

Despite the existence of Shariah advisory councils, Islamic banks and financial institutions in Malaysia may be failing to carry out their duties. An article in this month's JSSH investigates transactions on purchasing houses specifically on transactions involving houses pending completion using the current practice of 'sale by deferred payment' also known as Bay' Bithaman al-Ajil (BBA).

Islamic banking gained foothold in Malaysia, with the establishment of Bank Islam Malaysia Berhad in 1983 and facilities have since expanded. Products include Wadiah - where the bank acts as the safe-keeper of deposits but may provide returns to the depositors as a gift; Murabahah, or partnership and equity financing; Ijarah – leasing; Musharakah – partnership and Bay' Bithaman al-Ajil – sale by deferred payment. Nuarrual Hilal Md. Dahlan and Sharifah Zubaidah Syed Abdul Kader Aljunid looked at sale and purchase and loan agreement to see if they comply with the requirements of the Islamic Law in protecting stakeholders and to provide practical suggestions to improve the existing practice.

Though in a landmark decision by the court of appeal in Malaysia in 2009 to legalize this arrangement as compliant with the shariah requirement, the authors of this paper are of the opinion that the transaction involves elements of gharar al-fahish or 'excessive profit with deception' and asks the question: "how could the bank as the 'owner' of the house, become a 'chargee' to their own asset?". Thus, the positions and status of the house, the charge, the ownership, the purchaser, the bank and the developer in BBA transaction are ambiguous and not certain.

The authors conclude that the current practice of Bay' Bithaman al-Ajil – whereby the good is sold immediately and the payment deferred to a later date – contradicts with the teachings of Islam and should be revamped until it is fully able to protect the interests of the purchasers/borrowers.

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