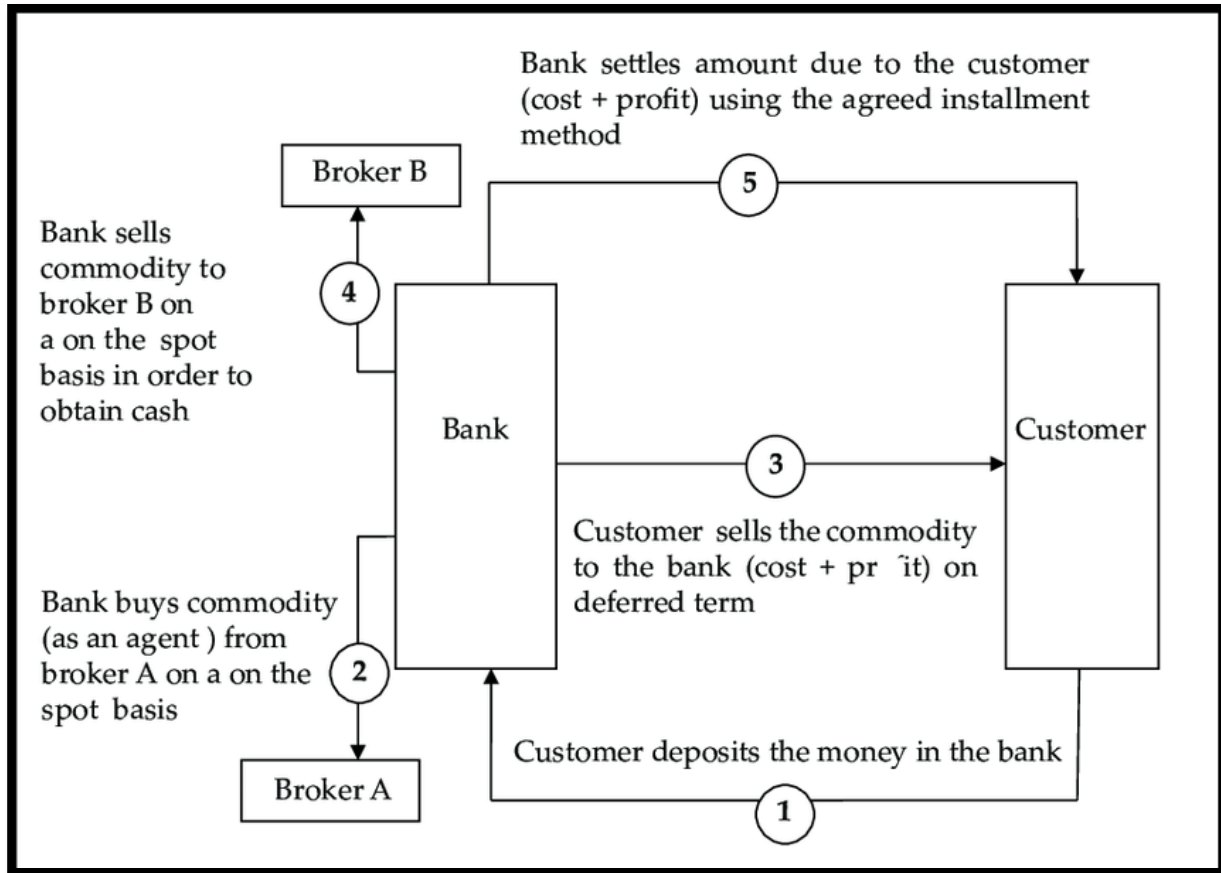


Diagram 3.1: The Process of Money Depository for Commodity Murabahah via Tawarruq

