

ORGANIZED TAWARRUQ IN BURSA SOUQ AL-SILA', MALAYSIA: A CRITICAL EXAMINATION OF SHARIAH COMPLIANCE

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ABSTRACT

Bursa Souq al-Sila' (BSAS) is Malaysia's first Shariah-compliant commodity trading platform, using crude palm oil to facilitate Islamic finance contracts such as Murabaha and organized Tawarruq. While organized Tawarruq has become a key liquidity-management tool for Islamic banks, its resemblance to interest-based lending (riba) has sparked intense debate among Shariah scholars. This study, therefore, aims to (1) map the operational mechanism of organized Tawarruq on BSAS, (2) evaluate its Shariah compliance, (3) assess its effectiveness in meeting short-term liquidity needs, and (4) propose actionable recommendations for strengthening Shariah governance and regulatory oversight in Malaysia. Adopting a qualitative approach, we draw on secondary sources and semi-structured interviews with Islamic finance experts at the International Islamic University Malaysia (IIUM). Our findings reveal that organized Tawarruq is widely and rapidly adopted yet remains controversial: some jurists condemn it as a legal stratagem masking riba, while others regard it as a necessary innovation in the absence of viable alternatives. Operational issues—such as commodity availability, delivery timelines, and customer awareness further affect its real-world application. We conclude by calling for clearer contract terms, enhanced e-certificate controls on BSAS, and targeted education initiatives for practitioners and customers. These measures will help reconcile liquidity-management imperatives with rigorous Shariah compliance, advancing both the ethical integrity and practical effectiveness of Islamic financial instruments.

Keywords: Organized Tawarruq; Bursa Souq al-Sila'; Shariah compliance; liquidity management; crude palm oil

INTRODUCTION

Bursa Souq Al-Sila' serves as a Shariah-compliant platform for commodity trading in Malaysia, supporting Islamic financial transactions such as Murabaha and Tawarruq, with crude palm oil being its primary commodity.

Ahmad et al., 2017 said the underlying asset of Bursa Souq al-Sila Malaysia is crude palm oil. Bursa Souq Al-Sila, previously known as the Murabaha Commodities House. Bursa Souq al-Sila Exchange is unique in that it is the world's first Shariah-based commodity trading platform specifically designed to facilitate the financing of Islam; this would improve the liquidity management of Islamic financial institutions. However, the fast development of Islamic banking and finance worldwide in the last two decades has raised some issues, especially the lack of a product for liquidity management. The high demand for Islamic banking and finance products and services requires high innovation in the products and services. One of the most controversial Islamic financial products is Tawarruq, as some scholars believe that it contains elements of usury and high (legal Stratagem). To the element of rib or so-called legal Stratagem, the research on Tawarruq has recently received attention in which the issues arising from the application of Tawarruq in the Islamic banking system were discussed among Shariah scholars following the fatwas or resolutions issued by the authorized Fiqh bodies. The prohibition of the Tawarruq mechanism in modern banking by the latest collective Shariah ruling of the Organisation of Islamic Cooperation (OIC) Fiqh academy has affected the Islamic banking industry by positioning the Tawarruq application as having a high risk of non-compliance with Shariah (Ahmad et al., 2017). The etymology of bay' al-Tawarruq is from the Arabic term (asked for wariq') as mentioned by Ibn Manzur, 1990(Rahman et al., 2010a). Wariq is money made of silver. The meaning of bay' al-Tawarruq became more general asked for money: either silver, gold, or paper (Mahyudin & Seman, 2018).

'As a financial term, bay' al-Tawarruq refers to mueamalah business transactions which involve two stages of business. In its first stage, business is conducted where a purchase on credit is made between the buyer and the original seller of an asset. In the second stage, the buyer will sell the asset to a third buyer in cash (Ministry of Waqf and Islamic Affairs Kuwait, 1993). Bay al-Tawarruq can be defined as an act of buying the commodity by a person (mustawriq) on a deferred basis and then selling it at a

lower price on a cash basis to someone else other than the initial seller to acquire cash (Wi Zarah al-Awqaf and al-Shu'un al-Islamiyah, 1983) (Rahman et al., 2010). Therefore, the study aims to investigate how Bursa Souq Al-Sila Malaysia undertakes and manages Tawarruq transactions, especially Organized Tawarruq. In addition, the features of Bursa Souq Al-Sila Malaysia should be examined. Furthermore, it will provide views and verdicts of Shariah scholars concerning Tawarruq and, lastly, produce solutions and recommendations for Tawarruq.

LITERATURE REVIEW

Tawarruq, an Islamic finance contract, has generated significant debate among scholars. Some schools of thought, such as Shafi'i, Hanbali, and Hanafi, consider it permissible based on the Quran's endorsement of trade, while others, including Maliki, Ibn Taymiyyah, and Ibn Qayyim, reject it due to its perceived similarity to interest-based transactions. Tawarruq is classified into two types: Classical (Tawarruq Al-Fardi) and Modern (Tawarruq Al-Munnazam), with the latter being more widely practiced but controversial. Critics argue that Tawarruq creates new debt and resembles usurious loans, bypassing the prohibition of interest. Economically, its impact is debated, with some scholars questioning its contribution to social wealth creation and its efficiency. Concerns also arise over legal issues such as commodity ownership, delivery, and price fluctuations. In Malaysia, the Shariah Advisory Council and Bursa Souq Al-Sila address these concerns to ensure compliance with Shariah principles. Despite challenges, particularly in retail banking, Tawarruq remains popular as a liquidity management tool in Islamic finance. This section will discuss the views of Shariah scholars on Tawarruq, exploring the differing opinions on its permissibility, its economic impact on debt creation and liquidity, and its alignment with Maqasid Shariah and societal needs. Additionally, it will cover the perspectives of Maslaha, ICFA, and AAOIFI, as well as its impact on social wealth, and examine the challenges and trends in the practice of Tawarruq in Malaysia.

