

**A STUDY THE BAI AL-INAH AS PRACTISED BY THE BANK
RAKYAT FROM THE SYARIAH PERSPECTIVE**

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AUTHOR DECLARATION

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

I hereby declare that the work in this academic project is my own except for quotations and summaries which have been duly acknowledged.

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بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

In the name of Allah, the Compassionate, the Merciful

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ABSTRAK

Maksud bai al-inah ialah satu kaedah menjual suatu barang dengan harga tangguh, kemudian membeli kembali barang itu dari pembeli dengan harga tunai. Ulama berselisih pandangan dalam pengharusan bai al-inah. Kajian ini bertujuan untuk melihat sejauhmana pelaksanaan bai al -inah di Bank Rakyat, bentuk perlaksanaannya dan hal-hal lain yang berkaitan . Bagi memperolehi data tersebut , beberapa terknik kajian yang telah dibuat antaranya ialah temubual dan meneliti dokumen yang berkaitan.

ABSTRACT

The writer's research on the "Bai al-Inah a banking system introduced by Bank Rakyat"2003. Bai al-inah means a method of selling a property for the purpose of reselling the same property in cash terms to the buyer at an agreed higher price between the bank and the purchaser of the property. Muslim Scholars have been in disagreement on the pros and cons on this banking system. This research will look into the effectiveness on the implementation of this banking system and other matters relation to its implementation. In order to obtain the data, the writer held interview sessions with the relevant bank officers at Bank Rakyat and went through the related documents and brochures on Bai al-inah banking system.

ملخص البحث

تهدف هذا البحث إلى دراسة تطبيق بيع العينة من قبل "بيك رعية". بيع العينة هو البيع بضمن مؤجل، ثم شراء مرة ثانية. بضمن نقد. ومن أجل إنجاز ذلك فإن الباحثة اتبعت منهجا يقوم على البحث المكتبي وإجراء المقابلات مع المفيين بالموضوع. وتوصل البحث إلى أن جمهور العلماء يتفق على أن بيع العينة فيه مصلحة للناس في يومنا هذا.

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GLOSSARY

Fuqaha	Islamic jurists
Fiqh	Jurisprudence
Gharar	uncertainty, speculation
Haram	forbidden
Jumhur	majority
Muamalat	transaction
Qard	loan
Riba	interest, usury
Salam	a form of sale where the price is paid in advance
Swt	this blessing whenever he hears the Prophet Muhammad's name being mentioned
Mudarabah	a type of partnership

TRANSLITERATION TABLE
ARABIC WORDS TRANSLITERATION SYSTEM

1. ALPHABET

<u>Arabic</u>	<u>Latin</u>	<u>Example</u>	<u>Transliteration</u>
ء	,	فار	fa`r
ب	b	برد	burd
ت	t	تَلَّ	tall
ث	th	ثوب	thawb
ج	j	جدار	jidār
ح	h	حليب	halīb
خ	kh	خادم	khādim
د	d	ديك	dīk
ذ	dh	ذهب	dhahab
ر	r	رفيق	rafīq
ز	z	زميل	zamīl
س	s	سلام	salām
ش	sh	شعب	sha ^c b
ص	s	صخر	sakhr
ض	d	ضيق	dayq
ط	t	طازخ	tālib
ظ	z	ظالم	zālim
ع	c	عقل	^c aql
غ	gh	غلام	ghulām
ف	f	فيل	fil
ق	q	قلب	qalb
ك	k	كلام	kalām

ل	l	لَبَّ	lubb
م	m	مَال	māl
ن	n	نَجْم	najm
ه	h	هَوْل	hawl
و	w	وَرَق	waraq
ي	y	يَم	yamm

2. Short Vowel

<u>Arabic</u>	<u>Latin</u>	<u>Example</u>	<u>Transliteration</u>
_____	a	كَتَب	kataba
_____	i	عَلِم	‘alima
_____	u	غَلِب	ghuliba

3. Long Vowel

<u>Arabic</u>	<u>Latin</u>	<u>Example</u>	<u>Transliteration</u>
ى , ا	ā	عَالِم, فَتَى	‘ālīm, fatā
ي	ī	عَلِيم, دَاعِي	‘alīm, dā‘ī
و	ū	عُلُوم, أَدْعُو	‘ulūm, Ad‘ū

4. Diphthong

<u>Arabic</u>	<u>Latin</u>	<u>Example</u>	<u>Transliteration</u>
و	aw	نوم	nawn
ي	ay	ليل	layl
يَ	iyy	شافعي	shāfi ^c iyy (ending)
وَ	uww	علو	^c uluww (ending)

5. Exemptions

5. 1 Arabic letter ء (hamzah) found at the beginning of a word is transliterated to the letter “a” and not to ’ .

