

Home Financing Pricing Issues in the Bay' Bithaman Ajil (BBA) and Musharakah Mutanaqisah (MMP)

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Abstract

Islamic banking in Malaysia has evolved rapidly since its first invention in 1983. Throughout 30 years of development, various products have been developed to fulfill the demands of the society both Muslim and Non-Muslim. Positive support and constructive criticisms have flourished the industry and made the product innovation to be enhanced accordingly. With regards to the products, retail financing is observed to be so dearer to the society compared to other form of financing like trade and corporate. Home financing is regarded as the most influential one since it normally affects long term commitment of the customer. Thus, this paper aims at analysing pricing issue of home financing products offered in Malaysia specifically BBA and MMP. The study uses content analysis method with intense and analytical readings of the previous texts and literatures on issues observed in the two products. The issue will then be comparatively reviewed using Maqasid-based appraisals.

Keywords: Islamic Banking; Home Financing; Bay' Bithaman Ajil (BBA); *Musharakah*

Mutanaqisah (MMP); Maqasid al-Shari'ah

Introduction

The emergence of Islamic banking for the last 30 years has brought the industry into several stages of development. Islamic banking and finance as modern corporate entity in the world history has emerged when Mit Ghamr Savings Bank was established in 1960's with basic banking facilities such as deposit, investment, equity participation and financing (Asyraf Wajdi, 2011; Ghani, 1999; Haron & Azmi, 2009; Iqbal & Molyneux, 2005; Khir et al., 2008). This purely Shari'ah-based institution however collapsed due to lack of support by the government in 1968 (Asyraf Wajdi, 2011). The world since then has evidently shown a great expansion of Islamic bank from its first emergence in 1960's to a boom in the 1970's, 80's and towards the 20th Century with thousands of Islamic banks established with quite a number of participation from regulatory bodies and organizations like Islamic Development Bank (IDB), Accounting and Auditing Organization for Islamic Financial Institution (AAOFI), International Islamic Financial Market and Islamic Financial Services

Board (IFSB) (2010) and others.

In Malaysia specifically, Islamic banking has gone through a dynamic process and is well supported by its regulator. Bank Negara Malaysia (BNM) provides a very strong hand for Muslims to play major functions as end users with its products, Islamic concepts, operations, marketing and many other roles as banks or financial institutions. Historically, Islamic banking and finance in Malaysia has developed vastly in a few important stages. The early development began with the establishment of the first Islamic Financial Institution initiated by Yang Mulia Ungku Aziz known as Muslims Pilgrim Board or *Tabung Haji* in 1963 (Haron, 1996; Haron & Azmi, 2009). *Tabung Haji* then has opened opportunities for the establishment of other Islamic financial institutions in Malaysia. From that initiative, in 1983 Bank Islam Malaysia Berhad (BIMB) was launched as the first full-fledge Islamic Bank in Malaysia (Asyraf Wajdi, 2011; Haron, 1996; Haron & Azmi, 2009; Khir et al., 2008).

Responding to the positive feedback from Muslims and non-Muslims, BNM extended the service to conventional banks by entitling them Islamic banking windows. This system was formerly known as “*Sistem Perbankan Tanpa Faedah*” (SPTF). In 1999, the second full-fledge Islamic bank; Bank Muamalat was established (Asyraf Wajdi, 2011; Khir et al., 2008). Year 2004 has awakened the country with the establishment of three foreign Islamic banks in Malaysia. The great name and rapport of Malaysia as Islamic Banking hub has brought Al-Rajhi Banking and Investment Corporation (Malaysia) Berhad, Kuwait Finance House (Malaysia) Berhad and Asian Finance Bank Berhad to set up their subsidiaries in this country. Currently, there are 16 Islamic banks that have been given licenses to operate as full-fledge Islamic banks under the supervision of Bank Negara Malaysia (BNM). The formerly conventional windows have now totally converted to Islamic banks as subsidiaries of their parent conventional bank.

Emergence of Islamic Banking Product

Islamic banks as financial intermediaries have developed a lot of products ranging from deposit products, retail banking products and corporate banking products. In global arena, the industry that has awakened the financial industry from its first inception until today has produced a wide range of products and financial services to both retail and corporate customers. Islamic Financial Services Board (IFSB) (2010) in its report has highlighted the development of the financial products in Islamic Finance as shown in Figure 1. Beginning with retail banking products, the industry has globally enlarged to commercial, takaful and capital market innovations.

