

**AN ANALYSIS OF THE CLASSICAL AND
CONTEMPORARY JURISTIC OPINIONS ON BAY
AL- DAYN**

Hanudin Amin^{a*}

^a *Labuan School of International Business and Finance, Universiti Malaysia Sabah*

Received: 15 May 2007, Revised: 07 September 2007, Accepted: 11 November 2007

ABSTRACT

This is a peer-reviewed article

The term, *bay al-dayn*, has created an interest amongst the Muslim jurists of classical and contemporary alike. This issue has also driven the force to recognize the importance of *bay al-dayn* pertaining to its meaning, priorities and applications in the banking industry today. Compliance to or otherwise to the principles of *Shariah* is the agenda of this paper entitled “An Analysis of the Classical and Contemporary Juristic Opinions on *bay al-dayn*” which speaks for itself. Some issues will be analyzed in detail and some issues will be discussed in general. Further observations and critical opinions will be offered when necessary.

Keywords: *Bay al-dayn, comparative analysis, Islam, Malaysia*

* Corresponding author: Hanudin Amin Universiti Malaysia Sabah, Labuan International Campus, School of International Business and Finance, Jln. Sg. Pagar, 87000 F.T. Labuan, Malaysia. E-mail: hanudin@ums.edu.my

1. Introduction

Bay al-dayn means the sale of debt. It is a controversial sale contract in many of its application for economic activities because it involves the sale of a subject matter which is considered by most jurists as *ribawi* (*riba*-bearing), i.e., debt is considered as similar to money. Furthermore, some Islamic countries do not practice *bay al-dayn* for reason of *ribawi* (*riba* bearing) which refers to *riba al-buyu* in particular. The rules of *riba al-buyu* entail same denominations should be sold only at par and for cash / on the spot; different denominations can only be sold in spot transactions. In Malaysia, exception by majority's view by way of analogy with "*dha' wa ta' ajjal*" principle, thus, allowing for debts to be sold for a discount. Yet, even for the Malaysian fatwa, which allows the discounting of debts, all sales of debts must still be made in spot transactions.

The reason as to why *bay al-dayn* is considered a controversial issue, some countries practice it and some leave it out without prior improvement taking place. It is worth mentioning here that the principle of *bay al-dayn* is not widely used by other Islamic banks, especially in Middle Eastern countries (Haron and Shanmugam, 2001). In Malaysia, it has been practiced.

Generally speaking, *bay al-dayn* is not widely used as compared to *bay bithaman ajil* and other financial instruments. Relatively, it depends on the benefit and public need of *bay al-dayn* in certain countries. Islamic countries in the Muslim world experienced a difference of opinion on the implementation and adaptation of this sale contract.

2. The meaning of bay al-dayn

Bay al-dayn is an Arabic term for "sale of debt" as originated from two words; *bay'* which means sale, while *dayn* means debt. As far as *bay al-dayn* is concerned, it simply means a sale and purchase transaction of a quality debt (Thani et al., 2003). For instance, the default risk of the debtor is low and the debt must be created from the business transaction that conforms to *Shariah*.

Most fundamentally, the term *bay al-dayn* comprises of two words namely *bay'* (sale) and *dayn* (debt). Moustapha (2001) stated that the word *bay'* (sale) which most of the *fiqh* books defined the word as a contract of exchange between two properties on the basis of ownership of the price and commodity. *Bay al-dayn* is a sale contract similar to other contracts, but differs in its process and application.

To be specific, it can be defined as the sale of debt according to *fuqaha* as a type of a sale contract in which the creditor sells his payable right upon the debtor either to the debtor himself or to a third party (Moustapha, 2001). According to this definition, *bay al-dayn*, in brief, refers to a sale of debt, type or application in its implementation of a sale contract.

