BAI' AL-'INAH IN THE PERSPECTIVES OF IMAM MALIK AND IMAM AL-SHAFI'I: ITS IMPLICATIONS FOR ISLAMIC BANKING PRACTICES IN MALAYSIA AND THAILAND

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ABSTRACT This study examines the juristic views of Imam Malik and Imam al-Shafi'i on the contract of bai' inah and its implications for Islamic banking practice in Malaysia and Thailand. The problem arises from the sharp disagreement among Islamic jurists over the permissibility of bai' inah, a sale-and-buy-back transaction frequently used as a financing instrument in Islamic financial institutions. This is a qualitative library research using a comparative method to analyze the legal reasoning (istinbat) of Imam Malik in Al-Muwatta' and Imam al-Shafi'i in Al-Umm, combined with a case-study approach to examine its practical implications in Southeast Asian Islamic banking. The results show that Imam Malik prohibits bai' inah because it leads to riba through the principle of sadd al-dhari'ah, while Imam al-Shafi'i permits it because the pillars and conditions of a valid sale are fulfilled, regardless of intention. In practice, the Securities Commission Malaysia's Shariah Advisory Council adopts al-Shafi'i's view, applying bai' inah in working-capital financing, Islamic credit cards, and home financing, while the Islamic Bank of Thailand uses bai' inah-based financing to support economic development programs for the Muslim community in Southern Thailand, contributing to branch growth and rising profitability between 2014 and 2015.

Keywords: Imam Malik; Imam al-Shafi'i; Bai' al-'Inah; Islamic Banking; Fiqh al-Mu'amalat

Introduction

The economic activities of Muslims cannot be separated from the principles of Islamic law (Sharia) derived from the Qur'an and the Sunnah. [1] Southeast Asia is home to the world's largest Muslim population, with Indonesia ranking first (approximately 237 million people), followed by Malaysia (approximately 19 million people). Meanwhile, the development of Islamic banking in the region has been pioneered by Malaysia, which has experienced one of

[1] Abdul Tri Wanzah, "Bai' Inah Menurut Imam Syafi'i dan Relevansinya dengan Akad Perbankan Syariah," *Jurnal Manajemen dan Perbankan Syariah* 4 (2022): 85.

the fastest rates of growth. [2] Islam encourages Muslims to engage in economic activities through time discipline, the preservation of wealth, and increased production[3]. However, such buying and selling activities must take into account the contractual arrangements and the objects of transactions in order to avoid elements of riba (usury/interest). [4]

One form of transaction whose legal status remains subject to scholarly debate is bai‘ al-‘inah, namely a sale transaction in which the seller sells an asset to the buyer on a deferred-payment basis and subsequently repurchases it in cash at a price lower than the deferred sale price.[5] Allah SWT has prohibited riba, while bai‘ al-‘inah is regarded by some scholars as a means that may lead to riba, because both parties essentially have no intention of acquiring ownership of the asset but rather seek to obtain cash. [6]

The differences among Islamic legal schools regarding bai‘ al-‘inah are particularly significant. The Hanafi, Maliki, and Hanbali schools tend to prohibit the transaction, whereas the Shafi‘i and Zahiri schools permit it (see Table 1). [7] These differences in legal reasoning (istinbat al-ahkam) have subsequently resulted in different implications for the practices of Islamic financial industries in various countries. Malaysia, for example, has adopted the Shafi‘i-Zahiri view, allowing bai‘ al-‘inah to develop as an officially recognized financing instrument within its Islamic financial institutions.[8] Meanwhile, in Southern Thailand, this contract has become one of the popular investment financing products offered by the Islamic Bank of Thailand. [9]

Based on the foregoing discussion, this article comparatively examines the views of Imam Malik and Imam al-Shafi‘i regarding the concept of the bai‘ al-‘inah contract and its implications for Islamic banking practices in Malaysia and Thailand.

Literature Review

The Concept of Sale and Purchase and Bai‘ al-‘Inah in Fiqh al-Mu‘amalat

Linguistically, sale and purchase (bai‘) refers to the exchange of one form of property for another. In legal terminology, scholars of the Shafi‘i school define it as a contractual relationship involving the exchange of property for another property through mutual exchange in accordance with Islamic law. [10] The validity of sale and purchase is based on the word of Allah SWT in QS. al-Baqarah [2]: 275, which affirms that Allah has permitted trade and prohibited riba. [11] A valid sale and purchase transaction must also fulfill certain essential elements (arkan), including the seller, buyer, subject matter of the sale, and ijab-qabul (offer and acceptance), as well as specific conditions, including the legal capacity of the contracting parties and the mutual consent of both parties. [12]

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[2]Ali Rahma, dkk., “Analisis Perkembangan Perbankan Syariah di Asia Tenggara,” *The Journal of Tauhidinomics* 1 (2015): 105.