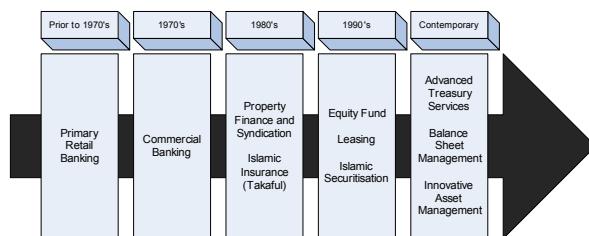


Figure 1: In the context of Malaysia, Bahari (2009) states that currently over 50 products and services have been offered in Malaysia throughout four phases of development.

The first phase was the commencement of Islamic banking in Malaysia where the products used all the basic contracts like wadiah and mudhrabah for deposit purposes and Bay' Bithaman Ajil (BBA) for financing purpose. The second phase fell from the year 1993 where some new capital market and corporate products started circling the industry like murabahah working capital financing, Islamic Money Market and asset securitisation. The next phase that began in 1999 has shown the emergence of many hybrid products like al-Ijarah Thumma al-Bay' (AITAB), Islamic credit card and Ijarah fixed financing. Finally, the fourth stage, product intensity and complexity emerged with the development of mudharabah and musharakah financing, Musharakah Mutanaqisah Partnership (MMP) financing, structured deposit and derivatives and hedging products (Bahari, 2009).

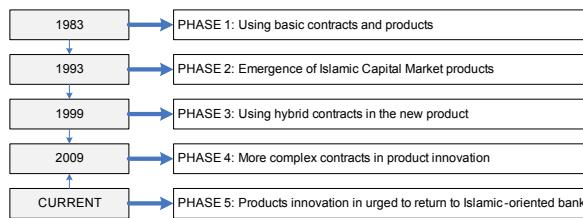


Figure 2: Islamic Banking Product and Services Development in Malaysia (Source: Adapted from the original article of Bahari, 2009)

Therefore, tremendous rapid development of product innovation in Islamic banking and finance has been evident in almost 30 years of development. Currently however, the industry looks through another facet of Islamic banking and asks the players and regulators who are involved in product development strategy to refer to the basic aim and focal point of Islamic banking objective. Socio-economic and Maqasid-oriented product is aiming for today's scenario responding to series of meeting and declaration by the main organisation in Shari'ah rulings of Islamic banking and finance development like Organisation of Islamic Conference (OIC), Islamic Research Training Institute (IRTI) and International Shari'ah Research Academy (ISRA) (ISRA, 2011; Organization of the Islamic Conference (OIC), 2007; Sairally, 2007)

Home Financing Product Range

In relation to home financing, a number of products has been offered to the customers currently like BBA Financing, *Musyarakah Mutanaqisah*, *Istisna'*, *Murabahah*, *Ijarah Mausufah Fi Zimmah*, *Ijarah Muntahiyyah Bi Tamlik* and *Tawarruq*. The current 16 Islamic banks with full-fledged local and foreign banks status operate using the said concepts in their various names of home financing products. Out of 23 home financing products offered, 15 products or 65.23% exercise BBA concept particularly by the local Islamic bank, 21.75% for *Musyarakah Mutanaqisah* financing and 4.34% each for *Tawarruq*, *Istisna'* and *Murabahah* Financings.

Bai' Bithaman Ajil (BBA) seemed to be the most

preferable and commonly used in financing facilities where Bank Negara Malaysia (BNM) (2011) reports that the BBA is the major contract that has been endorsed by Islamic banks with a percentage of 33% (67,672.9 million Ringgit Malaysia) of the contracts offered followed by *Ijarah Thumma Al-Bai'* (AITAB) contract as shown in Figure 3. The report thus provides apparent evidence that BBA is still the key contract playing in the industry despite of its operational and Shari'ah issues. BBA normally is utilised in products like home financing and personal financing. The simple operation of BBA compared to other products has made it the main choice of industrial players in fulfilling the financial needs of Malaysian, instead of its rejection in Arab countries.

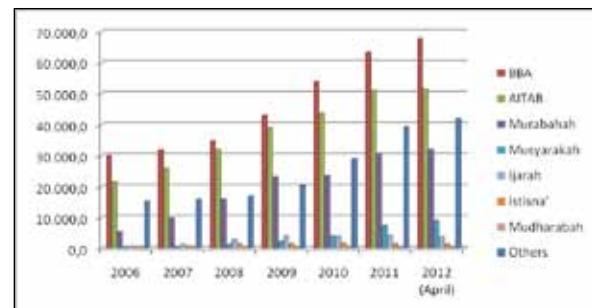


Figure 3: Comparison of BBA Financing Contract to other Financing Products (Source: The data was taken from BNM, retrieved on 24 June 2012)

