

Maslahah-Mafsadah Approach in Assessing the Shari'ah Compliance of Islamic Banking Products

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Abstract

The recent financial crisis has intensified the discussion regarding the authenticity of Islamic banking modes of operation. Scholars have been increasingly demanded Islamic banks to re-instill the philosophy of Islamic economics in their products and services. Semantic modification is no longer seen an appropriate orientation. Instead, the 'Islamic' alterations are required to include genuine economic substance. The present paper advocates the role of shari'ah advisors in achieving the objective. Their role in making a new product legal and saleable in the market is significance. However, analysis of a few resolutions issued by the current shari'ah advisors of Malaysian Islamic banks indicates their incoherent legal methodology. In determining the shari'ah compliance of proposed banking products, the scholars can be very rigid, concentrating solely on the legal technicality and at the same time be very flexible, adapting an unregulated doctrine of maslahah. Both approaches are taken to satisfy the requirements of the Islamic banking sector. As more conscious Muslims begin to questioning the validity of these resolutions, the present paper supports Siddiqi's idea concerning the adaptation of maslahah-mafsadah calculus in order to reach more precise ijihad in this matter.

Keywords: Shari'ah compliance, Islamic banking, maslahah

Introduction

Perhaps, the major concern of Islamic banking institutions is to conduct their business in accordance to the principles of shari'ah. In order to ensure that all their products and services are shari'ah compliant, most of the Islamic banks have established their Shari'ah Supervisory Board (SSB). Its main duty is to advise the Islamic bankers in matter pertaining to the application of Islamic classical commercial rulings in the modern banking business. The SSB authenticates new products to the guidelines of the Islamic classical rulings before they are offered to banks' clients.

In assisting the Islamic bankers, the SSB members usually practise ijihad. This is understandable since Islamic banks operate in a completely different environment when compared to what had been elaborated by the classical jurists. It is generally acknowledged that not all of the classical fiqh rulings are applicable in the modern times. New ijihad is needed to modify the classical fiqh doctrines so that they become relevant in meeting the sophisticated financial needs of contemporary Muslim. A review of the educational background of the SSB members indicates their capability to carry out such a vital task. The SSB members are appointed from experts in Islamic law, either in Islamic legal theory (usul al-fiqh) or Islamic commercial transactions (fiqh al-mu'amalat). In Malaysia for instance, most of them have doctorate in the subjects from various universities in the Middle East, United Kingdom and locally.

However, despite having a qualified training, a number of resolutions passed by the Malaysian SSB members appear to be controversial. Critics of the Islamic banking have long argued with regard to their decision in approving bay' al-inah (buy-back sale) contract. The application of the contract is criticised mainly because of the hilah (legal stratagem) issue. The so-called 'Islamic' financial products created through the adaptation of bay' al-inah is hardly recognised being free from riba. This is because the modus operandi of the financial products merely focuses on semantic modification. As a result, the products do not carry genuine economic substance and appear to be identical to their conventional counterparts.

In this paper, I intend to discuss another debatable resolutions issued by the Malaysian SSB members. The first resolution is regarding the introduction of al-Awfar saving and investment accounts and the second is concerning the implementation of Profit Equalisation Reserve (PER). Juristic analysis on both resolutions suggests that the local SSB members have adopted an incoherent legal methodology in deducing new hukm for the Islamic banking and finance matters. The scholars can be very rigid by concentrating solely on the legal technicality and fail to look at the appalling consequences of proposed banking products from wider perspective. At the same time, they can also be very liberal in the sense that they would remove the classical boundaries of a classical contract simply by using a maslahah excuse. In view of such an incoherent legal methodology, I think there is a need to develop comprehensive parameters (dawabit) in assisting the SSB members reaching more appropriate ijthad. In this regard, I support Siddiqi's recommendation on the application of maslahah-mafsadah calculus as the basis in assessing the shari'ah compliance of Islamic banking products.