Organized Tawarruq from Maqasid al-Shari'ah Perspective

Maqasid al-Shari'ah, or the higher objectives of Islamic law, aim to protect essential human interests such as religion (din), life (nafs), intellect ('aql), progeny (nasl), and wealth (mal). In Islamic finance, Maqasid requires that financial transactions genuinely contribute to social welfare, economic justice, and the reduction of harm (darar). While Bursa Souq al-Sila' (BSAS) improves operational Shari'ah compliance by ensuring real commodity trading, ownership transfer through e-certificates, and offering delivery options, its alignment with Maqasid al-Shari'ah remains partial. Although BSAS provides a practical liquidity management solution for Islamic banks and fulfills an urgent need to avoid riba (Dusuki, 2010; Ahmad et al., 2017), scholars argue that organized Tawarruq primarily results in debt creation without generating genuine economic activity (Siddiqi, 2007). Critics emphasize that the niyyah (intention) behind Tawarruq is often cash acquisition rather than real trade, resembling legal stratagems (hilah) that Shari'ah discourages (Khan, 2009; Shinsuke, 2012). Although proponents claim that Tawarruq addresses urgent financial needs without engaging in riba, partially achieving Maqasid by preserving wealth (hifz al-mal), concerns remain regarding its economic inefficiency and its detachment from real productive activity. In favor of BSAS, its operational improvements such as enabling genuine commodity transactions and offering delivery demonstrate an effort to align with valid Shari'ah trade requirements and respond to liquidity management needs in Islamic banking. Furthermore, some scholars justify its use under the fiqh maxim of choosing the lesser harm to eliminate a greater harm (إِزَالُ الضَّرِّ الْأَشَدِّ بِالضَّرِّ الْأَخْفِ). Nevertheless, persistent criticisms highlight that BSAS transactions often culminate in debt creation rather than wealth generation, undermining the spirit of Maqasid al-Shari'ah. If the structure mainly facilitates artificial debt and the customers' intention is not genuine commodity usage, the platform, in practice, promotes inefficiency and financial dependence. Therefore, while Bursa Souq al-Sila' addresses many technical Shari'ah requirements and provides a riba-free liquidity mechanism, it only partially fulfills Maqasid al-Shari'ah by falling short of promoting genuine trade, risk-sharing, and sustainable economic growth. To fully realize Maqasid al-Shari'ah, Islamic banks and regulators should enhance Tawarruq practices by encouraging real economic uses of funds and exploring more authentic risk-sharing models such as Musharakah and Mudarabah, shifting the focus from mere liquidity facilitation toward true wealth creation and social justice (Fisol et al., 2017; Nagaoka, 2012).

Schools of Fiqh views on Tawarruq

For scholars who have been approved Tawarruq and considered permissible are Shafi'i school, Hanbali school, and Hanafi school (such as Abu Yusuf). In addition, the proponents argue that this product is a form of sale transaction and Allah permits to conduct business activities validly; the evidence is the verse of the Quran, which is "Allah permits trade and prohibits riba". Furthermore, they came out with the support of a legal maxim: 'The original ruling for useful things is permissibility while the original ruling for harmful things is prohibition' (al-Zuhayli, 2009). According to the legal maxim mentioned above, there is a rationale proof of satisfaction with people's needs and interests regarding liquidity issues by avoiding usury, and then Tawarruq may solve the liquidity problems (Dusuki, 2010). On the other hand, some scholars dismissed and rejected Tawarruq opinion of its impermissibility, including the Maliki school, Umar ibn Abd Al-Aziz, scholars from the Hanafi school, such as Muhammad ibn Al-Hassan Al-Shaybani, two prominent scholars from Hanbali school namely: Ibn Taymiyyah and ibn Qayyim al-Jawziyyah. Based on prominent arguments, such a product like Innah and Tawarruq have a form of forced sale because they seek cash or liquidity. That is why ibn Qayyim considered Tawarruq an Innah comprising Riba and hilah (legal Stratagem) (Dusuki, 2010). Besides, there are two types of Tawarruq: Classical Tawarruq (Tawarruq Al-Fardi) and the modern or Organized Tawarruq (Tawarruq Al-Munnazam) (ALJAMOS et al., 2018). However, Organized Tawarruq prohibited by most of the scholars because of its process such as earning money for money (Mohamad & Ab Rahman, 2014). In Malaysia, organized Tawarruq falls under the most common practice today. However, OIC Fiqh Academy is prohibited the use of organized tawarruq in its 17th meeting (ISRA, 2013). On other hand, the Shariah Advisory Council of Central Bank of Malaysia permitted the use of organized tawarruq (Malaysia, 2010).