Central Bank of Malaysia had issued the latest Policy Document regarding *Tawarruq* on 28 December 2018 detailing all relevant aspects on *tawarruq* arrangement. Taking into consideration of the arguments from Muslims Scholars who opposed *tawarruq* as discussed earlier such as the tradition of one of Prophet companion Ibnu Umar (*may Allah swt pleased with him*) and force of selling and buying from happened, Central Bank of Malaysia in the guidelines clearly stated that “the seller in the first sale and purchase contract shall not be the purchaser in the second sale and purchase contract in the same *tawarruq*”. This guideline also may avoid the contracting parties in the *tawarruq* fall under *riba'*. Besides, Broker A and Broker B supposedly was not the same parties or individual, and they should be involving in commodities trading and business line which related with the commodities. Furthermore, Bursa Malaysia introduced Bursa Malaysia Bursa Suq Al-Sila' (BSAS) in 2009, a purposefully designed exchange-traded platform to facilitate *tawarruq* transactions, particularly for Islamic banks, while addressing the scholars' concerns about violations in the existing practice of organized *tawarruq* using various international commodity platforms (Dusuki, 2010). Bursa Suq Al-Sila' also was developed to address some concern regarding *tawarruq* such as spoiled commodities and lack of monitoring, possession and delivery of the commodities, potential of *tawarruq* becoming *Bay al 'Inah* and lastly concern regarding the appointment of the Islamic Bank as *Wakalah* to sell the commodities on behalf of the customer.

The practise of Commodity *Murabahah* in Malaysia Islamic Banking Industries referring to the process as shown in Diagram 3.2, started with Step 1 as Customer (*loan applicant*) come to Islamic Bank in order to get financing facilities. In this step, the Islamic Bank may require the customer to sign *Wa'ad* (Promise) Contract to ensure the customer will buy the commodity from the Islamic Bank if they proceed with purchase of commodity from Broker A. Depending on the amount requested by Customer, the Islamic Bank started the process by buying the asset by cash from Broker A as shows in Step 2. In the Diagram 3.2 Step 2 also shows that once the Islamic Bank bought the commodity from the Broker A, the ownership of the commodity will be transferred from the Broker A to the Islamic Bank. Islamic Bank then sell to customer at agreed price using *Murabahah* concepts on deferred payment. This is where debt being created in the Commodity *Murabahah* via *Tawarruq* product as shown in the Step 3 in the diagram below. As mentioned about *Murabahah's* definition above, in this Step 3 customers must be well informed regarding the cost of purchasing the commodities as well as the profit which the Islamic Bank would like to obtain from this transaction. The Islamic Bank also need to ensure all the Central Bank of Malaysia's guideline on *tawarruq* to be comply such as using the Bursa Suq Al-Sila' in order to ensure that the Broker A and the Broker B was not the same party. Once completed the Step 3, then the ownership of the commodity bought by the Islamic Bank now transferred to the Customers.