[3]Wanzah, “Bai' Inah…,” h. 85.

[4]Wanzah, “Bai' Inah…,” h. 85.

[5]Muchtar Wahyudi Pamungkas dan Miftahul Huda, “Bay' Al-Inah dalam Pemikiran Imam Syafi'i dan Imam Malik (Sebuah Kajian Perbandingan),” *Jurnal Antologi Hukum* 1, no. 1 (2021): 35.

[6]Enang Hidayat, *Fiqh Jual Beli* (Bandung: PT Remaja Rosdakarya, 2015), h. 117–118.

[7]Ascarya, *Akad dan Produk Perbankan Syariah* (Depok: PT Rajagrafindo Pustaka, 2015), h. 191.

[8]Sutan Remy Sjahdeini, *Perbankan Syariah: Produk-Produk dan Aspek-Aspek Hukumnya* (Jakarta: Kencana, 2014), h. 237.

[9]Bukhoree Lateh, “Implikasi Penerapan Akad Bai' Al-'Inah bagi Masyarakat Muslim di Thailand Selatan,” *Jurnal Khazanah Hukum* 1, no. 1 (2019): 28.

[10]Siah Khosyi'ah, *Fiqh Muamalah Perbandingan* (Bandung: CV Pustaka Setia, 2014), h. 47.

[11]Departemen Agama RI, *Al-Qur'an dan Terjemahan* (Semarang: PT Toha Putra, 2010), h. 47.

[12]Ahmad Wardi Muslich, *Fiqh Muamalat* (Jakarta: Sinar Grafika Offset, 2017), h. 179.

Linguistically, bai' al-'inah refers to a loan ('ayn), while in Islamic legal terminology, it refers to a sale-and-purchase practice used as a means of obtaining a monetary loan with a larger repayment obligation. This is carried out by selling an asset on a deferred-payment basis and subsequently repurchasing it in cash at a lower price.[13] In Islamic financial institutions, this mechanism generally involves six stages: the customer submits a financing application; the bank identifies the asset to be sold; the bank and the customer enter into the first sale contract on a deferred-payment basis; the bank and the customer enter into the second purchase contract on a cash basis at a lower price; the bank disburses the cash proceeds to the customer; and the customer repays the financing in installments according to the agreed schedule. [14]

Table 1. The Views of Islamic Jurisprudential Schools on Bai' al-'Inah

Mazhab	Ruling	Rationale
Hanafi	Prohibited	Permissible when it involves a third party (not a sale and buy-back arrangement).
Maliki	Prohibited	Considered a form of manipulation leading to riba.
Hambali	Prohibited	Considered a form of manipulation leading to riba.
Syafi'i	Permissible	The contract is judged based on its outward form (zahir), while the intention is left to Allah SWT.
Zahiri	Permissible	The contract is judged based on its outward form (zahir), while the intention is left to Allah SWT.

Source: Adapted from Ascarya (2015).[15]

As presented in Table 1, the Hanafi, Maliki, and Hanbali schools consider bai' al-'inah prohibited because it is viewed as a form of manipulation leading to riba. In contrast, the Shafi'i and Zahiri schools permit it on the grounds that a contract is judged according to its outward form (zahir), while the intention of the parties is left to Allah SWT.[16] At the national regulatory level in Indonesia, the National Sharia Council of the Indonesian Ulema Council (DSN-MUI) does not have a specific fatwa explicitly addressing bai' al-'inah. However, through DSN-MUI Fatwa No. 31/DSN-MUI/VI/2002 concerning debt transfer, a practice that is substantively similar to bai' al-'inah is permitted on a limited basis under considerations of necessity (darurah), based on the legal maxim al-akhdh bi akhaff al-dararayn, namely choosing the lesser of two harms rather than maintaining a riba-based contract with a conventional financial institution.[17]

A Brief Biography of Imam Malik and Imam al-Shafi'i

Imam Malik ibn Anas (93–179 AH) was born in Dhu al-Marwah near Medina and was renowned as the leading imam of the people of the Hijaz. His monumental work, Al-Muwatta', contains more than one thousand narrations of the Prophet Muhammad (PBUH), as well as the opinions of the Companions and the Followers (Tabi'in), and became a major reference for Maliki jurisprudence.[18] Imam Muhammad ibn Idris al-Shafi'i (150–204 AH) was born in Ghazzah, Asqalan, and is widely recognized as one of the founders of the systematic discipline of Usul al-Fiqh (Islamic legal theory). By the age of ten, he had memorized Al-Muwatta'. He

[13]Richa Angkita Mulyawisdawati dan Mufti Afif, "Jual Beli Model 'Inah di Lembaga Keuangan Syariah," *Jurnal Ekonomi Syariah* 3, no. 1 (2018): 69.

