

Methodology on the Trend of Underlying Shariah Contracts and Legal Disputes of Decided Islamic Banking Cases in Malaysia

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Abstract, The general reflection of certainty and predictability in the decisions of the courts could be traced from the trend of decided Islamic Banking cases itself. Some studies highlighted the trend in decided Islamic Banking cases but not in detail, with a limited scope of discussion and did not cover the current and the latest decided cases. The objective of this paper is to provide a comprehensive analysis on the decided Islamic Banking cases in Malaysia of year 1987 to 2018 in order to find out the trend of underlying Shariah contract and legal disputes. The method employed in this study is the legal research through the analysis decided Islamic Banking cases in Malaysia. This paper highlights the underlying Shariah contracts that attract numerous judicial consideration and legal disputes in different phases of development in Islamic Banking cases. The diversification underlying Shariah contract and the complexity of legal issues could be traced in the more recent decided Islamic Banking cases. Moreover, the findings contribute to the enhancement of disputes resolution outcomes through court process and improvise the Shariah compliance and legal risk management of Islamic Banking Institutions.

Index Terms: Trend, Islamic Banking, Cases, Underlying Shariah Contracts, Legal disputes

I. INTRODUCTION

The rapid growth of Islamic Banking industry in Malaysia is a signal that the industry will expose the economy to the systemic risk if it is not properly controlled. Thus, this industry needs to be regulated to maintain its soundness and the sustainability of its progress. Well-defined strategies are needed focusing on the institutional capacity building and development of a comprehensive supporting financial structure. According to the former Governor of Central Bank of Malaysia, Datuk Zeti Akhtar Aziz, legal infrastructure is one of the main pre-requisites in the Islamic Banking Sector Master Plan 2010 to 2020 (BNM, 2011). Enactment of new Islamic banking law and development of legal talents that are competent in both Shari'ah and Civil Law are the important parts of this process (Mohamad & Trackic, 2012). In addition, the 10-year Financial Blue Print by the Central Bank of Malaysia aims to make the country as a global hub of Islamic Finance that focuses on developing Malaysia as a Centre of Reference (BNM, 2011). This includes the vision to enhance Malaysia's legal system in order to be acknowledged

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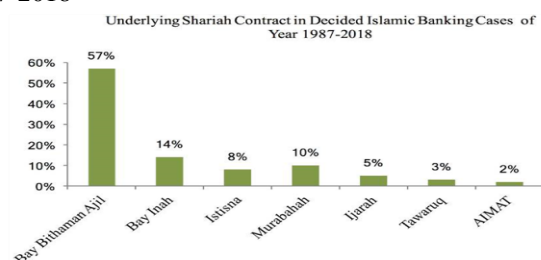
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and adopted for the international Islamic financial transactions. To achieve this, according to Zakaria (2013), it requires among others, a comprehensive legal framework that could promise certainty, predictability, and consistency in the disputes resolution outcomes. Hence, the analysis on decided Islamic Banking cases is one way to come out with the inference and overview on the courts' adjudication of Islamic Banking cases in Malaysia. Notably, from time to time, the Islamic Banking institutions have moved to other new Shariah contracts to facilitate the financing transactions. The milestone of the Shariah contracts for Islamic Banks reveals the new adopted Shariah contracts from year 2009 onwards which include, Tawarruq, Parallel Istisna, Ijarah Mausufah fi Zimmah and others (BIMB, 2013). With the introduction to the new Shariah contracts, it suggests that different trends in Shariah contracts and legal disputes could be traced from decided Islamic Banking cases of year 1987 to 2018.

II. UNDERLYING SHARIAH CONTRACTS IN ISLAMIC BANKING CASES

The overall cases analysed in this study are 63 cases from year 1987 until 2018 of which they are divided into four phases: phase I from 1987-2003, phase II from 2004-2009, phase III from 2010-2012 and phase IV from 2013-2018. The category of the cases based on the Shariah underlying contract has revealed that 36 out of 63 cases deal with the Bai' Bithaman Ajil (BBA) contract. This covers 57% or half of the total cases. This finding is in line with Markom et al. (2013) and Hasan and Asutay (2011) that suggested, most of the decided Islamic Banking cases are related to the BBA contract. The percentage of different underlying Shariah contracts of 63 decided Islamic Banking cases analysed is illustrated in the following Diagram:

Diagram 1: Percentage of Different Underlying Shariah Contract in Decided Islamic Banking Cases of Year 1987-2018



The finding indicates that the BBA contract and Bay' Inah are the two Shariah contracts that attract the most judicial consideration in the court litigation proceeding for Islamic Banking cases. The controversial over these two Shariah contracts have been addressed in many articles (Abdul & Taib, 2009). It is observed from the cases that the disputes over the BBA contract are mainly centred on the Shariah issues.

In the early phases of decided Islamic Banking cases, the Shariah issues of the BBA contract mostly related to whether the Islamic Bank should be allowed to claim the full selling price in the case of early termination due to customers' default. This issue seems to be settled based on the Court of Appeal decision in case of Bank Islam Malaysia Bhd v Lim Kok Hoe & Anor and other appeals (2009) that had granted the claim for the full selling price stipulated in the Property Sale Agreement (PSA) of the BBA contract. But, many still believe that it is unjust to allow the Islamic Banks to collect the "unearned profit" from the unexpired tenure of the financing. In Nurrachimi, Mohamed, & Nazah(2013) mentioned that, in relation to the case of Bank Islam Malaysia Bhd v Lim Kok Hoe & Anor and other appeals (2009), the Court of Appeal Judges had decided in favour of the Islamic Bank in order to portray good image of Islamic Bank to the public and to prevent the injury to the growth of Islamic Banking industry in Malaysia.

