The Legal and Regulatory Framework of Ibra' in Islamic Financial Institutions and Islamic Co-Operatives: A Comparative Analysis

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ABSTRACT

Malaysia is leading the global Islamic banking and finance industry with a proper and well-designed legal and regulatory framework for Islamic financial institutions in the area of *Ibra'* (rebate). In addition, Islamic co-operatives are among the providers of some form of Islamic financial service similar to Islamic financial institutions. An Islamic co-operative conducts activities and business based on Shariah principles. Being a non-banking financial institution, the legal and regulatory framework of *Ibra'* for Islamic financial institutions does not apply to Islamic co-operatives. Islamic co-operatives instead have their own legal and regulatory framework of *Ibra'* to address the issue. This article embarks on the qualitative and doctrinal approaches involving library-based research because it reflects the sources that the article analyses and the comparative approach as it compares the legal and regulatory framework of *Ibra'* that is applicable to Islamic financial institutions and Islamic co-operatives. The current legal framework of *Ibra'* indicates that it is applicable in cases of early settlement. It is noteworthy that nearly all of the SKM Guidelines' content reflects that of the BNM Guidelines, but with specific changes to accommodate the co-operative sector's comparatively lenient and adaptable characteristics. Despite efforts to rectify the shortcomings in the SKM Guidelines, they remain imperfect. By emphasising the shortcomings of the SKM Guidelines, regulators can proactively address the issues, and recommendations are proposed to address the limitations.

Keywords: Ibra', rebate, guidelines, Islamic banking, Islamic finance, co-operatives, Islamic co-operatives.

INTRODUCTION

Ibra' (rebate) refers to the voluntary relinquishment or waiver of a right by one party in a contract, specifically the right to claim a debt (Abdul Hamid Mohamad & Adnan Trakic, 2013b). According to Mohamed Fairooz Abdul Khir (2013), this act of waiving financial rights, which are established in another person's liability, results in the release of the other party from their obligation. *Ibra'* is grounded in the principles of fairness, justice, and good faith, which are fundamental to Islamic law. This principle is reflected in primary sources such as the *hadiths* and the *Sirah* of the Prophet Muhammad, who emphasized the virtue of forgiveness and mercy in contractual matters, aligning with the principles of *Ibra'*. For instance, the Prophet's interaction with a Jewish merchant in Medina illustrates the application of this concept (Abdul Hamid Mohamad & Adnan Trakic, 2013a & 2013b). From a jurisprudential perspective, *Ibra'* is linked to the principles of *maslahah* (public interest) and *adl* (justice), serving as a mechanism to prevent injustice and undue hardship, ensuring that the spirit of the law is upheld alongside its letter (Nurlia et al., n.d.).

Prominent Islamic jurists like Imam *Al-Shafi'i* and Imam Malik have provided in-depth jurisprudential analysis of *Ibra'*. The Maliki and Shafi'i schools of Islamic law have distinct interpretations of *Ibra'*. Maliki jurists view *Ibra'* as a transfer of ownership, based on the *hibah* (endowment) principle, while the Shafi'i school emphasizes the dominance of ownership in *Ibra'* and maintains that the creditor can retract the waiver (Auwal Adam Saad & Syed Musa Bin Syed Jaafar Alhabshi, 2019).

In Malaysia, *Ibra'* holds significant importance in the realm of Islamic finance, particularly within the context of Islamic banking institutions. Following the issuance of guidelines by Bank Negara Malaysia (BNM), the provision of *Ibra'* became widely accepted and practiced within the Malaysian Islamic banking sector. *Ibra'* is implemented as a method of reconciliation (*sulh*) between contracting parties, serving as a benevolent contract given at the sole discretion of the creditor without any stipulated conditions. It is often granted by Islamic financial institutions to their customers as a form of rebate in sale-based financing contracts, where customers settle their debts earlier than the agreed-upon financing period.

