

**ANALYSIS OF THE PERMISSIBILITY OF BAI' AL-'INAH
TRANSACTIONS ACCORDING TO THE SHAFI'I SCHOOL OF
THOUGHT AND ITS IMPLEMENTATION IN MALAYSIA**

Alif Cahya Setiyadi

Leipzig University of Germany
Email: as79suja@studserv.uni-leipzig.de

Sakiinah Binti Mohammad Aris

Universitas Islam Negeri Ar-Raniry Banda Aceh, Indonesia
Email: sakiinah.mohammadaris@ar-raniry.ac.id

Abstract

This research aims to analyse of the legality of the *bai' al-'inah* contract according to the Syafi'i school and how it is implemented in Malaysia. The author uses the qualitative research method which all data gathered from secondary data. The research results found that the contract of *bai' al-'inah* allowed by Imam Shafi'i based on free from the element of *riba* (usury) and other elements that can prohibit it. Among the conditions set by Imam Syafi'i are that the two sales and purchase transactions contained in this *bai' al-'inah* must stand alone and not be related to each other so that the second transaction is a condition for the first transaction. The Syariah Advisory Council (MPS) in Malaysia decided to allow *bai' al-'inah* based on the opinion brought by Imam Syafi'i. In the decision that has been issued, MPS states the conditions that must be followed by Islamic Banking Institutions in Malaysia that apply *bai' al-'inah* in their products. Among them are the two purchase and sale contracts, which must be clear and carried out separately; there is no repurchase condition in the contract, the time for the confirmation of the two contracts is different, and the transfer of ownership of assets is clear.

Keywords: Bai' al-'inah contract, Islamic Law, Malaysia, Syafii school of thought

Abstrak

Penelitian ini bertujuan untuk menganalisis legalitas akad bai' al-'inah menurut mazhab Syafi'i dan bagaimana implementasinya di Malaysia. Penulis menggunakan metode penelitian kualitatif yang seluruh datanya diperoleh dari data sekunder. Hasil penelitian menemukan bahwa akad bai' al-'inah diperbolehkan oleh Imam Syafi'i dengan dasar terbebas dari unsur riba dan unsur-unsur lain yang dapat mengharamkannya. Diantara syarat yang ditetapkan oleh Imam Syafi'i adalah kedua transaksi jual beli yang terdapat dalam bai' al-'inah ini harus berdiri sendiri dan tidak terkait satu sama lain sehingga transaksi yang kedua menjadi syarat bagi transaksi yang pertama. Majelis Pertimbangan Syariah (MPS) di Malaysia memutuskan untuk membolehkan bai' al-'inah berdasarkan pendapat yang dibawa oleh Imam Syafi'i. Dalam keputusan yang telah dikeluarkan, MPS menyebutkan syarat-syarat yang harus diikuti oleh Lembaga Perbankan Syariah di Malaysia yang menerapkan bai' al-'inah dalam produknya. Diantaranya adalah dua akad pembelian dan penjualan harus jelas dan dilakukan secara terpisah, tidak ada syarat pembelian kembali dalam akad, waktu konfirmasi kedua akad berbeda, dan pemindahan kepemilikan aset jelas.

Kata Kunci: Akad Bai' al-'inah, Hukum Islam, Malaysia, Mazhab Syafii

INTRODUCTION

The affairs of *muamalat* are part of Islam's demands to regulate the people's lives. The principles of sharia, which are based on the Quran and Al-Sunnah, are the primary basis for interpreting human wants and needs, which often change occasionally. In matters of muamalat, sharia does not narrow the situation by referring only to the Quran and Al-Sunnah. Ijtihad of the scholars is required to explain the law of a matter described in general terms by the Quran and Al-Sunnah. The scope of the ijthihad of the scholars is undoubtedly based on the primary source by looking at the realities of life that are more practical by the will of the Sharia.¹ In order to deal with

¹ Chairul Fahmi, 'Revitalisasi Penerapan Hukum Syariat Di Aceh (Kajian Terhadap UU No.11 Tahun 2006)', *TSAQAFAH* 8, no. 2 (30 November 2012): 295-310, <https://doi.org/10.21111/tsaqafah.v8i2.27>.

the *muamalah* issues of today, the scholars of Jurisprudence have paid serious attention to the main issues of legal, such as *halal-haram*, *riba*, *gharar*, *maslahah*, and *maqasid syar'iyah*. *Istinbath* means to issue or determine.² Terminologically *istinbath* is the effort that must be made to formulate *shara'* law based on the Qur'an and Al-Sunnah by means of *ijtihad*.³

The issues of *muamalat* that are increasingly numerous and widespread along with the development of the times cause many Jurisprudence scholars to perform *ijtihad* to issue a new law.⁴ Differences of opinion between the scholars of Jurisprudence are caused by differences in understanding drawn or implemented from a proposition, namely the verses of the Al-Quran and Al-Sunnah.⁵ One example that can be taken is about the original law for buying and selling, which is that it must be and is justified by *Shara'*. This is based on the words of Allah S.W.T.