The present paper is organised as follows. After this introduction, the following section explains in detail the fiqh issues arose from the introduction of al-Awfar accounts and the PER method. Then, the paper discusses the historical sketches of the maslahah theory in Islamic law. It shows the tendency of the contemporary jurists to apply the theory based on the Maliki and Hanbali jurists' justifications. In addition to that, the section highlights al-Shafi'i's concern over the possibility of manipulating the theory in satisfying the unregulated human interests. After that, the paper explains a practical example of how the maslahah theory can be applied as a tool to attain more precise ijthad. The example is drawn mainly from Siddiqi' arguments against the application of bay' al-tawwaruq. Finally, the last section concludes the previous discussions.

Shari'ah Issues in al-Awfar Accounts and Profit Equalisation Method (PER)

Al-Awfar saving and investment accounts are recently launched by Bank Islam Malaysia Berhad (BIMB) to draw more funds from the public. The account is different from the general mudarabah accounts as it gives depositors opportunity to win cash prizes drawn in every quarter as follows:

Insert table (1) about here

In order to be eligible for the draw, depositors are required to maintain a minimum balance of RM100 throughout the deposit period. Every RM100 deposit entitles one unit of draw entry. This means the more deposits put in the account the larger chance for depositors to win the prize. For some conscious Muslims, the modus operandi of al-Awfar accounts appears to be surrounded with fiqh issues. They view the quarterly prize draw involves the element of gambling. This is due to the thought that mudarabah profit is distributed only to a few draw winners at the expense of the majority depositors. Replying to this skepticism, BIMB asserts that the cash prizes are not taken from profit of al-Awfar funds but are derived from bank's own income.

In other words, all depositors of al-Awfar saving account are assured to earn their respective shares of profit if any. The cash prizes are just additional incentives given by the bank from the external financial sources as a marketing strategy to attract more funds from the general public. Since the original profits are shared between all depositors, the questions of gambling and unfairness distribution of profit do not arise. On this basis, the Shari'ah Supervisory Council of BIMB approved the product in its 102nd meeting dated 7th April 2008 (BIMB, 2009). Despite this clarification, I still wonder how BIMB could afford to give such a commitment in paying the cash prizes draw in every quarter. My suspicion becomes clearer when I look at the profit ratio agreed between depositors and the bank. For the purpose of comparison, I reproduce the profit ratios and the indicative profit rates of all types of deposit accounts as advertised in the bank's website.

Insert table (1) about here

Information on the profit ratio and the indicative profit rate of al-Awfar saving account give us some clues regarding the trick on how the draw mechanism is actually worked out. As clearly shown in the table 2, the profit ratio of customer is somehow unreasonable; 2 ratios against 98 enjoyed by the bank. The profit ratio is notably lower comparing to the other types of deposit products. What is the explanation for this significance variance?

Why the bank could offer relatively higher customer profit ratio in other deposit accounts but not al-Awfar account? There must be solid justification for this condition. I personally think that the huge share of profit enjoyed by the bank is used to maintain the cash prizes draw. Having 98 percent of profit sharing ratio, the bank will use some of them to pay what they claim as an 'additional incentive' to depositors. There is no doubt that all depositors will earn their respective shares. However, given the 2 percent ratio which equal 0.04 percent of indicative annual profit rates, their shares are virtually nothing. Therefore, the bank's claim that it uses its own money to pay the cash prizes could be thought of as a misleading statement. The bank artificially attains almost all the profits from al-Awfar funds and then reallocates them to certain lucky depositors.

The approval of al-Awfar accounts clearly reveals the rigid approach taken by the bank's SSB. For them, a proposed product is legally recognised when it merely satisfy the salient features (arkan) and conditions (shurut) of a particular Islamic classical contract. Without doubt, the al-Awfar accounts do not contravene any fundamental rules of a mudarabah contract. The depositors and the bank have agreed on a certain profit sharing ratio (despite being unreasonable). However, the unreasonable profit ratio is beyond the observation of the SSB members as their emphasis is on the technicality of the mudarabah contract not the overall picture of the product. In addition to this, the SSB members overlook the fact concerning the determination of profit sharing ratio between the bank and the depositors. When promoting al-Awfar accounts to potential customers, the bank does not explain clearly the division of the profit ratio. Unless carefully studied, customers will not aware of their negligible share of profit. The most important elements presented to the customers are the chance to win the grand cash prizes.