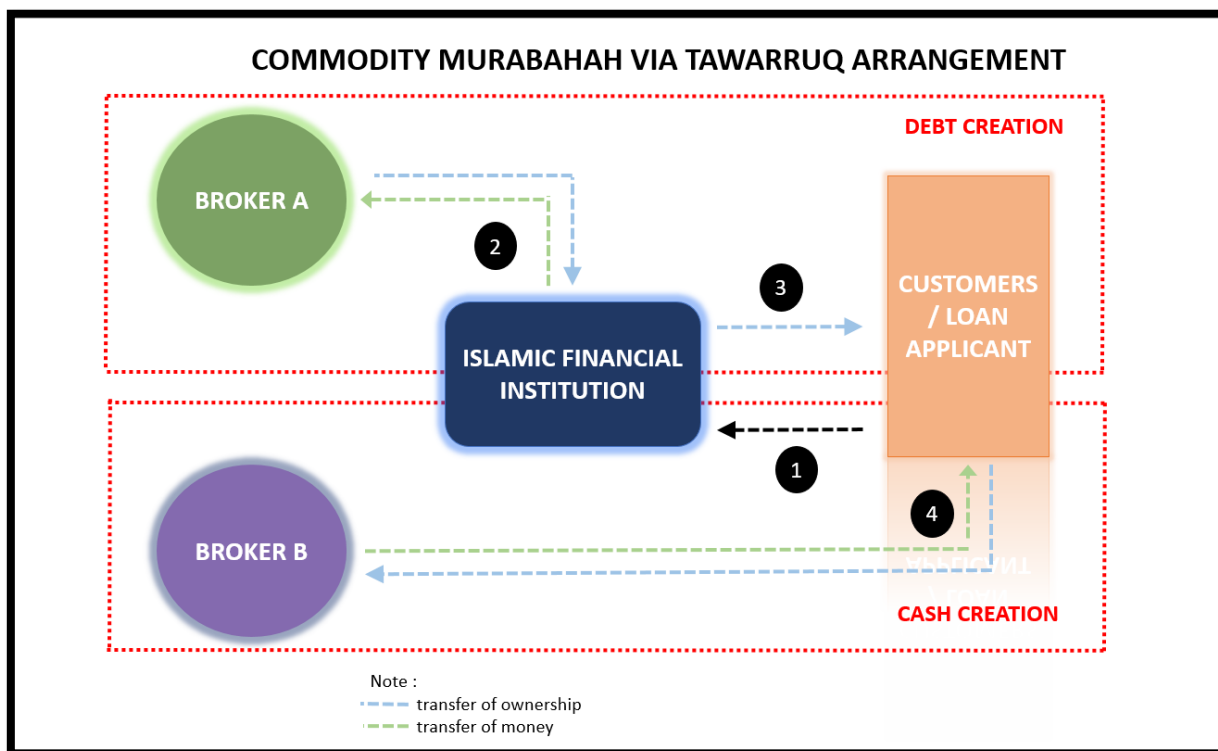


Diagram 3.2: The Process of Money Depository for Commodity *Murabahah* via *Tawarruq*

When customers came to the Islamic Bank, their real intention was to obtain the liquidity or cash money instead of the commodity. In the Step 4, this is where cash being created by the Customers sell the commodity to the Broker B. Usually Customer will sign a *Wakalah* (Agent Contract in

order to appoint the Islamic Bank to sell on behalf of them to the Broker B. Bursa Suq Al-Sila' provided by Bursa Malaysia will be used by the Islamic Bank in order to proceed with the selling process and finding the Broker B. In this step also, the Islamic Bank need to understand and follow the guideline provided by Central Bank of Malaysia in order to avoid the same problems occur in Bay Al 'Inah's product. In this step also the ownership of the commodity will finally have transferred to Broker B.

Several Islamic Bank in Malaysia adapting *Commodity Murabahah via Tawarruq* in designing their product. Example, RHB Islamic Bank Bhd offering Commodity Murabahah Financing-i to most their retail customers as shown in Diagram 3.3. As discussed in Diagram 1.1, total financing for personal purposes was amounted RM99 million from January until September 2019. It is shows that personal financing was a huge demand for Islamic Banking Industries.

### PRODUCT DISCLOSURE SHEET

*(Please read and understand this Product Disclosure Sheet together with the general terms and conditions governing the Commodity Murabahah Term Financing-i before you decide to take up this product. Seek clarification from RHB Islamic Bank Berhad if you do not understand any part of this document or the general terms.)*

**FSHFN 072/2015\_v2**

**RHB ISLAMIC BANK BERHAD** (680329-V) Incorporated in Malaysia

**COMMODITY MURABAHAH TERM FINANCING-i**

Date: \_\_\_\_\_  
[to be filled by Relationship Manager]

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**1. What is this product about?**  
**Commodity Murabahah Term Financing-i** is a type of medium to long term financing. Generally, Commodity Murabahah Term Financing-i is used to finance:

- The acquisition of assets/ properties or any acceptable asset that can be identified
- The construction or manufacture of assets
- Eligible asset to be financed are halal goods, raw material, stocks and inventories.