Harun and Shanmugam (2001) mentioned that the principle of *bay al-dayn* is used in Malaysia for transactions involving sale and purchase of trade documents such as Bill of Exchange and Bankers Acceptance¹. This principle is similar to the principle of debt purchasing practiced in Iran.

¹ This fact also discussed by Haron alone from his written book entitled *Islamic Banking: Rules & Regulation.*, p.83.

3. The nature of *bay al-dayn*

The selling of debts is to avoid the occurrence of *riba* between two debts and also to avoid any kinds of *gharar* and *makhatarah* which may arise at the level of inability of a buyer from possessing what he has bought as it is not permitted that the buyer sold before actual receipt of the purchased item.

Rosly and Sanusi (1999) based on their references to al-Majallah (34), mentioned that *dayn* defines as the thing due, for instance, the amount of money owed by a certain debtor. So also a sum of money not existing is considered a debt, as also a certain sum of money from thing which exist or present, or from a heap of wheat which is present before it is separated from the mass. *Al-dayn* can be either monetary or a commodity, for instance, food or metal. Based on the aforementioned of *al-dayn* and its literal meaning, *bay al-dayn* is defined as the sale of payable right either to the debtor himself or to any third party. This type of sale is usually for immediate payment or for deferred payment (*al-nasihah*).

4. Classical juristic opinions

4.1. First condition: The sale of debt to the debtor (*bay al-dayn li al madin*)²

First opinion: The sale is allowed and fully permissible. According to the Hanafis, Malikis, Shafi'is and Hanbalis, the creditor has the full right to sell his debt to the debtor at any price he likes as far as the debt raised from the cost of damage, *qard*, price of commodity, cost of services or dowry of a woman. This is also regardless of the type of debt in terms of the confirmation or time stipulation. Thus, it is due to the reason that since the creditor has the full right to waive or annul his debt at any point in time he wants to. Therefore, he also has the same right to sell it to the debtor at any price he may like.

This opinion is based on the *hadith* narrated by Ibn Umar who reported that:

One day he came to see the Prophet (pbuh) and told him: I sell camels in Baqi in *dinars* (debt) and accept *dirhams* (payment), and I sell in *dirhams* (debt) and accept *dinars* (payment). The Prophet said. It is okay, but you should try to accept it at the day price for each before you conclude your contract.

Based on this *hadith*, selling a debt to the debtor is permissible provided that certain conditions are fulfilled. For instance, the sale could not be allowed if the delivery was not possible, but in this sale the delivery of the item to the buyer is not needed. Thus the sale is allowed.

Second opinion: The sale of debt is not allowed. However, according to Zahiris, the sale of debt is not allowed either to the debtor or to a third party. Furthermore, the underlying reason to this matter is accurately the view that the debt should not be sold; it may only be waived. In conjunction with this view, a reference is made to a *hadith* of the Prophet Muhammad s.a.w.:

Do not sell gold for gold except if they are the same, and do not sell silver for silver except if they are same, and do not sell that which is absent for that which

² Moustapha, Sano Koutoub. (2001). *The Sale of Debt as Implemented by the Islamic Financial Institutions in Malaysia*, Kuala Lumpur: IIUM Press., p.44.

is present.

In fact, this *hadith* as mentioned by the Prophet (pbuh) prohibits the selling of debts because the *dayn* will always be an absent one, while its price can either be present or absent. Also, there is another *hadith* in which the Prophet (pbuh) has prohibited the sale of uncertainty (*bay' al-gharar*). The sale of debt is a sale of uncertainty and therefore it is not allowed. The debt is an uncertain right because the debtor may ignore it or he may refuse to settle it. Therefore, selling of the debt should not be permitted. In fact, the matter seems to contain *gharar* elements, which are not allowed in Islamic economic activities. Moreover, Islam stresses that any elements which are not clear to be avoided. The foundation should be clear in order to pursue harmonization in *muamalat*. Umar Ibn Khattab was reported to have prohibited the sale of debts by commodity. The sale of debt to the debtor is not allowed at all, regardless of the type of the debt in terms of its confirmation and time stipulation.

