

## Concept & Application of Bai‘ al-Īnah in Islamic Banking in Indonesia and Malaysia

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### ABSTRACT

**Keywords:**

*Bai‘ al-Īnah  
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study*

*Bai‘ al-Īnah is the process of buying and selling carried out by the seller to the buyer on a direct or credit basis, which then the goods are resold by the buyer to the original seller at a price lower than the previous purchasing price. This research is normative (doctrinal) research, with a regulative (statute approach) and conceptual approaches, emphasizing the use of secondary data in the form of primary, secondary, and tertiary legal materials. The result shows that: First, the scholars had different opinions on bai‘ al-Īnah. Abu Hanifah forbade bai‘ al-Īnah from the legally binding sale, and the purchase was illegal. Hence the second sale and purchase were also illegal. Besides, Imam Malik and Ahmad ibn Hanbal also prohibited bai‘ al-Īnah because they both adhered to the arguments of sadd aẓ-ẓrī‘ah, where bai‘ al-Īnah contained elements of usury, manipulation to justify bai‘ al-Īnah interest. In contrast, Imam al-Syafi‘i allowed bai‘ al-Īnah because buying and selling were halal (legal), and based on qiyas, the buying and selling model was in line with the law of buying and selling according to the Al-Qur‘an. However, al-Syafi‘i also prohibited bai‘ al-Īnah if any hilah/manipulations occur. Second, Indonesia prohibits bai‘ al-Īnah to be applied in Islamic Financial Institutions (LKS), except for one type of bai‘ al-Īnah in an emergency case, the for transferring customer debts from Conventional Financial Institutions (LKK) to LKS. Meanwhile, in Malaysia, bai‘ al-Īnah can be applied to Islamic financial institutions because Malaysia refers to the opinion of Imam al-Syafi‘i. Despite that, Malaysia continuously evaluates the program and regulates bai‘ al-Īnah to be applied cautiously. Bai‘ al-Īnah in Malaysia is practiced in several Islamic products, including Islamic credit card financing, home financing, gold transactions, etc.*

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### 1. INTRODUCTION

*Bai‘ al-Īnah*, or known in Bahasa Indonesia as ‘*inah* transaction, is used as a term that indicates the occurrence of two sales and purchases of the same item, but carried out at different prices, the cash price for the first sale and purchase and installments for the second sale and purchase. The Islamic economy forbids three principles to be carried out

in the business activities of Islamic financial institutions, *maysir*, *gharar*, *riba* (shortened as *maghrib* in Bahasa Indonesia).

According to Nik Norzrul Thani, “*Maysir* is gambling in terms of a true form of speculation.”<sup>1</sup> Meanwhile, *gharar* means vague (*jahalah*), unclear or uncertain from the objects, contracts, or price.<sup>2</sup> As for usury, M. Umer Chapra defined it as the addition in one or two exchanged homogeneous equivalents is without return. He stated, “*Riba* literally means ‘increase’ (*al-ziyadah*), and terminologically it is defined as an increase in one of two homogeneous equivalents being exchanged without return.”<sup>3</sup>

Based on these forbidden principles, several related terms were born, such as *bai’ al-īnah*, *bai’ at-tawarruq*, and *bai’ ataani fi bai’ah wahidah*. The terms *bai’ al-īnah* consist of *bai’*, which means to buy, and *al-īnah* is derived from *al-ain*, meaning goods (*dzat*) and cash.<sup>4</sup> The trading transaction is called an *īnah* transaction because:<sup>5</sup>

1. Goods (*al-ain/dzat*) are objects that become objects of sale and purchase back to the first seller.
2. *Al-ain* means cash, where the buyer receives cash in exchange for resold goods to the first seller.

From its terminology, *bai’ al-īnah* is a sale and purchase contract where the seller sells an item to another person in cash, and then the seller repurchases the item in installments at a higher price. Engku Rabiah Adawiyah stated that: *bai’ al-īnah* is known by “sale to cash” or “sale and buy back” or “same item sales.”<sup>6</sup> Engku Rabiah Adawiyah defines *bai’ al-īnah* as cash sales, sale and buyback, repurchase, or comparable goods sale.