Beginning in 2004, the Malaysian Islamic banks have introduced another new mechanism in distributing profit for the mudarabah investments. The new mechanism is known as Profit Equalisation Reserve (PER). The PER is introduced to stabilise the rate of return paid to the depositors (BNM, 2004). In the real banking business, the monthly rate of return recorded by Islamic banks throughout a year is inconsistent. This is because an Islamic bank tends to generate a huge profit at the end of its financial year due to the flux of bad debt income, provisioning and total deposit. The pressure of the closure of bank' financial account makes bankers work harder during that time to generate high profit. Meanwhile, during the middle of the year such a pressure eases in which a fairly low profit is produced from the bank's businesses (Chik, 2008).

Hence, in order to mitigate the fluctuation of the rate of return, the Central Bank of Malaysia has demanded all the Islamic banks in the country to implement the PER mechanism. The PER allows the Islamic banks to save up to 15 percent of the total gross income in a separate provision. This provision/reserve will be used whenever Islamic banks record a low profit. As such PER is viewed as a reserve that is built up in good times to cater for the need in bad times (Ismail & Shahimi, 2006). As argued by the Islamic banks, the PER is essential to ensure a stable and competitive rate of return for the depositors.

The implementation of PER method is undoubtedly controversial. The practice of having a certain amount of profit as reserve for time of bad business is totally unknown to the classical mudarabah contract. To the best of my knowledge, none of the classical jurists had allowed such a practice. As argued by the Islamic banks, the PER is introduced to enable them to offer a stable and competitive rate of return to the depositors. Although the purpose of PER is undeniably important, its implementation however causes more confusion. Let us consider an illustrative case as an example. Suppose a depositor put his money in a mudarabah general investment account for 3-months, commencing from January an ending in March. During these months, the actual profit generated by the Islamic banks is relatively high. However due to the PER practice, some of the profit is taken as reserve for the bad business period. What is the bank's justification in taking this action? The Islamic banks may argue that they obtain the depositor's permission based on the standard form signed at the beginning of the contract. But, the level of transparency pertaining to this matter is very low. Similar to the case of al-Awfar accounts, the Islamic banks do not explain the PER mechanism clearly to the depositors. The negotiating element in a mudarabah contract as emphasised by the classical jurists apparently does not take place between both parties.

The acceptance of the PER method in the Malaysian Islamic banking practices indicates the flexible approach adopted by their SSB members in modifying the Islamic commercial contracts. On the basis of *maslahah*, they would remove the classical boundaries of any classical contract to adapt the modern banking situation. A question promptly arises; is the bank's *maslahah* justifiable?

While the local SSB may agree on it, some other scholars are likely to differ. In view of such a dispute, I argue that there is a need to understand thoroughly the *maslahah* doctrine in Islamic law. The subsequent section provides a preliminary background for the discussion.

Historical Sketch of the Maslahah Theory in Islamic law

Literally, the word *maslahah* is derived from the verb *saluha*, which denotes a good, right, just or honest person or thing. Legally, al-Shatibi (d.790) defined it as:

'all concerns that promote the subsistence of human life, the completion of man's livelihood and the acquisition of all his physical and intellectual qualities which are required for him' (al-Shatibi, 1990, p.15).