Table 1: show Schools of Fiqh views on Tawarruq

School of Fiqh	Permissibility	Key Rationale	School of Fiqh	Permissibility
Shafi'i	Permissible	Trade is allowed and riba is prohibited—so Tawarruq, as a sale, is valid.	Shafi'i	Permissible
ḤANAFĪ	Permissible	Maslahah (public interest) principle: beneficial contracts are permissible.	ḤANAFĪ	Permissible
ḤANBALĪ	Permissible	Permits based on an analogy to general trade rules; sees no intrinsic riba.	ḤANBALĪ	Permissible
MALIKĪ	Impermissible	Equates organized Tawarruq to Bay' al-'Ināh viewed as a risky legal stratagem.	MALIKĪ	Impermissible

Source: Author

Tawarruq from an Economic Perspective

Nagaoka, 2012 stated that Tawarruq is how Islamic banks facilitate the cash supply to their clients. The customer (Mustawriq) buys a commodity from the bank on deferred payment and then sells this commodity to a third party for a spot cash amount that is less than the deferred price. Therefore, every Tawarruq transaction generates a debt. Furthermore, the debt generated by a Tawarruq transaction is always larger than the cash transferred to the customer. So, there are economic issues related to creating new debts and the fact that the debt is larger than the cash received. According to (Nagaoka, 2012), critics of Tawarruq mention that this stipulation makes Tawarruq merely a critical instrument to avoid interest-based loans because, in such a practical application of Tawarruq, the actual transactions of the real good tend to become just nominal on paper. They consider that such an application ignores the real purpose of Tawarruq. For example, Siddiqi emphasizes that Tawarruq is identical to interest-based loans at the functional level and from the macroeconomic Perspective (Siddiqi, 2007). Furthermore, Kahf insists that Tawarruq must be limited because it may be economically worse than the practice of interest-based loans [Kahf 2004: 6] (Shinsuke, 2012).

Maqasid Shariah and Social Perspective

In analysing the use of the objectives of Shari'ah (Maqasid al-Shari'ah) on the bay' al-Tawarruq contract in Islamic banking, Siddiqi applied the approach of maslahah mafsadah calculus. 27 In his analysis, he discovered that the harmful consequences of bay' al-Tawarruq are much greater than the benefits.28. However, the proponents of bay' al-Tawarruq argue that the contract of bay' al-Tawarruq is an important mode of transaction in resolving their basic needs (i.e., purchasing houses, vehicles, and other needs) (Shinsuke, 2012). They claimed that the bay' al-Tawarruq contract could be applied as an alternative sale needed contracts (al-hajjiyyah) without resorting to riba-based transactions. The acceptable of the bay' al-Tawarruq contract is also seen as choosing between the lesser of two evils: riba, which is explicitly prohibited, and bay' al-Tawarruq, which is disputed. The decision to take lesser harm action is supported by a Fiqh maxim (qawa'id al-fiqhiyyah), which states "a greater harm is eliminated using a lesser harm" (yuzal al-dar alashaddu bid-darbar al-aka). Therefore, this argument is rationally acceptable and in conformity with the objectives of Shari'ah (Maqasid al-Shari'ah) (Fisol et al., 2017).

Tawarruq from Maslaha's Perspective

The commodity supplier Khnifer (2010) found that after witnessing the disruption of their young industry due to the OIC fatwa, a group of prominent scholars led by Nizam Yaquby rose to challenge the establishment's ruling. These scholars publicly invoked the principle of Maslahah, arguing that the commodity Murabahah is essential to the industry's foundation and should be legitimized based on its social usefulness and the needs of the Islamic Ummah. To support this, other observers noted that OIC scholars had a narrow interpretation of the use of the commodity Murabahah, particularly for retail banking. They contend that the product also serves wholesale banking. On the impermissibility of organized Murabahah, the OIC fatwa primarily addressed its use in retail, overlooking its vital role as a liquidity management tool in wholesale banking. Islamic banks rely on interbank transactions, whereas Murabahah is used for borrowing and lending between banks for durations ranging from overnight to over a year. They will deliver the goods to the buyer within seven days of receiving the endorsed commodity certificate from BMIS (Khnifer, 2010).

Murabahah is a fundamental element in the liquidity management process. If Murabahah is deemed non-compliant with Shariah principles, it could collapse the Shariah-compliant inter-bank market, compelling Islamic banks to redirect their surplus funds into the conventional financial system. This shift could ultimately result in the downfall of Islamic banking as it currently exists. In addition, Murabahah is one of the lenders for Last Resort facilities. Overall, the benefit of continuing to use Murabahah contracts, despite some Shariah reservations, outweighs the call for its impermissibility as they fulfil a useful purpose (Khnifer, 2010).