وَأَحَلَّ اللَّهُ الْبَيْعَ وَحَرَّمَ الرِّبَا

“... and Allah has justified buying and selling and forbidden usury...”
(QS. Al Baqarah: 275)

The above verse explains that all buying and selling is lawful regarding religion unless there is usury in the transaction. Buying and selling are essential *muamalat* in the life of every human being.⁶ It is human nature to own something one wants. Man will do anything to achieve his desire. However, a Muslim must have boundaries that align with the Shariah. However, this is different in the case of *bai' al-'inah* transactions, one type of sale and purchase. *Bai' al-'inah* is a transaction involving two parties, namely the seller and the buyer. Where the seller sells his asset to the buyer in cash, the seller buys back the asset with the buyer at a higher price in instalments. Judging from its status, *bai' al-'inah* is a commonly used form of *muamalah*. However, the purpose of *bai' al-'inah* itself is entirely contrary to the purpose of *Ramallah* because *bai' al-'inah* is only a stepping stone or paving the way to legalise the practice of usury, which is forbidden.

² Chairul Fahmi, 'KONSEP IJMAK MENURUT FAZLUR RAHMAN DAN PEMBAHARUAN HUKUM ISLAM', *Jurnal Ilmiah Islam Futura* 11, no. 1 (3 February 2017): 35-49, <https://doi.org/10.22373/jiif.v11i1.59>.

³ Satria Effendi dan M. Zein, *Ushul Fiqh*, (Jakarta: Kencana, 2009), hlm. 177

⁴ Hasbi Ash-Shiddiqie, *Pengantar Fikih Muamalah* (Jakarta: Sinar Bintang, 2021).

⁵ Chairul Fahmi, 'TRANSFORMASI FILSAFAT DALAM PENERAPAN SYARIAT ISLAM (Analisis Kritis Terhadap Penerapan Syari'at Islam Di Aceh)', *Al-Manahij: Jurnal Kajian Hukum Islam* 6, no. 2 (2012): 167-76.

⁶ Abd Shomad, *Hukum Islam: Penormaan Prinsip Syariah dalam Hukum Indonesia* (Jakarta: Kencana, 2017).

Jurisprudence scholars differ in opinion in addressing the law of *bai' al-'inah*. According to the Hanbalis, the law of *bai' al-'inah* is haram and invalid because according to them, *bai' al-'inah* is a camouflage for a system that aims to legalise usury.⁷ Among the traditions used by Imam Hambali are:

عن ابن عمر رضي الله عنهما قال ، سمعت رسول الله صلى الله عليه وسلم يقول :إذا ضن الناس بالدينار والدرهم وتبايعوا بالعينة واتبعوا أذنان البقر وتركوا الجهاد في سبيل الله أنزل الله بهم بلاء فلا يرفعه عنهم حتى يراجعوا دينهم. (رواه أحمد)⁸

“When the people are generous with dinars and dirhams, and deal in trade by *al-'inah*, and they follow the tails of oxen, and forsake jihad fi sabilillah, then Allah will send affliction upon them, and He will not remove it from them until they return to their religion.” (HR. Ahmad)

The Hanafis differed among themselves regarding the ruling on *bai' al-'inah*.⁹ According to Muhammad bin al-Hasan ash-Shibani the law of *bai' al-'inah* is makruh while according to Abu Yusuf it is permissible. This dispute occurs in *bai' al-'inah* which in practice only involves two people. However, if in practice it involves three people, then both agree that *bai' al-'inah* is permissible.¹⁰

According to ash-Shafi'iyah, *bai' al-'inah* is not a prohibited trade practice, whether done after receiving the price in the first sale or before, whether the transaction is customary or not. However, according to al-Ustadz Abu Ishaq al-Isfirayaini and ash-Shaikh Abu Muhammad, if the transaction is customary, then the second transaction is as if it were conditioned on the first transaction. So, the first transaction is not valid. Thus, according to the Shafi'i school of thought, *bai' al-'inah* is not classified as a forbidden trade practice.¹¹ While Maliki school of thought believed that the law of *bai' al-'inah* is haram, on the grounds that *bai' al-'inah* is an opportunity to commit usury. In the theory of ushul Fikih,

⁷ Abd Allah Bin Ahmad Ibn Qudamah al-Maqdisi, *al-Mughni*, juz. 15, (Riyad: Dar al-Kutub, 1999) hlm. 260.

