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BUY FIRST, PAY LATER (BNPL): THE MALAYSIAN ISLAMIC LAW PERSPECTIVE

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Abstract

The recent technological advancement allows various types of contracts to deviate from the normal, traditional way of contracting. Many financial institutions and e-commerce platforms have started introducing many products with the concept of Buy First Pay Later (hereinafter referred to as "BFPL") in order to increase the consumer's purchasing power. Somehow, the question arises as to whether the concept of BFPL is permissible under the context of Islamic Law. Islam has a few rules of contracting which include the prohibition of Riba, Gharar (uncertainty) and Maysir (gambling), the requirement to pay zakat for the individual or the company's gain and many more. Preliminary findings suggest potential conflicts related to Riba and Gharar, requiring further scrutiny of BNPL contracts under Islamic finance principles. Hence, this paper aims to explore whether the BNPL concept aligns with the principles of Islamic Law, particularly in the context of the Malaysian financial regulations. This research employs a qualitative approach through a comprehensive literature review of Islamic texts, contemporary fatwas and Malaysian legal rulings alongside the descriptive analysis of the Shariah principles governing the commercial transactions. This paper focuses on the Malaysian context somehow it provides insights that may be relevant to other jurisdictions practising Islamic finance. This research can also be used as a guideline for future products that might resemble the BNPL mechanism. The research outcome is expected to provide an overview to the policymakers and financial institutions in ensuring that the BNPL product design comply with the Islamic principles while maintaining the consumer protection aspects and legal compliance.

Keywords*: Buy First Pay Later, BNPL, Malaysia, Islamic Law, Contracts*

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BELI DAHULU, BAYAR KEMUDIAN: PERSPEKTIF UNDANG-UNDANG ISLAM DI MALAYSIA

Abstrak

Perkembangan teknologi terkini memungkin pelbagai jenis kontrak yang berbeza daripada cara berkontrak yang normal dan tradisional dibuat. Banyak institusi-institusi kewangan dan platform e-dagang telah mula memperkenalkan pelbagai produk dengan konsep Beli Dahulu Bayar Kemudian (selepas ini dirujuk sebagai "BFPL") untuk meningkatkan kuasa membeli para pengguna. Walaubagaimanapun, timbul persoalan mengenai samaada konsep BFPL dibenarkan di bawah konteks undang-undang Islam. Islam menetapkan beberapa garis panduan untuk berkontrak termasuklah pengharaman Riba, Gharar (ketidakpastian) dan Maysir (perjudian), keperluan membayar zakat bagi keuntungan yang diperoleh individu atau syarikat, dan lain-lain. Kajian awal mencadangkan kemungkinan perkaitan dengan Riba dan gharar yang memerlukan kontrak BNPL diteliti selaras dengan prinsip perbankan Islam. Maka, kajian ini dibuat untuk mengeetahui samaada produk BNPL selari dengan prinsip Undang-Undang Islam, khususnya dalam konteks perundangan kewangan di Malaysia. Kajian ini menggunakan pendekatan kualitatif melalui sorotan kajian literatur ke atas teks Islamik, fatwa kontemporari dan keputusan undang-undang Malaysia bersama analisis deskriptif prinsip-prinsip Syariah yang mengawal selia transaksi komersial. Kajian ini memfokuskan skop kajian hanya kepada konteks Malaysia sahaja tetapi kajian ini juga menyediakan pemahaman dalaman yang mungkin boleh digunakan sebagai rujukan untuk bidangkuasa lain yang menggunakan system perbankan Islam. Kajian ini juga boleh digunakan sebagai garis panduan kepada produk-produk akan dating yang menyerupai mekanisma BNPL. Hasil kajian dianggarkan untuk memberi Gambaran keseluruhan kepada pembuat polisi dan institusi kewangan dalam memastikan produk BNPL mengikut prinsip Islamik dan menjaga aspek perlindungan pengguna dan pematuhan undang-undang.

***Kata Kunci**: Beli Dahulu Bayar Kemudian, BNPL, Malaysia, Undang-Undang Islam, Kontrak*

INTRODUCTION

Technology advancements are making various impossible things possible. From the context of contractual matters, the world especially from the economic perspective has now shifted from traditional face-to-face transactions to mostly online transactions (Karnow, 2021).