Tawarruq and Social Wealth

Debt creation does not increase society's net wealth as every addition to social wealth through debt is negated by deducting a similar amount of wealth due. Temporarily, the cash obtained through debt can be utilized, which may or may not result in actual wealth creation. If wealth is created, it may be equal to, larger than or less than the cash input. Hence, economic consequences will be different in each case. Society's net wealth would increase if the wealth created is larger than the cash invested. If the added wealth is merely equivalent to the cash invested and the resources consumed, there is no net benefit since the total social wealth remains the same. However, if the investment leads to wealthy generation that is less than the amount of cash and resources used, society incurs a loss equivalent to the shortfall; this also holds when the invested cash is lost entirely, creating no wealth. Therefore, debt finance is inefficient and inequitable for creating additional or new wealth. It is inefficient as the finance provided goes not to the most promising projects for wealth production but to the most credit-worthy borrowers (Siddiqi, 2007).

Hence, a question may arise in this elaboration: Why did our fuqaha not say any Tawarruq? First, the Fuqaha in the past were dealing with a different world, and the tools of macroeconomic analysis required to find out the harmful effects of Tawarruq were unavailable to them. The harmful impact (fear) of Tawarruq on the economy, to the extent present, was not visible at the time, whereas its benefits (mash) in certain individual cases were easy to see. In brief, debt did not play as big a role in the economy during our fuqaha as it plays today, and money was not based on debt. Debt instruments hardly existed, much less traded. In addition, economic fluctuations originated in droughts, famines, crop failures, or big changes in population rather than in the financial sector. Furthermore, the business's debt financing was secondary. Trade, industry, and agriculture were largely financed by self-owned wealth, trade credit, partnership and sharing (Siddiqi, 2007).

Tawarruq from ICFA Perspective

There are two main types of Tawarruq: Organized Tawarruq and Classical Tawarruq (also known as Reverse Tawarruq). However, the OIC (Organisation of Islamic Conference) by the International Council of Fiqh Academy (ICFA) that was held in Makkah in 2009 that both the types mentioned above of Tawarruq - organized Tawarruq and reverse Tawarruq were not permitted. Meanwhile, they were deceived into earning spot cash with deferred payment by paying more after that time. In addition, ICFA prohibits Tawarruq because of these factors: First, only two parties participate in this transaction instead of three. Second, the existence of a buried buy-back instead of a naked transaction with a third party. Therefore, ICFA emphasizes that 'organized' Tawarruq should be disallowed (Khan, 2009).

Tawarruq from AAOIFI Perspective

Khan, 2009 said that the AAOIFI's opinion towards organized Tawarruq depends on certain conditions. If these conditions are fully fulfilled, organized Tawarruq is permitted; otherwise, it is not. These key conditions are as follows: First, the Tawarruq transaction must not involve only two parties (ignoring the 'cosmetic involvement' of third parties). Second, the subject matter should be real and delivered from the seller to the buyer. Third, the transaction should be free from 'tricks', and no fixed return should be inserted. However, these situations differ from how Islamic banks use organized Tawarruq today. Therefore, the weak point of AAOIFI's opinion is that they 'ignore cosmetic involved third parties', which is one procedure that most Tawarruq-relevant institutions use today (Khan, 2009).

The most focusing issue regarding Tawarruq

Many argue that the main issue of Tawarruq is the "intention" of the contract itself, which is not to "trade in commodities" but to create debt via a trading transaction.

1. **Commodity Delivery:** The bank must establish a system that enables the customer to take possession of the commodity whenever requested.
2. **The problem of Price Fluctuation:** Prices of commodities can vary over time since they are real commodities being actively traded. How is a specific price determined when the purchase and sale of a commodity are not concluded immediately? The issue of price fluctuation is a valid concern for Shariah Committees.
3. **The issue of Discrepancies in Terms:** The Murabahah contract in the Tawarruq arrangement is a critical agreement. Scholars stress the need for transaction details to be as accurate as possible, as this ensures the proper acceptance of what is offered and maintains the integrity of the financial process.
4. **The issue of Delays in Transactions:** The ability of some banks to execute commodity trading on the same day, while others may only be able to complete it the following day after their batch processing, can significantly impact the financial process. This delay in the conclusion may affect specific terms, including the price of the commodity and its availability. There is also the danger of missing delayed transactions, as those instructions are no longer "current."
5. **The issue of Qard in Tawarruq:** "What is the status of the funds when no transaction is made?" Is the agreement a Qard (Loan) contract until the transaction is completed, or is it an Amanah (Trust) arrangement? Regardless, for Tawarruq Deposits, how is the profit managed for both contracts, which prohibit "interest" or "returns"?

6. The matter of Agency and Dual Agency: Some banks still believe that the Dual Agency structure significantly contributes to the concept of "arranged" Tawarruq and thus avoids it.
7. The issue of Physical Commodity: Where is the certainty that the traded assets are the right physical ones? Efforts have been made to split into smaller denominations whenever needed, and commodities like Crude Palm Oil (CPO) are easier to allocate. However, there is always suspicion about whether this is superficial, whereas proof of otherwise is much more difficult to obtain.

