

Issues on Interbank Commodity Murabaha (CM) for Liquidity Management in Malaysia

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ABSTRACT

Purpose: The objective of this research is to highlight issues and review the Interbank Commodity Murabahah (CM) practice as a tool of liquidity requirement from both the Shariah and industry's operational perspectives. Accordingly, this study seeks to analyze the structure and mechanism of CM as an instrument to meet the liquidity need of Islamic financial institutions and provides an opportunity for investments. In doing so, the paper seeks to review issues related to Shariah and operations in Islamic banking.

Design/methodology/approach: By interviewing with Treasurers, Shariah Scholars and funding dealers of Islamic banks in Malaysia, the study evaluates reassessment on CM practices and operational issues concerning risk and compliance. The study focuses on the Islamic Treasury Division of Islamic banks in Malaysia.

Findings: The findings of the study suggest that the two most significant issues in Islamic liquidity management of Islamic banks in Malaysia are i) resembling interest ii) nature of tradeability iii) structure of CM iv) the timing the transaction to be completed and v) the real brokerage cost involved in adopting the CM transactions.

Research limitations/implications: The research proposes risk mitigation and enhanced Shariah compliance frameworks such as straight-through processing (STP) and commodity broker's standard guideline for Islamic banks to adopt CM practices.

Practical implications: This study provides direction and guidance to the Islamic Commercial Banks, Commodity Brokers and regulator (BNM) involved in the banking system to reflect upon the importance to understand the issues and limitation of CM. By highlighting the importance of efficiency in terms of time and cost-saving together with Shariah issues, Islamic banks can design policies to enhance efficiency in order to either decide to maintain the adoption of CMP or to consider the proposed alternative.

Social implications: Understanding the Shariah compliance and operational issues will enhance the integrity of Islamic banks, which is consistent with the Key Economic Growth Area of making Malaysia as International Islamic Financial Hub 2.0.

1. Introduction

Financial experts reach a consensus that liquidity is part and parcel of any financial institutions, including Islamic banking institutions.

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Thus, efficient management of liquidity is essential for ease operation of banks, particularly and the economy as a whole. The short-term money market instrument is the liquidity primary provider. Short-term mobilized deposit funds are utilized by Islamic banks and their conventional counterparts to offer long-term loans and fund projects which lead to asset-liability discrepancies, causing vulnerability in terms of liquidity issues (Muttalib, 2014)

Islamic banks in Malaysia in 1997 were relying on Money market funds of Islamic orientation for outflows of deposit upon their failures to offer viable deposit rates because of the deterioration of performance of fixed-rate assets (FRAs) like BBA and AITAB. Islamic based deposits in 1997, dropped by RM200 million (USD55 million), whereas Islamic interbank trading elevated from 176% to RM134 billion (USD 37.2 billion) (Saiful Azhar, 2015).

Resulting from the crises of US subprime in 2007, most banks learned on how to manage liquidity risks which turns out to be challenging for most Islamic banks in Malaysia. It is even more challenging for Islamic banks to manage the liquidity risks compared to their conventional counterparts due to the limited spectrum of investments due to Shariah requirements on the prohibition of interest. Deloitte (2010) asserted that managing liquidity is an old and primary focus of Islamic banks. According to a survey of industry practitioners and leaders of Middle East Islamic Financial Institutions that was conducted in 2010, liquidity ratio was considered as the top priority in the banking industry. A renowned bank run case of Ihlis Finance House in Turkey occurred in 2001 (Rizkiah, 2018). In February 2001, this largest finance house in Turkey became insolvent due to irregular use of funds and was abruptly closed. Occurring at the same time as a macro/financial crisis runs on the other Special Finance Houses (SFHs) erupted, resulting in a sizable loss of deposits in the sector (Starr & Yilmaz, 2007). The same scenario also happened in 2007 to the UK-based Northern Rock bank with 150 years of establishment due to the credit crisis (Saiful Azhar, 2015).

Malaysian banks have also learned from the past from this liquidity crisis, and it was reported that a minimum of 70% Liquidity Coverage Ratio (LCR) requirement issued by BNM is no longer a challenge for most banks including the Islamic ones (MaybankIB, 2015). After Islamic Financial Service Act 2013 (IFSA 2013) was established, Islamic banks in Malaysia were using Commodity Murabahah and Qard as deposit product for liquidity tools in managing their daily liquidity. BNM (2017) also stated that the LCR banking system was at 141% as on 30 June 2017, whereas the Net Stable Funding Ratio (NSFR) system was beyond 100%. Under Basel III requirement, the LCR seeks to ensure that banking institutions hold sufficient high-quality assets (HQLA) to withstand an acute liquidity stress scenario over the 30-day horizon while NSFR, is aimed to ensure banks' survival during the stress period. The banks need stable funding beyond a year. This is seen as highly recommended due to international banks liquidity crisis in the 2007/08 as a result of their heavy reliance on the funding of short-term daily liquidity management (Mahalingam, 2017). BNM in October 2018 has also announced extending the observation period for NSFR for another year to 2020 from 2019 because two Islamic Banks are yet to comply with NSFR requirements where a banking institution shall maintain a minimum NSFR of 100% at all times. This was a second extension which was initially targeted after the target year of 2018, and then an announcement was made for an extension to 2019 (Anas, 2018). Affin Islamic Bank Berhad Malaysia, scored below 100% whereas Bank Islam Malaysia Berhad went above the target of NSFR was beyond 100%. By 1 July 2020, under NSFR policy document, all licensed banks, licensed investment banks and licensed Islamic banks required an NSFR above 100%.