[14]Sjahdeini, *Perbankan Syariah…*, h. 241.

[15]Ascarya, *Akad dan Produk…*, h. 191.

[16]Wahbah Az-Zuhaili, *Fiqih Islam wa Adillatuhu* (Jakarta: Gema Insani, 2011), h. 76.

[17]Wanzah, "Bai' Inah…," h. 25.

[18]Khozainul Ulum, "Malik Ibn Anas Ibn Malik dan Kitab Al-Muwaththa': Introduksi Biografi dan Karya Monumentalnya," *Jurnal Akademika* 11, no. 1 (2017): 196.

subsequently studied directly under Imam Malik in Medina before eventually composing his monumental work of Islamic jurisprudence, Al-Umm, in Egypt.[19]

Research methods

This study employs a qualitative research method using a library research approach, which is a form of inquiry based on the examination of relevant literature related to the research topic..[20] A comparative approach is employed to analyze the similarities and differences in the legal reasoning (istinbat al-ahkam) of Imam Malik and Imam al-Shafi'i. In addition, a case study approach is used to examine the implications of implementing the bai' al-'inah contract in Islamic banking practices in Malaysia and Thailand.The research data consist of primary and secondary sources. Primary data are obtained directly from the original works of the two scholars, namely Imam Malik's Al-Muwatta' and Imam al-Shafi'i's Al-Umm.[21] Secondary data are obtained from books on fiqh al-mu'amalat, scholarly journals, and previous relevant studies to deepen and strengthen the analysis. Data collection is conducted through a literature review by identifying, reading, and recording sources relevant to the research focus, followed by classifying them according to the analytical requirements.[22] Data analysis was conducted using a descriptive-analytical method through three stages: (1) editing, which involved examining the completeness and relevance of the collected data; (2) categorization, which involved organizing the data into thematic groups through axial coding; and (3) data interpretation, which involved interpreting the findings to address the research questions.[23]

Results and Discussion

Imam Malik's Legal Reasoning on Bai' al-'Inah

Imam Malik considers bai' al-'inah an invalid contract. His legal reasoning (istinbat al-ahkam) is based on two main foundations. First, Qur'anic verse al-Baqarah [2]: 275 concerning the prohibition of riba.[24] From Imam Malik's perspective, bai' al-'inah essentially incorporates an additional amount in the price that resembles riba. Second, a hadith that he himself narrated in Al-Muwatta', transmitted from Abdullah ibn Umar, in which the Prophet Muhammad (PBUH) said: "Whoever purchases food should not resell it until he has actually taken possession of it."[25] Based on this hadith, Imam Malik regards a sale-and-repurchase transaction conducted before the goods have been fully received as an indication of the invalidity of the contract.

In addition to these two sources, Imam Malik applies the principle of sadd al-dhara'i, namely the principle of blocking the means that may potentially lead to prohibited acts.[26] Two considerations underlie the application of this principle to bai' al-'inah: (1) the contract involves an additional amount in the price that may potentially constitute riba, thereby creating an opportunity for one of the parties to intend to obtain a usurious gain; and (2) the potential harm (mafsadah) arising from such a transaction.[27]

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[19] Asmaji Muchtar, *Fatwa-Fatwa Imam Asy-Syafi'i* (Jakarta: PT Kaloka, 2015), h. 1.

[20] Nursapia Harahap, "Penelitian Kepustakaan," *Jurnal Iqra'* 8, no. 1 (2014): 68.

[21] Imam Malik, *Terjemahan Kitab Al-Muwattha Imam Malik*, terj. Nasrullah (Jakarta: Shahih, 2016); Imam Syafi'i, *Al-Umm Jilid 5*, terj. Imam Ahmad bin Hambal (Jakarta: PT Pustaka Abdi Bangsa, t.t.).

[22] Harahap, "Penelitian Kepustakaan," h. 71.