**2. What is the Shariah concept applicable?**  
 The Shariah concept applicable for this product is Commodity Murabahah via Tawarruq arrangement whereby it refers to the trading of commodities which act as the underlying assets of a transaction. You will make payment of the sale price for the commodity, which includes cost price and profit on deferred basis. With the concept of Tawarruq, You will receive cash in exchange for the commodities being sold off to third party.

**3. What do I get from this product?**  
 You will be provided a facility with key features as follows:

<b>Facility Amount</b>	(According to your Letter of Offer)
<b>Tenure</b>	(According to your Letter of Offer)
<b>Currency</b>	Ringgit Malaysia and other currencies available in Nostro (as allowed under the Islamic Financial Services Act 2013)
<b>Amount</b>	Not exceeding facility approved limit
<b>Margin of Financing</b>	<ul style="list-style-type: none"> <li>Up to 95% (within limit and subject to credit approval)</li> <li>Minimum financing amount RM100,000.00</li> </ul>
<b>Profit Rate (for fixed rate)</b>	Fixed profit rate will be provided by Business Unit based on credit assessment and customer's Credit Rating. Note: Services Tax (ST) is exempted
<b>Profit Rate (for variable rate)</b>	
<b>i) Contracted Profit Rate (CPR)</b>	Contracted Profit Rate (CPR) <sup>1</sup> is used to determine the sales price. It is the ceiling rate that will be used in the event Effective Profit Rate (EPR) exceeds CPR <sup>1</sup> CPR is fixed at 12.0%.
<b>ii) Effective Profit Rate (EPR)</b>	EPR refers to $IBR^* / \text{Cost of Funds} + \text{Profit Spread}$

includes the profit and principal during the tenor of the facility.

- Selling Price is to be fully paid at maturity.
- You must settle the financing amount in full upon expiry of tenure unless the facility is extended.

**Important: Your monthly payment and total payment amount will vary if the IBR changes.**

**Illustration**

**Assumption: Financing amount RM100,000 for 10 years.**

Rate	if IBR* = 6.85% + 1.5% (spread) = 8.35%	if IBR* goes up 1% = 9.35%
Monthly payment	RM1,232	RM1,286
Total profit cost at the end of 10 years	RM47,840	RM54,320
Total payment amount at the end of 10 years	RM147,840	RM154,320


**\*IBR may vary from time to time. You may refer to our website, [www.rhbgroup.com](http://www.rhbgroup.com) for the latest rate.**

**5. What are the fees and charges I have to pay?**  
 For the avoidance of doubt, you shall bear all professional fees, taxes (including but not limited to Services Tax (ST) where applicable), and out-of-pocket expenses incurred and any other fees, expenses or recourse in respect of this product.

Types of fee/ charge	Details of fee/ charge
<b>Stamp Duty</b>	As per Stamp Act 1949 (revised 1989)
<b>Legal Fees on Financing Documentations</b>	You are required to pay all legal fees and incidental expenses related to the facility (including but not limited to the preparation, stamping and registration of any security documents and the lodgment and withdrawal of caveats). Security documentation for the financing is to be handled by solicitor under the Bank's panel. Should a non-panel solicitor is appointed by you, guidelines on application of a non-panel solicitor by Group Legal and Compliance Department must be complied and approval is strictly at Bank's discretion. However, to avoid any delay in the

Diagram 3.3 RHB Islamic Bank Bhd Product Disclosure Sheet

Another example of application of Commodity *Murabahah* via *Tawarruq* is a product from Maybank Islamic. Maybank Islamic offered a mortgage financing using concept of Commodity *Murabahah* via *Tawarruq*. As we can see in Diagram 3.4 below, the mortgage was offered up to RM500,000 worth of financing.



### PRODUCT DISCLOSURE SHEET (Islamic Mortgage)

**2. What is the Shariah contract applicable?**

**Commodity Murabahah (cost plus profit).**

Commodity Murabahah refers to an arrangement that involves sale (with disclosed cost and profit) of commodities to purchaser on a deferred payment basis and subsequent sale of the commodities to a third party to obtain cash.