Third opinion: The permissibility of the sale is subject to the type of debt. According to the Hanbali's, the legitimacy of selling a debt to a debtor is subject to the type of debt, meaning that there is a need to differentiate between the two types of debts namely, confirmed and non-confirmed debt. As far as the confirmed debt is concerned, that the creditor has the right to sell it to the debtor and this sale is considered legal and permissible based on the same arguments raised by the other schools. On the other hand, non-confirmed debt such as the cost of a labor or services before completion, dowry of a woman before marital consummation and the capital of *salam* should not be subjected to selling to the debtor. Likewise, this opinion is based on the idea that the creditor does not possess the non-confirmed debt. Thus, it is not allowed.

4.2. Second condition: The sale of debt to a third party (*Bay al-dayn li ghayr al madin*)³

Selling of debt to a third party refers to a sale of debt to a non-debtor at a discount price but normally on spot payment basis. (Moustapha, 2001). Otherwise, it is not valid. This implies that the creditor may not be willing to wait for the due date of the debt and consequently would sell it to a third party at a discount price on cash payment.

First opinion: The sale is not allowed at all. Hanafi's, Shafi'i's (some), Hanbali's and Zahiri's, the debt whether confirmed or non-confirmed, is not allowed to be sold to a third party at all. Moreover, it is forbidden to give it to a non-debtor. The opinion is basically derived from:

- There is a *hadith* of the Prophet (pbuh) which clearly states, "Don't sell what you don't possess".
- It also based on another *hadith* of the Prophet (pbuh) which prohibits selling or giving an item that the seller or giver is unable to deliver to the buyer or given:
 - Don't sell the fish while they are in the water

On the same ground, there is a *hadith*, which states:

- "The Prophet prohibited the sale of a missing slave or the offspring of the offspring"

On logical grounds, this sale should not take place, since it may create a conflict between

³ Moustapha, Sano Koutoub. (2001). *The Sale of Debt as Implemented by the Islamic Financial Institutions in Malaysia*, Kuala Lumpur: IIUM Press., p.49.

the debtor and the buyer of the debt. In other words, the debtor after all may refuse to pay the debt to the new buyer or he may refuse to give it to the person to whom it is given. Therefore, this sale should not be allowed for the benefit of the two contractual parties. In fact, sale based on sale of undeliverable item as well as a sale of not possessed item will not be allowed.

Second opinion: The sale is allowed. According to some Shafi'i's and Hanbali's like Ibn al-Qayyim, the creditor has the right to sell only confirmed debt to the debtor or to a third party. This is based on the grounds that he is allowed to give it to the debtor and to a third party too. This opinion is based on the following arguments:

- i. There is no authentic source that prohibits such kinds of selling or giving. Thus, it should be allowed and permitted;
- ii. Creditor has full right on possession and full right to sell it to a third party; and
- iii. Based on a legal maxim, it is allowed, which states that all transactions are permissible until they are proven non-permissible by an authentic source. So, since there is no authentic source prohibiting this transaction, then, it should be allowed.

Third opinion: The sale is allowed on three conditions. According to some Shafi'i scholars namely al-Shirazi, al-Subki and al-Nawawi, the creditor has the right to sell his *dayn* to a third party as well as to the debtor himself. Nevertheless, this permission is subjected to the following conditions:

- i. The *dayn* must be a spot debt in nature otherwise it will not be allowed;
- ii. The debtor must be a rich person and he has to accept the sale or there must be strong evidence to prove the existence of the debt in case of any denials from the debtor. Otherwise the sale should not take place; and
- iii. The buyer must pay the price of the debt on spot basis otherwise, the sale will be considered as invalid and illegal.