Example: أكبر transliterated to: akbar (not ‘akbar).

5. 2 Arabic letter ة (ta’ marbutah) found in a word without ال (al) which is coupled with another word that contains ال (al) at the beginning of it is transliterated to the letter “ t ”

Example: مكتبة الإمام transliterated to: maktabat al-imām.

However if the Arabic letter ة (ta’ marbutah) found in a word with ال (al), in a single word or in the last word in a sentence, it is transliterated to the letter “ h ” .

Example: المكتبة الأهلية transliterasi: al maktabah al-ahliyyah

قلعة qal^cah

دار وهبة dār wahbah

ABBREVIATION

S. A. W	“Sallahahu ‘Alaihi Wa Sallam “means “Peace Be upon him”. It is compulsory for a Muslim to Utter this bleasing whenever he hears the Prophet Muhammad’s name being mentioned.
S. W. T	“Subhanahu Wa Ta’ala
RM	Ringgit Malaysia
MD.	Mohammad
YPEIM	Yayasan Pembangunan Ehwal Islam Malaysia
i. e	Example

CHAPTER

1

CHAPTER 1

1. 1 INTRODUCTION

الحمد لله رب العالمين والصلوة والسلام على سيد الأنبياء والمرسلين ، سيدنا محمد وعلى

آله واصحابه اجمعين

Indeed, Allah has given human beings a several facilities for their happiness and calmness.

In this research project, the researcher discusses a topic related to the concept of “*bai al-inah*” especially performed by *Bank Rakyat*.

In Malaysia, it is that, “*bai al-inah*” was performed unconsciously in the entire banking system. Even the performance of this “*bai al-inah*” was different from one bank and other in certain concepts.

In this project, the researcher wants to discuss the definition of “*bai al-inah*” generally. It involves a definition of “*muamalah*” the condition, requirement and its compulsion in Islam and to emphasize also the concept of “*bai al-inah*”, and the several views of the various schools in Islam. Some arguments said that it is not necessary. Whatever, their opinions, they have their own proofs.

Beside that, the researcher tries to the history of the establishment of the bank, the structure and implementation of “*bai al-inah*” specifically in the bank.

When the concept is discussed generally, we can know about a concept of "*bai al-inah*" in details.

In this research project, the researcher would like to reveal the differences between "*bai al-inah*" and "*bai bithaman ajil*" (BBA) which both like are different even they are similar in the definition and the concept.

1. 2 DEFINITION OF MUAMALAH

Allah *s. w. t* creates people for living that everybody needs each other. Here, we know that nobody can live lonely without other's help. Some people have facilities which other's people haven't it. Some people have food supplement whereas others do not have. Some of them have the still but do not have the capital and vies verse. There is a life scenario that done in this world.¹

So that, Allah has given the inspiration to people to communicate and make the exchanges for benefit. They do business, loans, wages, rental, pawning, and others ways that everybody needs in life. All of these are purposed to complete and soften the jobs. So people may avoid any inconvenience raised in their life.

Hereby, it is clear that Allah directs people's life to the real meaning. So Allah imposed the rules and regulations that can be as guidelines and teachings to people today. Regarding that rules and regulations, people can plan and arrange their lifestyle in best way. Therefore, they can establish their life and civilization, which is allowed by Allah and Prophet.

¹) Dr. Haron Din. 1990. *Manusia Dan Islam*. page:21-22

So that, the business or Islamic are comprising the things exchanges or something that give the benefit with the certain ways like business, rental, wages, loans, plantation and so on.

1. 3 DEFINITION OF TRANSACTION

According to the third Edition of Dewan Dictionary, ¹the transaction means that the process of selling and buying things (between the business, seller or buyer). Beside that, ²regarding to transaction of Islamic Civil laws is exchanging between assets and asset. It is whether “*mu'qid*” (through the bargaining) or “*ghairun mun'aqid*” (do not through the bargaining).

If the transaction is viewed from the things sold are divided in four. The first one is selling the assets with assets. Because of the transaction is the famous one, so it is called as (real) transaction. The second one is money changes. And the third one is the exchanging between things and thing the fourth are “*salam*” (ordering of things, items with in price paid firstly).

Sale and purchase in “*Fiqh*” “*al-bai*” means sale buy and change something with another thing. In terminology, Islamic Schools gave a several definition however the substances and purpose are some. Hanafiah said:

- 1) “*Al-Ba*”*i* mean change the property with another property based on the good way.
- 2) Change the property with another property that we want based on the way that can give the benefit for both of parties.