In addition to Islamic Financial Institutions (IFIs), there are a number of non-banking financial institutions that provide financial services and products based on Shariah principles, including Islamic co-operatives. These co-operatives operate based on the Shariah principle with a focus on the mutuality principle of goodness. However, unlike IFIs, Islamic co-operatives do not have a body like the Shariah Advisory Council (SAC) of BNM to issue guidelines on *Ibra'*. Instead, the Suruhanjaya Koperasi Malaysia (SKM), the regulator of co-operatives in Malaysia, has issued guidelines to harmonize the practices of granting *Ibra'* among the Islamic co-operatives. This article will compare the application of *Ibra'* in both IFIs and Islamic co-operatives based on their respective guidelines.

LITERATURE REVIEW

Ibra' in Islamic Finance

The issue of *Ibra'* in Islamic finance is addressed through the concept of *dha` wa ta`ajjal*, which originated in the credit trade of the Arabs in the sixth century, offers a debtor the option of a debt reduction in exchange for an upfront cash payment (Khan, 2003). The idea of *dha` wa ta`ajjal* was once contentious among Islamic scholars, both ancient and modern. In the end, modern Islamic scholars began to accept *Ibra'* in Islamic financing contracts that are based on sales. Certain scholars permitted *Ibra'* as an exclusive process that is at the seller's (creditor's) discretion (IIFA, 1992). Others mandated that *Ibra'* be conditional and bilateral, with the amount defined at contract inception by a predetermined computation (Bank Negara Malaysia, 2013).

Following the advice of the SAC, BNM adhered to the requirement for a bilateral *Ibra'* in sale-based financing contracts through the inclusion of a pre-specified *Ibra'* clause in the contract at the outset and as proposed by BNM, mandatory pre-specified *Ibra'* estimates could be a justifiable and reasonable request. (Islam Kamal, 2021).

In an arrangement like this, adopting *Ibra'* without taking into account the differences between charitable and sale transactions might give rise to some concerns about usury. Therefore, a distinct differentiation between *Ibra'* treatments in both contracts would help alleviate these worries. The problem of *Ibra'* in charitable and sales contracts is covered in the section that follows.

Unilateral *Ibra'* (Rebate for debts arising from charitable contracts)

The majority of early Islamic jurists rejected the *dha` wa ta`ajjal* idea, making it illegal to give rebates in exchange for paying off debts early without making a distinction between debts arising from loans and debts arising from deferred sales. The argument used to support this ban was that *Ibra'* compensations amounted to accepting the time value of money in loan transactions, which is the same as illegal usury. The majority of primary Islamic jurists previously held that *Ibra'* was prohibited due to it being equivalent to usury, with the similarity that the amount of debt varies over time in both situations. In the case of usury, the debt amount increases with the passage of time. In the case of a rebate, the debt amount decreases as time is being reduced (Ibn Rushd, 2004; Mohamed Fairooz Abdul Khir, 2016; Islam Kamal, 2021).

A minority of early jurists, led by *Ibn Taymiyyah* and *Ibn Qayyim al-Jawziyyah*, permitted rebates generally on the grounds that they did not constitute ordinary usurious transactions. *Dha` wa ta`ajjal* is advantageous to both debtors and creditors, in contrast to regular *riba* (usury) transactions that hurt the debtor for the benefit of the creditor (*Ibn Qayyim al-Jawziyyah*, 2006, pp.3/260-261; Mohamed Fairooz Abdul Khir, 2016; Islam Kamal, 2021).

Current Islamic scholars tend to permit *Ibra'* and its acceptance is further stabilised by the Resolution 64(7/2) of the International Islamic Fiqh Academy (IIFA) in Islamic finance literature that permitted *Ibra'* in the fourth clause of the resolution. Despite that, the following conditions need to be fulfilled before rendering *Ibra'* to be permitted: no previous agreement specifies the amount of the *Ibra'* or mandates it; debtors and creditors have a reciprocal relationship; and third parties are not permitted to intervene (IIFA, 1992; Muhamad Zuhaili Saiman & Ahmad Dahlan Salleh, 2016; Islam Kamal, 2021).