For Commodity Murabahah trading purposes, the Bank shall at all times be your non-exclusive agent to undertake the required Commodity Murabahah transactions related to the Facility

**3. What do I get from this product?**

<b>A. Financing Amount</b>	500,000.00
<b>B. Capitalised Related Expenses</b>	
• MRTT	41,250.00
• Will Writing Fee	0.00
• Others	0.00
<b>C. Total Financing Amount (A + B)</b>	541,250.00
<b>D. Property Value/OMV</b>	600,000.00
<b>E. Margin of Advance (C ÷ D)</b>	90.21%

<b>F. Financing Tenure (years)</b>	20
<b>G. Sale Price Rate / Ceiling Profit Rate (% p.a)</b>	10.65
<b>H. Sale Price (RM)</b>	1,482,939.65
<b>I. Profit Rate*</b>	1.40%
* Indicative rate, subject to customer's credit rating and credit assessment	
<b>J. Current Islamic Base Rate (IBR)</b>	3.00%
<b>K. Effective Profit Rate (I + J)</b>	4.40%

**4. What are my obligations?**

A. Servicing the GPP/monthly progressive profit pending full financing disbursement.

B. Servicing the monthly instalment amount (due 1<sup>st</sup> of each month) upon full financing disbursement or expiry of grace period.

C. Servicing profit portion only up to 5 years, and thereafter servicing the monthly instalment (Completed properties and properties and properties under construction)

**IMPORTANT NOTE:**

Your monthly instalment and total payment amount will vary if the IBR changes but will not exceed the Sale Price (for Commodity Murabahah only).

Profit Rate	Current Rate	Current Rate + 1%	Current Rate + 2%
Monthly Instalment Amount (RM) <sup>1</sup>	3,396	3,693	4,004
Total Profit Payable <sup>2</sup>	308,244	387,554	470,058
Total Payment <sup>3</sup>	849,494	928,804	1,011,308
Effective Profit Rate <sup>4</sup>	4.40%	5.40%	6.40%

**Note:** The above calculated based on assumption:-

a) Financing disbursement for a financing of 90% MOF for instance will be disbursed as follows:-

2 Years Construction Period	3 Years Construction Period
-----------------------------	-----------------------------

Diagram 3.4 Maybank Islamic Product Disclosure Sheet

Using *Murabahah* (cost plus profit) concepts, Maybank Islamic show to their potential customer the total financing (cost) as shown in the Product Disclosure above. The Sale Price as well as Profit Rate (profit) also clearly stated there and fulfilling the guideline from Central Bank of Malaysia.

Term Deposit-i (*Tawarruq*) offered by Bank Islam Bhd as Diagram 3.5 was another creative application of Commodity *Murabahah* via *Tawarruq*. However, the arrangement under this product is different from financing product. In this product, customers do not required financing but they will buy the commodity and appointing the Bank Islam as *Wakalah* as the agent to assist the buying process. Bank Islam also will be appointed again as *Wakalah* to sell the commodity at higher price and the payment from the Bank Islam and customer will agreed on deferred payment. The shariah sales contract used to sell the commodity was *Murabahah* Contract where the Islamic Bank and customer need to agree on the cost and profit need to pay to the customers.