2) Dewan Bahasa dan Pustaka. *Kamus Dewan*. Third Edition, page; 545

3) Md.Akhir Haji Yaacob. *Al-Ahkam al-Adliyah*, law of Islamic sivil. page:33

In this definition, consist of the particular way from Hanafiah through “*ijab*” and “*qabul*”. “*ijab*” is a statement of purchaser and “*qabu*” is a statement of seller.

Malikiyah, Syafi’yah and Hanabilah said:

Al -Bai means change the property with another property based on the right because also existed that change the property with the un-right thing such as rent.

Islamic Scholars said that ‘*al-mal*’ is a material and benefit. So, some thing can give a benefit is a material or property. But Hanafiah said that ‘*al-mal*’ is some materials that have a high value.

1. 4. 1 PROHIBITED TRANSACTION

Nowadays, every transaction done by people, are not doing in the right way. But, some of them are transaction in Islam. There are some of the examples of unlawful transaction in Islam:

- 1) Selling unlawful items. Every income will come out the worse. So the selling or transaction of things or item are unlawful, for instance pigs, alcohol, and foods or barrages which are disallowed by *syara*’ or other. If these things are allowed to be sold means that we also lead to the sins or encourage others to use it or give the opportunities to other to do the sins.²

As a proof, said that:

4) Dr. Haron Din. 1990. *Manusia Dan Islam*. page: 24-30

((أن الله ورسوله حرم بيع الخمر والميتة الخنزير والاصنام، وقال إن الله إذا حرم شيئاً حرم ثمنه))

The meaning: *Indeed Allah and Prophet, prohibited selling the alcohol, carcass, idol, then he said: Indeed, God unlawful something so the price also unlawful.*

(riwayat imam Ahmad, Abu Daud)

- 2) Islam urged to sell birds in sky or fishes in water or anything that concluded the cheating means. This was in hadith prophet saw.⁵
- 3) Urged to sell the fruits on the tree and unripe, except it have ripe, cause of the possible action will come out the bicker and cruel. As a proof is:

((عن أبي عمر فمى النبي صلى الله عليه وسلم عن بيع الثمار حتى يبدو صلاحها))

The meaning: *Umar's mother the prophet saw prohibits sell fruits until its ripened well.*

(hadith agree by imam al-Bukhari and Muslim)

- 4) Prohibit buying things that are bought by orders in the time of choices. As a proof, prophet saw;

((عن أبي هريرة رضى الله عنه قال : قال رسول الله صلى الله عليه وسلم: لا يبيع بعضكم على بيع أخيه))

The meaning: *Abu Hurairah said the prophet saw: Do not sell to some one that the things are bought by others.*

⁵) Dr. Haron Din. 1990. *Manussia Dan Islam*. page:25

- 5) Prohibit see people from village in rural area and buy their things before reaching to market and they do not know yet about its prices because of this behavior will buyer .As a proof:

((عن ابن عباس رضى الله عنه قال: قال رسول الله صلى عليه وسلم الله لا تتلقوا الركبان))

The Meaning: *Ibn Abbas said: the prophet saw. Don't you see people who will go to market before they reach there.*

- 6) Less a scale and weight. It is one of cheating is decreasing the weight. Because of this situation is always happen in business, so Allah s. w. t very looking seriously to that problem and make it, one of ten proper messages in hereafter. ⁶

{ وأوفوا الكيل والميزان بالقسط لانكلف نفسا إلا وسعها }⁷

The meaning: *Give full measure and just weight, we never charge a soul With more than it can bear.*

{ وأوفوا الكيل إذا كلتم وزنوا بالقسطاسى المستقيم ذلك خير واحسن تأويلا }⁸

The meaning: *You shall give full measure, when you measure, weight With even scale, this is the best way and will to be the best in the best.*

⁶) Dr. Haron Din, 1990. *Manusia Dan Manusia*. . page:26

⁷) Al-Quran Al-an'am 6:152

⁸) Al-Quran Al-Isra' 17:35

{ويل للظففين (1) الذين إذا اكتالوا على الناس يستوفون (2)
 وإذا كالوهم أو وزنوهم يحسرون (3) ألا يظن أوائك أنهم مبعوثون (4)
 ليوم عظيم (5) يوم يقوم الناس لرب العالمين (6)}³

The Meaning; *woe to those who defraud, who when take by measure from men; Take the full measure, but when they give measure or by weight to other, they Take less than due. Do they not that will be raised to life again on a might day a Day when all mankind will stand before the rabb of the worlds.*⁹

Allah contributed one surah in holy of *Quran* which named it as *surah al-mutafifin* which is decreasing the weight or scale to denied by Muslim, how their outcome in hereafter.