On the other hand, the second popular choice of Islamic home financing product; i.e. *Musharakah Mutanaqisah* Partnership (MMP) has only received below 5.629 million Ringgit Malaysia as reported under the group of *Musyarakah* Financing as shown in Figure 3 above. Is it because it is deemed as a new product, its popularity is lessened? Alternatively, is it due to the fact that the institutions that offer *Musharakah Mutanaqisah* Partnership (MMP) home financing mainly are foreign Islamic banks? The *Musharakah Mutanaqisah* Partnership (MMP) product that represents a group of equity-based financing has a strong support at international level and those who strive for total and holistic Islamic banking system (Osmani & Abdullah, 2010; Smolo & Hassan, 2011). Its bases of profit and loss

sharing is said to be the true spirit of Islamic banking as compared to debt-based financing like the most popular one in Malaysia; BBA Financing (Ezry Fahmy et al., 2009; Nooraslinda et al., 2012; Osmani & Abdullah, 2010; Smolo & Hassan, 2011) Herein, Islamic banking development has shown rapid changes in the industry with retail products to capital market and complexity in product innovation has been promoted accordingly. Despite of its limitation especially with the international acceptance, the old product of BBA is still on demand for its special characteristic as shown and discussed above. The BBA in the existing market nonetheless, requires further investigation and enhancement and the main issue of the problems should be identified and resolved accordingly. The problem should be rectified whether it is in the nascent stage of BBA product development, its operation or the end stage of the product cycle. New innovation of Islamic banking product also is deemed necessary for truly appreciate the spirit of Islamic banking for future development of the Muslim nations and global Islamic banking and finance. Thus, the industry has started innovating some other improved products in its operation and socio-economic effect to rectify the limitations of BBA.

BBA: Concept and Evolution

By definition, BBA is derived from the words “*Bay*”, “*bithaman*” and “*Ajil*”. These three words connote different meanings that when combined it refers to a single connotation. The word “*Bay*” refers to a sale transaction and purchase is the opposite. Sometimes the word “*Bay*” concurrently means sale and purchase contracts (Ibn Manzur, n.d.). Wizarah al-Awqaf wa al-Syu'un al-Islamiyyah (1987) that discusses the term “*bay*” in a lengthy discussion in *Al-Mausu'ah al-Fiqhiyyah* defines it as an exchange of assets for assets, the opposite of “*syira*” means purchasing. Hanafiyah attributes the term “*Bay*” or sale to the term “*taradi*” means mutual consent. Hence, the term “*Bay*” may refer to a sale and a purchase

contract and normally when this term is used, the context of the contract will render the status of the buyer (purchaser) and a seller (purchasee).

The word “*thaman*” in *Lisan al-'Arab* means the value of sale object which becomes the mode of exchange in sale contract that was previously referred to as *dirham* and *dinar* (Ibn Manzur, n.d.). Wizarah al-Awqaf wa al-Syu'un al-Islamiyyah (1989) linguistically defines “*thaman*” as something that can be possessed. It is also defined as the value of an object of sale. The *Mawsu'ah* adds that “*thaman*” is the marked-up or discounted price that mutually agreed by both parties. However, value is the worthiness of an object. Thus, “*thaman*” in the context of sale and purchase contracts refers to a mode of exchange that allows the seller and buyer to conclude with a transaction. “*Thaman*” also in many contexts constitute of “*Darahim*” and “*Dananir*” (Wizarah al-Awqaf wa al-Syu'un al-Islamiyyah, 1989) which denotes currency; e.g.: RM, USD, in the contemporary situation. In the existing context, the word “*thaman*” is the price that needs to be exchanged for an object known as “*al-Mabi*”, which is also valuable. In Islamic banking and finance, “*thaman*” is an important element that should be revealed in the contract session to determine the legality of a contract.

As for the word “*Ajil*” with a lengthen intonation of the letter “*A*” that sound “*Aaa*” is the derivation from the verb “*Ajila*” taking the form of “*Fa'il*”. Literally, the word “*Ajil*” means future time and lengthen duration and it is contrary to the term “*Ajil*” (Wizarah al-Awqaf wa al-Syu'un al-Islamiyyah, 1983) which means immediate or on the spot. The *Mawsu'ah* also divides “*Ajil*” technically into three; due to legal cause that sanctioned by the Law-Giver such as “*Iddah*”; due to judicial requirement that decided by the Judge like extension of judgement for extended duration requires for evidence; and due to agreement that decided by two contracting parties. Ibn Manzur (n.d.) defines it as deferred or future undertaking. The contextual application of the term “*Ajil*”

in Islamic banking and Finance normally appears in future payment sales; including future delivery the price.