Agus Triyanta, in his dissertation theses, illustrated *al-īnah* contract as follows. A person sells goods to other people at a specific price where the payment is delayed for a period. He repurchases the goods in cash at a lower price, and the owner gets a profit from the price difference between the first and second contracts.<sup>7</sup>

*Bai’ al-īnah* becomes a fascinating topic in Indonesia and the world since this issue is closely related to the halal business development that operates according to sharia.

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<sup>1</sup> Nik Norzrul Thani et.al, *Law and Practice of Islamic and Finance* (Kuala Lumpur: Sweet & Maxwell Asia, 2003).

<sup>2</sup> Rafiq Yunus Al-Mishri, *Fiqh Al-Mu’amalat Al-Maliyyah* (Damaskus: Dar al-Qalam, 2007).

<sup>3</sup> M. Umer Chapra, *Towards a Just Monetary System, A Discussion of Money, Banking and Monetary Policy in the Light of Islamic Teachings* (Leicester: The Islamic Foundation, 1995).

<sup>4</sup> Muhammad Khalid Manshur, “Hukm Al-Bai Al ‘Inah Fi Al-Fiqh Al-Islami Al-Muqarin Wa Tathbiqathuhu Al-Mu’Ashirah,” *Jurnal Dirasat Ulum Al-Syari’ah Wa Al-Qanun*,” *Jurnal Dirasat Ulum Al-Syari’ah Wa Al-Qanun* 34 (2007): 226.

<sup>5</sup> Muhammad Khalid Manshur.

<sup>6</sup> Engku Rabiah Adawiah, “Islamic Law Compliance Issues in Sale-Based Financing Structures and as Practiced in Malaysia,” *Malayan Law Journal* 3 (2003): xix–xx.

<sup>7</sup> Agus Triyanta, *The Implementation of Shari’ah Compliance in Islamic Banking: The Rule of The Shari’ Ah Board (A Comparative Study Between Malaysia and Indonesia)* (International Islamic University Malaysia, 2009).

The concept of *bai' al-īnah* and its application in Islamic financial institutions (sharia) in Indonesia and Malaysia still becomes a polemic that has sparked debate, both among Islamic economists and practitioners in Islamic financial institutions at the national and international levels.

An example of this disagreement is, for example, Al-Zuhaeli argues that *bai' al-īnah* as “The entire operation is a trick to borrow with interest (*riba*) disguised as purchases and sales.”<sup>8</sup> Zuhaeli believes that the entire *bai' al-īnah* processes are tricks or manipulations to borrow money accompanied by interest or usury disguised as buying and selling transactions. Meanwhile, Imam al-Syafi'i, known as one of the most outstanding Islam scholars, argued that *bai' al-īnah* could be applied to Islamic economic transactions with several points to be considered.

Malaysia is an example of a country that has implemented *bai' al-īnah* in various types of transactions operated by several Islamic financial institutions (IFIs), despite some changes in regulations or policies that affect its implementation. Meanwhile, Indonesia still prohibits applying the practice of financing in Islamic Financial Institutions (LKS) because it is considered to contain usury. Related to the above explanation, *bai' al-īnah* is a fascinating subject, both in terms of the concept that brings polemics and why in Islamic economics, Indonesia and Malaysia are two countries with many similarities. Both countries are predominantly Muslim, and in terms of Islamic economic development, the two countries also have relatively similar dynamics. In this regard, a discussion of the concept of *bai' al-īnah* and comparing its application in Indonesia and Malaysia is an excellent comparative study. This paper wants to show that the two countries, predominantly Muslim, have different policies in implementing *bai' al-īnah*. However, these differences must be respected because each is based on the ulama's *ijtihad*, which can guide).

## 2. RESEARCH METHOD

This legal research used normative (doctrinal) methods, research on legal concepts developed based on the doctrines adopted by thinkers or developers in related fields. The approaches of the study were the regulatory (statute approach) and the conceptual approach. The data in this paper focused on secondary data in the form of primary legal materials taken from various regulations related to the application of *bai' al-īnah* in Indonesia and Malaysia. Consequently, the research also used secondary legal materials in the form of experts' doctrine in Islamic economics and using tertiary legal material from the dictionary to support primary and secondary legal materials.

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<sup>8</sup> Al-Zuhayli, “Konsep Syariah Dalam Sistem Perbankan Islam,” in *Konsep Syariah Dalam Sistem Perbankan Islam* (Kuala Lumpur: BIMB Institute of Research and Training, 1998), 68.