However, it is argued that the decision of the court in the case was made based on the Islamic principles that the parties should be bound by the selling price that had been mutually agreed in the PSA. The decision did not in any way give good perception to the Islamic Bank. Many customers had turned away because the Islamic Banking seems to be more oppressive than the Conventional Banking (Mohamad & Trakic, 2013). It is good to note that Bank Negara Malaysia in 2013 has issued the Guidelines on Ibra (Rebate) for sale based financing that requires the Islamic Financial Institutions to grant Ibra/rebate for early settlement of the financing including the cases involving the customers' default as stated under provision 6.1 of the Guidelines (BNM, 2013). By having this guideline, the courts now are able to do justice to the Islamic Banks as well as to the customers (Mohamad & Trakic, 2013).

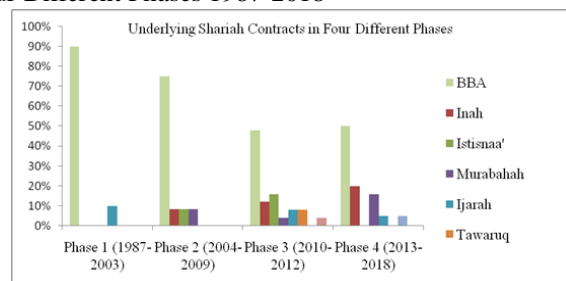
Another issue on the BBA contract in the more recent decided Islamic Banking cases is in relation to the existence of the subject matter of the contract in case of abandoned project. In the case of Pripih Permata Sdn Bhd v Bank Muamalat Malaysia Bhd (2015), the presiding Judge declared that the BBA contract entered by the parties as invalid due to the existence of Gharar Fahishah since there is uncertainty on the existence of the subject matter of contract because the construction of the building project was abandoned thus the court ordered the Islamic Bank in this case to refund the instalments paid by the customer. Although the decision in this case has been criticised due to the absence of any reference made to the SAC on the issue, but many agree that the Islamic Bank acting as the seller in the PSA should take the risk and obligation to ensure the completion of the project and the submission of vacant

possession of the property to the customer (Hilal, Noor, & Shuib, 2017).

Bay' Inah is the second Shariah contract that mostly disputed in Islamic Banking cases. The legal dispute on this contract is mostly on the Shariah issues. Based on the observation of 63 decided Islamic Banking cases, two cases involving the Bay' Inah have been declared by the court as invalid as in the case of Bank Kerjasama Rakyat Malaysia Bhd v MME Realty & Management Sdn Bhd (2018) and FLH LCT Services SdnBhd& Anor v Malaysian Debt Ventures Bhd (2016). In the first case, the Bay' Inah contract was declared as void because the agreement consists the pre-condition to repurchase the asset and in the second case the Bay' Inah contract was invalidated by the judge because of the absence of the underlying asset during the execution of the contract. Although the BBA contract is the highest underlying Shariah contract for Islamic Banking cases in every phase of the analysis, but the concentration of the BBA cases has reduced. In the first phase, of year 1987 to 2003, 90% of the cases analysed are related to the BBA contract. But this percentage has continuously decreased. In the fourth phase of year 2013 to 2018, the percentage of the BBA contract in decided Islamic Banking cases is only 50%. The underlying Shariah contracts in Islamic Banking cases become more diverse in the third and fourth phase and no longer monopolised by the BBA contract. This is mainly due to the action taken by the Islamic Banks that have stopped offering the BBA contract and move to other Shariah contracts like Tawaruq.

In some recent Islamic Bank's report, the division of the financing by Shariah contract has revealed that, over 80% of the underlying Shariah contracts for financing are based on Tawaruq and less than 20% of the underlying Shariah contracts are based on the BBA (Bank Islam, 2017). Although Tawaruq has been in the market since 2005 and currently becomes a phenomenal in the Islamic Banks, there are only two out of 63 decided Islamic Banking cases that deal with this Shariah contract.

Diagram 2: Percentage of Underlying Shariah contract in Islamic Banking cases of Four Different Phases 1987-2018



One of the main points that could be highlighted from the analysis is that over dependency on a particular controversial Shariah contract like the BBA in the past had resulted in higher legal and Shariah-compliance risk. This practice also had exposed the Islamic Banking institutions to the concentration risk when the legality of the Shariah contract from the Islamic perspective

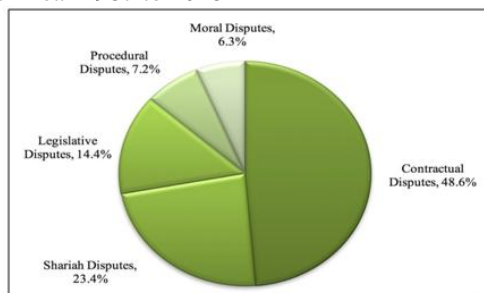


was questioned by the court. However, the Islamic Banking environment today has witnessed the domination of another Shariah contract which is Tawarruq in the financing transactions of Islamic Banking which is not a good indication. Thus, Islamic Banks should be encouraged to diversify the underlying Shariah contracts and minimise the application of controversial Shariah contracts in the financing transactions as a measure for risk mitigation process.

3.0 Legal Disputes in Islamic Banking Cases

According to Hasshan (2017), legal disputes in Islamic Banking could be divided into five main categories which include the contractual disputes, Shariah disputes, legislative disputes, procedural disputes and moral disputes. The finding of the legal issues in the cases that have been analysed are categorised into these five main groups. Through the observation and analysis of 63 decided Islamic Banking cases, it was observed that in many cases, there are more than one legal issues that had been submitted to the courts. The total number of legal issues that has been identified from the analysis of 63 Islamic Banking cases is amounted to 111 legal issues. The percentage of the legal issues that have been categorised based on the nature of the disputes into the five main categories is illustrated in the following diagram:

Diagram 3: Legal Disputes in Decided Islamic Banking Cases of Year 1987 to 2018



3.1 Contractual Disputes

The contractual dispute is initiated mainly due to the breach of contract. In relation to Islamic Banking cases, most of the proceedings were initiated by the Islamic Banks following the breach of the financing contract when the customers defaulted on the instalments. 44 out of 63 cases analysed had named the Islamic Banks as the Plaintiffs that apply from the court either for Summary Judgment or Order for Sale to remedy the customers' default. This finding is in line with Markom et al. (2013) and Hasan and Asutay (2011), that have stated most of the cases in Islamic Banking involve the application for Summary Judgment and Order for Sale. In many cases, the courts granted the Summary Judgment and the Order for Sale to the Islamic Banks due to the failure of the customers to raise any defence or to prove the existence of any cause to contrary.