In classical literatures, the exact term “*Bay' Bithaman Ajil*” (BBA) has never been used by scholars. However the similar applications have been found in contemporary literatures and standards. Hence, the explanations and examples derived from the classical and contemporary literatures have divided the indication towards BBA or almost similar to BBA into four terms; Bay' Ajil, Bay' Murabahah, Bay' Inah and Bay' Bithaman Ajil (BBA) itself. The terms Bay' Ajil, Bay' Murabahah and Bay' Inah have been found in many classical literatures while the term Bay' Bithaman Ajil (BBA) is only found in the contemporary literature.

It is therefore concluded from the given various angles of definitions that the combination of the whole word of “*Bay' Bithaman Ajil*” thus means a forward sale of the price with known profit for same resale item. In short, it can be simplified in the following Figure 4 to show the meanings of BBA as mode of payment and the contracts that contain in it.

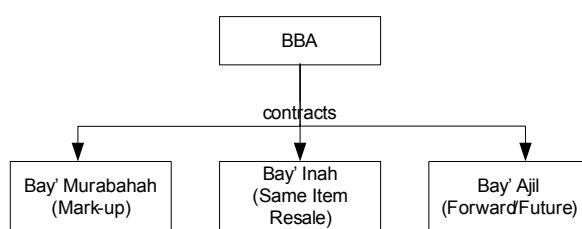


Figure 4: BBA and the contracts involved

In practice, BBA has been defined as a deferred payment sale contract of an asset with pre-agreed price, payment method and profit (Ambank Islamic, n.d.; Bank Muamalat Malaysia Berhad (BMMB), n.d.; BIMB, 2010; Maybank Islamic, n.d.). It is widely used in most of the Malaysian Islamic banks. Comparing the theoretical definition to its operation, BBA is not a contract per se. It presents a mode of payment that is to be performed in the future by installment or in

full (Engku Rabiah Adawiah, 2012; INCEIF, 2007; Zaharuddin, 2010). Operationally, BBA consists of three contracts namely *bay' al-Inah* that corresponds to the same item resale, *bay' al-Murabaha* that connotes pre-agreed profit feature *bay' al-Ajal* that implies the deferred payment mode. Therefore, it resolves the conjecture whether BBA is a contract by itself or a combination of various contracts. "The Mejelle (Translated)" 2003) that uses the term *bay' al-Muajjal* defines it as “*a sale for a deferred payment or for payment or for payment by installments is good*”. The Council of the International Islamic Fiqh Academy (1986) in its resolution defines *al-bay' bil ajal* as a sale of a possessed object of a bank by a customer or a sale contract of a customer as an agent to the bank with condition that bank will sell the same object to the customer. While Bank Negara Malaysia (BNM) (2010) that uses the term *bay' al-Inah* defines it as “*a seller sells an asset to client and then buy back that asset from the same client at a different price in which the deferred price is higher than the cash price*”. To sum up this discussion on the definition of BBA Financing and its multiple terms uses in this traditional *fiqhi* references and in the industry, it is well observed that operationally, this contract involved several contracts as illustrated in Figure 5.

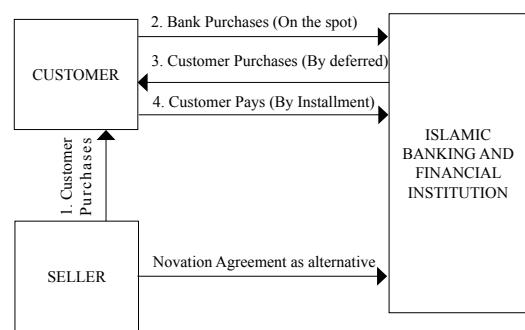


Figure 5: BBA Home Financing Contract Illustration
(Source: Adapted from BIMB website)

Therefore, there are a number of characteristics of BBA based on the given definitions; on the spot goods delivery, deferred price to be paid by installment and mutual agreement of the profit (mark-up). These characteristics thus

affect the overall legal documentations and operations of BBA financing in Islamic banking in Malaysia. It also therefore influences the degree of acceptance of BBA in this industry while contemplating the rejection of BBA in most of Arab Countries. Thus, the issue in this matter is not the definition or conceptual idea of BBA, but the operation of BBA in the banking institution is the pinpoint that will be argued and deliberated further in this chapter.

MMP: Concept and Evolution

Musharakah Mutanaqisah Partnership (MMP) is another main home financing product offered in Malaysia. In international arena, the product seems to be the most popular product and captures the eyes of Muslims and non-Muslims around the world. Its unique specification of partnership and Ijarah contracts has made it distinguished from the other kinds of financing; make it Islamic or conventional.

The innovation of MMP for home financing was firstly approved in 1991 during a workshop organised by the Islamic Research and Training Institute (IRTI), and the Sudanese Estates Bank held in Khartoum (Haneef, Kunhibava, & Smolo, 2011). In Malaysia particularly, the contract was resolved by Shari'ah Advisory Council (SAC), Bank Negara Malaysia (BNM) on 5th February 2006 (Bank Negara Malaysia (BNM), 2010). The advert of the application of MMP in this country is consistent with the historical development of Islamic banking in Malaysia by approving the establishment of three foreign Islamic bank.