Meanwhile, organized Tawarruq practices worldwide also faced liquidity management issues. Its application in Malaysia by Islamic banks encompasses financing, deposit, capital market and investment. Bank Negara's Shariah's Advisory Council (SAC) declares the permissibility of both organized and reversed Tawarruq practices by Islamic banks in Malaysia.

Commodity Murabahah (CM) or Organized Tawarruq have been adopted as liquidity management tools by Islamic banks in Malaysia. However, despite its dominance, the demand for CM decreased to RM1.848 billion in December 2016 compared to RM8.20 billion in 2015. A significant decrease in percentage from

4% to 1% of the composition of the liquidity instrument of Islamic banks (BNM, 2016). Also, based on BNM statistics from 2011 – 2017, CM still not a dominant product used by Islamic Interbank player compared to other products for their liquidity management. Utilization total transaction volume of CM was at 2% only while other products such Qard usage dominant by 98% as per highlighted in Table 1 (BNM, 2018).

This problem is highlighted from Chart 1 where the volume for CM is found to be lower with a decreasing trend from the period of 2011 - 2017 compared to other products due to operational issues and its limitations on trade-ability of CM (Ali, 2017b). The permissibility of CM contract is a controversial issue among scholars for such a long time. The products like organized Tawarruq, accepted by Shariah Board Members of many banks, are strongly condemned by Shariah academics (Ayub, 2017). Besides, trading in the secondary market is also a concern. Once the commodity is sold or bought on a deferred payment basis, it becomes a debt which is not allowed to be sold unless at par value (Rizkiah, 2018).

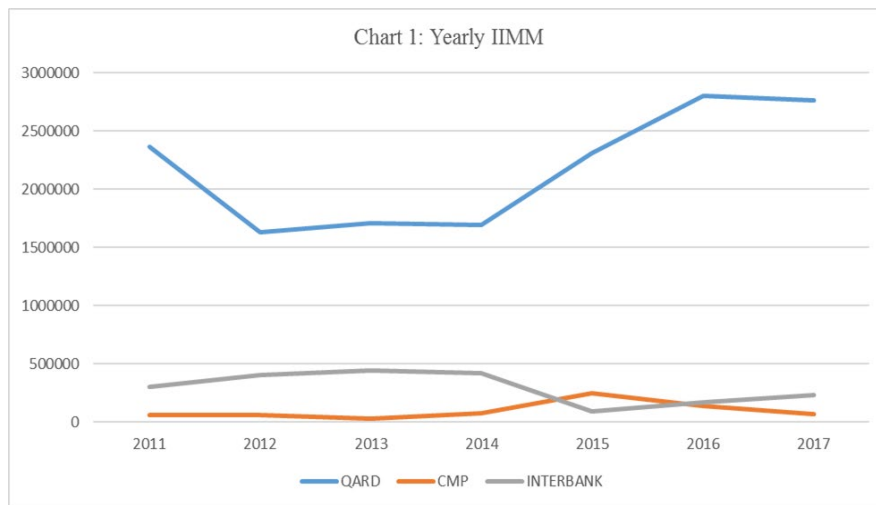


Fig. 1. Yearly Volume for CM compared with other products (BNM, 2018)

Table 1: Islamic Interbank Money Market Transaction Yearly Volume (BNM, 2018)

| YEARS | YEARLY ISLAMIC INTERBANK TRANSACTIONS | | | | | | |
|-----------------|---------------------------------------|------|------|------|------|------|------|
| | VOLUME (%) | | | | | | |
| | 2011 | 2012 | 2013 | 2014 | 2015 | 2016 | 2017 |
| QARD | 72% | 59% | 59% | 60% | 75% | 77% | 80% |
| MURABAHAH (CMP) | 2% | 2% | 1% | 3% | 8% | 4% | 2% |
| INTERBANK | 9% | 14% | 15% | 15% | 3% | 5% | 7% |
| NIDC/INID | 1% | 1% | 2% | 2% | 2% | 1% | 2% |
| CORPORATE SUKUK | 2% | 4% | 3% | 3% | 3% | 3% | 3% |
| MITB | 0% | 0% | 0% | 0% | 0% | 0% | 0% |
| BNNN/BNMN/SBNMI | 7% | 11% | 13% | 11% | 1% | 0% | 0% |
| MGII/SPK | 7% | 8% | 8% | 7% | 8% | 9% | 7% |

SOURCE: BNM

Against the backdrop of declining usage of CMP by Islamic banks, despite its dominance, it is therefore imperative to revisit the issues that Islamic financial institutions face in adopting this liquidity management tool.