**BANK ISLAM**

<b>PRODUCT DISCLOSURE SHEET</b> Kindly read this Product Disclosure Sheet before you decide to take out the Term Deposit-i (Tawarruq)/Term Deposit-i (Tawarruq) – Special. Be sure to also read the terms and conditions for the product.	<b>BANK ISLAM MALAYSIA BERHAD</b> <b>Term Deposit-i (Tawarruq)/Term Deposit-i (Tawarruq) – Special</b> <b>1<sup>st</sup> August 2019</b>  <b>Protected by PIDM up to RM250,000 for each depositor.</b>												
<b>1. What is this product about?</b>													
Term Deposit-i (Tawarruq)/Term Deposit-i (Tawarruq) – Special is a term deposit product with a fixed profit rate. The profit is derived from the commodity purchase and sale transactions based on the fixed profit rate determined upfront. This product is covered by Malaysia Deposit Insurance Corporation/Perbadanan Insurans Deposit Malaysia (MDIC/PIDM) up to RM250,000 per customer.													
<b>2. What is the Shariah concept applicable?</b>													
The applicable Shariah concept is <i>Tawarruq</i> where the commodity is used as an underlying asset for the purchase and sale transactions between commodity trader(s), the Customer and the Bank.													
<b>Definition of Tawarruq</b> A <i>tawarruq</i> consists of two sale and purchase contracts. The first involves the sale of an asset by a seller to a purchaser on a deferred basis. Subsequently, the purchaser of the first sale will sell the same asset to a third party on a cash and spot basis.													
<b>Roles &amp; Responsibilities of the Contracting Parties in Tawarruq based Deposit Product</b> As the Purchase Agent for the customer, the Bank on behalf of the customer is obliged to purchase the commodity from commodity supplier at cost price. As the Sale Agent for the customer, the Bank on behalf of the customer shall sell the commodity to the Bank on <i>Murabahah</i> basis at cost plus profit. The Bank is obliged to pay the amount due from the <i>Murabahah</i> transaction as per the agreed terms.													
<b>3. What are the key features of the product and what do I get from this product?</b>													
<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 30%;">Minimum Deposit Placement</td> <td> <ul style="list-style-type: none"> <li>▪ RM1,000 for 1 month and RM500 for 2 months and above</li> <li>▪ For Term Deposit-i (Tawarruq) – Special, it is negotiable</li> </ul> </td> </tr> <tr> <td>Tenure</td> <td> <ul style="list-style-type: none"> <li>▪ 1 month to 60 months</li> <li>▪ For Term Deposit-i (Tawarruq) – Special, it is negotiable</li> </ul> </td> </tr> <tr> <td>Profit Rate</td> <td>Fixed rate determined upfront, upon deposit placement</td> </tr> <tr> <td>Profit Payment Frequency</td> <td> <ul style="list-style-type: none"> <li>▪ Upon maturity (tenure up to 1 year)</li> <li>▪ Half-yearly profit payment (tenure above 1 year)</li> </ul> </td> </tr> <tr> <td>Capital Guaranteed</td> <td>Yes</td> </tr> <tr> <td>Brokerage Fee</td> <td>Absorbed by the Bank except for cases in pre-mature withdrawal</td> </tr> </table>	Minimum Deposit Placement	<ul style="list-style-type: none"> <li>▪ RM1,000 for 1 month and RM500 for 2 months and above</li> <li>▪ For Term Deposit-i (Tawarruq) – Special, it is negotiable</li> </ul>	Tenure	<ul style="list-style-type: none"> <li>▪ 1 month to 60 months</li> <li>▪ For Term Deposit-i (Tawarruq) – Special, it is negotiable</li> </ul>	Profit Rate	Fixed rate determined upfront, upon deposit placement	Profit Payment Frequency	<ul style="list-style-type: none"> <li>▪ Upon maturity (tenure up to 1 year)</li> <li>▪ Half-yearly profit payment (tenure above 1 year)</li> </ul>	Capital Guaranteed	Yes	Brokerage Fee	Absorbed by the Bank except for cases in pre-mature withdrawal	
Minimum Deposit Placement	<ul style="list-style-type: none"> <li>▪ RM1,000 for 1 month and RM500 for 2 months and above</li> <li>▪ For Term Deposit-i (Tawarruq) – Special, it is negotiable</li> </ul>												
Tenure	<ul style="list-style-type: none"> <li>▪ 1 month to 60 months</li> <li>▪ For Term Deposit-i (Tawarruq) – Special, it is negotiable</li> </ul>												
Profit Rate	Fixed rate determined upfront, upon deposit placement												
Profit Payment Frequency	<ul style="list-style-type: none"> <li>▪ Upon maturity (tenure up to 1 year)</li> <li>▪ Half-yearly profit payment (tenure above 1 year)</li> </ul>												
Capital Guaranteed	Yes												
Brokerage Fee	Absorbed by the Bank except for cases in pre-mature withdrawal												
<b>4. What are the other key terms and conditions of this product that I should know?</b>													