Even though the IIFA resolution primarily addressed instalment sales, the treatment of *Ibra'* involved therein is considered a unilateral one that left the provision of *Ibra'* to the creditor's discretion, that ought to be more suitable for charitable, and not sale contracts (Islam Kamal, 2021).

Bilateral *Ibra'* (Rebate for debts arising from sale contracts)

Two distinguishing characteristics set a bilateral rebate apart from a unilateral rebate. First, in the event of default and early settlement, the seller is bound by it. Second, it involves a time-for-money exchange that is part of the payment deferment (*ajal*) or grace period (Mohamed Fairooz Abdul Khir, 2016; Islam Kamal, 2021). As a result, the creditor (seller) is not free to choose the amount of the rebate that is granted at their sole discretion. Since time value is a major factor in determining price in instalment sales, the bilateral rebate practice makes sense in sale-based financing contracts. It simply represents the difference between the cash price and the instalment price, and it is determined and computed by the seller at the beginning of the contract (Saleem, 2016; Islam Kamal, 2021). It is argued that the time value of money which is permitted and calculated at the contract's inception in sale transactions must also be permitted and measured at any other time during the contract's life as a reasonable practice to protect the interests of all contract parties and remove any ignorance from the contract (Muhamad Zuhaili Saiman & Ahmad Dahlan Salleh, 2016; Islam Kamal, 2021).

In general, *Ibn Qayyim al-Jawziyyah* (2001) accepted *Ibra'*, contending that it protects the interests of both parties involved in the transaction. Despite the view that *Ibra'* should be accepted in all kinds of contracts, *Ibn Qayyim* suggested that, when discussing the problem of *Ibra'*, it could make sense to make a distinction between debts arising from loan contracts and debts resulting from deferred (instalment) sale contracts (*Ibn Qayyim al-Jawziyyah*, 2001).

The SAC of BNM agreed to legalise a bilateral rebate that would be required in the event that debts arising from sale-based financing arrangements were settled early. The SAC decided in its 24th meeting that Islamic banking institutions must incorporate a clause providing *Ibra'* to their clients who make an early settlement in the Islamic financing agreement (Mohd Ab Malek Md Shah et al., 2016; Islam Kamal, 2021). Additionally, BNM presented a demonstration of rebate computation in various scenarios, which was appended to its *Ibra'* guidelines for sales-based financing (Bank Negara Malaysia, 2013).

Most of the literature advocates bilateral rebate in sale-based debts instead of the unilateral rebate which are in accordance with BNM's decision (Saleem 2016; Mohamed Fairooz Abdul Khir, 2016; Islam Kamal, 2021). Mohamed Fairuz Abdul Khir (2016) believed that the bilateral rebate is the most effective and equitable Islamic method of resolving injustice in a number of situations that could affect the bank's liquidity for instances, the early settlement of debt facilities and the early withdrawal of term deposits. Both transacting parties would have their interests equally protected in that way. Nevertheless, the study presented an illustrative case that was heavily influenced by the conventional financing rebate computation facilitated by the conventional loan amortisation practice as if there are no Shariah issues with this practice. Interestingly, Muhammad Shahrul Ifwat Ishak (2019) proposed that the structure of Islamic financial products, which have been heavily impacted by the interest rate used in conventional finance contracts, may be partially responsible for some of the influences of conventional finance on BNM's rebate computation.

Despite bilateral rebates have been included in Islamic financing agreements, there is legal controversy regarding binding conditions at the outset of the agreement due to the fact that the law governing *dha` wa ta`ajjal*, as detailed in the Shafi'i school, which is the fundamental practise in Malaysia, prohibits the setting of rebate conditions at the outset of an agreement other than during the initial settlement (Asyraf Wajdi Dusuki et al., 2010). This creates a problem in the event of a bank default and raises questions for the customer regarding the amount of the rebate they should receive (Muhamad Zuhaili, 2019).