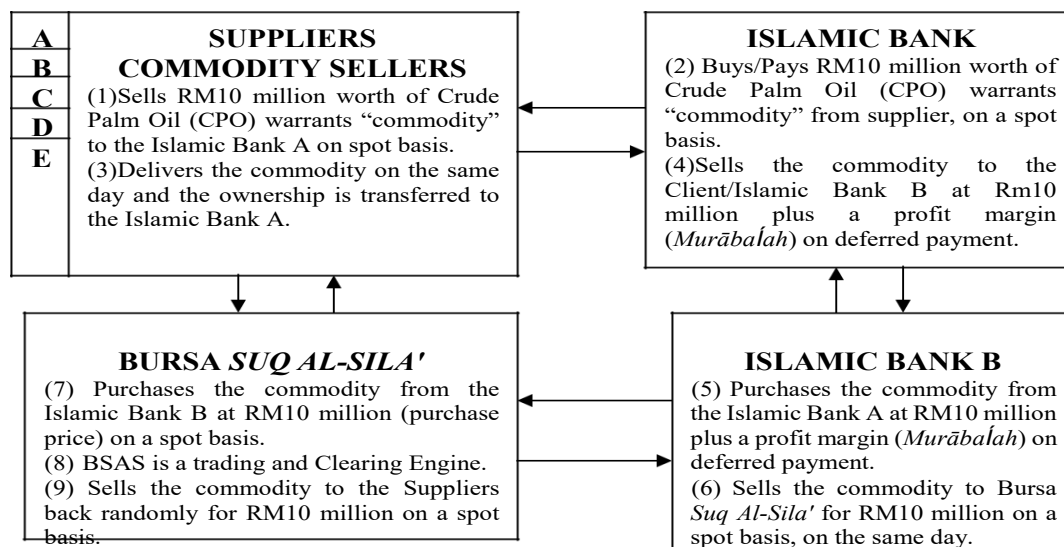
The Practices of Tawarruq in Bursa Souq Al-Sila

In recent years, Tawarruq or Commodity Murabaha has led to Malaysian capital market practices particularly Bursa Souq al-Sila (BSAS) or Commodity Murabaha House (CMH). The practice of Bursa Souq al-Sila was approved by the Shariah Advisory Council in its 78th meeting on July 30, 2008, (Malaysia, 2010).

BSAS launched to solve the Sharia problems in organized Tawarruq like ownership of underlying asset, possession, delivery and agency problems. (E. F. Ahmad et al., 2017). In practice, the mechanism of Operation Bursa Souq al-Sila will look like the above chart.

Figure 1. Flow of Organized Tawarruq Transactions on Bursa Souq al-Sila', Malaysia

Transactional Flow of Bursa *Sūq al-Sila*'



Source: (Mahadi, 2010)

In the case of bursa Souq al-Sila, one of the main concerns stamped by scholars relating to the fabricated practice of organized Tawarruq is the issue of the commodity. Therefore, it is argued that BSAS has tolerably dealt with this issue by transacting real and valuable commodities on the platform. Specifically, BSAS only agrees that real commodities with value, like crude palm oil (CPO), can be transacted on the platform. Regarding potential redundancy in the commodities used, BSAS runs a fully electronic system that will recognize and verify ownership through e-certificates (Dusuki, 2010b). Nevertheless, many industry players are unconvinced about the volume of CPO accessible for banks to make transactions, which is not good in cases that involve an enormous volume of CPO. Therefore, Bursa Malaysia tried to participate with other commodity suppliers, such as metal, to be involved in the platform to simplify the operations from the enlarged volume of transactions caused by massive growth in local and foreign interest in Tawarruq transactions (Dusuki, 2010b).

On the other hand, BSAS allows for the delivery of the commodity, eradicating another concern about the fictitious nature of organized Tawarruq. According to this delivery procedure, the buyer must indicate to BMIS directly or through a broker for this purpose. Once approved by BMIS, the commodity supplier will then be informed. The commodity supplier will deliver the goods to the buyer within seven days of receiving the endorsed commodity certificate from BMIS (Dusuki, 2010b). Regarding the agent issue of Tawarruq, customers who need personal financing, for example, can go to the bank that provides a Tawarruq financing facility. The bank will then have to buy CPO from a supplier on the BSAS platform and sell it to a customer for a deferred price. The customer can then assign the bank to sell the CPO to a supplier using the BSAS platform. In this situation, the assignment of the bank as an agent to act on behalf of the customer to sell the commodity back to the market is considered unacceptable under the AAOIFI ruling. However, this arrangement is above the control of the BSAS since the decision is entirely the right of the contracting parties, whereas BSAS is just acting as a platform to facilitate the transaction (Dusuki, 2010b).

In this part, we analyse Bursa Souq Al-silica Malaysia's five-year market highlights from 2015 to 2018. We got this information from a report issued by Bursa Malaysia in 2018. The average daily commodity traded in BSAS increases year after year. Hence, the total commodity trading value also surged up. In addition, the number of matched contracts shows mixed trends; it increased from 2014 to 2015. However, it plunged in 2016 because of macro-economic development challenges, leading to

slower economic growth, rising commodity prices and currency volatilities. After that, it experienced an upward trend until 2018 (Nor et al., 2024).

Regarding the Sharia requirement, a supplier or agent must own the commodity, exist, and have a defined quantity and quality. During the offer, the commodity must be present in a specified location and not have been tagged to any sale at the point of offer. Conversely, the trading fee paid by Commodity trading participants (CTP) to BSAS is RM 15 per million. This amount goes to suppliers (RM 9) and BMIS (RM 6).

