

# Islamic finance in malaysia (bay al- dayn)



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Bay al-dayn is an Islamic financial instrument which was developed and currently practised in Malaysia. Bay al-dayn is considered a controversial issue because some countries practice it and some leave it out without prior improvement taking place. It is worth mentioning here that the principle of bay al-dayn is not widely used by other Islamic banks, especially in Middle Eastern countries but, bay al-Dayn has been mainly used in Malaysia as one of the fundamental Shariah contracts in structuring various Islamic finance facilities including, Islamic money market instruments, Islamic bonds, Islamic accepted, Islamic treasury bills and Islamic negotiable instruments.

Firstly, bay al-dayn as money market instrument. The application of bay al-dayn is pertaining to trading instrument which has contributed to the development of various securitized products and tradable bonds. Due to this, it has provided a wide range of assets for investment. Money Market Instruments based on Islamic principles have arisen in competing the conventional ones. The securitization refers to the creation of tradable certificates as evidence of a debt that arising out from financing facilities. It also means putting a guarantee for the issuance of securities that are financial assets. For example, if Ali owes RM 5, 000, 000 to Bank Islam, apart from legal documents, a legal document of ' I Owe You' (IOU) would be created as evidence of the debt, as securitization.

Secondly, Islamic bonds on the basis of bay al-dayn. A bond is a " security" which gives the holder a financial claim on the issuer.[1]This claim protects the holder if the issuer is unable to pay the amount due. The development of Islamic Economy in Malaysia has positively contributed to the application of bay al-dayn. Malaysia has successful in the application of Islamic securities

which is based on the concept of bay al-dayn. Even though, bay al-dayn has not been applied in other countries, but its potential in Malaysia seems has grown. Basically, the creation of Islamic securities or bonds involves three main steps:

1. Securitization- the creation of murabahah and BBA assets.
2. Bond issues-issuance of debt certificates
3. Trading of debt certificates- that is buying and selling of debt certificates in the secondary market using the contract of bay al-dayn.

Thirdly, Islamic accepted bills (IAB) as a liquidity instrument. IAB is a bill of exchange, which is made by the bank and accepted by the purchaser or buyer, hence creating a debt owing to the bank. The bank then in turn, may sell the IAB in the secondary market at a discount value under the bay al-dayn. Therefore, bay al-dayn is instrumental in becoming a liquidity instrument and it is governed by the principles of murabahah and bay al-dayn. An exporter who uses an Islamic Bankers Acceptance Facilities (IBAF) prepares the export documents as required under the sale contract or letter of credit. The export documents will be sent to the importer's bank. In addition, there must be genuine transaction between the parties involved, the goods involved must be lawful purpose, and there is adequate documentary evidence and that it is drawn in accordance with the law and requirements of IAB as indicated by Central Bank of Malaysia.

Evaluation of bay al-dayn- Malaysian experiences:

As been mentioned above, on 21st August 1996, The Malaysian Securities Commission Shariah Advisory Council approved a resolution unanimously

agreed to accept the principle of bay al-dayn as one of the concepts for developing Islamic capital market instruments. This was based on the views of some of the Islamic jurists who allowed this concept subject to certain conditions for instance there is a transparent regulatory system in the capital market to safeguard the maslahah (public interest) of the market participants.

There are arguments among the past and the present jurists on the issue of bay al-dayn. Nevertheless, there is no general consensus (ijma') prohibits it. In general, majority of the jurists are unanimous in allowing the selling of debts. They only contrast in terms of the debt being sold to a third party for reason that the seller may not be able to deliver the sold item to the buyer. The illah for some Islamic jurists do not allow bay al-dayn is due to the risk that might be faced by the buyer, element of gharar, absence of qabadh and riba.

Despite all of the controversial issues regarding the application of bay al-dayn, there is a logic idea behind the application. For instance, a transaction between Ali, Hap Seng Motorcar Sdn Bhd and Maybank Islamic. Ali wanted to buy a car from Hap Seng Motorcar with price RM 900, 000 but at that time he does not have enough money to pay. Later, Ali sells his debt with Hap Seng Motorcar to Maybank with discount that amount RM 850, 000. Thus, Maybank have to pay the car price to Hap Seng Motorcar. This is where the issue arise, when Ali sells his debt with discount. Some of the scholars agreed that there is a riba in this transaction. However, the logic is if we sell the debt with full price, who would want to buy it from Ali. At the end of the transaction Ali still need to pay his debt to Maybank at par value.