For every customer who settles their financing before the end of the financing tenure, IFIs are required to award *Ibra'*. Additionally, the IFIs are required to grant *Ibra'* on the difference between the profit amount calculated based on the contracted profit rate (CPR) and the profit amount calculated using the effective profit rate (EPR) under the variable rate financing concept (Sherin Kunhibava, 2017). If the profit amount based on EPR is less than the profit amount based on CPR, *Ibra'* must be awarded. Furthermore, IFIs are required to grant *Ibra'* to all current clients who have active financing agreements with them as well as any new clients who sign financing agreements after the effective date (Sherin Kunhibava, 2017).

The variables in the formula for *Ibra'* is as follows:

Ibra' = Deferred profit – Early settlement charges

And,

Settlement amount = Outstanding selling price – *Ibra'* + Late payment charges.

The formula illustrates how the BNM Guidelines now require IFIs to grant *Ibra'* even in default situations. The IFI no longer has discretion on granting *Ibra'*. On the other hand, as the formula indicates, the quantification of *Ibra'* is subject to late payment fees. The formula for determining the settlement amount in default situations takes into account not only the outstanding selling price and *Ibra'* but also late payment penalties. Two conclusions can be drawn from this: first, IFIs argued that in foreclosure situations, they should receive the full purchase price because the rebate that they would provide to the customer would account for late payment penalties; and secondly, the clarification of the guidelines regarding late payment charges allows the Guidelines to mandate that IFIs provide *Ibra'* to defaulting customers (Sherin Kunhibava, 2017). Bank Negara's Guideline on Late Payment Charges for Islamic Banking Institutions, which went into effect on January 1, 2012, has now established the maximum amount that IFIs can charge defaulters for late payments (Sherin Kunhibava, 2017).

Co-operatives in Malaysia

Co-operatives may appear tiny on an individual basis, but their combined power is truly amazing and based on the data in the National Co-operative Policy 2011-2020, the number is increasing annually, which has an impact on the growth of assets and revenues (Muhammad Issyam Itam@Ismail et al., 2016). Over a span of five years, the average annual growth rate of co-operatives is approximately 9.4%. The rise indicates that people in Malaysia now trust co-operatives to help them enhance their social and economic conditions (Muhammad Issyam Itam@Ismail et al., 2016). Moreover, the Ministry of Entrepreneur and Cooperatives Development (MECD) introduced the Malaysian Co-operative Policy 2030 (DaKoM 2030) in 2023 to enhance the role of co-operatives as drivers of economic resilience, prosperity, and their establishment as the preferred business model for socio-economic advancement (Ministry of Entrepreneur and Cooperatives Development, 2025). It was reported that there were 16,284 co-operatives registered nationwide in 2024, and more than 7.2 million individuals were members (Ministry of Entrepreneur and Cooperatives Development, 2025). Co-operatives had a total of RM173.35 billion in assets and RM68.18 billion in revenue which demonstrate the enormous potential of cooperatives as important forces behind the growth of the national economy, which corresponds with the Malaysia Madani vision (Ministry of Entrepreneur and Cooperatives Development, 2025).

Nonetheless, the Malaysian co-operatives face numerous shortcomings. Among them are observed by Muhammad Issyam Itam@Ismail et al. (2016) to be falling behind in terms of skills, knowledge, and technology; failing to investigate new prospects both domestically and abroad; and not participating in high-value, competitive enterprises; significant number of co-operatives are small in terms of membership and capital support; lack networking and synergies among themselves, and have indifferent members. Besides, Siti Maslina Hamzah & Mohd Nor Hakimin Yusoff (2025) found that the Malaysian co-operatives also continue to struggle with governance, digital preparedness, and unequal sustainability integration. In the age of globalisation and digital transformation, addressing these issues is crucial to enhancing Malaysian co-operatives' competitiveness and resilience (Siti Maslina Hamzah & Mohd Nor Hakimin Yusoff, 2025).