Its antonym, *mafsadah* indicates anything that is harmful and destructive. The use of *maslahah* as an independent legal source has been advocated by many contemporary jurists and reformists such as Muhammad Abduh (d.1905), Rashid Rida (d.1935), Ibn 'Ashur (d.1973) and Muhammad Sa'id Ramadan al-Buti. They support the principle based on the notion that Islamic law was revealed to serve, inter alia, human welfare (Lubis, 1995, p.10). Hence, all matters which preserve the well being of the society are inline with the objectives of the *shari'ah* and therefore should be pursued and legally recognised.

However, there was disagreement among the classical jurists in applying the *maslahah* principle as the determining factor in Islamic law. Due to the ambiguity in defining its limit (how far human welfare justification could be used to determine law), the classical jurists had differed in recognising the validity of *maslahah* as a source of law. Some scholars claim that al-Shafi'i did not employ the *maslahah* as an independent legal evidence (*dalil*) because he strictly confined the use of personal opinion (*ra'y*) to *qiyas* (analogy). To al-Shafi'i, applying the concept of *maslahah* would exceed the limitations of permitted use of human legal reasoning in deducing new *hukm* (Lubis, 1995). Perhaps, al-Shafi'i attempted to portray his legal methodology (the Qur'an, *sunnah*, *qiyas* and *ijma'*) explained in *al-Risalah* as the self-contained sources of law which able to answer all questions in Muslim life. Al-Shafi'i believed that these sources of law are sufficient to cover the *maslahah* of human being. He thought the *shari'ah* takes full cognisance of all *maslahah* and there is no *maslahah* outside its framework.

In the sixth century Hijri, al-Ghazali (d.505/ 1118) refined the Shafi'is' concept of *maslahah* by defining its parameters. Al-Ghazali acknowledged the validity of *maslahah* as independent legal evidence with the condition that it fulfilled three elements; *darurah* (necessity), *qat'iyah* (absolute certainty) and *kuliyah* (universality). In elucidating the parameters, al-Ghazali illustrated a classical example from the law of war whereby Muslim soldiers encounter predicament whether to attack unbelievers' army who were shielding themselves with a group of Muslim captives or to refrain from attacking. The first course of action would kill the innocent Muslims whereas the second would give opportunity to the unbelievers to conquer more Muslim territory. In such a situation, al-Ghazali thought that the Muslim soldiers should attack the unbelievers in view that the action would preserve a more important *maslahah*. In addition, the attack is considered *daruri* because it protects Muslim life, *qat'i* as it the only method of saving Muslims and *kulli* because it takes consideration of the whole community (al-Ghazali, 1993, p. 177).

In the other schools of Islamic law, the principle of *maslahah* was generally received a wider acceptance. Although, there is no textual evidence indicating Abu Hanifah's consent to *maslahah* being one of the sources of law, his whole legal theory supports the pursuit of *maslahah* in solving new legal problem (al-Buti, 2005, p.395). Being the leading rationalists (*ashab al-ra'y*) of his time, Abu Hanifah appeared to be inevitably employing the *maslahah* principle in developing his *fiqh* doctrine. The application of '*urf* (custom) and *istihsan* (legal preference) strongly suggests the inclusion of *maslahah* in the Hanafis legal paradigm (Zuhaili, 2005, p.775). In contrast, the use of *maslahah* principle in Malik's doctrine is much more explicit. In fact, some scholars had accused him of over reliance on the principle which to a certain extent had prioritised *maslahah* over the textual sources. Cases in point are Malik's approval of killing a *zindiq* (unbeliever) who had declared the commitment to convert to Islam and his *fatwa* permitting a woman to abstain from breast-feeding her baby without any reasonable cause.

The first case appears to contradict the saying of the Prophet; 'I have been ordered to fight against people, until they testify that there is no God but Allah, and believe in me (that) I am the Messenger and in all that I have brought. And when they do it, their blood and riches are guaranteed protection on my behalf except where it is justified by law, and their affairs rest with Allah (Sahih Muslim). Meanwhile, the second case opposes the verse 2:233; 'And the mothers should breast-feed their babies for a period of two years'.