⁸ Ahmad Bin Muhammad, Ibn Hambal, *al-Musnad li al-Imam Ahmad Ibn Hanbal*, juz 2, (Beirut: Dar al-Fikr, 1991), hlm. 260-261, No. hadis: 4824 & 4825.

⁹ Shomad, *Hukum Islam*.

¹⁰ Ahmad Azhar Basyir, *Menata Kembali Ijtihad Menuju Aktualisasi Hukum Islam* (Bandung: Mizan, 1991).

¹¹ Yahya bin Syaraf an Nawawi, *Raudhah at Thalibin wa 'Umdah al Muftin*, juz. 3, cet. 3 (Beirut: al Maktab al Islamiy, 1991), hlm. 429

the method used by Malikiyah is known as *saddudz dzariah*, which is a preventive measure that is sought to avoid something undesirable.¹²

Differences of opinion about the law of *bai' al-'inah* cause *bai' al-'inah* not to be implemented in all countries including Indonesia. Unlike Malaysia, where in Malaysia, *bai' al-'inah* may be used as a concept for Islamic financial products in Malaysia but Indonesia still holds firm to the principle that *bai' al-'inah* cannot be implemented in banking practices.¹³ Prof Dr K.H. Ma'ruf Amin, Chairman of the National Sharia Council of the Indonesian Ulema Council (DSN-MUI) said there are some sharia products from other countries that are not allowed in Indonesia. "For example, the practice of *bai' al-'inah* is allowed in Malaysia and *tawarruq* is allowed in the Middle East, but in Indonesia it is not allowed,"¹⁴

RESEARCH METHODS

This research uses qualitative research methods. Qualitative research methods are research methods used to research on natural object conditions.¹⁵ The type of research used is library research, namely by examining written sources from various types of references, such as books, books of Jurisprudence, fatwas, theses, articles, journals, theses, and other references that are considered related to the object of study in this study.¹⁶ Specifically, this research is directed at analysing the permissibility of *bai' al-'inah* transactions according to the Shafi'i school of thought and its implementation in Malaysia

RESULTS AND DISCUSSION

1. The Law of *Bai' Al-'Inah* Transaction According to the Shafi'i Mazhab

In Imam Syafi'i's view, there are basically two forms of buying and selling that are allowed. First, a sale where the goods to be exchanged are brought by both parties at the place of the sale and purchase transaction to

¹² Azhar Basyir, *Menata Kembali Ijtihad Menuju Aktualisasi Hukum Islam*.

¹³ Hasbi Ash-Shiddiqie, *Pengantar Fikih Muamalah*.

¹⁴ <https://www.republika.co.id/berita/ekonomi/syariah-ekonomi/13/07/23/mqdjh2-fatwa-ekonomi-syariah-di-indonesia-pilih-jalan-tengah>

¹⁵ Muhammad Siddiq-Armia, *Penentuan Metode Dan Pendekatan Penelitian Hukum*, ed. Chairul Fahmi (Indonesia: Lembaga Kajian Konstitusi Indonesia (LKKI), 2022).

¹⁶ Reza Banakar and Max Travers, *Theory and Method in Socio-Legal Research* (USA: Bloomsbury Publishing, 2005).

be exchanged. Second, a sale where one of the goods to be exchanged is not brought or not yet present at the place of the sale and purchase transaction. This second category of sale and purchase includes: salam sale and deferred sale (bai' ajal). As in the book al-Umm:

أصل البيع يبعان لا ثالث لهما: بيع صفة مضمونة علي بائعها, فإذا جاء بها فلا خيار للمشتري إذا كانت علي صفته. وبيع عين مضمونة علي بائعها بعينها يسلمها البائع للمشتري, فإذا تلفت لم يضمن سوي العين التي باع¹⁷

“So, buying and selling can occur in two situations, namely the exchange of objects of buying and selling takes place at the place and time of the transaction or one of the objects of buying and selling does not exist at the place and time of the transaction. This second situation is better known as bai' ajal (deferred sale) and what is deferred is the object of sale, whether it is money or goods. The specific condition that must be fulfilled for this second sale is that the time of delivery of goods in bai salam/salaf and the time of payment in bai ajal must be clearly specified at the time of the contract”.