5. Contemporary juristic opinions

Moustapha (2001) stated that the sale of debt should be considered as a legal sale and there is nothing wrong in doing it. However, the following issues have to be taken into consideration:

- i. First: The Islamic financial institutions and banks in the Middle Eastern countries have to review their rejection of the sale of debt. Thus, their arguments are not founded on solid ground at all. Moreover, they need to have more openness towards this vital financial instruments based on the sale of debt;
- ii. Second: Instead of the selective approach (*talfiq*), while attempting to derive the Islamic viewpoint on new transactions and financial instruments, the *maqasidic* approach should be the basis of all rejections or acceptances of these new forms of contracts and transactions;
- iii. Third: The *Shariah* has many objectives behind the permissibility of the investment and financial transactions which are mentioned under three main objectives, namely:

- a. Firstly, it is to ensure the continuity of the growth of wealth in the society. Looking into the lawful transactions and permissible financial activities such as *musharakah*, *murabahah*, *mudarabah*, etc. one will find that Islam does allow these transactions and activities in order to maintain growth and continuous increase of wealth. Therefore, the continuity of their permissibility will depend on their ability to actualize the objective. Moreover, any new financial instrument which will lead towards the actualization of this objective should be allowed and considered a lawful one;
- b. Secondly, it is to enhance the continual distribution of the wealth in the society. It is indeed clear that Islam does recommend many types of transactions and contract of partnership such as *mudarabah*, *mufawadha*, *muzara'ah* and *musharakah*, etc. with the hope that there will be continual distribution of wealth among the society members. Furthermore, the concept of distribution of the heritage meant to strengthen this objective. Thus, through this distribution of wealth will be in many hands. Yet, for the sake of this objective, Islam prohibited the monopolization and negative savings of wealth. It also prohibits usury and all unhealthy transactions leading towards reducing the gap between the poor and the rich. Yet, through this objective, the wealth will not stay in the hands of the rich people only but other people can be rich, meaning that the unfortunate people with skills will have assistance and opportunity leading them to become rich. Accordingly, and new financial instrument or contract leads towards the actualization of this objective should be allowed. Furthermore, the application of any permissible financial transactions or contracts will depend on their ability to achieve this objective; otherwise, they have to be suspended. In other words, if the application of a lawful financial instrument or contract found to be leading towards deepening the gap between the rich and poor it then has to be suspended and corrected. In the same context, lawfulness of a new financial instrument will depend on its distribution to the strength of this objective. A maxim of the Islamic law pertaining to *maslahah* states that what is good is lawful; and what is lawful must be good. Meaning if it is found that through the new instrument this objective can be achieved it must be then allowed and permitted; and
- c. Thirdly, it is to bring happiness and financial stability to the society member. Indeed, the permissibility of different types of transactions and contracts in Islam is meant to bring happiness and financial stability through creating more jobs and activities. All society members should be provided with the means and tools through which they can fulfill and get their basic needs. On this ground, Islam has considered working as a part of obligatory worship that every Muslim has to do. In others words, a Muslim is prohibited from staying without having a job voluntarily. It is forbidden to live at the expense of others. Every Muslim has to struggle in order to gain his basic needs, which will prevent him from mediocre. Accordingly, the financial instruments and activities must lead to create more job opportunity in the society. However, all permissible transactions and contracts should lead to the actualization of this objective. Furthermore, their applications in a society will depend on their ability to achieve this objective. Moreover, any new financial instrument leads to

this objective should be allowed and permitted.