Supporting Malik's approach to the *maslahah*, al-Buti contends that none of the two cases was ruled as abusing the principle. Al-Buti argues that the *zindiq* group was excluded from the meaning of unbelievers stipulated in the hadith. He was of the opinion that the hadith indicates unbelievers who lived during the Prophet's time which include al-musyrikun, the people of Holy books; Jews and Christians and al-munafiqun (hypocrites).

Although these unbelievers differed in their manifestation of God, they still believe in religion. However, the *zindiq* were distinctive from these groups of unbelievers since they did not have faith in the religion at all. Therefore, the rule to allow killing the *zindiq* did not contravene with the hadith but was made based on the principle of *masalih al-mursalah* (*maslahah* which has no basis either in the Qur'an or the *sunnah*). On the other hand, Malik's fatwa regarding the breast-feeding is based on his understanding that the verse does not imply any obligation on behalf of a mother. Hence, there is no issue arises whether the fatwa contradict the verse or otherwise. In the classical Muslim society, the perception that a mother is obliged to breast-feed her baby is merely based on 'urf (custom) and is not derived from textual evidence (al-Buti, 2005, p.353-360).

The above discussion clearly illustrates Malik's adaptation of *maslahah* principle in developing his *fiqh* doctrine. Subsequently, the theory of *maslahah* was enhanced further by the later Maliki notably al-Shatibi in his masterpiece *al-Muwafaqat*. Al-Shatibi emphasised that the concept of *maslahah* applied by the Maliki jurists is not just a matter of consideration of human interest in determining the law rather it is a practice of *ijtihad* in understanding the Lawgiver's intentions (*maqasid*) (Raysuni, 2005, p.45-50). In relation to this, it is noteworthy that the *maslahah* which referred by the Maliki is the *maslahah* which has basis in the textual sources. In other words, in considering a human interest as *maslahah* the Maliki did not relied solely on opinion (al-'aql) but tied it to the Qur'an and *sunnah*. Based on this fact, the contemporary Muslim jurists depict the *maslahah* as an undisputed source of law acknowledged by all classical jurists (including al-Shafi'i) (al-Buti, 2005).

However, al-Tufi (d.716/1316) of the Hanbalis emerged with more liberal concept. The controversy of al-Tufi's concept of *maslahah* lies on several ideas which depart from the general theory of the majority jurists. In this article however, I would mention only two of them. Firstly, he recognised opinion (al-'aql) as the sole determining factor in judging human interest as *maslahah*. Secondly, al-Tufi propounded a view which prioritised *maslahah* over the textual sources in deducing new *hukm* (Zuhaili, 2005, p.817). Because of these controversies, al-Tufi's idea was not welcomed and received severe criticism from his contemporaries. The concept of *maslahah* articulated by al-Tufi went beyond the accepted standard of the majority jurists. Despite the criticism, one can not deny al-Tufi's contribution in augmenting the idea that *maslahah* principle should be applied only in the *mu'amalat* (man-man relationships) and not *ibadat* (God-man relationships). While the latter is the prerogative of God, the former is down to the discretion of mankind.

The previous discussions clearly indicate that the majority of classical jurists upheld a middle position in applying the *maslahah* principle in solving new *fiqh* problem. They chose to be in between the strict rejection of al-Shafi'i and the liberal opinion of al-Tufi. Certainly, the works of al-Ghazali and al-Shatibi provide grounds on how to apply the principle. However, such classical works are considered to be general without outlining a specific method in solving real Muslim affairs. Hence, to apply the principle in Islamic banking matters, contemporary scholars have to develop a distinctive method. For instance, the question on how to deduce a correct ruling when there is a contradiction between the two *maslahah* should be thoroughly studied. The controversy of *bay' al-tawarruq* contract is an interesting example with which to address this issue. As the proponents and opponents of the contract argue for using the *maslahah* principle, it is necessary for the *shari'ah* scholars to have a sound understanding of the theory in order to make correct judgements.