However, there are also cases initiated by the customer based on the contractual disputes. For example, in case of Tahan Steel Corp Sdn Bhd v Bank Islam Malaysia Bhd (2012) and Kamuja Hartamas Sdn Bhd (formerly known as Aras Suasana Sdn Bhd) v Bank Kerjasama Rakyat Malaysia Bhd (2017). The proceedings of these cases were initiated by the

customers that had challenged the lawful action of the Islamic Bank in terminating the financing contract.

In addition, the contractual disputes also involve the matters under the Specific Relief Act (1950) such as the recession, rectification and specific performance (Hasshan, 2017). In the case of Malayan Banking Berhad v Robiah Binti Endot (2011), the issue of rectification on the profit rates that had been negligently written as 0.85% instead of the actual profit intended by the Islamic Bank of 8.5% was submitted to the court. The customer had been paying the instalments based on 0.85% profit rate for few years and innocently believe that the actually profit rate was 0.85%. The court held that this was a unilateral mistake stemmed from the plaintiff's negligence and refused to grant the order of rectification.

3.2 Shariah Disputes

Through the observation, Shariah disputes are the most common defence raised by the customers against the claims by the Islamic Banks. This is in line with Hasshan (2017) that has stated most of the lawyers acting on behalf of the customers will submit on the Shariah issues to defence the cases. In many cases, the courts held that, the Shariah issues bought by the customers are not of bona fide issues to be trailed. It is unjust for the customers to raise the issue of Shariah non-compliance or illegality of the Shariah contract after benefitting from the financing. The Shariah issues raised were just the afterthought defence or mere allegations without any proof.

However, from the overall 63 cases that have been analysed, there are three cases in which the Islamic financing facilities agreements had been declared as void due to the Shariah disputes raised by the customer which include the case of Pripih Permata Sdn Bhd v Bank Muamalat Malaysia Bhd (2015), FLH LCT Services Sdn Bhd & Anor v Malaysian Debt Ventures Bhd (2016), and Bank Kerjasama Rakyat Malaysia Bhd v MME Realty & Management Sdn Bhd (2018). In these cases, the court found that the agreements are inconsistent with the fundamental Shariah requirements (see appendix 4).

3.3 Legislative Disputes

Legislative disputes are another common issue raised by the customers as defence against the claims by the Islamic Banks. The legislative disputes are related to the contention that the Shariah contracts entered by the parties had breach the statutory or legislative provisions. The judges faced a lot of difficulties to provide the findings and decisions on the legislative disputes raised by the parties in Islamic Banking cases (Hasshan, 2017). In dealing with this issue the courts have to look into the context of the provision and the intention of the legislature as mentioned by the judge in the case of CIMB Islamic Bank Bhd v LCL Corp Bhd & Anor (2015).

From the cases that have been analysed, 16 legal issues have been recognised to fall under the legislative disputes. The example of significant legislative issue raised in



decided Islamic Banking cases including the contention over the constitutionality of s. 56 and s. 57 of the Central Bank of Malaysia Act (2009) as found in the case of Tan Sri Abdul Khalid Ibrahim v Bank Islam (M) Bhd(2011) and Mohd Alias bin Ibrahim v RHB Bank Bhd & Anor (2011). The conflict between the Shariah contract and the National Land Code (1965) also has been submitted to the courts in several cases including the case of Dato' Haji Nik Mahmud Bin Daud v Bank Islam Malaysia Berhad (1996) and Bank Muamalat Malaysia Bhd v Kong Sun Enterprise Sdn Bhd & others (2012). Although in many cases, the courts have stressed on the applicability of the Contract Act (1950) to the Islamic financing, this does not prevent the customers from raising the issue on the conflict of the Shariah contracts and the Contract Act 1950 (see Bank Kerjasama Rakyat Malaysia Berhad v Koperasi Belia Nasional Berhad, 2016) and (Bank Muamalat Malaysia Bhd & Ors v Redha Resources Sdn Bhd & Ors, 2017).

None of the courts' decisions in the cases involving the legislative disputes had agreed on the legislative conflict raised by the parties. Despite looking at the intention of the legislature on the enactment of the provision, the judges appreciate the unique characteristic of Shariah contract and try to construct the findings of the courts on the legislative issue in the perspective of Islamic principles (Bank Muamalat Malaysia Bhd v Kong Sun Enterprise Sdn Bhd & others, 2012).

3.4 Procedural Disputes

Procedural disputes should not be considered lightly. Although the procedural disputes do not affect the merit of the case, there is still possibility that the courts may dismiss the application due to the non-fulfilment of the court procedure (Hasshan, 2017). Despite acknowledging the special characteristic of Islamic Banking facilities, the courts still held that the procedural requirement set by the law should be observed by the parties (Bank Islam Malaysia Berhad v Pasaraya Peladang Sdn Bhd, 2004).

Through the analysis, eight decided Islamic Banking cases had specifically dealt with the procedural issues. The usual procedural issues raised by the parties to Islamic Banking cases is related to the non-compliance of O 83 r 3(3) of the Rules of Court 2012, that is to provide the definite amount claimed including the amount of interest in the application of Summary Judgment or Order for Sale as in the case of Bank Islam Malaysia Berhad v Adnan Bin Omar (1994) and Bank Islam Malaysia Berhad v Pasaraya Peladang Sdn Bhd (2004). In several cases, the judges refused to allow the parties to submit on the issues which were not specifically mentioned in the pleading as in the case of Bank Islam Malaysia Bhd v Aquasix Corp Sdn Bhd & Ors (2014) and Bank Kerjasama Rakyat Malaysia Berhad v Koperasi Belia Nasional Berhad (2016). The court procedure requires the issues to be specifically raised and detailed in the pleadings before it could be submitted in the trial.