- iv. Fourth: The formation of a sale contract in Islamic law requires the existence of certain essential element such as the offer and acceptance, contacting parties, commodity and price. All these requirements are met in *bay al-dayn* and therefore, it should be allowed;
- v. Fifth: In order to avoid this from becoming bay' al-kali bi al-kali which is prohibited by Islamic law, there is a need to consider certain principles and conditions that some scholars have risen, such as spot payment from the third party. This means that the new contract must be on spot basis and the buyer should not delay the payment. This aspect aims at avoiding ant relationship with the concept of selling the debt for the debt (bay al-kali bi al-kali);
- vi. Sixth: It is time to question and justify the status of the debtor within the second contract, meaning, the debtor should be given the option to buy before any third party is given the option to buy at discount. Of the debtor rends to buy the debt, then he is to be accepted without and conditions. In order words, the debtor should always be informed about the discount of the debt in the hope that he will benefit from it before anybody else does;
- vii. Seventh: It is to clarify here that the schools of Islamic law, which allowed the concept of *bay al-dayn* did not determine whether the creditor must sell his debt at cost price or at discount. This issue was not raised in their discussions at all. Therefore, claiming that *dayn* should not be sold at discount or must be sold ay cost price or at discount needs further justifications and correction. Yet, there will be no reason for the people to buy a forward debt for cash at its cost, meaning that the people will only be interested in buying the forward *dayn* if it is sold at discount;
- viii. Eighth: It is noticeable here that the implementation of the concept of bay al-dayn nowadays is based on the selective approach (*tafiiq*), meaning to say that the Islamic institutions and banks which practice it are doing it on selective basis. This is the case with the Islamic financial institutions in Malaysia, even though some Shafi'i scholars rejected this type of sale. Further, it has been practiced based on the opinion of some other Shafi'is scholars who permit it on the conditions that we mentioned earlier. Through this opinion has been the source of the practice, no full attention is paid to these conditions and requests made by the Shafi'is who allowed it; and
- ix. Ninth: In conclusion, the main objective of these institutions should be totally different from the objectives of the conventional ones. Unless this approach is well received and implemented, the above-mentioned institutions will be in no way different from the conventional ones. Therefore, besides allowing the sale of debt, such sale should not be the focus of Islamic financial institutions and banks, rather, to promote more profit sharing approaches (*mudarabah* and *musharakah*) and to think the ways and means of creating a system in which skilled people with zero capital will be provided with capital. In addition, as highlighted the concept of *bay al-dayn*, notwithstanding its application in Malaysia and its legal status in the school of thought, this issue still needs further investigation and reviewing from time to time.

Thani et al (2003) described that debt buyback price value is set by the issues, secondary trading will mean selling rights of debt to the third party. At this point, *bay al-dayn* at a discount is intensively applied to create liquidity through secondary trading. In a bond

trading, when a debt certificate is securitized, it then becomes a property of the investor or to other party (third party) if a secondary market for Islamic bond exists. Trading of debt certificates in the secondary market is acceptable in Malaysia, but not so in the other Middle-Eastern countries unless the conditions are fulfilled.

Harun (1997) stated that the principle of *bay al-dayn* used in Malaysia is for the transactions involving sale and purchase of trade documents such as Bill of Exchange and Bankers' Acceptance.

Vogel and Hayes (1998) stated that the ban on sale of *dayn* for *dayn* has extensive implications for transactions obligations. Rules prohibit a person owning *dayn* property in the *dhimma* of another (i.e., holding an obligation from another) however arising (from loan, sale, guarantee, liability for damages, etc.) from selling that property (obligation) to a third party, whether or not the payment is made at once or with delay. In prohibiting such sales even for a price in hand, the rule seems to go beyond the maxim. Only the Malikis are lenient in this respect, permitting such sales as long as the debt is not in food, is for a present payment in hand, and does not involve a prohibited *riba*-of-delay exchange (e.g., no exchange of an obligation in gold or silver; allows exchange of an obligation in cotton for present payment in cash).

Ismail Mahayudin (as cited in Moustapha 2001) from Bank Islam (Institute of Research and Training Sdn. Bhd.) defines the sale of debt (*bay al-dayn*) as it is implemented in Malaysia⁴.

Bay al-dayn or debt purchasing is a short-term financing facility whereby the bank purchases the customer's rights to the debt, which is normally securitized as Bill of Exchange known as Islamic Accepted Bill or Green Bas. The purchase price less Bank's charges will be credited into the customer's account. The purchase price of the *al-dayn* will be agreed upon between the customers and the bank. This *al-dayn* may then sell to a third party at a discount.