➤ GHARAR

Gharar from literature aspect means danger. *Tanghir* means explore to destroy. Basic of *gharar* from literature aspect (*zahirriyah*) is loved, but to (*batiniyyah*) is hearted. Because of that, that means, the earth is deceiving pleasantness. So *gharar* means a person explore to destroy, or their properties also explore to destroy without know and sell of *rajih* words (true word). Among *gharar* which prohibited by *fuqaha'* looked at that sold thing small stones. If looked to the element and either *gharar* to the thing would be sold such as selling a thing on the sky, or selling a goat walking around in his groups, or *gharar* on *sighah* like *aqad* (agreement) for all two sale, one sale for two conditions for selling (*Fudhuli*) or smell stones and so on.¹⁰

So *gharar* from literature aspect is deceit, which may not be liked by the buyer when they eating the property by invalidly. *Gharar* from *fiqh* aspect means

⁹) Al-Quran Al-Mutaffin 83:1-6

¹⁰) Wahbah Al-Zuhaili. *Fiqh @ Perundangan Islam*. Page: 450

deceit, grandiloquent and did know the thing would be sold and cannot be given.

Al- San'ani views that a selling by *gharar* may happen on several forms as follows;

- a) The thing cannot be given such as selling a horse that walking around or a camel that loose it way
- b) The thing would be selling is not exist or not be known where it is.
- c) The seller did not possess it; such as selling a fish that live in much water.

Gharar on the term of *fuqahaq'*:

The *Fuqaha'* (ulama' jurist) gave a close definition on *gharar* words. Among of them:

- 1) Al- Sarkhasi from Hanafi Jurist views that *gharar* is concealed thing and did not known the consequences.
- 2) Al-Qarafi from Maliki Jurist views that the basic of *gharar* is the thing which not be known either it can be acquired or not, such as a bird on the sky, a fish in the water.
- 3) Asy- Syirazi from Maliki Jurist views that *gharar* is a matter or thing that did not be know and concealed the consequences.
- 4) Al- Isnawi from Syafie Jurist views that; *gharar* is hesitant feeling between the two matters that is normal and concealed.

- 5) Ibn Taimiyah view that *gharar* is not be know it consequences. ¹¹
- 6) Ibn Qaiyim views that *gharar* is the thing cannot be given, either the thing Is exist or not exist such as selling or slave which is running from his lord or selling a loose camel although he posses it.
- 7) Ibn Hazm views that *gharar* is the buyer did not know what he was bought and the seller did not know what was sold.

As a conclusion, or selling purchasing of *gharar* is a purchasing that will cause (loss) or danger to the seller or buyer. It also may cause loosing property. Al-Zarqa' give a definition as selling a something hesitantly about the existence or it limited. A purchasing something like this, there is a deceit and gambling. *Gharar* make invalid selling is *gharar al-mamjud* that is each of the existence still is hesitating. While *gharar al-waft* it may valid conditions for purchasing. ¹²

➤ *Riba*

Literally *riba* means excess or add or plenty. Allah in *Al-Quran* uses the meaning of *riba*, in *surah Al-Fussilat* verse 39:

¹³ { فإذا أنزلنا عليها الماء اهتزت روت }

The Meaning: ...when we send down rain upon it, it stairs to life
 And its yield increase.

¹¹) Wahbah Al-Zuhaili. *Fiqh @ Perundangan Islam*. page: 451

¹²) Ibid :452

¹³) Al-Quran al-Fussilat 41:39

In surah al-Nahl :92

¹⁴ { أن تكون أمة هي أربى من أمة. }

The Meaning: *nor take your oaths for mutual deceit so that people
May take undue advantage over the other.*

All jurisprudence defining *riba* as:

“فضل مال بلاعوض في معاوضة مال بمال”

“ The excess the property in a transaction in which there is no
substitute or change”

¹⁴) Al-Quran al-Nahl 16:92

CHAPTER

2

CHAPTER 2

2. 1 THE HISTORY OF BANK RAKYAT

Before the writer writes further, it is better for her to know the history of *Bank Rakyat*. The history of the establishment of *Bank Rakyat* started since 1954 whereby there are two meetings had been held by our leading men of co-operation body in order to plan a construction of cooperative bank.¹⁵

On Mac 1954, the first meeting is held at a school in Ipoh. However, the meeting failed to reach a consensus of having a central bank or '*Bank Agung*'. In the second meeting, which was held in *Bukit Mertajam* in July 1954, however, the entire representative agreed to construct the kind of bank. Lastly, cooperative bank, which was known as *Bank Agung*, was built.