[23] Natalia Nilam Sari, "Memahami Studi Dokumentasi dalam Penelitian Kualitatif," *Jurnal Pedidikan* (2014): 179.

[24] Departemen Agama RI, *Al-Qur'an dan Terjemahan*, h. 47.

[25] Imam Malik, *Terjemahan Al-Muwattha*, terj. Nasrullah, h. 393.

[26] Husnul Khotimah, "Metode Istinbat Imam Malik," *Jurnal Istidlal* 1, no. 1 (2017): 33.

[27] Pamungkas dan Huda, "Bay' Al-Inah…," h. 43–44.

Imam al-Shafi'i's Legal Reasoning on Bai' al-'Inah

In contrast to Imam Malik, Imam al-Shafi'i permits bai' al-'inah in his work Al-Umm. His legal reasoning (istinbat al-ahkam) is also based on QS. al-Baqarah [2]: 275, but with emphasis on the phrase "Allah has permitted trade," which is understood as a general legal principle that all forms of sale and purchase are permissible unless there is explicit evidence prohibiting them.[28] Imam al-Shafi'i also criticized the hadith narrated by 'Aishah concerning the transaction involving Zayd ibn Arqam, which is commonly used by the majority of scholars as a basis for prohibiting bai' al-'inah. He argued that it was unlikely that a Companion of the Prophet (PBUH) of the stature of Zayd ibn Arqam—who had participated in seventeen military expeditions alongside the Messenger of Allah (PBUH)—would engage in a transaction that was explicitly prohibited[29] The principal ijtihad applied by Imam al-Shafi'i in this matter is that the validity of a mu'amalat contract is determined by its outward form (zahir), particularly the ijab-qabul (offer and acceptance), while the intention of the contracting parties is ultimately a matter known to Allah SWT.[30] herefore, as long as the essential elements and conditions of a sale—namely, the presence of a seller, a buyer, an object of sale, and ijab-qabul—are fulfilled, the contract is considered valid, although he still regards it as makruh (disliked) when there are indications that the underlying intention is to obtain riba through the sale-and-purchase mechanism.[31]

Similarities and Differences in the Views of the Two Imams

The similarity between the views of the two imams lies in their definition of bai' al-'inah. Both understand it as a deferred sale followed by a repurchase in cash at a lower price.[32] The difference between them lies primarily in their emphasis on intention. Imam Malik considers the potential for an improper intention leading to riba as a basis for prohibition through the principle of sadd al-dhara'i. In contrast, Imam al-Shafi'i assesses the validity of the contract solely on the basis of its outward form (zahir) without taking the parties' intentions into consideration, as intention lies beyond the scope of human judgment Based on the foregoing analysis, the researcher tends to align more closely with the view of Imam Malik, because the principle of precaution (ihtiyat) in mu'amalat requires avoiding transactions that have the potential to lead to the shubhat (doubtful or ambiguous) realm of riba, even when the contract outwardly fulfills all the essential elements and conditions of a valid sale.

Implications of the Implementation of Bai' al-'Inah in Islamic Banking in Malaysia

The Securities Commission Malaysia, through its Shariah Advisory Council (SAC), adopts the view of the Shafi'i and Zahiri schools, which permit bai' al-'inah. Consequently, this contract has developed into an officially recognized instrument in Malaysia's Islamic capital market and Islamic banking sector.[33] Its implementation can be found in at least three products. First, working capital financing, in which an Islamic financial institution sells an asset to a customer on a deferred-payment basis and subsequently repurchases it in cash at a lower price to provide fresh funds for the customer's business needs.[34] Second, Islamic credit cards. AmBank pioneered this product in December 2001 through the Al-Taysir Credit Card, which

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[28]Departemen Agama RI, *Al-Qur'an dan Terjemahan*, h. 47.

[29]Az-Zuhaili, *Fiqih Islam wa Adillatuhu*, h. 169–173.

[30]Imam Syafi'i, *Al-Umm Jilid 5*, terj. Imam Ahmad bin Hambal, h. 65–68.

[31]Pamungkas dan Huda, "Bay' Al-Inah…," h. 44.

[32]Agus Fakhrina, "Bai' 'Inah dalam Konstruksi Pemikiran Syafi'i," *Jurnal Hukum Islam* 13, no. 1 (2015): 26.

[33]Sjahdeini, *Perbankan Syariah…*, h. 237–238.