Since MMP product commencement in Malaysian market, it is reported in Bank Negara Malaysia (BNM) (2012) a tremendous movement of this partnership concept financing by Islamic financial institutions. The following Figure 6 shows the progress. Despite reporting all modes of Musharakah financing, including simple or direct Musharakah in the table, the result still can be an indicator of a positive feedback and support towards MMP.

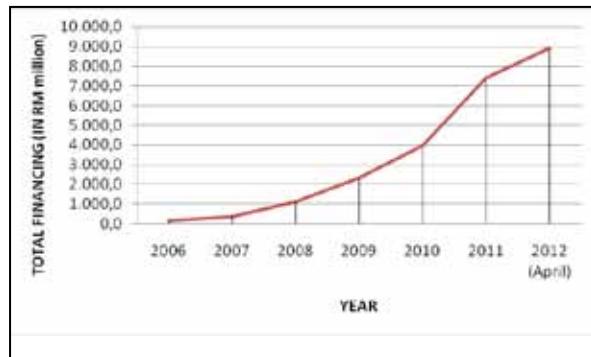


Figure 6: Musharakah-mode of Financing Disbursement of Islamic Financial Institutions in Malaysia
(Source: Bank Negara Malaysia, 2012)

Musharakah Mutanaqisah Partnership (MMP) is derived from two words; Musharakah and Mutanaqisah. Musharakah originally comes from the word “*Sha-Ra-Ka*” that refers to as joint, bind and be part of. Al-Musharakah or al-Shirkah is a joint membership in one particular activity (Wizarah al-Awqaf wa al-Syu'un al-Islamiyyah, 1992). With regards to its applicability in Muamalat activities, Musharakah normally understood as profit and loss sharing compared to Mudarabah which only refers to profit sharing. Mutanaqisah which is derived from the word “*Na-Qa-Sa*” means reduce, decrease, diminish or decline (Ibn Manzur, n.d.). Hence, Mutanaqisah individually connotes declining state or decreasing amount of any activity. When these two words are put into single phrase, the term Musharakah Mutanaqisah thus literally refers to a declining profit and loss sharing.

Technically, in the operation of Islamic banking and finance, the term Musharakah Mutanaqisah combines two contracts of Musharakah and Ijarah. It is normally referred to as Musharakah Mutanaqisah Partnership (MMP/MM/MMQ). Other similar terms normally used are Shirkah al-Mutanaqisah or Shirkah Mutanaqisah, diminishing Musharakah, diminishing partnership or decreasing partnership. Accounting and Auditing Organisation for Islamic Financial Institution (AAOIFI) (2010) defines Diminishing Musharakah (MMP) contract as “a form of partnership in which one of the

partners promises to buy the equity share of the other partner gradually until the title to the equity is completely transferred to him". Bank Negara Malaysia (2010) technically defines this hybrid contract as "a contract of partnership that allows one (or more) partner(s) to give a right to gradually own his share of the asset to the remaining partners based on agreed terms". Thus, the definitions connote a number of common elements in MMP; partnership, gradual ownership and share or equity. These terms represent the general feature of MMP that implies the operation of MMP in Islamic banking and finance. In addition, the former standard also includes the element of promise (*wa'ad*) which connotes a binding purchase contract upon completion of gradual title transferred process.

Maqasid al-Shari'ah: A Framework for Analysis

Maqasid al-Shari'ah in its original form is a derivation of two words; "*maqasid*" and "*al-Shari'ah*". The word "*maqsud*" and in plural sense "*maqasid*" which is derived from the word "*qasada-yaqsidu-qasdan*" means consistency of aim (*istiqamah al-tariq*) (Ibn_Manzur, n.d.). Al-Yubi (2008) opined that both "*al-qasdu*" and "*al-maqsud*" connote similar meanings, that refer to several linguistic meanings. The first meaning is intent, reliance, credence and direction. Secondly, it refers to consistency of aim. The third is linguistically defined as justice, equality and not excessive. While the word "*al-Shari'ah*" means path, religion, guideline, and lifestyle (Ibn_Manzur, n.d.).