3.5 Moral Disputes

Moral disputes are related to the contentions or claims made by the parties based on the allegation of oppressiveness,

excessiveness, fairness, justice, prohibited business conduct and consumer protection (Hasshan, 2017). In civil litigation process, the main consideration of the court is to deal with the legal issues pleaded and not to put any merit on the issue of morality. But in Islamic financial transactions, the issue of morality could not be disregarded since morality is a significant element in Islamic principles. All the matters including the conducts and transactions are guided by the principle of morality such as fairness and justice as mentioned by the judge in the case of Malayan Banking Bhd v Ya'kup bin Oje & Anor (2007). In the case of Amanah Raya Capital v Hairuddin & Ors (2012), the judge had acknowledged the excessiveness of the Plaintiff in charging 6% rate of Tawidh on the customer.

Through the analysis, seven of the legal issues raised in 63 cases fall under the moral disputes. The contention of oppressiveness and excessiveness of Islamic Banks' claim usually interrelated with the Shariah issue on interest submitted to the court, (see Bank Kerjasama Rakyat Malaysia Bhd v Brampton Holdings Sdn Bhd (2015) and Affin Bank Bhd v Zulkifli bin Abdullah (2006). By having section 135 and section 136 of the Islamic Financial Services Act 2013, whereby the Islamic Banks are required to be transparent and fair in their contracts, the financial consumer may have a new ground to specifically claim or bring up the defence based on the issue of morality (Hasshan, 2017).

III. CONCLUSION

Through the analysis on decided Islamic Banking cases in Malaysia, it is interesting to highlight the increased sensitivity, concern and appreciation of the judges especially in dealing with the Shariah issues. The underlying Shariah contracts and the legal issues submitted to the courts in decided Islamic Banking cases have become more diverse and complex. Thus, the judges should be able to attend the issues with adequate knowledge on Islamic principles that govern the Islamic Banking practices, in order to ensure there is no flawed and strange decision. The improvement on these aspects will contribute to certainty, predictability and consistency in the dispute resolution outcomes of Islamic Banking cases through the court litigation proceeding. The readiness of the court to deliberate on the Shariah issues and to invalidate the Islamic Banking contracts due to Shariah non-compliance is an alert to the Islamic Banks to improve the Shariah compliance aspects. In addition, the analysis also reveals different scope of legal issues which include the legislative, procedural, moral disputes and others raised by the customers against the Islamic Bank. Thus, Islamic Banks should pay attention not only to Shariah compliance risk but also on the management of legal risks of the institutions.

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Appendix 1: Analysis of Decided Islamic Banking Cases from 1987-2003

Case	Shariah Contract	Main Legal Disputes
Tinta Press Sdn Bhd v Bank Islam Malaysia Bhd [1987] 2 MLJ 192 Supreme Court	Lease agreement/ijarah	1. Contractual Disputes: This was an appeal brought by the Appellant (Customer) to set aside the mandatory injunction to remove the possession of the leased equipment and the arrears of the rent. The Appellant argued that the agreement signed between the parties was a loan agreement. The Respondent should have filed the claim against the Appellant for defaulting loan rather than the application for repossession of the equipment.
Dato' Haji Nik Mahmud Bin Daud v Bank Islam Malaysia Berhad [1996] 4 MLJ 295 High Court	BBA	1. Legislative Disputes: The Plaintiff contended that the Property Purchase Agreement (PPA hereinafter), the Property Sale Agreement (PSA hereinafter) and the Charge documents were void since the BBA contract contradicted the Kelantan Malay Reservation Enactment 1930 and the NLC (1965) that prohibit the transfer, transmission or vesting of any right or interest of Malay Reservation Land to any Non-Malay.
Bank Islam Malaysia Berhad v Adnan Bin Omar [1994] 3 CLJ 735 High Court	BBA	1. Contractual Disputes: This was an application of Order for Sale following the default of the Defendant (Customer) on the instalments. 2. Procedural Disputes: In defence, the Defendant raised up the issue on the failure of the Plaintiff to comply with O 83 r 3(3), i.e. to provide the definite sum claim including the amount of interest in the contract. 3. Contractual Disputes: The Defendant should be entitled for rebate based on the term agreed in the contract.
Bank Islam Malaysia Berhad v Shamuddin Haji Ahmad [1999] 1 LNS 275 High Court	BBA	1. Contractual Disputes: This was an application of Order for Sale following the default of the Defendant (Customer) on the instalments. 2. Shariah Disputes: The Defendant argued that there was element of interest in the financing granted by the Plaintiff.
Bank Kerjasama Rakyat Malaysia v Nasarwan Samyaloov [2002] 8 CLJ 92 High Court	BBA	1. Contractual Disputes: This was an application of Order for Sale following the default of the Defendant on the instalments. 2. Legislative Disputes: The Defendant argued that the contract in form 16D was contrary to s. 254 (1) of the NLC (1965). The form 16D provides 14 days after the breach for the Plaintiff to issue the Notice of Default and 14 days period for the Defendant to remedy the default. Meanwhile in s. 254 (1) it stipulates the period of 30 days after the default for the Plaintiff to issue the notice.
Bank Kerjasama Rakyat Malaysia v Encim Cosmetics Sdn Bhd [2002] 2 MLJ 408 Court of Appeal	BBA	1. Contractual Disputes: This was an appeal by the Appellant (Islamic Bank) over the High Court decision that dismissed the application of Order for Sale under s. 254 of the NLC (1965) on the ground that the Respondent had already made several payments before application filed by the Appellant.