RESEARCH METHODOLOGY

The researchers will use descriptive research to describe the practices and the applications of Tawarruq in Bursa Souq al-Sila Malaysia. The reason behind selecting this descriptive method is to get a significant understanding of the gap, fill the gap, and expand the theory regarding the application of Tawarruq in Malaysia. On the other hand, this study will be qualitative research, on phenomena relating to applying Tawarruq in Malaysia. However, the study population/participants are two scholars in Islamic finance at IIUM. Therefore, the researchers will use non-probability sampling to choose people with in-depth knowledge and experience in the study area. In addition, to get sufficient and absolute data concerning the practices of Tawarruq in Bursa souq al-silica, data was collected from secondary sources such as books, the internet, different sources, and reports. These data were reviewed as supporting evidence. Although the primary data will be gathered honestly from respondents on the field of data collection using research instruments such as interviews. Therefore, the results of the interviews will be read thoroughly, refined, organized, and summarized to prepare them for analysis. In a nutshell, to ensure confidentiality of the information provided by the respondents and to ascertain the practice of ethics in this study, the following activities will be implemented by the researchers: Seek permission to adopt the scheduled interview and acknowledge the authors quoted in this study and the author of the standardized instrument through citations and referencing.

INTERVIEW ANALYSIS

The researchers interviewed two academicians who participated in the industry before. the first interviewee is a lecture at (IIUM), and the second interviewee is head of the Islamic and Banking department at (IIUM). The Authors built interview questions to get answers for them. In this section, we will answer interview questions based on their answers. The authors summarized the answers as below:

The first interviewee opinion regarding al-Tawarruq in bursa Souq-El-Sila

"Tawarruq: is a sale contract, for example, under Murabaha – the sale price either you are paying on cash or deferred. When the payment is deferred, it is debt. For the economic consequences – let us say Murabaha – when purchasing a commodity from the seller, is he paying cash or deferred? If it is deferred, there is already debt there, so Tawarruq is a contract that he would like to have cash, so it takes and sells it to another party for cash so the buyer, which is the second party, pays him cash, now that cash is lower than the purchase price he bought earlier because that one is a comprising of the profit of the seller as well. So, the customers either utilize it or waste it; for example, customers who use it as working capital, for instance, his/her business, have a positive impact on the economy. Currently, Tawarruq is used in the banking sector to access cash. If it is further developed for economic purposes, that would be beneficial. However, if not, it can lead to debt and negative economic consequences." In addition, "Muslims discourage debt generally, but if the customer or company, for example, approaches the bank by using Tawarruq as the main source of funds for his business, then it is not a discouragement for that thing, but it is welcomed. The company aims to put it into a working capital company; for example, it positively impacts the economy. Islamic banks provide financing to generate an impact on the economy. Moreover, it is neither an easy touch for banks nor easy for banks to provide financing; they will check each of the customers, respecting credit scoring, the customer's credibility, and the purpose. Although banks offer personal financing, often in small amounts, these loans are typically provided to fulfil customers' financial commitments. However, in hardship cases, the financing amount is generally limited and may need to be increased to address their financial needs fully.; every Muslim discourage debt unless necessary, for example, buying a house that is also debt few customers only buy a cash house; in contrast, within the real economy, most purchases are not made in cash. In Islamic banking, customers often opt for Islamic home financing, which can take the form of Tawarruq; this allows them to access financing in a Shariah-compliant manner without relying on conventional interest-based loans.

"Bursa Malaysia created that platform; they also confirm commodity, so in that platform, they have the commodity, the seller and the buyer. So the source of income of Bursa souq-al-Sila is the brokerage fee; they act as a broker; when the bank would like to raise financing, the bank will purchase the commodity from bursa souq al-Sila and then sell it to the customer of the bank the customer of the bank said: I do not need this commodity – what I need is cash, for my purpose. So, the customer says: Bank, please sell it back to anyone then. I would like to have cash, so the bank will go back to Bursa Souq al-Sila to sell it because my customer would like to have the financing and the cash so Bursa Souq al-Sila will find another buyer from the platform, and then they will sell him/her. Therefore, three parties – the first seller, the bank, and the third party, the Bursa will collect some brokerage fee, which they will charge depending on the amount of the commodity they trade between the bank and the Bursa. Moreover, when the Bursa created a platform, they invited all academicians and the Sharia committees in each bank to come and face the commodity to ensure its existence. One of the practices of BSAS for Tawarruq transactions includes: when one Tawarruq transaction is executed, they block the amount of commodity, for instance, the CPO involved in this transaction. However, when other transactions are ready for execution, they must not use blocked commodities; other sections must be frozen for those transactions, and they have a system to monitor this."

On the other hand, "Lending transactions come from under Qard, in Islamic banks. It comes from savings products and current accounts. The Qard cannot collect more than what you already lend from the customer, but conventionally, they can lend to the customer and charge interest, which is prohibited. The bank does not want to proceed with Qard with the customer who

needs that money, so they go into Murabaha, Musharakah, Ijarah, Istisna' and Tawarruq; that is how they provide, so lending here is that conventional banks charge interest, but if Islamic banks would like to have that lending can but what does the bank get? The bank always asks what I get. So, the bank does not use Qard to finance their customer's other party. Collection yes, depositors, we collect sources of fund, but the application of fund no Qard, so Tawarruq is a sale instrument and not a debt instrument."