Applying the Maslahah Theory in Assessing Bay' al-Tawarruq Issue

Basically, the salient features of bay' al-tawarruq are very similar to bay' al-inah. Both contracts are identical in the sense that they are executed to attain liquidity. The contracting parties in the contracts have no intention to own the purchased assets but use the sales technicalities as a means in obtaining cash.

The distinct feature between the two is that the modus operandi of the former involves three parties whereas the latter includes two parties. Hence, the classical form of bay' al-tawarruq is described when a person who buys merchandise at a deferred price sells it in cash at lower price to a third party. With the exception of the Hanbalis, all other jurists did not discuss the rule of bay' al-tawarruq separately from bay' al-inah. The majority of Hanbali jurists approved bay' al-tawarruq because they did not consider the contract as carrying riba element (al-Buhuti, 1982, p.182). Since bay' al-tawarruq is less controversy among the classical jurists, the Malaysian Islamic bankers and shari'ah scholars are keen to promote the contract as alternative to bay' al-inah in creating cash financing products. In fact, they had introduced a commodity murabahah programme (CMP) which deemed to be an innovative approach in solving liquidity problems among the local Islamic banks.

However, the application of bay' al-tawarruq has been slammed by a recent declaration of the Organisation of Islamic Conference (OIC) Fiqh Academy. In April 2009, the Academy had passed a resolution that ruled against the practise of what they called as 'organised' tawarruq implemented by most Islamic banks. The Fiqh Academy shari'ah members differentiate between the classical form of bay' al-tawarruq and its contemporary practices (ISRA, 2010). They are of the opinion that the cash obtained from the classical bay' al-tawarruq is determined purely by market forces. There is no prior arrangement between al-mustawriq who first buy merchandise with deferred price and the third party who buy back the merchandise at lower spot price. In contrast, the contemporary tawarruq is organised whereby the transaction involving the three parties (client, banks and third party company) are previously set up to provide cash. While the former is allowed according to the Hanbali jurists, the latter is viewed to be analogous to bay' al-inah and hence impermissible. In many cases, this arranged transaction would result in non-satisfaction of receipt condition (al-qabd) that is required in Islamic commercial law (Dusuki, 2007).

In assessing the compliance of bay' al-tawarruq in Islamic banking practices, Siddiqi applies the *maslahah-mafsadah* calculus. He views that the harmful consequences of bay' al-tawarruq are much greater than the benefits generally cited by its proponents. Arguing from the macroeconomic perspective, he contends that the application of bay' al-tawarruq will support an economic system based on debt creation. This is based on the fact that bay' al-tawarruq is manipulated by Islamic banks to create debt instruments. As one of the founders of Islamic economic discipline, Siddiqi opposes the excessive of debt creation instruments in governing Muslim financial affairs. He warns the creation of debt market instruments under the banner of Islam. This is because the market of debt instruments created through the application of bay' al-tawarruq will inherit similar problems of the capitalist economic system (i.e. speculation activity, inefficient allocation of funds and inequitable wealth distribution). He contends that the application of bay' al-tawarruq will broaden the dichotomy between the theory and practice of Islamic economic, therefore should not be pursued (Siddiqi, 2007).

However, the proponents of bay' al-tawarruq argue that the Islamic banks and their clients need the contract to solve the problems of liquidity and cash financing. By adopting bay' al-tawarruq, Islamic banks could develop various liquidity management products which are essential in ensuring their survival. Failure to manage the liquidity risk efficiently will probably cause the collapse of the entire banking system. As for the clients, the contract of bay' al-tawarruq is important as a *makhraj* (mode of problem solving) in creating financing products to meet their basic needs (i.e. to purchase houses, vehicles and other needs). Hence, the proponents claim that there are prudent needs (al-hajjiyyat) to adopt some controversial contract like bay' al-tawarruq without having resort to riba-based transaction (Dusuki, 2007). Hence, the use of bay' al-tawarruq is seen as the act of choosing between the lesser of two evils: between riba which is absolutely prohibited and bay' al-tawarruq which is disputed.