One of the recent contractual facilities that is growing in popularity in Malaysia is the facility of Buy Now Pay Later (BNPL) whereby BNPL is defined as a financial technology product introduced in 2018, represents an innovative payment method that allows consumers to make purchases now and pay for them later through instalment plans, without the need for a credit card. The growing trend of online purchases in Malaysia using the BNPL system highlights the significant influence of the internet on consumer behaviour (Nik Azmi *et al.*, 2022). A BNPL scheme is a sub-category of fintech that leverages technological advancements to improve the financial services offered by BNPL credit providers (Zainudin *et al*., 2024). Buy Now, Pay Later (BNPL) services allow retailers and enterprises to provide their consumers with instalment-based payment plans to help them manage their finances (Mukhtar et al.,2023).

The structure of how BNPL works can be summarised in Figure 1 below.

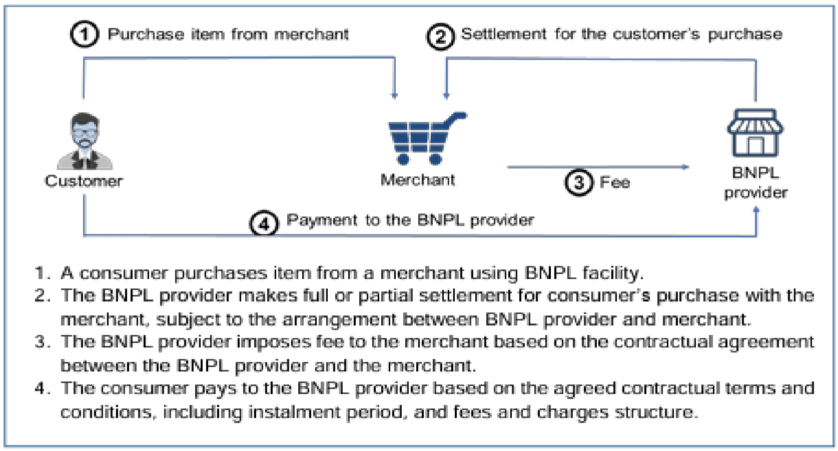

Figure 1: BNPL facility structure
Source: The Shariah Advisory Council of Bank Negara Malaysia (SAC) Ruling on Buy Now Pay Later (BNPL) Facility

BASIS OF PERMISSIBILITY OF BNPL

In January 2024, The Shariah Advisory Council of Bank Negara Malaysia (SAC) Ruling on the Buy Now Pay Later (BNPL) Facility ruled that the facility is permissible on a few bases including the BNPL facility as an evolved form of traditional sale contract with deferred payment (similar root to Bai' Bithaman Ajil), promoting flexibility to structure new innovative products accorded with specific conditions and encouragement towards responsible practices and prudent financial behaviour in line with the maqasid Shariah (Shariah Advisory Council of Bank Negara Malaysia, 2024). The basis of permissibility is highlighted in Figure 2 below.

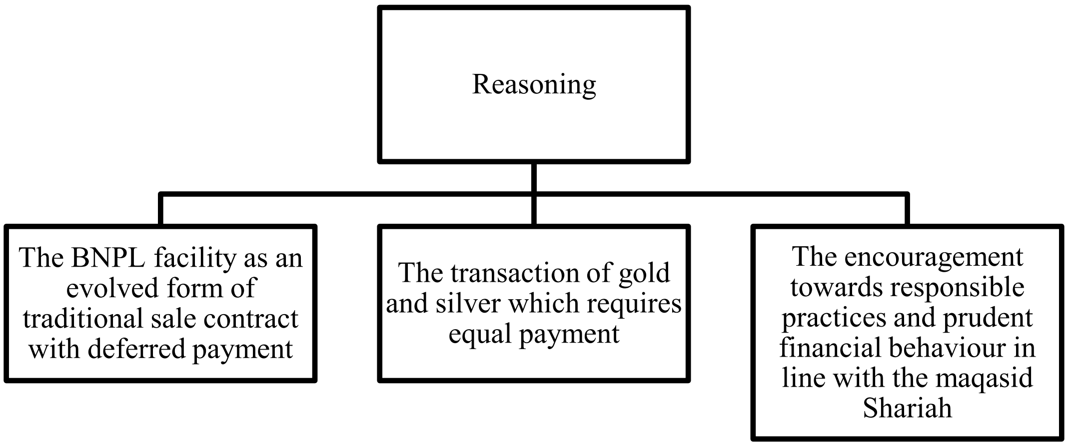

Figure 2: Justification for the permissibility of the Shariah Advisory Council of Bank Negara Malaysia (SAC) Ruling on the Buy Now Pay Later (BNPL) Facility

Somehow, the question arises as to whether the concept of BNPL is permissible according to the values and guidelines provided under Islamic Law.