As a plus point, to make *bay al-dayn* comes into practice, there are certain conditions to fulfill as follows:

The customer would have to be approved a facility for this purpose:

- The *al-dayn* represented by the Bill of Exchange must be to cover a bonafide trade transaction;
- It shall be drawn for a usable period of up to 180 days; and
- It is to be payable on a special future date without days of grace and mature on a day, which is not a holiday in Malaysia.

Taking into consideration all views that have been discussed earlier, the researcher has concluded that *bay al-dayn* can be practice as long as it fulfills the requirement of the *Shariah*. In Malaysia, *bay al-dayn* is used to ensure economic development. Several Islamic countries had debated on the application of *bay al-dayn* and did not agree about

⁴ Moustapha, Sano Koutoub. (2001). *The Sale of Debt as Implemented by the Islamic Financial Institutions in Malaysia*, Kuala Lumpur: IIUM Press., p.14.

it. Thani et al. (2003) supported the legitimacy of the issuance of Malaysian Islamic bonds, which are mainly due to the reason, which render it unacceptable individual Islamic jurists and institutions outside Malaysia and the Middle-Eastern countries. The religion strictly prohibits legal devices to be treated as a justification for transaction that Islam regards it as unfair, unjust and against the Islamic precepts.

6. Evaluation of *bay al-dayn*: Malaysian experiences

6.1. Resolution

On 21st August 1996, The Malaysian Securities Commission *Shariah* Advisory Council passed a resolution unanimously agreed to accept the principle of *bay al-dayn* as one of the concepts for developing Islamic capital market instruments. This was based on the views of some of the Islamic jurists who allowed this concept subject to certain conditions for instance there is a transparent regulatory system in the capital market to safeguard the *maslahah* (public interest) of the market participants.

6.2. Arguments that support the permissibility of *bay al-dayn*

There are arguments among the past and the present jurists on the issue of *bay al-dayn*. Nevertheless, there is no general *nas* or consensus (*ijma'*) prohibits it. In general, majority of the jurists are unanimous in allowing the selling of debts. They only differ in terms of the debt being sold to a third party for reason that the seller may not be able to deliver the sold item to the buyer. The *illah* for some Islamic jurists do not allow *bay al-dayn* is due to the risk faced by the buyer, element of *gharar*, absence of *qabadh*⁵ and *riba*.

6.3. Opinion of the past Islamic jurists

Hanafi Mazhab

The Hanafis are unanimous in not permitting *bay al-dayn* with reason that the debt is in the form of *mal hukmi* (intangible property) and the buyer takes great risk because he cannot own the item bought and the seller can not deliver the item sold.

Maliki Mazhab

The Malikis allow *bay al-dayn* subject to certain conditions as follows:

- Expediting the payment;
- Debtor present at the place of sale;
- Debtor confirms the debt;
- Debtor belongs to the group that is bound by law so that he is able to redeem his debt;
- Payment is not the same type as *dayn*, and it fit so, and the rate should be the same to avoid *riba*;
- The debt cannot be created from the sale of currency (gold and silver) to be delivered in future date;
- The *dayn* should be goods that are saleable even before they are received. This is to ensure that the *dayn* is not of the food type which cannot be traded before *qabadh* occur; and

⁵ Qabadh means the control and ownership of the item bought. It depends a lot on the urf or the normal recognition of the local community.

- There should be no enmity between the buyer and seller, which can create difficulties to the debtor.

Actually, the conditions of Malikis were divided into three as follows:

- To protect the rights of the debt buyer;
- To avoid debt selling before *qabadh*; and
- To avoid *riba*.