Thus this research aims to identify the Interbank Commodity Murabahah (CM)'s limitations and strengths as a tool of liquidity requirement for Malaysian Islamic banks from 2009 to 2018. Secondly, this paper seeks to examine the determinants of CMP usage in the Islamic Interbank Money Market (IIMM) in Malaysia over the last ten years. Accordingly, the paper also seeks to identify sharia compliance and operational risk issues that significantly affect CM usage as a tool for liquidity management.

In assessing the determinants of CMP usage, the paper also seeks to evaluate the operations of the CM, such as the sequencing of purchase and sales of the commodity. Ab Rahman (2014), in his research on Tawarruq application, recommended that the operational process should also be given due attention if Islamic banks are to continue adopting CMP. Accordingly, this paper will also analyze the practices that involve transaction completion timing and real brokerage cost in CM transaction, which in turn will affect the profitability of both the conventional and Islamic banks. In this paper, consistent with studies by Siddiqui (2013) and Ma'aji et al. (2014), we postulate that timing of the transaction and real brokerage costs are the determinants of CMP usage and thus are going to be tested against the usage of CMP. The identification of CM significant determinants and the associated sharia compliance and operational issues will provide a better understanding of the CM continuous implementation by the Islamic banks. This study recommends improvements as well as an alternative if CM is found to be non-feasible for continuous implementation by Islamic banks.

2. Overview of Islamic Liquidity Management

Management of liquidity that is robust and comprehensive enables the fund to be raised to fulfil depositors and borrowers' requirements satisfactorily. Without adequate liquidity, banks usually will face risks such as fiduciary risk, displaced commercial and others which influence the financial stability of banks in general without adequate liquidity. Besides, factors like profit and macro-economic variables show significant coefficients on bank liquidity (Sulaiman, Taquiuddin, & Lukman, 2013).

Islamic and conventional banking systems are similar in the sense that they are both facing the systems of fractional reserve. A run of depositors on both banking systems can potentially lead to a failure in both Islamic and conventional banking systems. However, the development of a new Islamic financial instrument, more significant challenges are faced especially the Sharia concerns, regulatory and tax treatments. Additional risks such as in terms of funds leakages also happening, given that Islamic banks are operating in parallel with the conventional ones (Onal, 2013).

3. Issues in Commodity Murabahah (CM)

3.1 Resembling Interest

Some scholars still argue that Tawarruq or CM resembles interest-based product. In 1998, the traditional Tawarruq was announced permissible by *Majma' Rabitah al-Alam al-Islami* in its 15th session in Makkah in the purview of the vast majority of Jurists and the original rules on the sale contract legitimacy. However, in 2003, *Majma' Rabitah al-Alam al-Islami* announced its stand that the modern Tawarruq is impermissible (Ali & Hassan, 2016). In 2009, the Organisation of Islamic Cooperation (OIC) Fiqh Academy restated the *Majma' Rabithah's* decision in 1998 and 2003 (Ali, 2017b). Table 3 shows the summary of Shariah rulings on the organized Tawarruq by different institutions.

Table 3. Shariah Rulings on Organized Tawarruq.

| ORGANIZATION | SHARIAH RULLING |
|----------------------|---|
| OIC Fiqh Academy | Resolution 179 (19/5) Organized and reverse tawarruq are Impermissible: the practice is deceptive and contains element of riba since the contract requires simultaneous transactions between the financier and the mustawriq, either explicitly or implicitly or based on common practice, in exchange for a financial obligation and for the purpose of receiving quick cash (ISRA, 2013: 4) |
| AAOIFI | Regarding Pre-Arrangement -The commodity must be sold to a party other than the one from whom it was purchased on a deferred-payment basis (third party), to avoid Inah - The commodity should not return-back to the seller by virtue of prior agreement or collusion between the two parties, or according to tradition. Source: AAOIFI, 2010: Standard No. 30, Article 4/5 Regarding agency: 4/7 The client should not delegate the institution or its agent to sell on his behalf a commodity that he purchased from the same institution and similarly, the institution should not accept such a delegation. 4/8 The institution should not arrange a proxy of a third party to sell the commodity on behalf of the client that purchased it from the institution. 4/9 The client should not sell the commodity except by himself or through an agent other than the institution, and should duly observe the other regulations. 4/10 The institution should provide the client with the information that he or his appointed agent may need in order to sell the commodity. Source: AAOIFI, 2010: Standard No. 30, Article 4/7 to 4/10 |
| Bank Negara Malaysia | Agency: G 11.3 The contracting parties in each sale and purchase contract in the tawarruq may enter into the sale and purchase contract through a wakil. Delivery: S 13.9 Possession of the asset shall either be in the form of qabd haqiqi (physical possession) or qabd hukmi (constructive possession). S 13.10 Possession of the asset shall take effect upon takhliyah (the purchaser took possession of the istisna' asset through the release of the asset) through any mechanism permitted by Shariah including `urf tijari (customary business practice). in order for tamkin (the purchaser would have access to the asset) to take place and for the purchaser to assume its ownership risk (Bank Negara Malaysia, 2018: 5 & 7). |