Imam Shafi'i's view on this special condition is based on his opinion on the verses of the Qur'an that speak of specified times.¹⁸ Among them:

أَيَّامًا مَّعْدُودَاتٍ فَمَنْ كَانَ مِنْكُمْ مَّرِيضًا أَوْ عَلَى سَفَرٍ فَعِدَّةٌ مِنْ أَيَّامٍ أُخَرَ وَعَلَى الَّذِينَ يُطِيقُونَهُ فِدْيَةٌ طَعَامٌ مِسْكِينٍ فَمَنْ تَطَوَّعَ خَيْرًا فَهُوَ خَيْرٌ لَهُ وَأَنْ تَصُومُوا خَيْرٌ لَكُمْ إِنْ كُنْتُمْ تَعْلَمُونَ
(البقرة: 184)

“(That is) in certain days. So, if any of you is sick or travelling (and breaks his fast), then he shall fast the number of days missed on other days. And it is obligatory for those who find it difficult to observe it (if they do not fast) to pay the fidyah, (which is) to feed a poor person. Whoever willingly does good deeds, that is better for him. And fasting is better for you if you know” (QS. Al-Baqarah [2]: 184)

¹⁷ Muhammad bin Idris Asy-Syafi'i, *al Umm*, (tahqiq Dr. Rif'at Fauzi Abdul Muthallib), juz. 4, (Mesir: Dar al Wafa, 2001), hlm. 6

¹⁸ *Ibid.*, hlm. 161.

يَسْأَلُونَكَ عَنِ الْأَهْلِ قُلْ هِيَ مَوْقِيتٌ لِلنَّاسِ وَالْحُجُّ وَلَيْسَ الْبِرُّ بِأَنْ تَأْتُوا الْبُيُوتَ مِنْ ظُهُورِهَا
وَلَكِنَّ الْبِرَّ مَنِ اتَّقَى وَأْتُوا الْبُيُوتَ مِنْ أَبْوَابِهَا وَاتَّقُوا اللَّهَ لَعَلَّكُمْ تُفْلِحُونَ (البقرة: 189)

“They ask you about the crescent moon. Say: "The crescent is a sign of time for men and (for the pilgrimage); and it is not virtue to enter houses from their backs, but it is the virtue of the pious. And enter the houses from their doors; and fear Allah that you may be fortunate”. (QS. Al-Baqarah [2]: 189)

وَأَذْكُرُوا اللَّهَ فِي أَيَّامٍ مَعْدُودَاتٍ فَمَنْ تَعَجَّلَ فِي يَوْمَيْنِ فَلَا إِثْمَ عَلَيْهِ وَمَنْ تَأَخَّرَ فَلَا إِثْمَ عَلَيْهِ لِمَنِ
اتَّقَى وَأَتَقُوا اللَّهَ وَاعْلَمُوا أَنَّكُمْ إِلَيْهِ تُحْشَرُونَ (البقرة: 203)

“And remember Allah for many days. Whoever wishes to hasten his departure after two days, there is no sin on him. And whoever wishes to delay (his departure from the two days), there is no sin on him, for he who fears. And fear Allah, and know that you will be gathered to Him.”. (QS. Al-Baqarah [2]: 203)

Imam al-Shafa'i explained that there is no problem if a person buys an item from someone on a deferred price or on credit, and after he receives the item, he sells it back to the seller or someone other than the seller for cash, even at a lower or higher price.¹⁹ This is provided that at the time of the contract it was agreed that the lower or higher price would be used. This is to ensure that the agreed price is clear. According to him, if the agreed price is not specified, the sale is not allowed because it falls under the category of two sales in one sale (two contracts in one contract) and this is prohibited in Islam. For Imam Shafi'i, the second sale by the first buyer has nothing to do with the first purchase. As stated in the book al-Umm:

¹⁹ Al Syairazi, *Mashadir Al-Tasyri' al-Islami Fi Ma La Nasha Fih* (Quwaid: Dar Al-Kalam, 1971).

فإذا اشترى الرجل من الرجل السلعة فقبضها, وكان الثمن إلي أجل, فلا بأس أن يتاعها من الذي اشتراها منه ومن غيره بنقد أقل أو أكثر مما اشتراها به, أو بدين كذلك, أو عرضا من العروض ساوي العرض ما شاء أن يساوي, وليست البيعة الثانية من البيعة الأولى بسبيل²⁰

Imam Shafi'i in allowing bai' al-'inah is in the context of a sale that each stands alone, not in the context of two contracts in one transaction. As mentioned above, Imam Shafi'i mentioned that the two sales must stand alone and not be related to each other as a condition for the second sale. Thus, it is clear that Imam Shafi'i permits buying and selling in this case in the context of a sale and purchase that is independent of each contract, not a multi-account sale and purchase. However, this kind of sale has already been included in the definition of bai' al-'inah, which actually Imam Shafi'i also prohibits bai' al-'inah if it makes it a fabrication to get profit solely to avoid usury.²¹