SHARIAH PRINCIPLES IN COMMERCIAL TRANSACTIONS

Malaysia is one of the largest Islamic Finance hubs in the world (Kok, 2023). Adhering to Shariah principle that emphasises a few rules in transacting is not new. Among the rules of transacting is the prohibition of Riba. In Al-Quran, Ali Imran 3:130 it is stated that

لَعَلَّكُم ٱللَّهَ وَٱتَّقُوا۟ مُّضَـٰعَفَةً ۖ أَضْعَـٰفًا ٱلرِّبَوٰٓا۟ تَأْكُلُوا۟ لَا يَـٰٓأَيُّهَا ٱلَّذِينَءَامَنُوا۟

"O you who have believed, do not consume usury, doubled and multiplied, but fear Allah that you may be successful."

ۖ مِثْلُ ٱلرِّبَوٰا۟ ۗ ذَٰلِكَ بِأَنَّهُمْ قَالُوٓا۟ إِنَّمَا ٱلْبَيْعُ مِنَ ٱلْمَسِّ يَتَخَبَّطُهُ ٱلشَّيْطَـٰنُ لَا يَقُومُونَ إِلَّا كَمَا يَقُومُ ٱلَّذِى يَأْكُلُونَ ٱلرِّبَوٰا۟ ٱلَّذِينَ
ۖ وَمَنْ عَادَ فَأُو۟لَـٰٓئِكَ إِلَى ٱللَّهِ مَا سَلَفَ وَأَمْرُهُۥٓ فَلَهُۥ فَٱنتَهَىٰ مَوْعِظَةٌ مِّن رَّبِّهِۦ ۗ فَمَن جَآءَهُۥ وَحَرَّمَ ٱلرِّبَوٰا۟ ٱلْبَيْعَ وَأَحَلَّ ٱللَّهُ
ۖ هُمْ فِيهَا خَـٰلِدُونَ أَصْحَـٰبُ ٱلنَّارِ

"Those who consume interest will stand on Judgment Day˺ like those driven to madness by Satan's touch. That is because they say, "Trade is no different than interest." But Allah has permitted trading and forbidden interest. Whoever refrains—after having received warning from their Lord—may keep their previous gains, and their case is left to Allah. As for those who persist, it is they who will be the residents of the Fire. They will be there forever."

These are the authorities from Al-Quran that emphasizes the prohibition of Riba in trading and transaction. Aside from Riba, Gharar (uncertainty) is another element that is prohibited in Islamic transactions. According to Siti Salwani Razali, the presence of Gharar in a commercial transaction or the associated contract allows one party to gain materially at the expense of the other.

وَلَا تَأْكُلُوٓاْ أَمْوَٰلَكُم بَيْنَكُم بِٱلْبَٰطِلِ وَتُدْلُواْ بِهَآ إِلَى ٱلْحُكَّامِ لِتَأْكُلُواْ فَرِيقًا مِّنْ أَمْوَٰلِ ٱلنَّاسِ بِٱلْإِثْمِ وَأَنتُمْ تَعْلَمُونَ

"And do not consume one another's wealth unjustly or send it [in bribery] to the rulers so that [they might aid] you [to] consume a portion of the wealth of the people in sin, while you know [it is unlawful]."

MALAYSIA POSITION ON THE SAC RULING

Section 52 of the Central Bank Malaysia Act 2009 emphasizes the function of the Shariah Advisory Council regarding the Islamic Law on financial matters and issues the relevant rulings for Islamic financial business.