Technically, the word "*Maqasid al-Shari'ah*" has been defined in various explanations with similar aims. In Al-Raysuni (2006) and Al-Yubi (2008) quoted Ibn 'Ashur (d. 1973), general "*Maqasid al-Shari'ah*" are the meanings (*al-Ma'ani*) and wisdoms (*al-Hikam*) or wise purposes derived from most of the Shari'ah rulings. 'Ilal al-Fasi (d. 1974) quoted by Al-Yubi (2008) and Al-Raysuni (2006) defines it as purpose (*al-Ghayah*), end, goal and secret

(*al-Asrar*) behind every Godly injunction. While Al-Raysuni (2006) defines "*Maqasid al-Shari'ah*" as '*the purposes which the Law was established to fulfil for the benefit of humankind*'. Al-Yubi (2008) defines "*Maqasid al-Shari'ah*" as meanings and wise purposes derived by the Creator in His injunctions in general and specific aiming for public interest. From all these meanings, it can be concluded that "*Maqasid al-Shari'ah*" is a divine secret of Allah derived behind most of His Laws which guides towards the end and goals of the Shari'ah, which can either be general or specific. In conclusion, it is a manifestation of Islamic doctrine that emphasises on the importance of purpose or intention to direct the whole spectrum of human life.

The theory of *Maqasid al-Shari'ah* evolved in gradual and slow process. The evolution took place in several years and until today there is still addendum to the development. Basically, all the current new developments of *Maqasid al-Shari'ah* is based on its main components of five elements of protections as promulgated by Al-Ghazali (1997) known as *Al-Dharuriyyat al-Khams*; protection of life (*Al-Hayah*), protection of religion (*Al-Diin*), protection of mind/intellect (*Al-'Aql*), protection of wealth (*Al-Mal*) and protection of dignity (*Al-Muru'ah*). In the current development of the theory, many new fiqh scholars have induced some added values to it such as in Al-Qaradawi (2007); Auda (2010) & Attia (2008, 2010); Al-Qaradawi (2010). Seven important dimensions of *Maqasid al-Shari'ah* harmonising the Islamic principles and practical human life namely as justice, equality, easiness, maslahah, unity and cooperation has been highlighted. Auda (2010) for instance has enhanced the term "protection" and "preservation" to "development" in which he opines that the theory should be more measurable and empirically researchable. In the latest observation by Attia (2008, 2010) which will be the model or framework of reference for this paper, an extension to *Maqasid al-Shari'ah* has been proposed. He divides the *Maqasid al-Shari'ah* into four realms which also constitute

all the five *dharuriyyat* listed by Al-Ghazali known as realm of individual, realm of the family, realm of the Ummah and realm of wider humanity. These realms are then specified into different elements as shown in Figure 7.

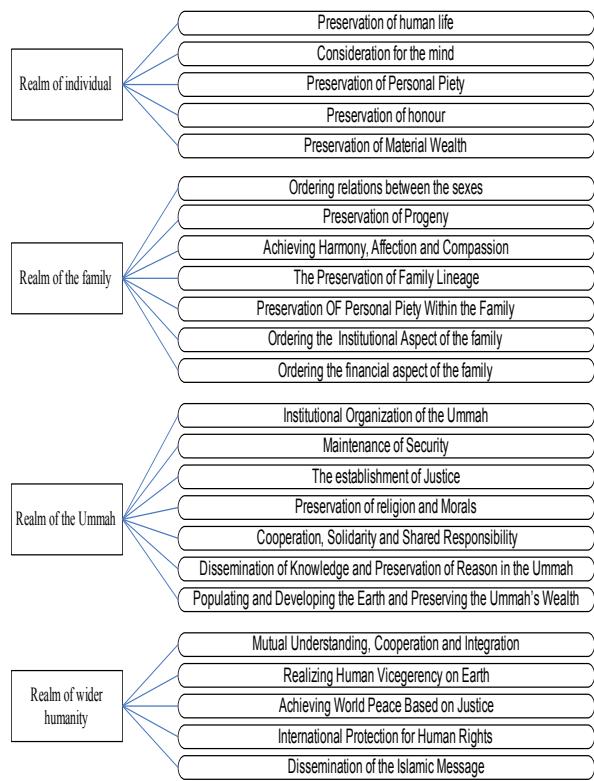


Figure 7: Attia's Four Realms Model of *Maqasid al-Shari'ah*

Maqasid Approach in Dealing with the Issues

In light of this literature discussion, a number of issues have been found when the two products are discussed. However, for the purpose of this study, only one issue will be analytically appraised that is pricing issue. Pricing issue is chosen based on its controversial discussion in many literatures. It is also an important element that many literatures relate pricing to the fulfillment of *Maqasid al-Shari'ah*. The two products of BBA and MMP are chosen based on their popularity and major contributors in Islamic banking home financing facilities as compared to the other products. The issue will be assessed conceptually according to suggested Attia's Four Realms Model of *Maqasid al-Shari'ah*. The model is chosen besides other contemporary models of *Maqasid al-Shari'ah*

due to its comprehensive deliberations and coverage of human relation without putting aside the five classical elements (*Al-Dharuriyyat al-Khams*) of *Maqasid al-Shari'ah*. However, the study limits the analysis to content analysis method with intense and analytical readings of the previous texts and literatures on issues observed in the two products. Empirical assessment thus is beyond the discussion in this study. The following Figure 8 shows the conceptual framework of the analysis that involves two observed products; BBA and MMP with the selected issue derived from literatures. The products issues will then be assessed based on Attia's Model of *Maqasid al-Shari'ah*.