Islamic Co-operatives

The "spillover" effect of the Islamic banking and finance sectors may be the reason for emphasising the significance of Shariah compliance in the context of the co-operative's business and operation (Muhammad Issyam Itam@Ismail et al., 2016). Although the phrase "Islamic co-operative" is currently popular, the idea is not new. The Co-operative Institute of Malaysia (CIM), previously known as the Co-operative College of Malaysia (CCM) hosted a seminar in 1978 with the theme "Cooperation in Islamic Society." The seminar concluded that this nation's co-operative system needs to be strengthened to comply with Islamic law (Muhammad Issyam Itam@Ismail et al., 2016). Accordingly, numerous Islamic-oriented co-operatives were founded in various locations, including Koperasi Belia Islam Malaysia and Koperasi Al-Hilal (Kohilal), among others (Muhammad Issyam Itam@Ismail et al., 2016).

Yet, it should be highlighted that being an "Islamic co-operative" does not imply that the organisation is officially recognised as such due to the absence of categorization as an Islamic co-operative during the co-operative's registration. Hence, an "Islamic co-operative" only pertains to a co-operative that operates in accordance with Shariah, emphasising the mutuality principle for goodness (Muhammad Issyam Itam@Ismail et al., 2016).

Malaysian Legislation for the Islamic Co-operative regarding Ibra'

As of right now, the Islamic co-operative is not governed by any particular Act. On the other hand, the Islamic Financial Services Act of 2013 is the specific act that governs Islamic financial institutions in the banking and finance sector. It lays out particular specifications for Islamic banking establishments. In situations where the current regulation may not adhere to Shariah principles or may impede the process of adhering to Shariah, the lack of a specific act or regulation for the Islamic co-operative may give rise to complications (Muhammad Issyam Itam@Ismail et al., 2016).

As the regulator, the Malaysia Co-operative Societies Commission (MCSC) or Suruhanjaya Koperasi Malaysia (SKM) may issue any directives, guidelines, circulars or notices regarding any provision of the co-operatives Act by virtue of section 86B under the Co-operative Societies Act 1993 (CSA 1993) (Malaysia Cooperative Societies Commission, 2025). Among the guidelines that have been produced by SKM is Guidelines on the Granting of *Ibra'* (Rebate) for Islamic Financing Based on Sale Contracts (GP07B) which was implemented on 1st July 2015 to standardize the practice of granting Ibra*'* (rebate) to safeguard the interest of the members and to standardise the financing activities according to the Shariah principle in the co-operative sector (Muhammad Issyam Itam@Ismail et al., 2016).

METHODOLOGY

In the context of this article, the doctrinal research that was done had involved a rigorous analysis of the principles and rules of *Ibra'* as established in Islamic law and the prevalence regulations pertaining to *Ibra'* in Malaysia in view of IFIs and Islamic co-operatives. Additionally, a comparative analysis was done with the aims to make comparisons across *Ibra'* given in products of IFIs and products of Islamic co-operatives. This includes examining the regulatory guidelines for each, the practical implications for customers, and the impact of the jurisprudential perspectives on *Ibra'*. The data for the comparative analysis will be collected from the primary sources *i.e.* guidelines and regulations of IFIs and Islamic co-operatives in Malaysia, as well as from secondary sources *i.e.* academic papers and other relevant literature that discuss the application of *Ibra'* in these institutions and in their products. These data will then undergo qualitative analysis to identify similarities and differences in the application of Ibra' in IFIs and Islamic cooperatives products. The findings from the doctrinal and comparative research will then be reported in a structured and comprehensive manner, providing a clear comparison of *Ibra'* in IFIs and Islamic co-operatives based on their respective guidelines while also discuss the implications of the findings for the future of *Ibra'* in Islamic finance in Malaysia.