Nevertheless, the issues on permissibility on *Wakalah* and pre-arrangement application for deposit and financing products for Islamic banks were resolved by the Shariah Advisory Council (SAC) of Bank Negara Malaysia in 2005 (Ahmad et al., 2017). The Shariah Advisory Board of Al-Rajhi Bank has also approved the practice of Tawarruq because the clients have full liberty to deal with the purchased asset from the platform. The Kuwait Finance House (KFH) permitted modern Tawarruq but suggested to remove the inclusion of the agency element in the Tawarruq structure to avoid the resembling to "*Riba*". Dubai Islamic Bank (DIB) resolution no 63 approves Tawarruq provided that the arrangement is free from the element of prohibited *al-'Inah*' arising from the involvement of a third party in a financial arrangement. The National Shariah Board of Indonesia Ulema Council (DSN-MUI) also resolved the permissibility of Tawarruq with certain conditions (Ali & Hassan, 2016).

Aljamos et al. (2018) stated that scholars are divided in their interpretations on this matter. Some permit it in terms of the legality of pacts formed on shared consensus and a third party bond which hinder the precluded *al-'Inah*' deal formation. Other scholars need specific requirements for its merit; whereas others

decline the kind of value-based together, viewing it as a trick where Islamic banking institutions offer legal authorization of *Riba* (usury/interest), which is mutually agreed to be impermissible. Khan (2009) stated that the organized and inverted Tawarruq is not permissible because of their few 'tricks' to tempt for immediate cash for more cash afterwards.

Table 4 shows the summary of sequence event of Tawarruq resolutions by Shariah Council in different jurisdictions.

Table 4. Sequence Event Resolution on Tawarruq

| Year | Organization | Resolution |
|------|--|--|
| 1998 | Majma' Rabitah Al-alam Al-islami in its 15th session in Makkah | Resolved that the traditional tawarruq is permissible based on the view of majority jurists and the original ruling on the legitimacy of a sale contract. |
| 2003 | Majma' Rabitah Al-alam Al-islami in its 17th meeting held in Makkah | Clarified its previous stand and ended with the resolution that the modern practice of tawarruq is impermissible due to the issue of fictitious commodity possession and enforcement of wakalah |
| 2005 | Shari'ah Advisory Council of Bank Negara Malaysia (SACBNM) in its 51st meeting, | Resolved the permissibility of tawarruq for deposit and financing products in Islamic banks (IBs). |
| 2007 | The National Shari'ah Board of Indonesia Ulama Council (DSN-MUI) | Resolved the permissibility of tawarruq with certain conditions. |
| 2008 | The Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI) | Issued Shari'ah Standard No. 30 on tawarruq and resolved that the organised tawarruq is permissible subject to certain rules and parameters. AAOIFI, Shari'ah Standards for Islamic Financial Institutions, (Manama: AAOIFI, 2010), 525. 14 |
| | The Shari'ah Advisory Board of Al-Rajhi Bank | Has also approved the practice of tawarruq since the customer has full liberty to deal with the purchased asset from the platform. Al-Rajhi, Fatwa no. 125, 713 and 699. |
| | The Kuwait Finance House (KFH) permitted | Permitted the modern tawarruq, but suggested to remove the inclusion of the agency element in the tawarruq structure as to avoid the resemblant characteristics to riba. KFH, Fatwa no. 131, 820 and 851 |
| | Dubai Islamic Bank (DIB) | Shared the same view with KFH and Al-Rajhi in approving tawarruq, provided that the arrangement is free from the element of prohibited 'inah arising from the involvement of a third party in the financial arrangement. DIB, Resolution no. 63 |
| 2009 | The Organisation of Islamic Cooperation (OIC) Fiqh Academy in its 19th meeting—held in Sharjah, the United Arab Emirates | Reiterated the decision made by majma' rabithah in 1998 and 2003 that the traditional tawarruq is permissible while the current practice of tawarruq is impermissible. DSN MUI, Fatwa no. 82 |

3.2 Nature on trade-ability

Sheikh Mohammad Akram Laldin, a renowned Malaysian scholar and member of BNM Shariah Board, issued a statement that Organized Tawarruq was Shariah-compliant. He did not concur with the GCC scholars who deemed Organized Tawarruq as invalid. Laldin's views were also supported by prominent scholars such as Sheikh Dr Abdul Sattar Abu Ghuddah, Sheikh Mohammad Sa'id Al-Buti and Sheikh Nizam Yaqubi in 2009 as according to them, each sale is valid, and there is no basis for Organized Tawarruq

to be regarded as invalid. In general, a consensus has yet to be reached for many Islamic banks to use Tawarruq in their operations (Aljamros et al., 2018).

Among the Shariah issues on CM is that it is not allowed to be employed in trading for the secondary market. (Olayemi, Hasan, Ibrahim, Buang, & Ansary, 2015). If a deferred payment basis is used to purchase a product, it is considered a debt which is impermissible to be traded unless at par value. Although the permissibility of sale of debt with a discount to a third party is somewhat controversial, Hanafi's, Shafi'i's (some), Hanbali's and Zahiri's school of thought scholars viewed the sale is resembling Riba for payment value is time-bound. CM is least favoured for a liquidity management instrument because it cannot be sold in the secondary market and thus, limits the banks' role to stabilize the liquidity of the Islamic bank. To stabilize the position of bank liquidity (Rizkiah, 2018).