Appendix 2: Analysis of Decided Islamic Banking Cases from 2004-2009

Case	Shariah Contract	Main Legal Disputes
Tanasee Corporation v Bank Islam Malaysia Bhd [2004] 6 MLJ 1 High Court	Ijarah	1. Contractual Disputes: The Plaintiff argued that the Defendant had wrongfully suspended the disbursement of financing and thus should be prevented / has no right to take any court action against the Plaintiff.
Bank Islam Malaysia Berhad v Pasaraya Peladang Sdn Bhd [2004] 7 MLJ 355 High Court	BBA	1. Contractual Disputes: This was an application of Order for Sale following the default of the Defendant on the instalments. 2. Procedural Disputes: In defence, the Defendant raised up the issue on the failure of the Plaintiff to comply with O 83 r 3(3), i.e. to provide the latest amount claimed in the application (to include the amount of interest).
Anah Malaysian Merchant Bank Bhd v Silver Concept Sdn Bhd [2005] 5 MLJ 210 High Court	BBA	1. Contractual Disputes: This was an application of Order for Sale following the default of the Defendant on the instalments. 2. Shariah and Moral Disputes: The Defendant claimed for a full trial due to the existence of cause to contract based on the contention that: a. The BBA contract was not valid because the contract was against the public policy and consist the element of interest. Thus, the charge initiated into the BBA contract also should be invalid and void. b. The right of the Defendant over rebate had been deprived.
Affin Bank Bhd v Zulkifli bin Abdullah [2006] 3 MLJ 67 High Court	BBA	1. Contractual Disputes: This was an application of Order for Sale following the default of the Defendant on the instalments. 2. Shariah and Moral Disputes: The Defendant argued that, the Plaintiff has no right to claim the profit of the unexpired terms of the facility which seems to be excessive.
Malayan Banking Bhd v Manjiv Hotel Sdn Bhd [2007] 7 MLJ 249 High Court	BBA	1. Contractual Disputes: This was an application of Order for Sale following the default of the Defendant on the instalments. 2. Shariah and Moral Disputes: The Defendant argued that the amount claimed should not be the selling price stated in the PSA. The profit charged for 240 months according to the Defendant was allocated to interest and not profit as claimed by the Plaintiff (the profit of the unexpired terms).
Malayan Banking Bhd v Yip Kai bin Ooi Anor [2007] 6 MLJ 389 High Court	BBA	1. Contractual Disputes: This was an application of Order for Sale following the default of the Defendant on the instalment. 2. Shariah and Moral Disputes: The Defendant argued that the amount claimed in the application was excessive. The issue whether the Plaintiff has the rights to claim for full profit upon early termination was raised.
Arab-Malaysia Finance Bhd v Teman Islam Jaya Sdn Bhd & Ors [Koporan: Seri Kota Bukit] High Court	BBA	1. Contractual Disputes: This was an application of Order for Sale following the default of the Defendant on the instalment. 2. Shariah Disputes:

Case	Shariah Contract	Main Legal Disputes
Koporan: Seri Kota Bukit (third party) [2008] 5 MLJ 431 High Court		2. Shariah Disputes: a. The Defendant argued that there was element of interest in the BBA contract executed between the parties. b. The BBA contract was not a valid contract and against the Islamic principles.
Arab-Malaysia Merchant Bank Bhd v Silver Concept Sdn Bhd [2008] 6 MLJ 295 High Court	BBA	1. Contractual Disputes: This was an application of Order for Sale following the default of the Defendant on the instalments. 2. Shariah Disputes: The Defendant raised the issue on the validity of the BBA. 3. Legislative Disputes: The Plaintiff questioned the court on the effect of s. 16B of the CBA (1958).
Light Style Sdn Bhd v KFHI Tanah House (M) Sdn Bhd [2008] 6 MLJ 175 High Court	Murabah	1. Procedural Disputes: The Plaintiff applied for injunction against the Defendant's winding up petition on the ground that there was serious triable issue in the Plaintiff's case. 2. Legislative Disputes: The Plaintiff claimed that the Murabah contract entered by the parties was in contravention of the BAFPA (1989) and Money Lender Act 1951.
Bank Islam Malaysia Bhd v Lim Kok Hoe & Anor and other appeal [2009] 6 MLJ 839 Court of Appeal	BBA	1. Contractual Disputes: This was an application of Order for Sale following the default of the Defendant on the instalments (High Court). 2. Shariah Disputes: The appeal was brought against the High Court decision that invalidate the BBA contract based on the following reasons: a. The BBA contract was more onerous than the conventional loan. b. There was element of interest in the BBA contract. c. The BBA contract was not accepted by the 4 Malabhas.
Tan Sri Abdul Khalid bin Ibrahim v Bank Islam Malaysia Bhd and another suit [2009] 6 MLJ 416 High Court	BBA	1. Shariah Disputes: The Plaintiff argued that the BBA contract was not a valid contract since it was not a true sale, and it was the same as the Bay' Inah. The Plaintiff also argued that the Defendant was wrong for selling the pledged asset without the consent of the Plaintiff.
Bank Kerjasama Rakyat Malaysia Bhd v Sea Oil Mill (1979) Sdn Bhd & Anor [2009] 2 MLJ 740 Federal Court	Bay' Inah	1. Contractual Disputes: The Plaintiff claimed for Summary Judgment when the Defendant defaulted on instalments and this application was rejected by the High Court based on the issue of licensing. 2. Legislative Disputes: The Plaintiff's appeal to the Federal Court based on the following contentions: a. The Appellant has the authority to offer Islamic Banking facilities. b. The validity of the Shariah contract executed was not affected by the nature of banking business.