FINDINGS AND DISCUSSION

Court Decisions on *Ibra'*

In Bank Islam Malaysia Bhd v Adnan bin Omar [1994] 3 AMR 2291, the court ruled against the defendant, stating that the rebate (*muqassah*) was at the discretion of the bank. Since the loan was not a term loan, there was no question of an early repayment. The plaintiff had the right to terminate the facility and seek full repayment of the loan as the defendant had breached the terms of the agreement in failing to pay the instalments. Notably, the issue in this case revolved around the dissatisfaction of the full amount a customer must pay in the event of default, particularly when compared to a conventional loan of the similar amount and instalment duration. The defendant attempted to invoke the principle of *Ibra'* to decrease the amount but was unsuccessful.

The issue brought to the court in Affin Bank Berhad v Zulkifli Bin Abdullah [2006] 3 MLJ 67 was related to the actual amount that a customer was obligated to pay to the provider of a *Bai' Bithaman Ajil* (BBA) facility in the event of a default, following the payment of RM33,454.19 in instalments. The court held that if a customer is required to pay the profit for the full tenure in a financing arrangement, they are entitled to the benefit of the full tenure. If the customer could be refused tenure while still required to pay the bank's profit margin for the full tenure, it would conflict with his right to the full tenure. The situation implies that the bank could earn a profit twice on the same amount simultaneously by earning the expired tenure of the facility. Additionally, the court acknowledged that charging a profit margin on the unexpired tenure is not actual profit but unearned profits, which contradicts with the principles of BBA. It is evident from the judgement here that *Ibra'* was not mentioned. Nevertheless, by deducting unearned profit, the learned judge was able to lower the amount due.

In Bank Islam Malaysia Berhad v Mohd Azmi bin Mohd Salleh Civil Appeal No W-02-609-2010, the Court of Appeal was of the view that the BBA contracts were valid as the parties willingly entered into them and there are no vitiating circumstances. Consequently, the court would enforce the entire sale price, affirming the bank's right to demand payment of the entire sale price as stipulated in the Property Sale Agreement. The outstanding sale price becomes due and payable upon termination, considering any prior payments made.

The court in the case of CIMB Islamic Bank Bhd v LCL Corporation Bhd & Anor [2011] 7 CLJ 594 addressed a dispute initiated by the bank for the sum owing under a BBA facility. The court acknowledged the letter of offer between the parties wherein it was agreed that the first defendant shall be given the right to make early settlement on the BBA facility, and the plaintiff shall be entitled to grant *Ibra'* and the plaintiff's calculation of *Ibra'* shall be final and binding. It was additionally agreed that the first defendant must provide the plaintiff three days' notice to be eligible for an early settlement based on the selling price, and that the early settlement must be made on a day when profits are paid. In the event that the notification is given in less than three days, the plaintiff will have the right to a lower *Ibra'*. The judge in this case ruled in favour of the bank where the first defendant, despite having the option for voluntary early settlement mentioned in the offer letter, did not make any effort to settle the outstanding amount on the BBA facility before the end of the tenure.

Essentially, court decisions involving *Ibra'* have witnessed a transformation over the years, reflecting factors such as customer's default resulting in breach of agreement and the general principles of equity and justice. The SAC resolutions have further shaped this evolution (Sherin Kunhibava, 2017). Notably, all cases mentioned above have been decided prior to November 1, 2011, the effective date of the BNM Guidelines on *Ibra'* (Rebate) for Sale-Based Financing (BNM Guidelines). Given the absence of the BNM Guidelines that would have provided clarification, the court's interpretation on early settlement excludes default situations and that *Ibra'* is only be granted at the banks' discretion. The existing legal position on *Ibra'* stipulates that it is granted in instances of early settlement. However, it does not extend to default cases and the decision to grant *Ibra'* and the determination of its amount is within the discretion of the bank (Abdul Hamid Mohamad & Adnan Trakic, 2013a).