"In Wakalah, when a customer needs financing and goes to the bank, the bank says I am not giving you cash; I can buy a commodity for you and then sell it back. After that, the customer appoints a bank (as wakil) to buy, called Wakalah. The main purpose of Wakalah is that customers cannot communicate directly with BSAS (it deals only with Banks). Regarding delivery, when the bank purchases a commodity from BSAS, the asset's owner is the customer. Therefore, the bank asks the purchaser if they want to deliver the commodity, and delivery is mentioned in the contract. Hence, if the asset owner (customer) requests to make commodity delivery for him, the customer bears the delivery cost. The first possession took place between BSAS and the Bank because the bank is the purchaser of goods on behalf of the customer (role of agent/wakil). The proof of possession in the Tawarruq transaction is the e-certificate issued by BSAS. After purchasing, the Bursa sends an e-certificate immediately to the bank. Although all these Wakalah, delivery, possession and ownership are stated in the Tawarruq agreement, there are contemporary issues in Malaysia. So, any issues that arise from these will be resolved by resolution issued by SAC in Bank Negara and Tawarruq Agreement signed by parties involved in Tawarruq transactions."

"According to the interviewee, there is no challenge regarding Tawarruq in Malaysia; it is only a contemporary issue. Moreover, there is an answer for those issues, although these issues need to be mentioned well in the Tawarruq agreement. One challenge in Malaysia is the lack of awareness of how Tawarruq transactions work. For instance, a customer told the bank I wanted Islamic home financing. Then, the bank said I had Tawarruq home financing, and the bank gave all the documents to ensure the customer was fully informed. Therefore, many customers ask the bank: Hey, am I buying a house? Am I not buying a new CPO? This indicates a lack of understanding between the customers. I can say this is the biggest challenge in the market."

The second interviewee has a contrary opinion towards Tawarruq

"Tawarruq emerged as an alternative to Bay' al-'Inah (inah sale) in response to its criticisms, particularly in Malaysia, where Bay' al-'Inah was often used to facilitate the sale of housing. In the Bay' al-'Inah model, houses were sold in a way that resembled interest-based transactions, prompting the development of Tawarruq as an alternative to legitimize these transactions. In Tawarruq, instead of directly selling the house, a commodity is sold as a middle step to make the transaction appear more compliant with Islamic principles. However, this approach is often seen as a hilah (legal trick), used to bypass the prohibition of riba (interest) rather than create genuine trade, which the Quran permits, as it states, 'Allah has permitted trade and forbidden riba.'

In practice, many Islamic banks rely heavily on commodity Murabaha as a means of providing financing. While this is considered Shariah-compliant, it often lacks the true spirit of trade. Alternatively, models like Musharakah Mutanaqisah (diminishing partnership) could be employed, which are more aligned with the core principles of Islamic finance, where risk and profit are shared between the bank and the customer. The issue is more about the mindset and concept behind the transaction rather than the tools themselves. Banks often seek legitimacy for their actions, but it's crucial for us to teach students how to develop genuine alternatives that reflect Islamic financial ethics.

Tawarruq, in its current form, does not solve the problem of debt accumulation, which remains a significant challenge in the Islamic finance sector. To address this issue, we should turn back to the principles of the Quran, Shariah governance, and management. Instead of relying on questionable mechanisms like Tawarruq, we should focus on popularizing more ethically sound alternatives such as Waqf (endowment) and Zakat (almsgiving), and even Sadaqah (voluntary charity), all of which offer more sustainable, equitable solutions to financial issues within the community.

Scholars, such as Dr. Bakar, have revised their stance on the use of Tawarruq in Islamic banks, noting that banks often act as mere intermediaries without engaging in the real economic activity that Islamic finance requires. In my view, the solution lies in moving away from Tawarruq altogether and embracing real, productive financial models that align with Islamic law. Models like profit-sharing partnerships (such as Musharakah) offer a much more viable, Shariah-compliant way forward."

DISCUSSION AND ANALYSIS

The first view see tawarruq is not shariah complain about these reasons

1. Narrated 'Amr Ibn Shu'aib on his father's authority from his grandfather that Allah's Messenger said, "The condition of a loan combined with a sale is not lawful, nor two conditions relating to one transaction, nor the profit arising from something which is not in one's charge, nor selling what is not in your possession." The above hadith shows that having two conditions relating to one transaction is not lawful, and organized Tawarruq involves even more than two conditions.
2. The ruling of organized Tawarruq is not considered as lawful as the traditional form of Tawarruq, which has been considered a lawful transaction according to most scholars in Islamic law, because there are significant differences between them. Therefore, the ruling of organized Tawarruq must be considered under the general rules of Islamic law rather than applying the ruling of traditional Tawarruq.
3. Organized Tawarruq seems closer to the 'Ina contract than any sales in the traditional Fiqh.
4. Despite its controversies, it is argued that Tawarruq is, at most, "shubhah," while riba-based loans are prohibited.
5. Given the right amount of research and development work, this can be overcome. Unfortunately, commodity muraqabah is the bane of these potential solutions.