The constitutionality and power vested in the Shariah Advisory Council is further affirmed in the case of JRI Resources Sdn Bhd v. Kuwait Finance House (Malaysia) Berhad; President of Association of Islamic Banking Institutions Malaysia & Anor (Interveners) whereby the 2019's judgment of the case involves Ijarah Muntahiah Bitamlik Facilities and a Murabahah Tawarruq Contract Financing facility concerning the leasing of shipping vessels by the respondent to the applicant. The respondent's claim is premised on the applicant's failure to make payment.

Substantial part of the case inclusive of the issuance of letter by SAC ("SAC's Letter") ruling that Clause 2.8 is Shariah compliant and referred its ruling to the High Court. The SAC's ruling determined that:- 3 (a) the owner of the asset (vessel) may delegate the responsibility of the maintenance costs to the lessee; (b) the owner of the asset and the lessee may negotiate and contractually agree as to who is to bear the costs of maintaining the leased assets.

One of the issues tried in the case is whether the ruling of the Shariah Advisory Council under Section 57 of the Central Bank of Malaysia Act 2009 concluded or settled the dispute between parties. The court held that the SAC ruling is constitutional and binding the court.

These statutory provisions and the decision of the court portray that SAC rulings are binding in nature towards the Islamic finance matters in Malaysia.

DISCUSSION

The possibility of Riba and Gharar in the facility of BNPL can be seen in the late payment charges. If the customer opts to pay instalments and there is a late payment interest being imposed on the instalment payment, there is possibly Riba in the facility. Most BNPL transactions often lack a strong Shariah-compliant legal basis, as they typically involve an interest-bearing loan with all related fees tied to the interest in the transaction (Katterbauer *et al.*,2023). Muslim consumers who are aware of Riba principles may be wary of BNPL and avoid using this business model, fearing that they might inadvertently engage in practices that conflict with their religious beliefs (Aji *et al.*, 2023).

Gharar or excessive uncertainty or ambiguity in a contract or transaction on the other hand can be seen in BNPL when the customer is not aware of any hidden charges or penalty upon entering into the transaction. If the terms for late payments are not disclosed, resulting in unforeseen financial obligations, this could be considered Gharar.

From the perspective of the Malaysian legal ruling and the statutory provisions, the judgment and the decision of the case portrayed in the case of JRI Resources Sdn Bhd v. Kuwait Finance House (Malaysia) Berhad; President of Association of Islamic Banking Institutions Malaysia & Anor (Interveners) SAC is established as an authoritative body concerning Shariah issues related to Islamic banking and finance. The rulings made by SAC incorporate the opinions of various Shariah jurists and thus definitely will suit the practicality needed as guidance to be used by the judge in delivering the judgment. Although the ruling of SAC is binding, somehow SAC shall not intervene with the judgments of the case as the judge shall only adopt the ruling in making judgment. The uncertainty created by the non-binding nature of the SAC under the 1958 Act has been resolved with the existence of Sections 56 & 57 of the Central Bank Malaysia Act 2009. This can be seen as one of the steps to empower Islamic Banking in Malaysia.

CONCLUSION

In conclusion, despite BNPL being one of the facilities that is growing in terms of popularity, there is still room for improvement, especially from the context of legal and compliance with the Shariah principles. Even though SAC has stated that the BNPL facilities are permissible in general especially if it complies with the Shariah principle, a vigorous framework and requirement to enhance the system. Islam does not forbid delayed payment for meeting primary, secondary, or tertiary needs, provided that the activities comply with Islamic law, do not harm others, cause negative impacts, or involve wastefulness (Wibowo *et al.*, 2024).

According to the Consumer Credit Oversight Board (CCOB), the Top 3 BNPL financial providers are SPaylater by Shopee, GrabPay from Grab and Atome, which constitute 97% of the BNPL transactions. Shopee has already imposed its policy towards Shariah compliance products whereby the processing fees are in line with the concept of Ujrah and the late payment interest has been changed to a flat rate late charge of RM10. To remain Shariah-compliant, any charges above the actual cost incurred will be donated to a charitable body approved by the Shariah Advisor. This approach taken by the Shopee is one of the applaudable actions towards a more Shariah compliance transaction.

In the future, other BNPL financial providers should consider to tally the products' criteria are in line with the legal and Shariah principles in order to ensure the permissibility of the BNPL product is undoubtable.

DECLARATION

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