Also, a previous study by Archer & Abdel Karim (2014) found that the main limitation of the CM is its nature of non-trade-ability. When CM contract is used, the sale, based on deferred payment, is considered a debt (account receivable) and thus cannot be traded in the secondary market. Moreover, Tawarruq and Bay' al-'Inah' is considered by many scholars as a forced sale which is forbidden in Islam because of their nature of exploitation. Those who seek liquidity is forced to commit to a prepared contract, and another party who refuses to offer finance sells commodity instead with profit (Dusuki, 2010). There is a difference between al-'Inah' and 'Tawarruq'. While the former refers to the commodity which is returned to its original seller, the latter refers to the commodity which is being sold to a third party. Hence, the latter seems permissible (Ahmad et al., 2017). In Tawarruq transactions, the sale object is not to be returned (resold) to the original owner (first seller); hence, sellers achieve liquidity with no usury involved (Dusuki, 2010).

3.3 Structure of Commodity Murabahah (CM)

Besides the issue of trade-ability, the structure of CM itself has been argued by various scholars such as Sheikh Dr Abdul Sattar Abu Ghuddah and Sheikh Nizam Yaqubi to be regarded Tawarruq as an actual sale. A variety of Shariah principle violations in modern Tawarruq are summarized as follows (Abdul Samad, 2011).

3.3.1 The subject matter of sale

One essential element of the sale transaction is Subject matter which must be a useful commodity comprising all required specification and conditions. The value is subject to its legitimate uses for any invalid sale refers to the sale object, which does not have value or is for illegal purposes. Banks rarely conducts inspecting commodities of CM because the objects are purchased for forming the Shariah-compliant contract as clients and banks are not interested in the commodity, which makes this contract to be a loan with interests from banks to clients. Clients are not able to view the sale object, know it in-depth and ask for the discounted rate. Hence, the motivation is lacking for both parties for no incentive offered and no guarantee that other buyers will buy the same object. Shariah conflict arises where the extent of the validity of the contract is questionable (Abdul Samad, 2011).

Ali (2017b) asserted that defective commodities are often used in Tawarruq transaction. Sheikh Ali al-Qaradaghi revealed that a defective aluminium from Russia was used in Tawarruq transaction because it is undoubtedly not saleable in the market. This, therefore, raises its credibility as a genuinely Shariah-compliant product that can be adopted by Islamic financial institutions.

3.3.2 Possession / delivery

Another essential sale condition is that the subject must be authentic, and the seller must possess it during the transaction. Shariah principle outlines that a seller shall pass the sale object to the buyer or gives the

object without any constraints. A Hadith of Hakeem Ibnu Hizaam stated that "O my brother if you buy something, do not sell it until you take it". Getting a copy of ownership certificate is not sufficient until one gets the right of utilization, shift and assessment.

Nevertheless, currently, the practice of CM raises doubts of whether permission and delivery ever occur for there is no statement in legal documents and the law of the land indicating buyers' intention for delivery. Sometimes, a standard operating procedure (SOP) restrains buyer from taking any delivery. In reality, a Tawarruq transaction is not to obtain the object but to trade the object with cash (Muneeza, Nurul Atiqah Nik Yusuf, & Hassan, 2011). Table 5 highlighted classical and contemporary view on organized Tawarruq.

Hence, banks do not deliver any goods to buyers. Only the client's signature is needed to verify his or her ownership of the goods. Then, the amount of goods is credited to his or her account. This contract type is likened to Riba because a client does not get any object from banks, just the cash. The goods do not change hands between seller and buyer. This so-called "netting arrangement" which have been implemented by London Metal Exchange market, which further verifies that the delivery and possession do not take place (Ali, 2017b)

Table 5. Classical vs Contemporary verdict on Organized Tawarruq (Source: Mohamad, 2014)

| Classical Tawarruq | Organized Tawarruq |
|---|---|
| Classical view Permitted by the majority of scholars due to involvement of third party, which makes the trading permissible and not considered as hilah, regardless of the higher price in deferred sale. Prohibited (or reprehensible) by some scholars due to 'illah of gaining money with money (darahim bi dahirim), which is considered as hilah, regardless of the involvement of third party | Permitted by some scholars under the basis of classical tawarruq, in which each of the transactions, including wakalah, is valid and fulfils the Shariah requirement |
| Contemporary view Same view as the majority of classical fiqh scholars, i.e. permissible due to the involvement of third party, which is not considered as hilah | Prohibited by the majority of scholars due to bank appointment as agent (wakalah) is considered as hilah, whereby the trading transaction is fictitious and unable to fulfil the possession requirement, and has similarity with 'inah. |

The operational realms face a Shariah non-compliance risk of high degree, time-consuming and costly compared to other contracts as mentioned by Mohamad (2014). Furthermore, more prudent risk mitigation is required by Tawarruq for it tends to expose to many activities of Shariah non-compliance (Ali, 2017a). Therefore, it is essential to investigate how Shariah issues affect the usage of CMP in the first part of the thesis.