Appendix 3: Analysis of Decided Islamic Banking Cases from 2010-2012

Case	Shariah Contract	Main Legal Disputes
Arab-Malaysia Merchant Bank Bhd v Silver Concept Sdn Bhd [2010] 3 MLJ 702 High Court	BBA	1. Contractual Disputes: This was an application of Order for Sale following the default of the Defendant on the instalments. 2. Shariah Disputes: The Defendant contended that the contract entered into by the parties was a loan agreement with fixed interest. Thus, the execution of the contract was against the Islamic principles.
Bank Islam Malaysia Bhd v Robiah Binti Endot and other cases [2010] 1 LNS 192 Court of Appeal	BBA	1. Contractual Disputes: This was an application of Order for Sale following the default of the Defendant on the instalments. The High Court allowed the application of Order for Sale but did not grant the full selling price stipulated in the PSA. 2. Shariah Disputes: The Appellant appealed against the decision of the lower court that disallowed the recovery of the full selling price agreed in the PSA.
Public Bank Berhad v Rahmat Bin Harun [2010] 1 LNS 1523 High Court	BBA	1. Contractual Disputes: The Plaintiff brought an action against the Defendant due to default in the payment of financing. 2. Legislative Disputes: The Defendant argued that the BBA contract executed by the parties was void since the Plaintiff did not have the license to operate the Islamic Banking business.
Malayan Banking Berhad v Robiah Binti Endot [2011] 1 LNS 1499 High Court	Bay' Inah	1. Contractual Disputes: The Plaintiff claimed the mistake on the profit rate mentioned in the agreement and in the offer letter which supposed to be 8.5% instead of 0.85%. The Plaintiff seeks rectification. From the court.
Mohd Alias bin Ibrahim v RHB Bank Bhd & Anor [2011] 3 MLJ 26 High Court	BBA	1. Legislative Disputes: The Plaintiff questioned the constitutionality of s. 56 and s. 57 of the CBMA (2009).
Malayan Banking Berhad v Sen Muka Sdn Bhd & Ors [2011] 1 LNS 647 High Court	BBA and Murabah	1. Contractual Disputes: The Plaintiff brought an action against the Defendant due to default in the payment of financing.
Public Bank Berhad v Dato. Encim Sdn Bhd & Anor [2011] 1 LNS 676 High Court	BBA	1. Contractual Disputes: The Plaintiff brought an action against the Defendant due to default in the payment of financing. 2. Shariah and Moral Disputes: The Defendant in defence to the claim of Summary Judgment by the Plaintiff raised the issue that the calculation of the selling price based on the amortization table was against the concept of finance.
Bank Kerjasama Rakyat Malaysia v Flavio Right Sdn Bhd & Anor [2011] 1 LNS 687 High Court	Bay' Inah	1. Contractual Disputes: The Plaintiff brought an action against the Defendant due to default in the repayment of financing. 2. Procedural Disputes: In defence to the Plaintiff's claim, the Defendant raised the issue that the Plaintiff had

Case	Shariah Contract	Main Legal Disputes
1165 High Court		failed to verify the statement of claim. 3. Contractual Disputes: The Plaintiff had breached the contract after failed to give rebate to the Defendant. 4. Shariah and Moral Disputes: The Plaintiff's claim for Terahid was excessive.
KFH v Adli Padmasa Sdn Bhd [2011] 1 LNS 242 High Court	Tawarruq and ADAMAT	1. Contractual Disputes: This was an application of Order for Sale following the default of the Defendant on the instalments. 2. Shariah Disputes: The Defendant in defence to the Plaintiff's claim raised the issue that the financing facility agreed was contrary to the Islamic principles.
Muhammad Daud Bin Radwan v Amalimank Bank Berhad [2011] 1 LNS 393 High Court	BBA	1. Contractual Disputes: The Plaintiff brought an action against the Defendant due to default in the payment of financing. The Session Court granted the application of Summary Judgment. 2. Procedural Disputes: The Defendant appealed against the Session Court decision on the contention that the Plaintiff had failed to produce any evidence to prove the indebtedness of the Defendant.
Bank Pertanian Malaysia v Mochd Awang Technologies Sdn Bhd [2011] 1 LNS 482 High Court	BBA	1. Contractual Disputes: This was an application for Summary Judgment after the Defendant defaulted in monthly instalments. 2. Contractual Disputes: The Defendant raised the issue of misrepresentation and inducements in the execution of the BBA contract.
Teohlim Bin Malim v Bank Kerjasama Rakyat Malaysia [2011] 1 LNS 994 High Court	BBA	1. Contractual Disputes: The Plaintiff claimed that he has the right to terminate the contract. The Defendant at the first place had breached the BBA contract; when the Defendant continued to pay the developer even there was no progress on the project. The Plaintiff also denied the binding effect of the contract since the project was abandoned.
Public Islamic Bank v Goh Hoek Choo [2011] 1 LNS 994 High Court	Ijarah	1. Contractual Disputes: The Plaintiff applied for Summary Judgment to acquire the full price of the car financed by the Plaintiff from the Defendant. The Plaintiff claimed that the financing contract was not valid since it had involved the transaction of illegal.
Ones Sdn Bhd & Ors v Kuwait Finance Co [2011] 1 LNS 754 High Court	Murabah	1. Procedural Disputes: The Plaintiff applied to the court to restrain the Defendant from continuing with the court action until the Plaintiff's legal suits against the State Government of Kelantan disposed by the court.
Bank Kerjasama Rakyat Malaysia v Fikah Fattah Sdn Bhd & Anor Corporation Ltd [2011] 1 LNS 487 High Court	BBA	1. Contractual Disputes: This was an application for Summary Judgment after the Defendant defaulted on monthly instalments. 2. The Application for Summary Judgment was denied by the Defendant since there was a collateral agreement concluded between the parties to be considered by the court for full trial.
RHB Islamic Bank v Velooth Hotel Sdn Bhd & Ors [2011] 1 LNS 684 High Court	Murabah	1. Contractual Disputes: This was an application for Summary Judgment after the Defendant defaulted on monthly instalments. In defence, the Defendant raised the issue that there was no Murabah contract concluded between the parties.



Methodology on the Trend of Underlying Shariah Contracts and Legal Disputes of Decided Islamic Banking Cases in Malaysia

