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Tawarruq as a Useful Instrument to Finance Retail the Halal Way

Zainor Nasrah Abdul Rahman^a, Siti Khadijah Ab Manan^{ab}

^aAccounting Research Institute (ARI), Universiti Teknologi MARA, 40450 Shah Alam, Selangor, Malaysia

^bCentre for Islamic Thought and Understanding (CITU), Universiti Teknologi MARA, 40450 Shah Alam, Selangor, Malaysia

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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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

^b Corresponding author. Tel.: +603-55442650; fax: +603-55442668.
E-mail address: sitik274@salam.uitm.edu.my.

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*^a (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*^b (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*^a 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*^c under Bank Negara which claimed to be the world's first end-to-end *Shariah* compliant commodity trading platform (Rahman, 2011).

^b Prohibited and impermissible in Islamic Law

^c *Suq Al-Sila* is a trading platform to facilitate commodity based financing and investment activities.

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