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Tawarruq as a Useful Instrument to Finance Retail the Halal Way

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Abstract

The term halal or permissible carries a comprehensive meaning which constituted the whole process in engaging any activity. A fried chicken for example is halal only when it is slaughtered Islamically and prepared using halal ingredients. The same goes to others particularly business activity. A business is considered halal or Shariah-compliant when it used permissible financing method and involved in halal business activity. The basic premise is the Qur'anic propagation to embrace Islam wholly not partially. This paper will delve into one method of business financing namely Tawarruq. Particular emphasis is given to the use of such method in finance the retail business. The study implied that the instrument is useful for business community to get permissible financing amid the disputes by scholars on the underlying contract. Perhaps, further research is needed in scrutinizing the practice in order to improve the instrument.

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Keywords: Tawarruq; Finance Retail; Halal; Shariah Law; Riba'; Business Financing

1. Introduction

In Islam, there are guidelines stipulated by Allah through His Messenger in conducting day to day activities. In addition, tradition of Prophet Muhammad is the secondary source of reference after Quran in
determining the permissibility of any actions. Allah has stipulated what is halal and what is Haram in order to guide the Muslim towards the happiness in the world and the most important is in the hereafter. Choosing the halal and leaving the haram is compulsory for Muslim.

Alserhan (2010) states that “the closer a person is to halal the more pure their actions are and the closer their actions to haram the more chance that they are sinning”. Halal is an Arabic word which means lawful or permissible in Shariah (Jonathan & Jonathan, 2010). In short, halal is related to the Islamic teachings which means “permitted, allowed, lawful or legal” (Tieman, 2011, p. 187). While the term haram is its opposite which carries the meaning “forbidden, unlawful or illegal” (Tieman, 2011, p. 187).

The term halal and haram is not limited to the food intake only but it carries comprehensive meaning which include lifestyles and services ranging from finance, hospitality, and logistics (Alserhan, 2010). Thus, this paper attempts to delve into the matter by focusing on the implementation of Islamic concept in financing small businesses the halal way.

Generally, there are many Islamic financing concepts being implemented in the market. One of them is Tawarruq. Tawarruq is considered makruh (reprehensible) by most jurists and harus (permissible) according to the Maliki school of thought for one very specific reason namely to avoid riba’ (Ayub, 2009; Zuhayli, El-Gamal, & Eissa, 2007). Traditionally, the concept is applied in a simple and natural manner. In conformity with its meaning, the concept allows for an individual to get cash via purchase and resell of a specific commodity.

Nevertheless, the contemporary scholars had raised doubt over the practice of Tawarruq particularly by the Islamic banks. The OIC Islamic Fiqh Academy for example is concerned on the possibility of non existence of physical commodities in Tawarruq structure as well as an existence of fraudulent trading contracts which may lead to fictitious transaction. If one of these occur in practice, therefore it is impermissible under Shariah’s point of view and thus the contract is haram (Islamic Finance News, 2010). It is essential to highlight that the concern raised over Tawarruq by the jurists is on the application of the concept and not on the concept itself.

In addition, Islamic finance is an asset-based system which promotes real physical economy (Adel, 2010; Christos & Alexandros, 2009). Therefore, trading is permissible by Allah instead of loan with increment. In terms of accounting treatment, such sales and trading should be included in the balance sheet to show movement of an asset of the Islamic banks even though the asset is held for only a few hours. Rosly (2010) further asserts that if any Islamic bank failed to produce evidence in terms of proper accounting treatment, they are guilty of riba’ since there are no proof that a true sale exists.

Raja Teh have once mentioned in a report that the practices of the Tawarruq that ought to be tightened and not the rule of the permissibility of the concept (Islamic Finance News, 2010). It is also immaterial to prohibit the whole concept and its implementation while only a few Islamic banks who violate the concept (Rahman, 2011). The concept itself is being recognized by Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI) by issuing Shariah standard on that matter.

Aznan once reported that if the contracts are properly executed and follows all the requirements and rulings of the concept, it should not be prohibited because of the transactions in the contract is organized (Islamic Finance News, 2010). However, OIC Fiqh Academy in Mecca ruled that organized Tawarruq and reverse Tawarruq is impermissible in April 2009 since the arrangement is a trick to get cash now by paying more cash at later date (S. H. Khan, 2009). On the contrary, Alrajhi approved the concept of organized Tawarruq by undersigned an agreement with Suq Al-Sila under Bank Negara which claimed to be the world’s first end-to-end Shariah compliant commodity trading platform (Rahman, 2011).

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b Prohibited and impermissible in Islamic Law  
Suq Al-Sila is a trading platform to facilitate commodity based financing and investment activities.
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