### 3. RESULTS AND DISCUSSION

#### 3.1. *The Concept of Bai' Al-Īnah*

In the dictionary, *al-inah* is translated as a loan. *Al-inah* is derived from the word *'ayyana*, which means doing *'inah* or debt, using a merchant selling goods at a delayed price, then repurchasing them in cash at a lower price.<sup>9</sup> *Bai' al-īnah*, from the perspective of fiqh science, is defined as manipulative buying and selling, which is often used as an excuse for borrowing money for then to be paid more than the initial amount. Specifically, it is done by selling goods with delayed payment, then repurchasing them in cash at a lower price.<sup>10</sup>

Ayub argued that *'inah* transaction (*bai' al-īnah*) is a trading practice in which the buyer buys the goods from the seller at a credit-predetermined price and then the buyer resells the goods to the original seller at a lower price than the previous purchase price.<sup>11</sup>

*Bai' al-īnah* in Islamic financial institutions can be illustrated as follows: Financial institution 'A' sells a car to someone for IDR 200,000,000 (two hundred million) in installments (credit). It was then agreed that the price would be paid within eight months so that every month the debtor had to pay installments on the car's price for IDR 25,000,000 (twenty-five million). Furthermore, at the same time, the debtor resells the car back to the financial institution 'A' for IDR 120,000,000 (one hundred and twenty million rupiahs) in cash, which means that the car's owner returns to the financial institution 'A.' This phenomenon occurs because the person needs cash instead of a car. The debtor gets cash from the financial institution 'A' amounting to IDR 120 million through this transaction. However, at the same time, the person is obliged to pay installments to the financial institution 'A' for IDR 200 million, which had to be paid in installments within eight months.

Meanwhile, financial institutions 'A' got a profit of IDR 80 million due to the price difference between the first and second purchase through installments. Why did Fulanah and financial institution 'A' not use debit transactions? The answer is because Islam strictly regulates debt transactions that it is forbidden to take profit in any form of debt. Debit transactions must be done solely with pure and kind intentions (*qordhun hasan*). Burdening the debtor with a specific addition when returning it, regardless of the amount, is the same as a credit agreement with a conventional financial institution. The additional money becomes usury.

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<sup>9</sup> Al-Fairuz Abadi, *Al-Qamus Al-Muhith* (Damaskus, 2015).

<sup>10</sup> Abdullah al- Mushlih and Shalah ash- Shawi, "Hukum Jual Beli: Jual Beli Yang Diperdebatkan," Pengusahamuslim.com, n.d., <http://pengusahamuslim.com/hukum-jual-beli-jual-beli-yang-diperdebatkan,diakses>.

<sup>11</sup> Ayub, *Al-Mu'amalat Al-Maliyah Fil Islam* (Cairo: Dar El-Salam, 2002).

According to Ibn Taimiyah, trading in the view of Islam is categorized into three types, (1) A person buys goods to consume them, and this is allowed. (2) A person who buys goods to be resold is also okay because there is no prohibition against buying and selling (business), (3) A person buys goods, not for consumption and business purposes, but to get cash. Since getting cash is very difficult, that person buys goods at a high price and then sells them back to the original seller at a lower price.<sup>12</sup> The third type is *bai' al-īnah*, and its law is still debated.

Abdullah Ibn Muhammad Ibn Abdullah al-Imrani emphasized that *al-īnah* transaction is two contracts with two different prices, the cash price and the delayed price for the same item.<sup>13</sup>

Based on the description above, *'īnah* transaction has the following five characteristics:

1. There are two buying and selling agreements.
2. Buying and selling twice is done on specific terms. The second sale and purchase are carried out because there are conditions in the first sale and purchase that the buyer is willing to buy. After all, the seller is willing to rebuy it.
3. There are two legal roles of sellers and buyers. Because the sale and purchase are carried out twice, the seller in the first sale and purchase becomes the buyer for the second sale and purchase. Conversely, the buyer in the first sale and purchase changes the seller's role in the second sale and purchase.
4. There are two prices. In the first sale and purchase, a cash price applies, and in the second, a delayed price applies, which is generally higher than the cash price.
5. The transactions are done twice for the same item.