[34]Azizi Abu Bakar, "Pelaksanaan Bay Al-Inah dalam Pembiayaan Pribadi (Personal Loan) di Malaysia," *International Conference on Corporate Law (ICCL)* (2009): 3.

applied a profit margin of 1.25% per month, equivalent to 15% per annum. This was followed by Bank Islam Malaysia Berhad (BIMB) in July 2002, which combined bai' al-'inah, wadiah, and qard hasan contracts in its credit card product.[35] Third, home financing offered by Bank Muamalat Malaysia Berhad (BMMB) through the Bai' Bithaman Ajil (BBA) contract, which is conceptually regarded as comparable to bai' al-'inah because both involve sale-and-purchase transactions with deferred payment.[36]

Implications of the Implementation of Bai' al-'Inah in Islamic Banking in Thailand

The majority of Muslims in Thailand—particularly those residing in the five southern provinces of Thailand (Pattani, Yala, Narathiwat, Songkhla, and Satun)—follow the Shafi'i school of jurisprudence. Consequently, bai' al-'inah has also been widely accepted in local Islamic financial practices.[37] Since 2010, the Islamic Bank of Thailand (Thanakhan Islam Haeng Prathet Thai), in cooperation with the government, has implemented eight investment financing projects based on bai' al-'inah under the Economic and Social Development Center Program for the five southern provinces of Thailand. These projects include financing for street vendors, the settlement of informal debts, Muslim clothing, halal food, migrant workers, the One Tambon One Product (OTOP) program, and occupational development.[38]

The implementation of these financing schemes has also contributed to the institutional growth of the bank. The number of branches increased from 6 branches in 2009 to 18 branches in 2015 across the five provinces, accompanied by the recruitment of approximately 200 bank personnel, 175 field officers, and 276 bank coordinators.[39] In terms of financial performance, the bank's assets increased from THB 355 million in 2014 to THB 1.280 billion in 2015, while net profit increased from THB 845 million to THB 1.751 billion during the same period (see Table 2).[40]

Table 2. Institutional Growth and Financial Performance of the Islamic Bank of Thailand

Indicator	2009	2014	2015
Number of branches	6	–	18
Total assets (THB million)	–	355	1.280
Net profit (THB million)	–	845	1.751

Source: Adapted from Lateh (2019).

These data indicate that the implementation of the *bai' al-'inah* contract, following the view of Imam al-Shafi'i, has generated a dual positive impact. On the one hand, it has expanded access to investment financing for Muslim communities in Southern Thailand in a manner consistent with their religious beliefs. On the other hand, it has contributed to the institutional growth and profitability of the bank itself.[41]

Conclusion

This study draws two main conclusions. First, Imam Malik considers bai' al-'inah an invalid contract because it has the potential to serve as a means leading to riba, as demonstrated

[35]Abu Bakar, "Pelaksanaan Bay Al-Inah…," h. 3.
[36]Sjahdeini, *Perbankan Syariah…*, h. 238.
[37]Lateh, "Implikasi Penerapan…," h. 28–30.
[38]Lateh, "Implikasi Penerapan…," h. 30–32.
[39]Lateh, "Implikasi Penerapan…," h. 32–34.
[40]Lateh, "Implikasi Penerapan…," h. 34–35.
[41]Lateh, "Implikasi Penerapan…," h. 35.

through the application of the principle of sadd al-dhara'i and the hadith narrated by him in Al-Muwatta'. In contrast, Imam al-Shafi'i, in Al-Umm, permits bai' al-'inah because the essential elements and conditions of a valid sale have been fulfilled, while the intention of the contracting parties is left entirely to Allah SWT.

Second, the implications of implementing bai' al-'inah in Islamic banking in Malaysia and Thailand generally reflect the view of Imam al-Shafi'i and demonstrate positive impacts on the respective Islamic financial industries. In Malaysia, the contract has become an officially recognized instrument for working capital financing, Islamic credit cards, and home financing. In Thailand, its implementation through the Islamic Bank of Thailand has contributed to the expansion of the bank's branch network and increases in its assets and profits between 2014 and 2015, while also expanding access to financing for Muslim communities in Southern Thailand in accordance with their religious beliefs.

Recommendations

Muslim communities are advised to pay careful attention to the contractual arrangements and subject matter of sale-and-purchase transactions in order to avoid elements of riba, including when selecting financing products based on bai' al-'inah. Future researchers may further develop this study by expanding the geographical scope to other countries and conducting a more in-depth analysis of Shariah compliance in contemporary bai' al-'inah practices among other Islamic financial institutions in Southeast Asia.

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