With regard to usury engineering, Imam Syafi'i did not see any engineering. There is no engineering because in the first contract a sale and purchase has occurred. Sale and purchase is said to occur when there has been a handover between the buyer and seller. When this happens, the sale and purchase takes place and there is a transfer of ownership of the goods being traded from the seller to the buyer. Since the buyer has the right of ownership of the item, he has the right to sell the item to anyone, including the seller, and at any price.²²

In the book of Raudhah at Talibin there is an interesting expression:

ليس من المناهي بيع العينة وهو أن يبيع غيره شيئا بثمن مؤجل, ويسلمه إليه, ثم يشتريه قبل قبض الثمن بأقل من ذلك الثمن نقدا. وكذا يجوز أن يبيع بثمن نقدا ويشترى بأكثر منه إلى أجل, سواء قبض الثمن الأول أم لا, وسواء صارت العينة عادة له غالبية في البلد أم لا²³

²⁰ *Ibid.*, hlm 161.

²¹ Panji Adam, *Hukum Islam: Konsep, Filosofi dan Metodologi* (Jakarta: Sinar Grafika, 2021).

²² Asy-Syafi'i, *Al-Umm*. (Beirut: Dar al-Ma'rifah, 1990), hlm. 79.

²³ Yahya bin Syaraf an Nawawi, *Raudhah at Thalibin...*, hlm. 418-419

“Bai' al-'inah is not prohibited in the sense that a person sells something to another person for a deferred price (on credit), and he delivers the item to the buyer, then he buys it back at a lower price in cash before receiving the first payment. Similarly, it is permissible for him to sell for cash and buy back at a higher price on credit, whether he has received the first payment or not, or whether 'inah is customary in the land or not..”

Imam Shafi'i also stated that although he saw the validity of the sale and purchase contract on its face, he disliked that the parties to the transaction had the intention to take usury by means of buying and selling, which if they stated their intention would cancel the sale and purchase. Therefore, *bai' al-'inah* is *makruh* if there are indications of an intention to take usury by means of buying and selling (engineering /hilah).²⁴

Imam Shafi'i himself allowed *bai' al-'inah* not in the context of a *murakkab* contract (multi-contract) but in the context of two independent contracts. In the book *al-Umm*, Imam Syafi'i has stated that the two sales must stand alone, not intertwined between the two where the second sale is not a condition of the first sale. Thus, Imam Shafi'i allows *bai' al-'inah* not in the context of two contracts in one contract, but in the context of two independent contracts. In other words, the sale and purchase intended by Imam Shafi'i is not *bai' al-'inah* as a contract in which there are two contracts.

Based on the description that has been made, it can be concluded that Imam Shafi'i allows this *bai' al-'inah* transaction but if the two contracts stand alone and there is no intention to get usury profit. Because Imam Shafi'i himself stated that two trades in one trade are prohibited.

1. Implementation of *Bai' Al-'Inah* Transaction in Malaysia

The implementation of *bai' al-'inah* transactions in Malaysia has been approved by the Majlis Penasihat Syariah Bank Negara Malaysia and Majlis Penasihat Syariah Suruhanjaya Sekuriti (MPSSC) at its 5th meeting on 29 January 1997 which has decided that:

²⁴ Muhammad Fathi Ad-Duraini, *Buhus Muqaranah Fi Al-Fiqh al-Islami Wa Ushulih Juz II* (Kairo: Muassasah al-Risalah, 2020).

“Bai' al-'inah is a method required in the Islamic capital market in Malaysia..”²⁵

Later, research on the law of al-'inah sale and purchase was conducted again through the Muzakarah Cendikiawan Syariah Nusantara by Bank Negara Malaysia in 2006. This muzakarah aimed to foster a strong understanding and co-operation between Islamic scholars within the archipelago in relation to the jurisprudence of muamalah and Islamic finance. The vision of the majlis muzakarah is to generate new ideas and insights among the scholars in an atmosphere of tolerance and respect for each other, even though most of them come from different cultural backgrounds, economies and political structures.²⁶ Then the majlis decided that the bai' al-'inah transaction was as follows.²⁷

1. There is still an issue of disagreement among the scholars of Jurisprudence regarding the ruling on the necessity of bai' al-'inah and bai' al-tawarruq.
2. The legal principle of bai' al-'inah is the same as the principle of the necessity of bai' al-tawarruq. Bai' al-tawarruq is a commodity purchase transaction between two parties (buyer and seller) at a deferred price, then the buyer resells it to another buyer (third party) for cash.
3. Bai' al-'inah is important in local Islamic financial development. Therefore, the procedure of carrying out bai' al-'inah needs to be strengthened and refined so that it fulfils the requirements demanded by Shariah principles.
4. Islamic Financial Institutions need to limit the use of products based on bai' al-'inah through new alternatives that have been agreed upon by Shariah scholars.