In its early establishment there were 12 associations of cooperative bank. The main purpose of building up *Bank Agung* was to help all the members financially. The first chairman appointed was Tan Sri Datuk Sheikh Ahmad b. Mohd Hashim. The secretary was Haji Ahmad b. Mohd Amin.

The first office of *Bank Agung* was in *Bukit Mertajam*. A year later its office was transferred to Penang. This bank lodged at Department Of Cooperative Development. According to the first meeting in July 1961 followed by the special meeting held in Kuala Lumpur. On 22 of Sept on the same year, the head of Director decided to transfer the headquarters from Penang to Kuala Lumpur. The Business

¹⁵) n. p. b. *Majalah Rakyat*. no. page.

Cooperation Department in Jalan Swetenhem. There was six staff working in this department.

On Oct 1966, this bank was transferred to its own building in Jalan Ipoh in Kuala Lumpur. The Prime Minister of Malaysia inaugurated this building. While it was in Kuala Lumpur, there were many activities involved buying and selling properties, lands and building done by Bank Agung.¹⁶

To make it updated, on Mac 1967 bank Agung was changes done for its sub laws in order for the bank to produce debenture, borrow money or accept the help from the government or other resources. The changes gave a chance to the bank to receive money saving from individual cooperative body. Besides that this bank was also permitted to be a representative for other Society in order to purchase and sell the shares or get the premium from insurance company, etc. In 1971, the purpose of this bank became larger. This was to make the bank to trade its asset and bought the shares. It also joined private projects after being agreed by then bank's register.

The name of the bank was changed to suit the development of its company and it was called *Bank Rakyat* since 1973 until now. This bank now is the biggest cooperative body in Malaysia and it is very well know.

2. 2 THE STUCTURE OF ORGANIZATION.

Bank Rakyat always makes sure its management runs smoothly. It introduces a new method, which organizes a new structure of organization in order to have a systematic and efficient management. The new structure of organization, which was introduced on 1 Sept 2000, is very efficient in millennium era.

¹⁶) n. p. b. *Majalah Rakyat*. no. page

The combination of Dr. Norresah Haji Mohd who is a chairman of Bank Rakyat and Dr. Zainal Bahrin as the Director is very compatible. A new systematic and organized in each sector, division, department, district, and branch is a wise way made by the new structure of management. Without we realize it, the existence of the new sectors can help to enhance the Cooperative Service and Banking service. There are also ideas that can be shared by the two important people who are En. Alim Ariffin who is a Financial Manager and Corporate Service and En. Md Sharif Baharudin as an Operation Manager.

Financial Manager and Corporate Service.

There are three sectors under Financial Control and Corporate Service:

1) Financial Management sector, led by En. Kamarudin Che Mat. This sector is to manage accounts, budget, "exchequer", investment and credit checking. This sector is assisted by Exchequer and Account Division, which led by Puan Sabariah and also Credit Inspection, which led by En. Rosely Shamsuri.

2) Information Technologies and communication sector is led by En Salim. The main responsibility of this sector is to manage about computer, multimedia, and electronic banking office automation, manage info system, plan and plan and evaluation system, development and implementation system, management and supporting system. This sector always helps *Bank Rakyat* to apply the latest information technology and communication to make its management runs smoother.

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3) Human Resources sector led by En. Yusoff is responsible to manage the progress of career, officers, and staff, training, work resource planning, posts, communication, production, salary management and its facilities. There are a few departments are located in corporate sector which are general administration department, properties management, confidential secretary and a driver.

¹⁷⁾ n. p. b. *Majalah Rakayt*. no. page

Main Banking Operation Manager

There are two sectors under main manager:

- 1) Branch operation sector led by En. Hamid who is responsible to the whole Branches including Sabah and Sarawak. There are two sectors under this sector which first operation branch led by En. Yahya and the second operation led by En Omar.¹⁸

- 2) Corporation banking sector and syndicate led by Tuan Haji Tajuddin Amiruldin responsible to manage the function of syndicate and corporate financial. Special Control Financial Project, documentation and corporate credit administration, helped by corporate financial led by En. Fadzmi Yaakob and corporate credit administration and documentation led by En. Anwar Salleh. Corporate development and its members led by En. Nik Md. Nasir Nik Rithaudeen. These are all located under Operation Banking by the manager (whom is responsible about its management).