Case	Shariah Contract	Main Legal Disputes
Tan Sri Abdul Khalid Ibrahim v Bank Islam (M) Bhd [2011] 1 LNS 259 Court of Appeal	BBA	1. Legislative Disputes: The Appellant argued on the constitutionality of s. 56 and s. 57 of the CBMA (2009) which claimed to be contrary to Art. 8 and Art. 74 of the FC.
Tanah Steel Corp Sdn Bhd v Bank Islam Malaysia Bhd [2012] 2 MLJ 114 Court of Appeal	Intinam	1. Contractual Disputes: The High Court had agreed with the Respondent contention that the Appellant had wrongfully terminated the financing contract. The Appellant appeal against the decision and contended that the termination of the financing contract was lawful and valid.
Kepok Holdings Sdn Bhd v Bank Islam Malaysia Bhd [2012] 4 MLJ 337 Court of Appeal	Intinam	1. Contractual Disputes: The Appellant argued that a financing contract was concluded between the parties based on the letter received by the Appellant from the Respondent.
Bank Islam Malaysia Bhd v Adnan bin Md Ali [2012] 5 MLJ 240 High Court	BBA	1. Contractual Disputes: This was an application for Order for Sale following the default of the Defendant on the instalment. 2. Shariah Disputes: In defence, the Defendant argued on the validity of the BBA contract. The subject matter of the contract which was the unit house did not exist during the execution of the BBA contract.
Bank Muamalat Malaysia Bhd v Kong Sun Enterprise Sdn Bhd & others [2012] 10 MLJ 665 High Court	Ijarah	1. Contractual Disputes: This was an application for Summary Judgment after the Defendant had defaulted on monthly instalments. 2. Legislative Disputes: The Defendant argued that the lease agreement executed by the parties was against the provisions in the NLC (1965), and the Contract Act (1950). 3. Shariah Disputes: The Defendant also contended that there will be element of interest if the court allows the claim on total outstanding sum of rental in the early termination of the Ijarah contract.
Amamb Raya Capital v HarrodinOn [2012] 5 CLJ 651 High Court	Bay' Inah	1. Contractual Disputes: This was an application for Summary Judgment after the Defendant had defaulted on monthly instalments. 2. Shariah and Moral Disputes: The Plaintiff had been excessive in charging 6% penalty for the late payment charges (Tarwih). 3. Legislative Disputes: The Plaintiff has no authority to carry out Islamic Banking business.
Bank Islam Malaysia Berhad v Ambar Plastik (M) [2012] 1 LNS 24 High Court	Tawarruq	1. Contractual Disputes: This was an application for summary judgment since the Defendant had defaulted in monthly instalment. 2. In defence to the claim of summary judgment, the Defendant raised the issue that the certificate of indebtedness has failed to detail the calculation of the sum alleged to be due.
Bank Islam Malaysia Bhd v Mustaffa Bin Yusoff Anor [2012] 6 MLJ 252 High Court	Intinam	1. Contractual Disputes: This was an application for Summary Judgment after the Defendant defaulted on monthly instalments. 2. Contractual Disputes: The Defendant raised the issue that the Plaintiff had failed to send any notice before charging the Tarwih, out of the terms stipulated in the Intinam agreement.
Bank Islam Malaysia Bhd v	Intinam	1. Contractual Disputes: This was an application for Summary Judgment after the Defendant defaulted on

Case	Shariah Contract	Main Legal Disputes
Raja Zaidi Corp Sdn Bhd & others [2012] 10 MLJ 454 High Court		monthly instalments. 2. Shariah Disputes: The Defendant argued that the Intinam contract concluded between the parties did not follow the real Islamic principles

Appendix 4: Analysis of Decided Islamic Banking Cases from 2013-2018

Case	Shariah Contract	Main Legal Disputes
Ong Lim Oei v Kuwait Finance House (Malaysia) Bhd [2013] 10 CLJ 126 High Court	Murabahah Tawarruq	1. Legislative Disputes: The Plaintiff contended that the amount claimed in the Bankruptcy notice did not involve the value of interest quantified up to the date when the Bankruptcy Notice was issued to the Defendant which was against s. 3 (1) (g) of the Bankruptcy Act (1967).
Bank Muamalat Malaysia Berhad v Nuzwan Tajudin [2013] 1 LNS 824 High Court	BBA	1. Contractual Disputes: The Plaintiff claimed for Summary Judgment after the Defendant defaulted on the instalments. 2. The Defendant raised the issue of negligence on part of the Plaintiff for: a. Releasing the progressive payment without checking the authenticity of the certificates issued by the architect. b. Fail to secure the status of the developer. c. The Plaintiff action was immature since there was agreement between the Plaintiff and the developer to refund the money if the project was abandoned.
Public Bank Bhd v Mohd Isa Mohd Yusoff [2013] 1 CLJ 274 High Court	BBA	1. Contractual Disputes: The Plaintiff claimed for Summary Judgment after the Defendant defaulted on the instalments. 2. Shariah Disputes: The Defendant argued that the underlying asset was not in existence and still under the construction during the execution of the BBA contract.
Tan Thiam Choo v Kuwait Finance House (Malaysia) Bhd & Another Case [2013] 7 CLJ 404 High Court	Murabahah Tawarruq	1. Legislative Disputes: The Plaintiff contended that the amount claimed did not include the amount of interest quantified up to the date of the Bankruptcy notice issuance which was against s. 3 (1) (g) of Bankruptcy Act.
Bank Islam Malaysia Bhd v Aquas Corp Sdn Bhd & On [2014] 3 MLJ 812 Court of Appeal	Murabahah	1. Contractual Disputes: The Appellant (Islamic Bank) submitted that, there was no conclusion of any contract to the failure on part of the Respondent to fulfill the condition precedent agreed by the parties. 2. Procedural Disputes: The Appellant also argued that the Respondent should not raise the issue which was not pleaded in the Statement of Claim and Statement of Defence.
Meybank Islamic Bhd v Kamardin bin Mohd Nordin [2014] 1 MLJ 685 High Court	BBA	1. Contractual Disputes: The Defendant's customer defaulted on monthly instalments. Therefore the Plaintiff applied for Summary Judgment from the court. 2. Shariah Disputes: The Defendant argued that the sale agreement cum assignment was tainted with uncertainty. The selling price in the agreement was stated as RM487,428.81. But from the monthly payment of the total 300 months, the amount was RM487,500.