Shafi'i Mazhab

The Shafi'i allows the selling of debt to a third party if the *dayn* was *mustaqir* (guaranteed) and was sold in exchange for goods that must be delivered immediately. The debt is sold; it must be paid in cash or tangible assets as agreed.

From the above considerations, the researcher derives that the main issue that surrounds the difference of opinions among the past scholars is centered on the ability to deliver the items sold as stated by Ibnu Taimiyyah and also of the four *mazhab*. In the Malaysian context, the debt securities instrument developed in accordance to the principle of *bay al-dayn* is regulated by the Bank Negara Malaysia and the Security Commission *Shariah* Advisory Council to safeguard the rights of the parties involved. Therefore, the above conditions set by Maliki's and Hanafi's are overcome by the regulation and surveillance that protect the buyer's *masalahah*.

The Securities Commission *Shariah* Advisory Council held that in the context of the sales of securitized debt, the characteristic of securities differentiates it from currency. It is not a legal tender and therefore, it is not bound by the conditions for exchanging of goods. It is not a *ribawi* item as the fifth condition set by Maliki mazhab.

7. Applications

7.1. *Bay al-dayn* as money market instrument

As noted earlier, *bay al-dayn* is defined as the sale of debt. In order to ensure *bay al-dayn* works, there are certain issues to be observed. The debts out of a contract of exchange such as trade financing based on the underlying contracts of *murabahah* or asset sale based on the underlying contract BBA are securitized⁶. These securities are traded in the secondary market. Maturities of these securities range from a short term of 30 days to a longer terms of 200 days. Only securities evidencing bona fide commercial transactions can be traded⁷. *Bay al-dayn* has been accepted in Malaysia. The application of *bay al-dayn* is pertaining to trading instrument, which has contributed to the development of various securitized products and tradable bonds. Due to this, it has provided a wide range of assets for investment purposes.

Money market instruments based on Islamic principles have emerged in competing or complementing the conventional ones. The securitization refers to the creation of tradable or marketable certificates evidencing a debt or indebtedness arising out of financing facilities. It also means putting certain income generating physical assets as a base of, or a guarantee for the issuance of securities that are financial assets. For

⁶ Cited from <http://www.modarabas.com/html/glossary.htm>

⁷ Ibid.

example, if A owes RM5m to Maybank, apart from legal documents, an IOU⁸ would be created as evidence of the debt. The creation of this IOU is referred to as securitization.

7.2. The practice of *bay al-dayn*

According to the table below, the researcher has listed out selected Islamic countries, which offer Islamic Banking and Financing products and services. As noted earlier, *bay al-dayn*, which is one type of *Shariah* compliance Islamic Banking and financing instruments is practiced in Malaysia, while two other countries do not practice it. This *bay al-dayn* is not widely used.

Table 1: Comparative study

Category	Iran	Malaysia	UAE
(A)	Civil partnership, Direct investment <i>Modarabah, Mozarah, Mosaqat.</i>	<i>Al-mudharabah</i> and <i>Al-musyarakah</i>	<i>Mudarabah</i> and <i>Musharakat</i>
(B)	Forward delivery transaction, Installment sales, <i>jo'alah</i> , hire purchase	<i>Al Mudharabah, BBA, Bay al-dayn, Al Ijarah, Al Ijarah thumma al Bai', Al-wakalah, Al-kafalah, Al-hiwalah</i> and <i>Al-ujr</i>	<i>Murabahat</i> and <i>Services charges</i>
(C)	<i>Qard al-hasanah</i> None	<i>Al qardhul Hassan</i> <i>Ar-rahn</i> and <i>Al-wadiyah yad</i>	<i>Qard Hassan</i> None
(D)		<i>dhamanah</i>	

Source: Haron, S. (1997). *Islamic banking: Rules & regulations*, Selangor: Pelanduk Publications., p. 82.