*'Inah* transaction is prohibited by most ulama because it is considered part of the *ribawiyah hilah*. Most ulama argue that the actual contract or transaction is not about buying and selling goods but borrowing money in exchange for profit. Whereas in the lending and borrowing transaction (*qardh*) it is prohibited to be accompanied by profits in any form. Agreed addition upon in *qardh* is categorized as *riba*. Therefore, in the view of *jumhur* ulama, traded goods are only used as media so that formally the seller gets a profit, which is not profit, but *riba* in the form of additional money.

Abu Hanifah stated that although, in general, the validity of buying and selling was determined by the language of the contract, he prohibited *bai' al-īnah*. Abu Hanifah's opinion is based on the Hadith of Zaid ibn Arqam the Hadith narrated by al-Dāraqutnī and al-Baiyhaqyī, from Abu Ishaq from his wife Aliyah. She had met Aisha with Umm

<sup>12</sup> Muhamad Nadrattuzaman Hosen and Amirah Ahmad Nahrawi, "Comperative Analysis of Islamic Banking Products between Malaysia and Indonesia," *International Journal of Academic Research in Economics Sciences* 1 (2012): 126.

<sup>13</sup> Abdullah Ibn Muhammad Ibn Abdilllah al-Imrani, *Al-Uqud Al-Maliyyah Al-Murakkabah Dirasah Fiqh Ta'shiliyyah Tathbiqiyyah* (Riyadh: Dar Kunuz Isybiliya, 2006).

Walad Zaid bin Arqam. Umm Walad Zaid said, 'I once sold a slave to Zaid for 800 dirhams of debt, and I repurchased it for 600 dirhams in cash. Aisha said, 'The methods of how you sell and buy are both wrong.' Tell Zaid that he has canceled the reward of his jihad and hajj with the Messenger of Allah unless he repents. The woman said, 'What if all I take is only my capital?' Aisyah answered with the word of Allah: 'People who have reached him the prohibition from His Lord then continue to stop taking usury, then what he did in the past is forgiven by Allah.'<sup>14</sup>

In another source, it is explained that the Hadith narrated by Aliyah bint Anfa, that she heard Aisha or Abi as-Safar's wife narrated from Aisha RA that someone asked Aisha about the goods purchased from Zaid ibn Arqam at this price and sold to al-Atha at that price. Then he bought this item from al-Atha at a lower price in cash. Aisha then said: It is terrible what you bought! It is not right what you buy. Explain to Zaid ibn Arqam that Allah Azza wa Jalla canceled his *jihad* deed with Rasulullah SAW unless he repents!<sup>15</sup>

Abu Hanifah also argued that if someone sells something on credit and then the buyer sells it back to him in cash, then the second sale and purchase is invalid. Abu Hanifah believes that the price of credit on the first sale and purchase is not acceptable, so the second sale and purchase are unacceptable.<sup>16</sup>

Maliki and Hambali's schools also rejected *bai' al-īnah* and considered it illegal to buy and sell by using this model. Both of them considered that the *bai' al-īnah* agreements are null. Their opinions are based on the principle of *sadd az-ẓrī'ah*, which is about the goal of preventing practices that can lead to prohibited actions such as *riba*. Malikiyah and Hanabilah Ulama even forbid buying and selling using *'inah*, based on the argument in the form of the Hadith of the Prophet Muhammad, which states that "there will come to humanity one day, which legalizes *riba* by buying and selling. Yusuf Qardhawi emphasized that what is meant by buying and selling in the Hadith is buying and selling *'inah*.<sup>17</sup>

Wahbah Al-Zuhayli also stated that the *'inah* sale and purchase contract was only a *hilah* leading to a loan agreement that contained *riba* by sale and purchase contract.<sup>18</sup>

In principle, *bai' al-īnah* is part of the prohibition of two buying and selling in one sale and purchase. Conceptually, scholars relate the *'inah* transactions with the concept of *bai ataani fi baiyah wahidah* (two buying and selling in one sale). Most ulama place the buying and selling of *'inah* to *hilah* (*hilah ribawiyah*) in the process.

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<sup>14</sup> Al-Bayhaqī, *Al-Sunan Al-Kubrā* (Beirut: Dār al-Kutub al-‘Ilmiyyah, 2003).