3.3.3 Views of Accounting and Auditing Organization of Islamic Financial Institutions (AAOIFI)

The AAOIFI, Shariah Standard Number 30 Paragraph 5/1, 2008, asserts that Tawarruq is to be utilized as a last option when a respective bank encounters a shortage of liquidity that affects its sustenance. Commodity (object of Tawarruq) must be sold to a party other than the one from whom it was purchased on a deferred payment basis (a third party) to avoid "*al-Inah*" (AAOIFI Shariah Standard Number 30

Paragraph 4/5). In Malaysia, Organized Tawarruq has been widely used in financing, deposit and hedging products (Ali, 2017).

3.3.4 Prohibition of Interest in Commodity Murabahah

CM involves different parties doing the sale transaction without the goods being physically shifted hands from seller to buyer as required by the Shariah. For instance, buying a motorcycle, the bank makes the purchase from the trader and the bank later sells it to a client on a credit basis. Next, the client appoints the trader to sell the motorcycle. The trader will then sell the motorcycle to a bank. Then, the bank will resell it to another client. This is the cycle of how various documents change hands between the bank, client and trader when the motorcycle remains in its place.

Another familiar tool of liquidity management is CM (based on Tawarruq), yet, some Shariah scholars criticize it because it implicates such dealings that act as a ploy to gain cash (Sheikh Rafiullah & Dr Atiqzafar Khan, 2018).

The above was supported by Sohaib Umar (2016) when he asserted that ISRA-Thomson Reuters Islamic Commercial Law Report views CM as a transaction where the customer or banks sells the goods onward to gain cash when in reality purchasing good is not the intention but obtaining cash. To this effect, goods are just the ploy to gain a monetary objective. The whole transaction is often "arranged" or "organized" by the Islamic banks.

According to (Aljamos et al., 2018), Tawarruq has the elements of *al-Hilah* (trick), and *Shubuhah* (doubt) since for *al-Hilah* reflects *Riba* (usury) and comprises *Shubuhah* (doubt). The verdict from the scholars is yet to be determined. In contrast, Tawarruq brings new debts more than the cash amounts gained. The instruments are detached from the reality of the economy without elevating society's net wealth. This statement is strongly supported (Bouheraoua, 2013) where Tawarruq negatively impacts Islamic Financial Institutions images like a failure in innovating new product, disinclination to be involved in real economic activities, and negative images without adding real value to the economy (Ayub, 2017).

3.3.5 Conventional Banks Dealing

CM is the platform of the transaction between Islamic and conventional banks. The practice of Tawarruq is debatable among Shariah Intellectuals because a sale contract and a loan (*Bay' wa Salaf*) combined in a transaction are prohibited by the Prophet (peace be upon him). In applying the preceding fiqhī findings, if Islamic Financial Institutions uses Qard based Islamic deposit to implement Tawarruq, Shariah is not violated. Islamic banks are implementing their activities using trading. Hence, the needs to perform research is paramount (Ahmad & Ansary, 2017). Mohamad (2014) found that many studies discuss the essential theoretical works, particularly, those areas of concept jurisprudence. Only a few studies such (Dusuki, Ali, & Sandrego, 2013) cover Tawarruq application in the banking commodities as well as their aspects of the operation. Literature is scarce on the operational process, whereas the arrangement of Tawarruq comprises transaction series where the Sharia risk of non-compliance might occur (Ab Rahman, 2014). For example, the sequential procedure in trading and obtaining the goods among the contracting parties through systems and e-certificates which include the *Wakalah* arrangement and *Al-Mustawarriq* involvement in the trading transaction which might trigger the Shariah non-compliance risk.

Dusuki (2007) analyzed the Commodity Murabahah Programme (CMP) for liquidity management purpose. The light of some controversies highlighted the CMP contentious mechanism designed according to a contract of Tawarruq. The study suggested that Islamic banks must channel their efforts to continuously create the more acceptable and workable alternative structure of Shariah concept that can prepare themselves to overcome problems of mismatching their liquidity.

Murabahah contract has no clear framework for Islamic banks. The banking standard regulators are needed to devise a transparent and organized framework for this banking contract type. CM and few Tawarruq forms draw several clerics' criticism who view that the structures fall foul on Islamic concepts. Several Malaysian Bankers views CM concept can be a bogus scheme without any real sale transaction take place and real transfer to form risk upon the purchaser of goods. Hence, Murabahah in Malaysia has yet to mature and devised appropriately by Shariah scholars (Zandi, Mohd. Ariffin, & Shahabi, 2012). BNM had introduced the first Tawarruq Policy Document only in 2015 and revised in 2018, but still, the compliance of each Financial Institutions had their owned interpretation on how to operationalize it.

Mohamad (2014) stated that Tawarruq studies cover fundamental theories focusing on the jurisprudence area, whereas a few analyze the realms of application in the banking industry. Nevertheless, the operational process is not explicitly analyzed and covered in details, and the Shariah non-compliance risk might emerge in the detail transaction.