7.3. Islamic bonds on the basis of *bay al-dayn*

The development of Islamic Economy in Malaysia has positively contributed to the application of *bay al-dayn*. Malaysia has championed the application of Islamic securities which is based on the concept of *bay al-dayn*. Even though, *bay al-dayn* is not taking place in other countries, but its potential in Malaysia seems has grown.

7.4. Islamic securities and bonds via the application of *bay al-dayn*

In general, the creation of Islamic securities or bonds involves three main steps, namely:

- Securitization- the creation of *murabahah* and BBA assets;
- Bond issues-issuance of debt certificates; and
- Trading of debt certificates- that is buying and selling of debt certificates in the secondary market using the contract of *bay al-dayn*.

7.5. Islamic accepted bills (IAB) as a liquidity instrument

IAB is a bill of exchange, which is drawn by the Bank and accepted by the purchaser/buyer, thus creating a debt owing to the Bank. Furthermore, the Bank, in turn, may sell the IAB in the secondary market at a discount value under the *bay al-dayn*. Hence, *bay al-dayn* is instrumental in becoming a liquidity instrument and it is

⁸ IOU is an abbreviation for "I owe you" and it is in the form of a legal document.

governed by the principles of *murabahah*⁹ and *bay al-dayn*. An exporter who uses an IBAF¹⁰ prepares the export documents as required under the sale contract or letter of credit. The export documents will be sent to the importer's bank. Additionally, the goods involved must be lawful purpose, genuine transaction between the parties involved and there is adequate documentary evidence and that it is drawn in accordance with the law and requirements of IAB as stated by Central Bank of Malaysia.

7.6. SBPU (*Surat berharga pasar wang*¹¹)

This instrument uses *bay al-dayn* concept for its application. SBPU is based on transaction at future's time in minimum amount that has been determined. Particularly, this kind of application has introduced fund suggestion or cushion that can be used in any conditions that makes it applied.

8. Conclusion

Based on the different views of scholars, regardless classical or contemporary, the point raised is the legitimacy in using *bay al-dayn* in Islamic economic of which it must be *Shariah* compliance. Therefore, *bay al-dayn* should be given due credit to contribute for the Islamic economic particularly in the Islamic banking and finance. To ensure that *bay al-dayn* be practiced widely, there are certain conditions should take place. Firstly, all the Muslim countries especially those in the Middle Eastern should or at least attempt to allow *bay al-dayn* to be undertaken where necessary in transacting economic activities. Secondly, the Muslim world should seriously considered *maqasidic* approach to accept the importance of *bay al-dayn*. Thirdly, the transaction rose by *bay al-dayn* must bound by *Shariah*. Last but not least, the creditor sells his asset either to the debtor or to a third party.

References

- Haron, S. (1997). *Islamic banking: Rules and regulations*. Selangor: Pelanduk.
- Haron, S., & Shanmugam, B. (2001). *Islamic banking system: Concept and application*. Selangor: Pelanduk.
- Moustapha, S.K. (2001). *The sale of debt as implemented by the Islamic financial institutions in Malaysia*. Kuala Lumpur: IIUM Press.
- Rosly, S.A., & Sanusi, M.M. (1999). The application of *bay' al-inah* and *bay' al-dayn* in Malaysian Islamic Bonds: An Islamic analysis. *International Journal of Islamic Financial Services*, 1(2). [On-line]. Available at: <http://www.islamic-finance.net>
- Thani, N. N., Abdullah, M.R.M., & Hassan, M.H. (2003). *Law and practice of Islamic banking and finance*. Petaling Jaya: Thomson Sweet & Maxwell Asia.
- Vogel, F.E., & Hayes, S.L.(1998). *Islamic law and finance*. Netherlands: Kluwer Law International.

⁹ Al-Murabahah means mark-up deferred payment sales (cost plus profit)

¹⁰ IBAF is an abbreviation for Islamic Bankers' Acceptance Facility. For further, see Moustapha (2001). p.30-31.

¹¹ According to the researcher, it is translated as 'Money Market Valid Certificates'.