Among the early banking institutions that practised the concept of bai' al-'inah was Bank Kerjasama Rakyat Malaysia. This instrument is indispensable in Islamic banking today because it is one of the instruments that offer financing to help customers get cash easily. Hence, there are many Islamic banks that practice the concept of bai' al-'inah in their products.

²⁵ Suruhanjaya Sekuriti Malaysia, *Keputusan Majlis Penasihat Syariah Suruhanjaya Sekuriti*, edisi Kedua, 2006, hlm 22

²⁶ http://www.bnm.gov.my/index.php?ch=bm_speech&pg=bm_speech&ac=589

²⁷ Bank Negara Malaysia, *Resolusi Syariah...*, hlm. 28

Among the examples of products that have been offered at Bank Rakyat are:²⁸

1. *Aslah Personal Financing*
2. *Mudarris Specialised Personal Financing*
3. *Syifa' Personal Financing*
4. *al-Falah Education Financing*
5. *Overdraf*
6. *Umrah & Tourisme Financing*
7. *Tijari Contract Financing*

Based on the concept of *bai' al-'inah*, the bank will sell the assets it owns to customers who wish to get money on a deferred basis. Then, the assets that have been sold to the customer will be bought back by the bank in cash. When, the resale price is higher than the original sale price. Accordingly, the customer will get the money from the bank in cash and the bank will also receive the money from the customer in instalments according to the time agreed by both parties.

In connection with that, assets in *bai' al-'inah* transactions need to be the permanent property of the bank. In fact, the value of the bank's asset also needs to be commensurate with the value that has been requested by the customer for this sale and purchase contract to be valid. In conclusion, both parties benefit from this transaction because the customer will get the cash he wants, while the bank will get the profit from the purchase of the asset that was sold earlier.²⁹

The Shariah Advisory Council further elaborated on the provisions relating to *bai' al-'inah* in connection with previous decisions. The MPS in its 16th meeting on 11 November 2000 and 82nd meeting on 17 February 2009 decided that the *bai' al-'inah* contract should fulfil the following legal conditions:

- Has two clear and separate sale and purchase contracts, namely the purchase contract and the sale contract
- There is no asset repurchase condition in the contract
- The time for validation of each contract is different

²⁸https://www.bankrakyat.com.my/c/business/business_financing_i/term_financing_i
-1

²⁹ Yusuf Al Qaradhawi, *Fatwa-Fatwa Kontemporer 3* (Jakarta: Gema Insani, 1995).

- The order in which each contract is ratified is correct, i.e. the first sale contract must be completed first before the second sale contract is ratified.
- There is a transfer of ownership of the asset and a valid form of control over the asset (qabd) based on syarak and current commercial practice (*ʿurf tijari*).

Then the legal requirements that have been determined are further developed and detailed in more detail in the Decree of the Sharia Advisory Council of Suruhanjaya Sekuriti 31 December 2018. The decision is:³⁰

MPS has decided that *bai' al-'inah* is a principle that is required to be utilised in the Islamic capital market in Malaysia. However, the MPS has updated the decision and has decided that the implementation of *bai' al-'inah* should fulfil and comply with the following conditions:

- The sale and purchase of assets should be done using two clear and separate sale and purchase contracts.
- Both contracts should fulfil the general conditions of valid sale and purchase required by syarak.
- Documentation of the asset sale or purchase transaction can be done using documentation methods accepted by market practice (*ʿurf*) including written documentation or recorded conversations
- Documentation of both asset sale and purchase transactions in writing should be done in two separate sets of documents

Sale of assets and purchase of assets should not contain conditions of repurchase or resale of the assets.

Any form of disclosure of the terms of repurchase or resale of the asset associated with the *bai' al-'inah* contract will invalidate the contract. In this regard, the following points should be adhered to:

- For the purpose of this decision, the terms of repurchase or resale of assets include;
 - a. Any fact in any document relating to a *bai' al-'inah* transaction that clearly states that the seller or buyer will repurchase or resell the asset; and/or
 - b. Any statement on any document relating to a *bai' al-'inah* transaction that states that the transaction involves the sale of

³⁰ Suruhanjaya Sekuriti Malaysia, *Keputusan Majlis Penasihat Syariah*, 2018, hlm. 9

an asset between two parties and is followed by the purchase of the same asset between the same parties or vice versa.