The decision to take a lesser harm action is supported by a legal maxim in Islamic jurisprudence; *yuzal ad-darar al-ashaddu bid-darar al-akhaf* - a greater harm is eliminated by means of a lesser harm. In addition, it is also argued that the problem with the current practice of bay al-tawwaruuq lies on its deficiencies in implementation.

Hence, as long as the deficiencies in its implementation are removed, the contract would be regarded lawful from shari'ah point of view. This approach leads to the introduction of suq al-sila' by Securities Commission of Malaysia.

So, which maslahah is more justifiable?

In view of the theory of maslahah propounded by the classical jurists, I think the resolution of OIC Fiqh Academy and its supporters is more appropriate. The justifications put forward by Siddiqi are more convincing in achieving the objectives of shari'ah and the original aims of the establishment of Islamic banks. The harmful consequences of bay' al-tawarruq to the whole Islamic economic system are much more important to be avoided than its temporary benefits. The acceptance of bay' al-tawarruq will prolong the debate regarding the authenticity issue in the Islamic banking system. Therefore, I argue the time has come for the Islamic bankers and their shari'ah advisors to re-think their approach in carrying out the Islamic banking operations. Semantic modification is no longer regarded as an appropriate orientation. Instead, the 'Islamic' alterations are required to include genuine economic substance. By abandoning the legal artifice of bay' al-tawarruq, it is hoped that the Islamic banks will be able to create investment instruments that truly uphold the notion of profit and loss sharing as embedded in a mudarabah contract. It is strongly believed that the notion of profit and loss sharing is the only principle representing the true spirit behind any effort to circumvent riba in the current financial system.

Conclusion

This paper recommends the use of a well-defined maslahah doctrine in assisting the shari'ah scholars producing more appropriate ijihad in Islamic banking and finance matters. The recommendation is made after considering the incoherent legal methodology adopted by the current shari'ah advisors of Malaysian Islamic banks. They can be too rigid by emphasising solely on the technicality aspect of the classical contract and at the same time be too liberal by using an unregulated maslahah principle. Such incoherent legal methodology has prolonged the authenticity issues within the Islamic banking sector. Islamic banking products created on the basis of the incoherent methodology do not really exhibit the Islamic ethical framework of commercial contracts and the objectives of shari'ah.

The historical sketch of the maslahah theory indicates good ground of philosophical discussions laid down by the classical jurists such as al-Ghazali and al-Shatibi. However, to apply the theory in the Islamic banking and finance matters, there is a need to develop a distinctive method to ensure its application does not deviate from the original concept. As an example, the paper discusses the issue of bay' al-tawarruq. It shows the importance of having a sound understanding of the maslahah theory when judging the contradiction of two interests. The opponents agree with the application of bay' al-tawarruq considering the maslahah of Islamic banks and their clients. Meanwhile, Siddiqi and others rule against the contract in view of the maslahah of Islamic economic system as a whole.

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Table 1: Cash prizes draw offered in al-Awfar saving and investment accounts.

No.	Cash Prize	No. of Quarterly Prize
1.	RM100,000	1
2.	RM10,000	1
3.	RM5,000	1
4.	RM1,000	3
5.	RM5,00	5
6.	RM250	18
7.	RM100	500

Source: www.bankislam.com.my

Table 2: Profit rates of BIMB deposit accounts from 16 November to 15 December 2009.

Deposit Products	Profit Sharing Ratio Customer : Bank	Profit Rate % p.a.
Mudarabah saving account	25:75	1.11
Wadi saving account	25:75	1.11
Ijraa saving account	25:75	1.11
Al-Awfar saving account	2:98	0.04
Pewani saving account		
Exceeding RM5,000	30:70	1.33
Below RM5,000	25:75	1.11

*This is indicative rate of return based on the previous month's performance.

The actual rate can be higher or lower than the indicative rate.

Source: www.bankislam.com.my