<sup>15</sup> Agus Fakhriana, "Bai'īnah Dalam Konstruksi Pemikiran Al-Syafi'ī," *Jurnal Hukum Islam* 13, no. 1 (2015): 25–36.

<sup>16</sup> Agus Fakhriana.

<sup>17</sup> Agus Fakhriana.

<sup>18</sup> Wahbah Az-Zuhaili, *Al-Muamalah Al-Maliyah Al-Mu'asirah* (Beirut: Dar al-Fikr, 2007).

*Hilah* is an effort or specific methods used by a person to abort an obligation or make an effort to make something *haram* becomes *halal*, using methods that, in the end, what is obligatory become non-obligatory or that which *haram* may become *halal*.<sup>19</sup>

Imam Ibn Taymiyyah and Ibn Qayyim al-Jauziyyah also explained that the substance of the prohibition of two buying and selling in one sale and purchase is essentially the prohibition of buying and selling *'inah* (*bai' al-īnah*), i.e., someone selling their belongings to another party at a specific price in cash. After that, the buyer is required to sell it back to the first seller at a higher price, which is delayed paid (*ta'jil*) or in installments (*taqsith*).<sup>20</sup> Likewise, Ibn Rushd stated that among the Hadith's intentions concerning the prohibition of two buying and selling in one transaction (*bai' ataani fi bai'ah wahidah*) is *'inah* transaction.

Meanwhile, according to Al-Syathibi, the goods which are used as the object of sale and purchase at *bai' al-īnah* are a means of playing or buying and selling done artificially (fake) because the benefit of the sale and purchase in terms of the objective is the transfer of ownership of the goods, not achieved.<sup>21</sup>

Nazih Hammad<sup>22</sup> argued that from the aspect of the purpose of the contract, the buying and selling of *'inah* is *hilah ribawi* (*riba as a result of a manipulation*), which is prohibited because the transaction acts only as a disguise of the foul intentions. The substance of the contract is *qardh* (borrowing money), while it appears as a trading transaction, and the goal is to profit from *qardh*. Many parties view *bai' al-īnah* as a form of engineering to take *riba* is an economic transaction, even though it is strictly forbidden in Islam.

However, al-Syafi'i and Zahiri schools allow *bai' al-īnah*. The Syafi'i and Zahiri schools state that a contract must be assessed based on what is expressed or seen outwardly. They criticized the hadiths used by most Islamic scholars as to the basis for their arguments and said that the hadiths were weak, so they could not be used as a legal basis.

Syafi'i<sup>23</sup> states that the validity of the sale and purchase contract is seen physically. However, al-Syafi'i also punishes *makruh* on transactions that are accompanied by the intention to justify *riba*. If the intention is expressed, it will encourage other parties to cancel the sale and purchase.

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<sup>19</sup> Muhammad Khalid Mas'ud, *Islamic Legal Philosophy: A Study of Abu Ishaq Al-Dhatibi's* (Islamabad: Islamic Research Institute, 1977).

<sup>20</sup> Ibn Qayyim al-Jauziyyah, *I'lam Al-Muwaqqi'in An Rabb Al-Alamin* (Beirut: Dar al-Fikr, 1995).

<sup>21</sup> Abdullah Ibn Muhammad Ibn Abdillah al-Imrani, *Al-Uqud Al-Maliyyah Al-Murakkabah Dirasah Fiqh Ta'shiliyyah Tathbiqiyyah*.

<sup>22</sup> Nazih Hammad, *Fiqh Al-Muamalat Al-Maliyah Al-Masharifiyah Al-Mu'ashirah: Qira'ah Jadidah* (Damaskus: Dar al-Qalam, 2007).

<sup>23</sup> Syafi'i, *Al-Umm* (Beirut: Dar al-Mar'ifah, 1990).

Responding to the above views, Azwar dan Muhamed<sup>24</sup> said that it is true that some Muslim scholars in Southeast Asia argue that Syafi'i allows *bai' al-īnah* and therefore *bai' al-īnah* can be applied to areas inhabited by followers of the Syafi'i school. However, both also argue that there are many questions about this opinion. Is it true that Syafi'i allows a form of buying and selling in which there is an engineering element (*hilah*) to justify *riba*? Or is it Syafi'i when talking about *bai' al-īnah* differently from what many people understand? Some parties have doubted the opinion of Syafi'i to allow *bai' al-īnah* in the context of *hilah*. As proposed by Rosly & Sanusi<sup>25</sup> and Ahmad<sup>26</sup>, they claimed that there is no satisfactory evidence to state that Syafi'i allows *bai' al-īnah* in the context of containing *hilah*.