- The condition of repurchase or resale of assets should not be specified in any documents related to bai' al-'inah transactions. The allocation of such a condition in any document relating to a bai' al-'inah transaction will render the transaction void.

All forms of documents related to bai' al-'inah transactions are considered as elements that make up the contract where all documents are interrelated and cannot be separated from one another.

Therefore, the terms of repurchase or resale of assets should not be included in the documents relating to the bai' al-'inah transaction. For example, documents in the context of sukuk issuance; Principal Terms and Conditions, Details of the Sukuk Facility, Trust Deed, Information Memorandum, Master Agreement and other related documents.

In this regard, the MPS ruled that the practice of pre-signing in legal documents based on bai' al-'inah is not permissible. This is because the practice is seen as a form of unauthorised disclosure of the terms of repurchase or resale of assets in bai' al-'inah contracts.

1. The timing of the ratification of the two sale contracts should be different. In this case, ratifying the first and second sale contracts simultaneously may invalidate both contracts. Hence, the timing of the ratification of the sale contracts should be different.
2. The order in which the contracts of sale are ratified should be based on the correct accompaniment. The order in which the contracts of sale are ratified should be based on the correct corollary, i.e., the first contract of sale should be consummated first before the second contract of sale is ratified. In this regard, the following points should be observed:
 - a. For the sale or purchase of an asset, the party selling the asset should sign the contract first and be followed by the party purchasing the asset.
 - b. For subsequent sale and purchase transactions, the party selling the asset should sign the contract first and be followed by the party buying the asset.

In justifying bai' al-'inah transactions, the MPS sets out the legal requirements and guidelines that must be adopted by all banking institutions in Malaysia that apply the bai' al-'inah system in their products. All the conditions that have been stipulated coincide with those that have been justified by Imam Shafi'i. Looking at the decisions that have been made by the MPS, the implementation of bai' al-'inah is determined from one period to another. Starting from the determination of the permissibility of bai' al-'inah transactions and onwards to the legal requirements in establishing bai' al-'inah. MPS does not take it easy in determining a matter where they set all the details so that it is clear and can be complied with by Islamic banking institutions in Malaysia.

The reason Majlis Penasihat Syariah (MPS) and Majlis Penasihat Syariah Suruhanjaya Sekuriti (MPSSC) allow bai'al-'inah is by looking at the view brought by the Syafi'i and Zahiri schools of thought that bai'al-'inah is required. They criticise the traditions that are used as evidence by most scholars which are considered weak and cannot be used as a legal basis.

As a result of the study of the views of the scholars and the issue of bai' al-'inah, the MPSSC has decided to accept the Shafi'i and Zahiri schools of thought that require bai' al-'inah. Hence, it is further promoted to form a product in the Islamic capital market in Malaysia. This can happen when institutions or individuals who need capital for a specific purpose can utilise this method of financing by using assets as collateral.

Among other reasons that are the source of MPS is based on the hadith narrated by Imam Muslim about mutual help which reads.

عَنْ أَبِي هُرَيْرَةَ رَضِيَ اللَّهُ عَنْهُ عَنِ النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ مَنْ نَفَسَ عَنْ مُؤْمِنٍ كُرْبَةً مِنْ كُرْبِ الدُّنْيَا ، نَفَسَ اللَّهُ عَنْهُ كُرْبَةً مِنْ كُرْبِ يَوْمِ الْقِيَامَةِ ، وَمَنْ يَسَّرَ عَلَى مُعْسِرٍ ، يَسَّرَ اللَّهُ عَلَيْهِ فِي الدُّنْيَا وَالْآخِرَةِ ، وَمَنْ سَتَرَ مُسْلِمًا ، سَتَرَهُ اللَّهُ فِي الدُّنْيَا وَالْآخِرَةِ ، وَاللَّهُ فِي عَوْنِ الْعَبْدِ مَا كَانَ الْعَبْدُ فِي عَوْنِ أَخِيهِ ، وَمَنْ سَلَكَ طَرِيقًا يَلْتَمِسُ فِيهِ عِلْمًا ، سَهَّلَ اللَّهُ لَهُ بِهِ طَرِيقًا إِلَى الْجَنَّةِ ، وَمَا اجْتَمَعَ قَوْمٌ فِي بَيْتٍ مِنْ بُيُوتِ اللَّهِ يَتْلُونَ كِتَابَ اللَّهِ ، وَيَتَدَارَسُونَهُ بَيْنَهُمْ ، إِلَّا نَزَلَتْ عَلَيْهِمُ السَّكِينَةُ ، وَغَشِيَتْهُمُ الرَّحْمَةُ ، وَحَفَّتْهُمُ الْمَلَائِكَةُ ، وَذَكَرَهُمُ اللَّهُ فِيمَنْ عِنْدَهُ ، وَمَنْ بَطَأَ بِهِ عَمَلُهُ ، لَمْ يُسْرِعْ بِهِ نَسَبُهُ (رواه مسلم)