BNM Guidelines on *Ibra'* (Rebate) for Sale-Based Financing

In 2011, the BNM introduced the BNM Guidelines aimed to address two key issues. Firstly, whether customers in default of their financing were entitled to *Ibra'* or if it was discretionary on the part of the IFIs and secondly,

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to establish a formula for the calculation of *Ibra'* (Sherin Kunhibava, 2017). The SAC played a significant role in addressing these concerns by issuing resolutions in the year of 2000, 2003, 2006, 2002 and 2011, which ultimately led to the issuance of the guidelines by BNM (Abdul Hamid Mohamad & Adnan Trakic, 2013a & 2013b). Essentially, the BNM Guidelines outline the requirement for applying and implementing *Ibra'*, specifying conditions for the granting and incorporating of an *Ibra'* clause in financing documents, and stipulating calculation and disclosure requirements (Bank Negara Malaysia, 2013).

The BNM Guidelines are applicable to Islamic banks licensed under the Islamic Banking Act 1983 (IBA 1983), banks licensed under the Banking and Financial Institutions Act 1989 (BAFIA 1989) engaged in Islamic banking, development financial institutions prescribed under the Development Financial Institutions Act 2002 (DFIA 2002) involved in Islamic banking, and Takaful operators registered under the Takaful Act 1984 (TA 1984). IFIs are obligated to provide Ibra to customers who settle their financing before the designated tenure concludes. Such settlements encompass early settlement or redemption, prepayments, resolution through financing restructuring exercises, settlements by customers in cases of default, and settlements resulting from the termination or cancellation of financing before the maturity date (Bank Negara Malaysia, 2013).

Limitations

The BNM Guidelines has a limitation in that it does not apply to all Islamic financial arrangements (Nurlia et al., n.d.). In Paragraph 1.1, IFIs may grant *Ibra'* to customers involved in sale-based financing, such as *Murabahah* and *Bai' Bithaman Ajil* (BBA), while Paragraph 3.2 expressly excludes the application of the BNM Guidelines to *Salam* and *Istisna'* contracts. Conversely, as mentioned in the BNM Guidelines' footnote number 3, IFIs are not restricted from granting rebates for financing based on other types of contracts, including equity-based, lease-based, or hybrid financing contracts, where applicable (Bank Negara Malaysia, 2013). This implies that IFIs can provide *Ibra'* for various financing transactions based on different Islamic contracts. Nevertheless, the BNM Guidelines does not address this aspect and its application.

In Bank Pembangunan Malaysia Berhad v Mensilin Holdings Sdn Bhd & Ors [2015] 1 LNS 442, the plaintiff initially granted three facilities to the first defendant, namely BBA facility, *Bai' Istisna'* facility and *Bai' Istisna'* second facility. Subsequently, these facilities were restructured into various forms, including a BBA facility, Private Debt Securities in the form of Redeemable Secured Loan Stock (Islamic), and Private Debt Securities in the form of Redeemable Convertible Preference Shares (Islamic). The defendant however defaulted on the restructured facilities. The learned judge at paragraph 55 of the judgement concluded that defendants failed to establish any early payments made to repay the sum under the Restructured Facilities Agreements, and consequently, they are not entitled to *Ibra'*. The judge made reference to the Court of Appeal case of Bank Islam Malaysia v. Mohd Azmi bin Mohd Salleh in arriving to this conclusion. Notably, the BNM Guidelines was neither referenced nor applied in this case, despite the breach or default being evident around August 2013 (Nurlia et al., n.d.).

Other limitation of the BNM Guidelines includes that it only takes effect from its effective date onwards and does not have retrospective effect to transactions that occurred prior to that date (Sherin Kunhibava, 2017). As provided in Paragraph 5.1, the BNM Guidelines become effective for IFIs, excluding takaful operators, from November 1, 2011, with immediate implementation of requirements specified under Paragraph 6. For IFIs other than takaful operators, the requirements under paragraphs 7, 8, 9, and 10 shall be fully implemented from the 1st of July 2012, with encouragement for earlier implementation. Takaful operators, as per Paragraph 5.3, are subject to the guidelines from January 31, 2013 (Bank Negara Malaysia, 2013).