2.3 THE CONCEPT OF BAI AL-INAH

In fact, *Bank Rakyat* has performed a concept of *bai al-inah* in *muamalat* since previous years. With doubtful among society and also among the staffs of *Bank Rakyat* about the concept of *bai al-inah*, so a specific initiative have been taken to solve a problem related in performing of *bai al-inah*. It was involved objective, definition, conditions, requirement and a view of school in Islam.¹⁹

The objective of *bai al-inah* is to give awareness and understanding to the staffs of *Bank Rakyat* and generally to the society about an implementation of *bai al-*

¹⁸⁾ Ibid : no. page

¹⁹⁾ n. p. b. *Risalah : Konsep Bai' Al-Inah*. Page: 1

inah. Beside that, it is performed in Islamic banking system at Bank Rakyat financial institution and banks in order to perform a concept of this *bai al-inah*. It also to make the concept of *bai al-inah* easier.

Bai al-inah is classified as a method to sell goods with debt and then buy those back in cash.

Before, I explain about an implementation of *bai al-inah* in detail firstly, I would like to give a definition of *al Qard*, which the definitions both are likely. In language, *al- Qard* means *al- Qat*. Asset that has given to the debtor knows as *qard* because of deduction of credit's asset. In terminology, according to Hanafi School, *Qard* means a giving that was given by a person to another person hopefully he will pay it back or in other word, it is specific agreement by giving asset to another so that the person will return back the asset alike.

Al- Qard has its own foundation according to the *al -sunnah* and '*ijma'* *ulama'*'. The hadith of the prophet S. A. W to the effect that:

ما من مسلم يقرض مسلماً، إلا كان كصدقة مرة.

The Meaning: *A Muslim who gave other Muslim debt for twice, is like giving a sedekah once.*

In another hadith from Anas have also reported that the prophet S. A. W have said to the effect that:

رأيت ليلة أسرى بن علي باب الجنة مكتوبا: الصدقة بعشر أمثالها، ،
القرض بثمانية عشر، فقلت يا جبريل ، ما بال القرض أفضل من الصدقة؟
قال : لأن السائل يسأل وعنده والمستقرض لا يستقرض إلا من حاجة ، .

The Meaning: *On the night that I've been (Mikraj), I saw a written on the heaven's door, gained sedekah is tens times and goodness for giving a debt is eighteen time . I asked Gabrel why giving a debt is more gained than? He answered; this is because he asked for sedekah in condition of asking while he has a property. However, those who asked for the loan are not to make a debt expect for the time in need²⁰*

The Muslims entirely agreed that *al-Qard* is compulsory. This debt is 'sunat' to creditor, while it is 'harus' to the debtor. These are according to hadith before.

Clearly, that the implementation of *bai al-inah* is coinciding with the hadiths before. The implementation is to facilitate and give happiness to the society soon.

In the concept of *bai al-inah*, there are two different transactions and each other is complete the certain conditions and requirement. First transaction, for example: Abu (seller) sells motorcycle at price RM3000 to Ali (buyer) with debt. Abu agrees to sell while Ali agrees to buy. There is element of *sighah*.

Second transaction is where Abu (buyer) wants to buy back the motorcycle, which was bought by Ali. Abu to buy the motorcycle in cash RM 2500. In this situation Abu and Ali agree to sell. There is also the element of *sighah* (offer and acceptance)

²⁰) Wahbah al-Zuhaili. *Fiqh @ Perundangan Islam Jilid IV*. page: 14

Requirements

Every matter will be done, there must be requirements. Both of the *aqad in bai al-inah* must be complete the requirements namely:

- a) Seller
- b) Buyer
- c) Goods
- d) Price
- e) *Sighah* (offer and acceptance)

The buyer and Seller requirements:

- 1) Must be qualified to pronounce *aqad*, on sound mind and *baligh*.
- 2) Voluntarily: it means it is voluntarily and not under duress and obstruction or forced.²¹

The Goods Requirements

- 1) The buyer has got to know that the goods that is going to be sold, must present at the time of the *aqad*.
- 2) The dealer must own the goods, if he does not own the goods; the purchase is off automatically (not valid/ invalid).
- 3) The goods must be clean of "*subhah*" (thing that are of evil doings) and valuable in *syara*'. Dr. Jabir once heard the Prophet said:
"By all means, the Prophets protests against the purchase of liquor, carcass and pigs."
- 4) The goods must be useful and beneficial, that is it is beneficial to use the Goods for example: selling rats and cockroaches is not allowed for allowed for beneficial study.
- 4) The dealer is also entitled to hand in the goods: for example it is legal to sell the fish in the sea. Another example: "I sell to you all the fruits on the tree"
- 5) The goods must be visible before the row of purchase.

²¹) n. p. b. *Risalah: Konsep Bai Al-inah*, page: 2

Additional Requirement for good to be sold in ‘*Bai al-inah*’ concept.

As we all know, things that are valued by money cannot be purchased in this concept, because the payment for this concept is base on delayed payment. This delay has become the “*nasiah*” interest that is forbidden in purchased and is illegal.