Abu Hurayrah (may Allah be pleased with him) reported that the Prophet (peace and blessings of Allah be upon him) said: "Whoever

relieves a believer of one worldly hardship, Allâh will relieve him of one hardship on the Day of Judgement. Whoever eases the troubles of a person in debt, Allâh will ease his troubles in this world and the Hereafter. Whoever covers the disgrace of a Muslim, Allâh will cover his disgrace in this world and the next. Allâh always helps a servant as long as he helps his brother. Whoever takes the path to knowledge, Allâh will make easy for him the path to Paradise. No people gather in one of Allâh's houses (mosques) to recite the Book of Allâh and study it among themselves, but tranquillity will descend upon them, mercy will cover them, Angels will surround them, and Allâh will honour them among the Angels who are with Him. Whoever is slowed down by his deeds (in attaining high degrees), his lineage cannot hasten him." (HR. Muslim)³¹

The above Hadith shows that if a Muslim helps his brother from hardship, Allah will relieve his hardship in the Hereafter. This is one example of MPS's reasoning in allowing bai' al-'inah to help Muslims in Malaysia who want to use Islamic banking products and move away from conventional banks.

Next, the hadith about fairness in buying and selling transactions based on the willingness of two or more parties to the transaction.

عن أبي سعيد الخدريّ يَقُولُ قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ إِذَا الْبَيْعُ عَنْ تَرَاضٍ (رواه
إبن ماجه)

Abu Said al-Khudri reported that the Messenger of Allah (peace and blessings of Allah be upon him) said: "A sale is only if it is based on mutual consent." (Ibn Majah)³²

A sale and purchase must be based on the principle of mutual willingness and mutual relief. There is no coercion, no party is harmed and no party is wronged. Likewise, with the bai 'al-'inah transaction which is based on the willingness of both parties because both will get separate benefits desired from the transaction.

³¹ Muslim bin Al-Hujjaj Abu Al-Hasan Al-Qansyiri al-Naisaburi, *Shahih Muslim*. (Beirut: Dar Ihya al Turats al-Arabi, t.t), juz. 4, no. 2699, hlm. 2074

³² Abu Abdullah Muhammad bin Yazid Ibnu Majah, *Sunan Ibnu Majah*, Kitabut Tijaarah, Bab Jual Beli Secara Khiyar, (terj. H. Abdullah Shonhaji), juz. 2, cet. 1, (Semarang: CV Asy Syifa, 1993.), no. 2185, hlm. 39

CONCLUSION

After conducting research and discussion and analysing the analysis of the permissibility of bai' al-'inah transactions according to the Shafi'i school of thought and its implementation in Malaysia, several conclusions can be drawn on the issues raised in this study.

1. Bai' al-'inah is a type of transaction contract in which a person sells something with delayed payment and then buys it back with cash payment at a price lower than the first price.
2. From the results of the study regarding the analysis of the permissibility of bai' al-'inah transactions in the Shafi'i school of thought, it was found that Imam Shafi'i allowed bai' al-'inah based on the arguments of the Koran, hadith and qiyas. The main argument used by Imam Syafii is Surah Al-Baqarah verse 275 which is also the main source of buying and selling law. Several conditions have been put forward by Imam Shafi'i in allowing bai' al-'inah and making it a valid and usable transaction.
3. Bai' al-'inah has long been introduced and justified in Malaysia in the decision of the Majlis Penasihat Syariah (MPS) which is the authority authorised to determine the syarak law relating to Islamic financial business and is used and adhered to by the Jawatankuasa Syariah under the Islamic banking institutions. The Majlis Penasihat Syariah has determined the legal conditions for the use of this bai' al-'inah contract in its deliberations. Since the Majlis Penasihat Syariah (MPS) justifies bai' al-'inah by looking at the views brought by the Shafi'i school of thought, the MPS has laid down the guidelines in the form of the legal conditions of bai' al-'inah that must be adhered to by Islamic Banking Institutions in Malaysia that apply this contract in their products.

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