Because of the diverse view regarding the Tawarruq application around the globe, Islamic Banking Institution should comprehend that Tawarruq arrangement is used according to sharia guiding principles whereas the industry should resume finding the management of liquidity solution. Organized Tawarruq widespread use might damage the industry in the long term because of Shariah conflicts. Several problems arise no physical ownership transfer of the underlying goods in the transaction, two separate prices in a transaction, i.e. for the delivery and non-delivery of the goods (Ahmad et al., 2017)

Based on literature review, most of the issues raised are related to Shariah compliance requirement where CM still having stumbling block at particular jurisdiction as per Table 6 and this needs further analysis whether this issue still relevant in the Malaysian context. Nevertheless, the in-depth operational process is not available in the literature, whereas the Shariah non-compliance risk might exist in the dealings. In general, the CM process well known by the market players but further studies needs to be going into detail on time-consuming in doing the real CM products. As mention, the Islamic Treasurer role is to maximize profit on money surplus daily, but when commodity cost involved, this will possibly create some reluctant of using CM among the Islamic interbank players.

Table 6. Global Distributions of Banks that apply Tawarruq

| Countries | Personal Financing | Corporate Financing | Islamic Banks | Product Type |
|--------------|--------------------|---------------------|---|--------------------|
| Bahrain | Yes | Yes | Kuwait Fiance House Islamic Bank Bahrain | Organized Tawarruq |
| Brunei | Yes | | Bank Islam Brunei | Organized Tawarruq |
| Maldives | No | No | | |
| Nigeria | No | No | | |
| Oman | No | No | | |
| Saudi Arabia | | Yes | National Commercial Bank | Classical Tawarruq |
| Sudan | Yes | | Riya Bank | Classical Tawarruq |
| UAE | Yes | Yes | United Arab Bank | Organized Tawarruq |

Ab Rahman (2014); Mohamad (2014); Ahmad et al. (2017) asserted that Shariah scholars identified the primary issue in the modern organized Tawarruq practice. In short, contemporary scholars permit Classical Tawarruq, whereas most forbid Organized Tawarruq because the issue of legal stratagem, i.e. prohibition essence is like *Bay' al 'Inah'* rule. Table 6 shows the ruling of Shariah ruling for both types of Tawarruq.

3.4 Costs of Commodity Murabahah (CM)

There is an additional cost for Islamic banks when dealing with CM in managing their daily liquidity compared to conventional banks. Ma'aji et al. (2014) in his research paper mentioned the use of goods like metals being traded in the London Metal Exchange (LME) by CM uses whereby the transaction cost of the transaction is likely to be high when using ringgit-based transaction. It involves the substantial cost of commodity brokerage without adding real value whatsoever against the risk-free returns to Islamic and conventional banks involved (Ayub, 2017). RHB Islamic Bank Chief Executive Officer, Khalid Bhaimia offered the best solution is to ascertain a suitable local commodity for trading in Commodity Murabahah which will decrease the cost of transaction considerably and encourage involvement (TMC news, 2006).

This statement reflects the findings of a previous study by Ismail et al. (2016), where the Crude Palm Oil (CPO) stock might not be able to cope with the Islamic bank's needs. Consequently, the introduction of new underlying goods is enforced like condensed milk, telecommunication's airtime and others.

Malaysia has six commodity brokers namely Bursa Suq al Sila' (BURSA), Ableace Raakin Sdn Bhd (ABLEACE), DD & CO Limited (DD Capital), Sedania As-Salam Capital (SASC), Eiger Trading Advisors Ltd (EIGER) and Shoraka Advisers Sdn Bhd (SHORAKA). These companies offer a commodity trading platform with Islamic contracts for markets of Islamic money and capital aiming to act as a platform of multi-commodity and multi-currency, trading Crude Palm Oil (CPO) and other Sharia-compliant goods. The BURSA is an essential component of the Islamic Interbank Money Market. This first globally accepted Sharia-compliant is a platform of commodity-based liquidity management in both local and global banking system. Indeed, it is a commodity trading market (Olayemi et al., 2015).

Base on Table 7 on IIMM statistics, the additional commodity cost for Islamic banks in adopting CM is significantly higher compared to their conventional counterparts.