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Beside that, the meaning of “*nasiah*” interest is the change of to ‘*ribawi*’ things, that are of the same type or the same foundations, where one of them is given in due time. Here, we can see that this things are divided into two categories- the currency foundations and food foundations.

There ~~are~~ many ‘*ribawi*’ things form the currency foundation like their own country values gold, silver, and currency wish.

The same goes to food foundation: that goes to all kinds of foods like cereals, meat, vegetables, fruits and salt.

The value Requirement

Here, the value requirement has to be rowed while purchase. Beside that the value requirement must be paid on currency expert it is not seen while the row. However, it can also be sold by these requirements:

- a) The pay due has to be clear.
- b) The pay due starts from the date of handing over the goods.
- c) The pay due cannot be agreed on the times that are not stable.

Besides that, it can be gained profit from, according to current value as agreed by both parties.

²²) n. p. b. *Risalah: Konsep Bai Al-inah*. page: 3

The Row (*Sighah*)

If we take looks from the row's point, the "*ijab*" row and "*qabul*" row is was spoken from both parties to form a value of agreement on purchase. The now here means '*ijab*' or an offer and "*qabul*" means acceptance.

How the *Ulama'* Look on "*bai al-inah*"

There are many points of view from the *Ulama'* about "*bai al-inah*". Among them:

Abu Hanifah feels that; to carry out *Bai al-inah* is (mischief) or not good is there is no third party who acts as the debt payer and the debt collector. It is thought so because, if the first sale's payment is not paid dutifully, then their applies also to the second sale. This is because the second sale depends in the first sale. Because the first sale is not dutifully paid, then the seller cannot buy back the goods y\that are not complete with the *aqad*. Therefore the second sale is illegal.²³

Meanwhile Abu Yusof thinks that to carry out *bai al-inah* in purchase is 'valid' (good) and not "*makruh*" (bad).

Other than that Muhamad thinks that, their purchase is legal but "*makruh*". He had added their kind of sale is like a high hill made by those who seed on interest.

Syafie and Daud Az-Zahiri feel that: their purchase is legal but "*makruh*" because it fulfills the requirements on a purchase "*ijab* and *qabul*". It is useless to pay attention to the bad intentions that we are do know. We do not know the signs or hints that prove our suspicion about bad intentions from the loaner, those who have

²³) n. p. b. *Risalah: Konsep Bai Al-inah*. page:5

bad intention will be executing by Allah swt. And then whether the purchase is legal or not is another problem, but in reality the *bai al-inah* purchase is legal without things that can arouse suspicions.²⁴

For the Hambali and Malik stream, they feel that this purchase is illegal canceled because it covers the illegal (حرام) things, the row is legal but if it done to cover up the illegal (حرام) things, then the result is still illegal.

2. 3. 1 THE DIFFERENT OF PRIVATE DEFRAVAL AND BAI BITHAMAN AJIL

Private Defrayal

1. Using two concepts, *Bai al-inah* and BBA
2. The defrayal for getting cash money
3. Indicating of using bank property or customer for declaration of buy and sale The transaction. If we using the property of bank, the concept of *bai al-inah* is Used. Instead, we will used the concept of BBA when we using the property of The customers.
4. The property of buy and sale that using the concepts of BBA could be a Pawn. Instead, if the property of Bank is used in the concept of *bai al-inah*, only The guarantee is needed. Usually, for both concept, above only need a guarantee.

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²⁴) n. p. b. *ibid*: 6

²⁵) n. p. b. *Risalah: Pembiayaan Peribadi*. page:1

Bai Bithaman Ajil

1. Only using the concept of BBA
2. Defrayal for buying property or land
3. Customers themselves recognizing their property that they needed for the Declaration of buy and sale of transaction.
4. The property that used for transaction of buy and sale will used or pawn

2. 3. 2 THE IMPLEMENTATION OF THE BAI AL-INAH IN BANK RAKYAT

Before the author explain the *bai al-inah* in detail, we should know first about the *shariah* banking planning in bank rakyat, the objective of this banking was established in order to transfer from all of the operation the konvensional banking to the operation based on *shariah*. This system launched by Dato' Afifidin Omar , on 5 Mei 1993 and fully function during two years.

Types of *shariah* that include in their *shariah* banking:

1) *Al-Wadiah*.

This produce used to replace the fund account concept the saving. In this system, the customers are asked to trade his money and the banker as a charity determines the profit and it is not promised.