SKM Guidelines on the Granting of *Ibra'* (Rebate) for Islamic Financing Based on Sale Contracts

The Guidelines on the Granting of *Ibra'* (Rebate) for Islamic Financing Based on Sale Contracts (SKM Guidelines) was issued by SKM in 2015. The SKM Guidelines are issued under Section 86B and subsection 51(1) of the CSA 1993 with the aim to standardize the practice of granting *Ibra'* to protect its members' interests and further streamlining the financing activities based on Shariah principles in the co-operative sector.

The SKM Guidelines take effect from 1st July 2015 and are applicable to co-operatives that conduct business or activities based on Shariah principles. The SKM Guidelines essentially outline the requirement for applying and implementing *Ibra'*, specifying conditions for the granting and incorporating of an *Ibra'* clause in financing documents and stipulating calculation and disclosure requirements.

Under the SKM Guidelines, Islamic co-operatives are obligated to provide *Ibra'* to customers who settle their financing before the designated tenure concludes. Such settlements encompass early settlement or redemption, prepayments, resolution through financing restructuring exercises, settlements by customers in cases of default, and settlements resulting from the termination or cancellation of financing before the maturity date.

Limitations

Unlike the BNM, the regulator for IFIs in Malaysia, which has the SAC as the highest authority in Islamic banking and finance, such a body or authority is not present at SKM as the regulator of co-operatives in Malaysia (Muhammad Issyam Itam@Ismail et al., 2016). The absence of such a body or authority would make it difficult to ensure end-to-end Shariah compliance in product structuring and implementation.

To address the issue, an amendment was made to the CSA 1993 and the Malaysia Co-operative Societies Commission Act 2007 (MCSC 2007), where the role of the SAC was mentioned.

Section 84A of the CSA 1993 provides that Islamic co-operatives may, from time to time, seek the advice from the SAC on the operation of its business or activity to ensure that it is in accordance with Shariah while Section 26(2) of the MCSC 2007 provides that in any proceedings relating to Shariah-based cooperative arrangement, monitored and regulated by the SKM, any question arising on Shariah matters, the court or arbitrator, as the case may be, can take into account any written directive issued by SKM or refer such a question to the SAC for its decision.

The above sections explain the indirect relationship between the SKM and the SAC, in which the SKM and the co-operatives may be referred to as the SAC. It is interesting to note that there is no provision for the appointment of the SAC at the SKM level, and thus, it may raise the issue of suitability of the application of the SAC BNM's decision in the context of co-operative business (Muhammad Issyam Itam@Ismail et al., 2016).

Another limitation of the SKM Guidelines is similar to the BNM Guidelines; it only takes effect from the effective date onwards and does not have a retrospective effect on transactions that occurred prior to the effective date.

CONCLUSION AND RECOMMENDATIONS

The BNM Guidelines have addressed uncertainty regarding *Ibra'* matters, specifically the entitlement of customers in default of their financing and the establishment of a formula for *Ibra'* calculation. However, it is crucial to acknowledge the limitations inherent in these Guidelines namely that it does not apply to all Islamic financing transactions, the lack of acknowledgement and application of the BNM Guidelines in case laws, particularly those after the effective date of the BNM Guidelines and how the BNM Guidelines do not have a retrospective effect. Ultimately, these limitations signify the need for continuous examination and subsequent revisions of the BNM Guidelines to address all issues related to *Ibra'*. Recommendations include the comprehensive application of BNM Guidelines tailored to other Islamic financing contracts beyond the existing scope and the application of judicial precedent as a means for ensuring the effective implementation of the BNM Guidelines.

It is interesting to note that most of the content of the SKM Guidelines is similar to the BNM Guidelines, except with certain modifications to conform to the co-operative sector's less stringent and flexible nature. Although attempts have been made to address the issues in the SKM Guidelines, it is not a perfect guideline. By highlighting the limitations of the SKM Guidelines, regulators can take active steps to address the issues, such as the establishment of a Shariah panel that plays a similar role to the SAC be placed at SKM as the regulator for the Islamic co-operatives to ensure certainty in the application of not only the SKM Guidelines, but also Shariah matters at all co-operatives level.

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