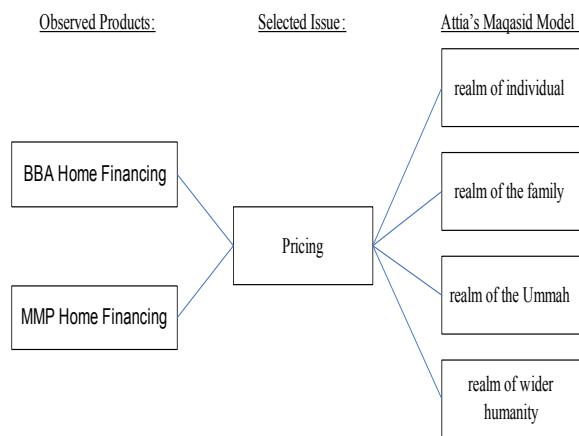


Figure 8: Conceptual Framework

In the operation of BBA as Shari'ah Complaint product, cost price should be disclosed and the profit gained by the bank also should be predetermined. It is contrary to conventional banking where the final purchased price is undetermined and subject to Base Lending Rate (BLR). Recently customers who feel to be abused by the word Shari'ah Complaint product has made a number of complaints for the high price offered by the bank (Harian Metro, 2012). The contention over the issue is firstly raised up by default customers particularly those who brought their cases to the court found out that their outstanding balance exceeded the original price (Ahamed Kameel & Dzuljastri, 2005; Nooraslinda et al., 2012). This issue thus has turned to be challenged in many court cases against the operation of BBA where another

issue has been brought that is the excessively high price of the object sold (Dzuljastri & Fauziah, 2011; Nuarrual Hilal, 2010). To conclude the cases, basically two contrary court decisions have been made. One decides that the bank is allowed to recover the whole sale price due to the state of defaulting customer even though the recovery price is considerably high – which normally counted as double from the actual cost price.

Another court decision has made the BBA void and regarded as loan transaction, not a sale and purchase transaction due to unjust

price offering to the customer. However, in the latest development, the Court of Appeal in 2009 has erred the previous decisions and the final decision has been made that BBA Financing is deemed to be valid as in the first decision. The opinion of Shari'ah Committee (SC) and Shari'ah Advisory Council (SAC) thus should be taken into account for any future disputes in Islamic banking. In relation to the issue, Noreeta (2008) as well as Smolo and Hassan (2011) in addition claim that the pre-agreed profit that resulting towards the high price of the BBA financing does not reflect the market price of the asset. When BBA pricing is offered in floating rate with ceiling capped price to the customer, Nuarrual Hilal (2010); Smolo and Hassan (2011) allege that the rate has made the BBA Financing converge to debt-based conventional financing. The initial motive of BBA for securing the price is violated and render the contract mimics conventional way of providing loan. Dzuljastri, Mustafa, and Fauziah (2008) claim that the pricing computation of BBA is only replacement of the term "interest rate" to "profit rate". Consequently, the volatility of variable rate also has become another matter of attention due to its relative effects to interest rate and inflation (Dzuljastri et al., 2008; Saiful Azhar, 2010; Smolo & Hassan, 2011).

MMP as partnership contract, pricing is not a predetermined matter. The nature of partnership contract in Islam that relies on the performance

and not guaranteeing specific return has opened another dimension of discussion. Many literatures demonstrate ample evidence on the pricing of BBA that higher than MMP. While MMP is claimed to be cheaper, many recent literatures have their arguments. Comparing MMP to conventional loan, Hasan (2011a, 2011b, 2011c) asserts that both are at similar interest use. Thus, the innocent MMP is seemed to be unprotected and Hassan proposes a model which seems to be cheaper and promising known as diminishing balance model. Additionally, Mohd Sollehudin et al. (2011) claim that the pricing of MMP is free from any observance towards ceiling rate practice like in other Islamic bank when dealing with variable-rate pricing. Thus, the insecure and unfix pricing rate of the house that subject to fluctuation (Osmani & Abdullah, 2010) is normally based on inconsistent interest rate. It will affect the financial plan and emotional instability of the customers. The risk of using market rate as benchmark is deemed to be affected in the event of inflation. As alternative, Rosylin Mohd et al. (2011) propose rental rate pricing where an analysis shows that making reference to rental rate pricing for home financing is far better than lending rate. Contrary to the finding, Zubair Hasan (2011a, 2011b, 2012) who proposes an alternative to MMP known as Zubair Diminishing Balance Model argues that MMP rental model will in a long run create contention between the contracting parties due to conflict of interest.