2) General *Al-Mudharabah*

This procedure is used to replace the permanent of deposit account. In this system, the customers are asked to trade their money in which. They promised to divide into

50:50 during the declaration (akad). The customers discharge the capital or money, while it will trade by banker.²⁶

3) Specific *Al-Mudhrabah*

The investment is from YPEIM to defrayal of *ar-rahn*, in which they promise to divide into 70:30

4) Al-Bithaman Ajil (BBA)

This system implements the buy and sale with the delay value. In this system, it replaces the house loan, motorcycle, golf and so on. The rate the benefit is 10.75% for non-members and 10.25% of members after *ibra'*.

5) *Bai al-inah*

The system is used to substitute the private loan in which it indicates two declaration (akad) of buy and sale. From a part of beneficial rate is 9.80% for non-members after *ibra'*. It is combination of *al-qardul hassan* and *al-wadiah*. The income is come from fee saving the deposit.

<u>Wage</u>	<u>Marhum value</u>	<u>effective rate</u>
40 cent	<1, 000	9.60%
50 cent	1, 000- 5, 000	12.00%
60 cent	> 5, 001	14.40%

6) A payment of share

It is ASBI, ASAS, ASDI and Dana Johor which 11.00% not a share holder, 10% is a shareholder after *ibra'* and estimation to the balance yearly.²⁷

²⁶) n. b. p. *Risalah: Rancangan Perbankan Syariah Bank Rakyat*. page:1

²⁷) n. b. p. *Risalah: Rancangan Perbankan Syariah Bank Rakyat*. page: 2

7) Repayment of conversional loan

It means personal loan and house.

8) *At- Talkhis*

It is known as overdraft, which replace a loan and executive

9) Certificate of *al- mudharabah* estimation

It uses a concept of *aqad al-inah* and reversed BBA

10) *Al-ijarah*

It means a hire purchase or leasing.

11) A payment skim of specific share investment.

This skim was a concept of *mudharabah*

12) A payment of *mudharabah* assurances

This concept is to change a loan with assurances of permanent deposit. This payment uses a concept of *aqad al –inah*

According to Mazhab Syafie, the concept of *al- inah* can be used by bank to offer the facility of private defrayal to the customers, There, the defrayal is offered to the bank customer as cash and them buying it as delay value (refinancing). In this below concept, bank will sale it property to the customer by refinancing and then it will buy back from that customer by cash. By this way, the customer will get money by cash and pay back his debt to that particular bank as gradually within the duration that had be agreed by both party.

Through this concept, bank will get a beneficial from the difference value between delays selling with cash. As usual, the property that bought and sold should be the owner of bank and the value of that property should be suitable or advisable with the amount applied by the customers, the properties that can be buy and sale, such as lump of gold, building, lot, of land and company share.

Gold

Gold is one of thing that can be buy and sale. It is valued based on is weight and the kinds of that gold, for instance, RM 1, 000, 00, RM 500, 00, or RM 10, 000, 00. *Riba* could be appear from the thing that has element with *ribawi*, and gold is one of *ribawi* thing. The buy and sale of gold should be done in a same time that is cash. Although, there is a bank in South-East Asia that that using gold as a thing of buy and sale for the mean of private defrayal to the customers.²⁸

Buildings

It is refers to the part of building that we known such as level, block or lot are the properties that can be buy and sale. Nevertheless, this property may give rise to the difficulties from apart of corresponding the value of building with the amount the defrayal that had been applied.

Computer

Personal computer with the tools (peripheral) is the types of properties, which is suitable for the process of buy and sale.

²⁸) n. p. b. *Risalah: Pembiayaan Peribadi*. page: 4

Lot of land

The value of the land can be known by determining its book value and the current value in the market. However, by using land as an object, is not advisable and it is so complicated from apart of transaction.

Company share

The company share that whether it is listed in Bursa Saham Kuala Lumpur or not, can be bought and sold through the concept of *inah*. However the value of share should be the current value in the market.

In order to make sure a customer pay his debt, bank could be asking the ensure. Bank can be impose certain condition for those appliers who taking insurance cancelled such as decreasing term assurance, the objective of the insurance contract is to concealed the important ness. And then, the customers can finish their debt before the mature duration, and it depend on Bank to give *ibra'* rebate to the customer cause of the debt in quickly.

An example of Modus Operandi. A customer need the money by cash, for instance need around RM 9000, 00, but he has any property to make the defrayal again of refinancing. And then, bank selling it property to the customer in RM 11, 650, 00 as delay selling during three years. Then, the bank buying again syer from the same customer with RM 9, 000, 00 by cash. And the customer will getting money by cash much RM 11, 150, 00 that need to pay back as gradually within three years.²⁹

²⁹) n. p. b. *Risalah: Pembiayaan Peribadi*. page: 5