The second view that organized Tawarruq is permissible according to Islamic law

1. The general ruling of sales is in the verse, "Allah has permitted trading and forbidden usury.³ As it can be seen, Allah has permitted trading in general, and the contract of organized Tawarruq is just a type of sale.
2. In Islamic law, the general rule of business transactions is that any transaction is permissible unless evidence shows it is not. Organized Tawarruq is a new form of transaction that is a means to finance people through the concept of Tawarruq in Islamic law, with some changes by organizing the contract procedure to make the financing easier and faster than the normal form of Tawarruq.
3. People need this kind of transaction. Assume that a person needs money to obtain a house or the like, and he cannot find anyone to offer him an interest-free loan. There are few choices to obtain money to meet his needs.
4. Financial institutions that finance their clients by Islamic law or have branches that they call Islamic windows offer their clients a contract that helps them obtain money more easily and quickly.

How Tawarruq can be made Shariah compliant

1. The financial institution could be a trader or a partner with traders to do business with clients and sell the product for deferred or immediate payment. For instance, A (the financial institution) forms a company with B (a trader) to sell some normally stable commodities in terms of price, such as cement, iron, rice, and sugar. Then, they sell commodities for immediate and deferred payments with an extra sum and deliver them to clients to use or sell as a normal form of Tawarruq.
2. The commodities sold to the client must be completely in their possession. The client's commodity must be distinguished and recorded under his name so that he can see it at any time, even if the commodity is not in the country of the financial institution or the client.
3. Financial institutions are not agents on behalf of clients to sell commodities again in the market. Therefore, clients must take responsibility for finding another party to buy the commodity.
4. Financial institutions should not charge clients for delayed payment as a financial penalty but should sue the clients who delay payment in court to determine whether they can or cannot pay the instalments.

FINDINGS

The study found that Tawarruq, particularly organized Tawarruq as practiced in Bursa Souq Al-Sila', remains a contentious issue in Islamic finance. While it serves as a useful tool for liquidity management, many Shariah scholars are divided over its permissibility. Some scholars argue that Tawarruq closely resembles interest-based lending (riba) and involves legal stratagems (hilah), which are not in line with Islamic principles. On the other hand, proponents believe it provides a necessary solution for financing needs, especially in the absence of alternative Shariah-compliant products. The study concludes that while Tawarruq is widely utilized in the industry, its application requires stricter oversight to ensure full compliance with Shariah law and mitigate concerns over debt creation and economic impact. Moreover, there is a need for increased awareness and understanding of Tawarruq among customers to address misconceptions about the process.

LIMITATIONS & FUTURE RESEARCH

"Findings are based on two expert interviews and publicly available BSAS data; broader industry surveys could enrich the analysis."

"A comparative study of commodity-Murabaha platforms in other jurisdictions (e.g., Dubai, Bahrain) would illuminate best practices."

CONTRIBUTION

This study contributes to the growing body of literature on Islamic finance by providing a comprehensive analysis of the application of Tawarruq in Bursa Souq Al-Sila', Malaysia. It highlights both the theoretical and practical implications of Tawarruq transactions within the Islamic banking system, addressing the ongoing debates regarding its compliance with Shariah law. The research also identifies key challenges and offers recommendations for improving Tawarruq practices, particularly in ensuring Shariah compliance while addressing liquidity management needs. By incorporating insights from Shariah scholars and industry practitioners, this study bridges the gap between theoretical critiques and practical implementation, offering a balanced perspective on the future of Tawarruq in Islamic finance.

CONCLUSION

Commodity Murabaha (Tawarruq) financing has been the most widely used liquidity management instrument due to its ease of execution and wide acceptability among IFIs and banks. However, some IFIs have been reluctant to use commodity Tawarruq

instruments in recent years due to their disapproval of Tawarruq. From the readings above, it can be asserted that many Muslim scholars do not allow organized Tawarruq. Therefore, Tawarruq should be reduced or even avoided by the practice of IFIs today.

Moreover, banking Tawarruq is not consistent with classical Tawarruq that was addressed by most Muslim scholars in the past, which aims at getting cash to a person who needs it, by purchasing goods on credit. In one case, the classic Tawarruq can resell the commodity to the person who purchased it at a lesser price. In cases of fear is not a pretext to usury by fraudulent collusion or trick, it is then prohibited in other cases because it is not different from the dispraised 'inah contract' that the seller of the goods benefits from selling on credit from the buyer again at a lower price, for making it the sale allowable by Allah to riba. Therefore, this should be carefully studied to ensure the reputation of our religion and the future of Islamic banking, and we must see what is going on now in the number of Islamic banks under the Islamic umbrella name regarding Tawarruq.

RECOMMENDATION

To enhance the application of Tawarruq in Bursa Souq al-Sila' Malaysia, it is crucial to implement stricter Shariah compliance oversight and continuous monitoring to ensure full adherence to Islamic principles, reducing the risk of riba-based practices. Public awareness and educational initiatives should be increased to address customer misconceptions and improve understanding of Tawarruq as a Shariah-compliant financing option. Additionally, Islamic financial institutions should explore alternative instruments such as profit-sharing (Mudarabah and Musharakah) to promote more equitable wealth distribution. Managing the economic and social implications of debt creation through Tawarruq is essential to avoid over-indebtedness and inefficiency, focusing instead on productive uses of the instrument. Finally, maintaining collaboration with Shariah scholars will strengthen the credibility and acceptance of Tawarruq, ensuring its alignment with both Islamic law and the needs of the financial industry.

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