### Malaysia Islamic Banks:

Bank Muammalat[2] refers bay al-dayn to the sale of a debt arising from trade and services transaction in the form of a deferred payment sale. The customer will sell this debt to the bank at a discount. The benefit is customer gets paid from the bank before realization of the sale. There are several features of bay al-dayn that includes:

1. The cost must be revealed
2. The price and tenor of the lump-sum deferred payment must be agreed upon by the Bank and customer
3. The Bank appoints customer as an agent to sell on its behalf
4. Only trade transaction on usance term is allowed
5. Financing for finished goods

Meanwhile, Bank Islam Malaysia[3] Berhad provides few concepts for Trade services which includes Bai' Dayn (Debt Trading). This contract refers to the selling of your trade debts/receivable arising from trade-related transactions. You will sell your trade debts/receivable to the bank for a discounted amount.

### Issues on bay al-dayn:

However, there are lots of issues regarding the application of bay al-dayn in Malaysia. Bay al-dayn has formed many doubts amongst the countries practising Islamic Banking as to its permissibility as an Islamic financial instrument. The instrument is being developed to compete with the conventional banking to create a flow in the secondary market. It is also understood to create large capital by attracting investors to invest in <https://assignbuster.com/islamic-finance-in-malaysia-bay-al-dayn/>

Malaysia. It is widely used in the sales, bonds, import and export sales.

Banking institutions in Malaysia are concern about maintaining the liquidity in the financial system therefore has developed this concept. However, other Islamic countries are reluctant to use this concept because it does not seem permissible and there is a possibility that this concept handles interest or riba which is prohibited in Islam.

One of the main issues is, whether it is permissible to sell a confirmed debt which is backed by non ribawi goods at discounted price. Islamic scholars have put a plug on the possibility of earning profit by confirming that any sale of debt (Bay-al-dayn) or transfer of debt (Hawalat-al-dayn) must be at face value. This means when the bank buys the instrument of debt (shahada-al-dayn) from the original buyer, it is not entitled to any discount. There will be no riba by disallowing any difference between what it pays and what it receives on maturity (its maturity value). Some Islamic banks have been offering Islamic bill discounting products, and they essentially treat debt as any other physical asset that can be traded at a negotiated price. In fact, the prohibition of bay al-dayn is a logical consequence of the prohibition of “riba” or interest. A “debt” receivable in monetary terms parallels to money, and every transaction where money is exchanged from the same quantity of money, the price must be at par value. Any increase or decrease from one side is equivalent to “riba”. Somehow, some parties in Malaysia encourage the development for debt discounting as an Islamic Financial product on the basis that it represents an important field of short term and self-liquidating investment, because the terms of negotiable instruments do not extend beyond six months especially in trade based debt discounting.[4]

The scholars from Malaysia claims that debts can be sold because the original transaction is a debt created with an underlying contract of sale. They claim that it is legitimate to gain profit from the debt because the original transaction is legitimate. Gaining profit is usually being associated with risk ' Al-Kharaj bi al-Dhaman'. The secondary market is a mechanism that allows lenders to obtain liquidity to make additional loans. Through the secondary market the lender will receives the benefits which may then passed on to the borrower in the form of lower interest rates and longer fixed rate terms. During the financial crisis in 1998 which was experienced by Malaysia, " the exchange rate essentially was affected by the flight of foreign funds while the stock market was being additionally pulled down by the herd behaviour of the local speculators". Therefore, a flow to the secondary market does not necessarily be beneficial as it creates a flow to derivatives and speculators. Secondary market also encourages debt-creation as experienced in the financial crisis which has created too much debt for a nation to hold and therefore lead to the downfall of the economy.

Comparison with Indonesia:

In Malaysia issuance of a debit note which is then bought by the client and the results of the purchase are used for investment while, in Indonesia, the Shariah National Council of MUI does not permit trading in debit notes. There is no any shariah banking system in Indonesia including Bank Muamalat Indonesia (BMI) apply the bay al-dayn product. This is because the National Shariah Council (DSN) has not issued a fatwa in order to support this type of transaction.

In Indonesia, the main concern in this matter is that the benefit which is determined in a transaction is usury. The classic ulama agree that bay al-Dayn with a premium is illegal, and not permitted according to shariah principle. Indeed, many contemporary ulama are of the same opinion. However, several Malaysian ulama have legalised this contract, relying on the Shafie opinion, but not taking into consideration that the Shafie ulama permit this contract only in cases where a debt is sold at the nominal value of that debt.

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[1](Billah)

[2](Bank Muamalat)

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[3](Bank Islam)

[4](Azhar)