The above two arguments on pricing issue of BBA and MMP have made the author correlate the discussion to be backed by *Maqasid al-Shari'ah*. This is because in many literatures, pricing and Maqasid observance are two interrelated but not connected. Many literatures prefer MMP than BBA in terms of its Maqasid observance. With regards to the model used by Attia, the pricing issue of BBA and MMP has a big role in creating dual balance cooperation between individual and institution. Since Attia's model is based on the constituents that construct the society; i.e. individual, family, ummah and

wider humanity, the appraisal of both products on its pricing issue will also be respecting those four realms. The authors have chosen specific elements from the four realms that represent the pricing context of this study. Thus, it eliminates other elements that in the opinion of the authors do no relate to the focus of this study. The first realm of individual, three elements have been seen related to pricing issue; that is, consideration for the mind, and preservation of honour and preservation of material wealth where the authors label them as A1, A2 and A3. The second realm of the family, three elements labeled as B1, B2 and B3 are opined to have the connection named as achieving harmony, affection and compassion, ordering the institutional aspect of the family and ordering the financial aspect of the family. The third realm, which is named as realm of the Ummah is labeled from C1 to C6 and the elements chosen by the authors are institutional organization of the Ummah, maintenance of security, the establishment of justice, cooperation, solidarity and shared responsibility, dissemination of knowledge and preservation of reason in the Ummah and populating and developing the earth and preserving the Ummah's wealth. In the last realm of wider humanity, three elements have been selected known as mutual understanding, cooperation and integration, achieving world peace based on justice and dissemination of the Islamic message.

Based on the observed issue, in general pricing issue is seemed to be dominated by BBA besides MMP. The pricing of BBA which is transparent has made it become the major issue in attacking the product while in contrary; the uncapped pricing of MMP has not been the issue of complaint due to its unknown price. This has made the contention over pricing issue (unjust) and its function as medium of comparing BBA and MMP also is debatable. With regards to its affect towards the component of the society, BBA is observed in the literatures to promote welfare of financial institution; that is, wider humanity and ummah in general rather than financial stability of an individual and family. However,

in maintaining knowledge and understanding of the contracts among customers, BBA is more promising since the contracts involve simple and direct relationship of the financial provider and customer compared to MMP which is more complex and confusing. Promoting institutional welfare maintains solidarity of the ummah in general, thus it reflects the *Maqasid al-Shari'ah* at macro level. The profitability of the bank will thus ensure bigger contribution for the society via means of zakat, charity and social responsibility. Correspondingly, providing lower financing rate and promote individual Muslims financial stability will ensure the Maqasid of protection on individual wealth. This fulfillment will enhance the micro set of *Maqasid al-Shari'ah* in generating individual society who is financially capable and stable. The issue of convergence to financial loan in Islam has no effect since Rasulullah (pbuh) primarily recognised all the acts of Jahiliyyah people which are not contravene to Shari'ah. Furthermore, the act of enhancing illegal conduct to be legal by eliminating the illegal contamination or element has been promoted by the Prophet previously. Thus, converging conventional loan for both MMP and BBA with regards to *Maqasid al-Shari'ah* has not brought big issue especially to the society as a whole. Nevertheless, promoting real partnership contract in Islam is a recommended effort since the term *riba* used in Al-Qur'an connotes many issues and acts. The avoidance and effort to circumvent any element that may invite *riba* should be supported.

Conclusion

When dealing with pricing especially when the price is claimed to be expensive, one party will gain more profit and another party will pay high price. However, the term expensive price should be given its new paradigm and identity. Expensive to a person might not relatively be expensive to another. Does giving a price that corresponds to market price fulfill *Maqasid al-Shari'ah*? Does converging to debt-based conventional financing not fulfill *Maqasid al-*

Shari'ah? Does reducing bank profit will render the prevalence of justice for the whole society? These are among the questions that always require subjective answers. There is no right or wrong answers but the circumstances and situations of the society are the guidelines. As long as the society survives and the individual Muslim survives, promoting Islamic financial institution based on *Maqasid al-Shari'ah* is necessary. This simple and subject of study suggests future research to deepen into the specific *Maqasid al-Shari'ah* to each level of society. It is also suggested for future empirical ranking and giving weightage in connecting *Maqasid al-Shari'ah* elements onto Islamic banking product engineering process to foster better Islamic banking product and promote *Maqasid al-Shari'ah* in all the processes in product development.

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