Case	Shariah Contract	Main Legal Disputes
Bank Muamalat Malaysia Berhad v Suhaili Abdul Rahman & Anor [2014] 10 CLJ 179 High Court	BBA	3. Legislative Disputes: The Defendant contended that the Plaintiff claim was time barred. 1. Contractual Disputes: The Plaintiff demanded the payment of financing which had been defaulted from the 1st and 2nd Defendants (Guarantors). In defence, the 2nd Defendant raised the issue that he did not read the document when he put his signature on it and thus, the agreement was not valid.
CDIB Islamic Bank Bhd v LCL Corp Bhd & Anor [2015] 3 MLJ 832 High Court	BBA	1. Contractual Disputes: The Defendant defaulted on the repayment of financing. 2. Shariah Disputes: The Defendant questioned the legality of the BBA contract since the same subject matter had been used/ recycled to complete three set of APA and ASA. 3. Legislative Disputes: The Defendant also argued that the BBA contract entered into was against s. 67 of the Companies Act (1965). The subject matter of the sale under the BBA contract was the first Defendant's (Company) own shares.
Bank Pembangunan Malaysia Bhd v Menalin Holdings Sdn Bhd & On [2015] 1 LNS 442 High Court	BBA	1. Contractual Disputes: The Defendant defaulted on repayment of financing. 2. Shariah Disputes: The Defendant argued that there was element of Ghurur because the existence of two agreements i.e. the restructuring agreement and the principle agreement which was not terminated.
Dr. Shamsul Bahar Abdul Kadir v RFB Bank Bhd and another appeal [2015] 4 CLJ 561 Federal Court	BBA	1. Legislative Disputes: The Plaintiff argued that the Bankruptcy proceeding commenced after 6 years from the date of judgment was against s. 1 (1) (i) of Bankruptcy Act (1967) that requires immediate execution of bankruptcy proceeding after judgment has been obtained. The bankruptcy proceeding was also time barred based on s. 6 (3) of the Limitation Act 1951.
Priyah Pemata Sdn Bhd v Bank Muamalat Malaysia Bhd [2015] 6 CLJ 135 High Court	BBA	1. Shariah Disputes: The Plaintiff contended that the BBA contract entered into by the parties was invalid since the construction project was abandoned. The developer in this case has been wound up and the project land was sold. The vacant possession of subject matter (the building under construction) could not be handed over to the Plaintiff.
Bank Keajaiban Rakyat Malaysia Bhd v Brasport Holdings Sdn Bhd [2015] 1 CLJ 655 High Court	BBA	1. Contractual Disputes: The Defendant defaulted on repayment of financing. The Plaintiff applied for Summary Judgment. 2. Shariah and Moral Disputes: The Defendant argued that BBA contract was not a valid Shariah contract because it was tainted with the elements of interest due to excessive outstanding sum claimed by the Plaintiff.
FLHCT Services Sdn Bhd & Anor v Malaysia Debt Ventures Bhd [2015] 1 MLJ 249 Court of Appeal	Bay' Inah	1. Contractual Disputes: The Appellant defaulted in the repayment of financing (High Court). 2. Shariah Disputes: The Appellant argued that the Bay' Inah contract entered by the parties was invalid since the subject matter of the contract did not exist during the execution of the transaction (Court of Appeal).
Cinemas Sdn Bhd v Kuwait Finance House (M) Bhd [2016] 12 MLJ 397	ADMAT	1. Moral Disputes: The Plaintiff argued that the Defendant was not entitled to set off the exit fee from the Plaintiff's account for the early redemption/ settlement of the financing since the amount was not mentioned disclosed in the redemption letter. This was against the Guideline of Transparency and

Case	Shariah Contract	Main Legal Disputes
High Court		Disclosures by the BNM pursuant to s. 135 of the FSA (2013).
Bank Keajaiban Rakyat Malaysia Berhad v Yayasan Baita Nasional Berhad [2016] 1 LNS 995 High Court	Bay' Inah	1. Contractual Disputes: The Defendant defaulted on monthly instalments. 2. Legislative Disputes: The Defendant argued that ASA entered by the parties was against s. 13 of Contract Act (1950) because there was no intention on part of the Defendant to buy the underlying asset. The agreement also had contravened s. 31 and s. 32 of the Sale of Goods Act (1979) since the Plaintiff has no intention to give possession of the underlying asset to the Defendant. 3. Procedural Disputes: The Plaintiff claimed that the Defendant should not be allowed to raise the issues not stipulated in the pleading.
Meybank Islamic Bhd v M40 Pridien Sdn Bhd & Anor [2017] 2 MLJ 69 Court of Appeal	Murabahah	1. Contractual Disputes: The Defendant defaulted on repayment of financing (High Court). 2. Shariah Disputes: The Appellant appealed against the High Court decision that invalidated the Murabahah contract because same asset was used for the principle APA and ASA, and in the second APA and ASA which were executed for restructuring the financing.
Bank Muamalat Malaysia Bhd & On v Rada Resources Sdn Bhd & On [2017] 2 MLJ 686 Court of Appeal	Bay' Inah	1. Contractual Disputes: The Defendant defaulted on repayment of financing (High Court). 2. Shariah Disputes: The Appellant appealed against the High Court decision that invalidated the Bay' Inah contract on the reason that ownership of the underlying asset under the Bay' Inah contract was not passed to the Respondent. 3. Legislative Disputes: The Respondent contended that the transfer of beneficial ownership contradicts the Contract Act (1950).
Kanauk Saranas Sdn Bhd (formerly known as Anor Saranas Sdn Bhd) v Bank Keajaiban Rakyat Malaysia Bhd [2017] 3 MLJ 668 Court of Appeal	BBA	1. Contractual Disputes: The Appellant argued that there was wrongful termination of the bridging facilities.
Adin bin Khalid v Mohamad Najib Inah and other appeals [2017] 6 MLJ 577 Court of Appeal	Ijarah	1. Shariah Disputes: The Appellant appealed against the Summary Judgment granted by the lower court without considering the Shariah issues raised by the Appellant.
Bank Keajaiban Rakyat Malaysia Bhd v M&E Realty & Management Sdn Bhd [2018] 8 MLJ 313 High Court	Bay' Inah	1. Contractual Disputes: The Defendant defaulted on repayment of financing. 2. Shariah Disputes: The Defendant argued that the contract of Bay' Inah was invalid because it consists of a pre-condition to repurchase the underlying asset. Secondly there was erroneous sequence in the conclusion of the Apad which was not aligned with the SAC Resolution.