Table 7. Commodity Cost Incurred By Islamic Banks

| YEARLY ISLAMIC INTERBANK TRANSACTIONS | | | | | | | |
|---------------------------------------|---------------------|---------------------|---------------------|---------------------|---------------------|---------------------|---------------------|
| VOLUME (RM million) | | | | | | | |
| | 2011 | 2012 | 2013 | 2014 | 2015 | 2016 | 2017 |
| QARD | 2,364,646.38 | 1,627,437.00 | 1,710,800.35 | 1,691,752.00 | 2,307,740.00 | 2,800,672.00 | 2,762,559.00 |
| MURABAHAH | 56,874.79 | 55,423.66 | 26,571.86 | 71,827.93 | 244,585.00 | 135,089.50 | 68,155.00 |
| SUB-TOTAL | 2,421,521.17 | 1,682,860.66 | 1,737,372.21 | 1,763,579.93 | 2,552,325.00 | 2,935,761.50 | 2,830,714.00 |
| INTERBANK | 304,515.49 | 399,631.15 | 441,803.25 | 418,582.89 | 90,533.67 | 164,787.93 | 227,448.98 |
| NIDC/INID | 26,832.00 | 32,811.00 | 46,061.00 | 62,381.00 | 61,746.00 | 49,715.00 | 55,752.00 |
| CORPORATE SUKUK | 67,164.79 | 108,092.19 | 92,623.48 | 72,403.69 | 86,721.14 | 125,915.22 | 99,459.91 |
| MITB | 528.16 | 2,341.38 | 2,187.72 | 4,050.70 | 8,157.04 | 7,833.41 | 3,809.30 |
| BNNN/BNMN/SBNMI | 235,734.51 | 312,791.66 | 377,363.33 | 296,012.76 | 43,549.69 | 62.86 | - |
| MGII/SPK | 239,810.04 | 223,068.10 | 226,484.82 | 187,462.61 | 233,767.33 | 334,346.37 | 229,281.85 |
| TOTAL | 3,296,106.16 | 2,761,596.14 | 2,923,895.81 | 2,804,473.58 | 3,076,799.87 | 3,618,422.29 | 3,446,466.04 |
| MURABAHAH COST | RM 853,121.85 | RM 831,354.90 | RM 398,577.90 | RM 1,077,418.95 | RM 3,668,775.00 | RM 2,026,342.50 | RM 1,022,325.00 |
| COST PER MILLION | RM 15.00 | RM 15.00 | RM 15.00 | RM 15.00 | RM 15.00 | RM 15.00 | RM 15.00 |

SOURCE: BNM & BURSA

3.5 Timing

Another issue related to CM, the completion time for Murabahah transaction which generally takes longer hours depending on availability of the commodity and job workload of the traders during the day as most traders need to juggle the liquidity management process for the conventional operation as well. Table 8 shows the same transactions of the real-time of execution for CM with different banks in 2018.

Table 8. Real-Time Taken of Completed CM Transactions

| No | Transaction Date | Bank | Broker | Time Purchase Commodity (Starting Time) | Time Sales Commodity (Ending Time) | Time Taken To Complete |
|----|------------------|------|---------|---|------------------------------------|------------------------|
| 1 | 02/01/2018 | A | ABLEACE | 11:15:52 | 18:17:59 | 7 hours 2 minutes |
| 2 | 03/04/2018 | B | ABLEACE | 12:15:12 | 14:30:41 | 2 hours 15 minutes |
| 3 | 26/04/2018 | C | ABLEACE | 12:32:29 | 20:26:45 | 7 hours 54 minutes |
| 4 | 29/06/2018 | D | ABLEACE | 10:41:51 | 15:28:14 | 4 hours 46 minutes |
| 5 | 17/10/2018 | E | ABLEACE | 10:32:51 | 19:15:28 | 8 hours 42 minutes |
| 6 | 27/11/2018 | F | ABLEACE | 10:00:40 | 17:22:34 | 7 hours 21 minutes |

4. Conclusion and Recommendation

Seeing the nature of the business, liquidity risk is among the top priority concern of the banking industry. The magnitude of the problem is even more significant for Islamic banks as the liquidity management instruments available are limited. Previously, Islamic banks tend to hold more liquid asset than the conventional bank, which impacts severely on its profitability and efficiency. Now, with the advancement and development of the Islamic financial service industry, the infrastructure and tools for liquidity management have evolved rapidly. However, current liquidity instruments are bound to challenges about its sharia issue, inactivity of its secondary market, critical issues on short term issuance and difficulty of cross-border transactions. Several tools have been developed to address this challenge, and Commodity Murabahah (Tawarruq) is a widely used tool but controversial in terms of its Shariah permissibility.

From the discussion, the contemporary Shariah scholar approved the classical Tawarruq. The problem arises on the practical and operational of organized Tawarruq worldwide, including Malaysia. The practised of organized and reversed Tawarruq was authorized from Fatwa given by BNM Shariah Advisory Council in 2005. As a result, Malaysia had been able to develop advanced Tawarruq products in all aspect of banking activities. It is evident in the paper that the modern scholars and practitioners do not dismiss the usage of Tawarruq out-rightly; instead is dismissal due to the many violations of Shariah principle, operational lapse and costly in its modern applications.

Furthermore, the nature of modern organized Tawarruq may not comply with Shariah principles; the reason behind the using CM should be taken into consideration, especially in the situation of real urgency and cases of need. However, proper control should be put in place by Islamic financial institutions (IFI) when applying Tawarruq based instruments. Also, Board Shariah Committee need to monitor all Tawarruq based transaction, including CM strictly. Even if the Tawarruq is adequately executed and Shariah requirements are fulfilled, still an overall impact from the macro perspective is harmful to the entire society and Islamic banking. It is a time for Islamic banks to used straight-through processing (STP) using the system and scrutinizes commodity brokers by having standard practices to mitigate potential non-Shariah

compliance issues. Lastly, in my opinion, the Islamic financial institution should strive hard for a better alternative.

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