Diagram 3.5 Bank Islam Bhd Product Disclosure Sheet

### Summary

In summary, Commodity *Murabahah* via *Tawarruq* was evolved from Bay al 'Inah where involving only to parties, to *Tawarruq* which involving the third party in order to obtain cash and finally became Commodity *Murabahah* via *Tawarruq* where there are four (4) parties participating in the transactions using commodities as underlying asset. Supporting the *tawarruq* transactions



using Bursa *Suq Al-Sila'* also allowing Islamic Financial Institution addressing several concern regarding the current practice of Commodity *Murabahah* via *Tawarruq* and make it permissible according to *Shari'ah* requirement. These development was in accordance with *Maqasid Shari'ah* especially when come to protection of Property or Wealth (Al - Mal) and protection of Faith or Religion (Al - Iman) for not involving any kind of usury or *riba'* in any financial activities and transactions. Protecting faith is also means obey Allah's instruction by prohibiting usury or *riba'* in any activities and transactions as mentioned by Surah Al Baqarah verse 275 and from Hadith of Prophet Muhammad p.b.u.h as mentioned above. Muslims Scholars from difference Schools of Fiqh also discussed *tawarruq* concept by not only looking at relevant legal maxim, but also presenting verses of Holy Quran, authentic hadiths, tradition of prophet's Companion, as well as other consideration before deciding the permissibility of implementing Commodity *Murabahah* via *Tawarruq* as one of accepted Islamic Financial product.

Commodity *Murabahah* via *Tawarruq* also play important role in supporting the financial and economic activities in Malaysia. The Commodity *Murabahah* via *Tawarruq* for depository purposes such as Term Deposit-i from Bank Islam Bhd can be source of fund for the Islamic Bank in Malaysia. By receiving the money as deposit from the customers, it is used to buy and sell the commodities. Thus these activities generate economic activities and promoting the growth of related commodity. On the other hand, the financing product such as Term Financing-i from RHB Islamic Bhd is example of fund application or utilization from the Islamic Bank. This product offered to retail customers for their personal need and usage. As for the corporate customers such as Small Medium Enterprise (SME) or small business owner, they may use the financing facility to expand and grow their business which later will contributing to increase of *Zakat's* collection. By offering the Islamic Finance Product, not only it obliges in obeying Allah's instruction in avoiding *riba'* (usury), the applicant also may use for the purpose of better standard of living, improving financial status and avoiding illegal loan shark. Thus, this practice also accordance to the objective of *Maqasid Shariah* in protecting the life, as well as protecting the wealth.

Commodity *Murabahah* contract via *Tawarruq* arrangement is a financing arrangement where customer will be receiving cash at the end of it for his needs through a series of sale transactions. As *Tawarruq* arrangement involves a third party, and there is no condition for the underlying sale object to be returned back (resold) to the original owner (first seller) in the sale transactions, which allows seller to achieve liquidity without involving usury (Dusuki, 2010). This is to rebut the application of Bay Al Inah contract. The bank provides financing through the mode of commodity trading and the customer pays in instalment or deferment upon the due date as the result of the credit sale by the bank, so that the customers have access for working capital for expansion of their business. The *Tawarruq* concept is not only for cash financing, but also is exercised for others financing such as house, auto and trade financing. Additionally, in *Muamalat*, the original ruling for any transaction is permissible, unless there is evidence that forbids the transaction, and there is no better proof of legal evidence that prohibits *Tawarruq* transactions. Thus, transaction of *Tawarruq* is legally permissible in Islam, until there is another contract available for working capital financing reveal by Islamic scholars.

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