The view of Syafi'i can be examined from his response to one of the hadiths of the Prophet related to Zaid ibn Arqam, as described above. Concerning this Hadith, Syafi'i has a different opinion from Aihya. According to Syafi'i, the sale and purchase carried out by Zaid ibn Arqam, as explained in the Hadith, can be justified based on *qiyas* that the sale and purchase made by Zaid ibn Arqam are following the trading allowed in the Qur'an. Meanwhile, as the source of Islamic law, Al-Qur'an has the highest level of authority, especially compared to the Hadith, which, according to Syafi'i, may lead to different interpretations.<sup>27</sup> Therefore, Syafi'i saw that Aisha's reproach for buying and selling to Zaid ibn Arqam was due to the incomplete information that Aisha received.

Syafi'i doubts that what Aisha is criticizing is two different prices between cash prices and delayed prices. According to him, what Aisha criticized was that she did not know the time frame for the delayed buying and selling transaction made by Zaid to al-Atha. In this context, Syafi'i emphasizes the importance of clarity of the contract in a sale and purchase transaction. It is okay if Zaid sells something to Atha firmly as long as with an apparent/known timeframe based on *qiyas*.<sup>28</sup>

Syafi'i views that it is impossible for Zaid ibn Arqam, a Prophet friend, to have made an illegal transaction. Zaid ibn Arqam is known as a Prophet's companion who has participated in *jihad* with the Prophet, 17 times out of 19 *jihad* carried out by Rasulullah SAW.<sup>29</sup> Zaid ibn Arqam besides being known as a person who has extensive knowledge

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<sup>24</sup> Abdul Azaheem Ahmed Azwar and Nurul Aini Muhamed, "Islamic House Financing Products in Malaysia: Shari'ah Issues and Possible Causes," in *Paper Proceeding of the 5th Islamic Economics System Conference 2013*, 2013, 1196–1208.

<sup>25</sup> Saiful Azhar Rosly and Sanusi Mahmood, "Some Issues of Bay 'al-Inah in Malaysian Islamic Financial Markets," *Arab Law Quarterly* 16, no. 3 (2001): 263–80.

<sup>26</sup> Abu Umar Faruq Ahmad, *Theory and Practice of Modern Islamic Finance: The Case Analysis from Australia* (Florida: Brown Walker Press, 2010).

<sup>27</sup> Syafi'i, *Al-Umm*.

<sup>28</sup> Syafi'i.

<sup>29</sup> Muslim, *Sahih Muslim Vol. 7, Musaqah*, 2007.



of trading and *riba*, has also been a reference for many other friends who ask about trading and *riba*.<sup>30</sup>

Syafi'i's thought is different from the views of Abu Hanifah, Imam Malik, and Ahmad ibn Hanbal. Abu Hanifah adhered to Aisha's opinion in the Hadith because, according to Abu Hanifah, delayed trading was illegal, so the second transaction was invalid. Meanwhile, Imam Malik and Ahmad ibn Hanbal adhere to *sadd az-zrī'ah* in prohibiting the transaction.<sup>31</sup>

Then regarding the accusation of *hilah* or fabrication of *riba* in the Hadith, al-Syafi'i stated that he did not see any manipulation because, in the first contract, a transaction had indeed occurred. According to Syafi'i, the sale and purchase occur when a handover has been made between the buyer and the seller. With the handover, there is a transfer of ownership of the goods being traded from the seller to the buyer. Furthermore, the buyer as the owner of the goods, of course, has the right to sell his belongings to anyone, including to the original seller, and at any price. Syafi'i also argues that delayed transaction (*bai' ajal*) in Islam is permissible, and not *bai' al-īnah*.<sup>32</sup>

Apart from the hadiths stated above, the Prophet also prohibited *bai' al-īnah* through several other traditions, for example, the Hadith narrated by Imam Ahmad from Ibn Umar which stated that the Prophet said: "If people withhold (hoard) dinars and dirham and trade according to *al-eena* (a type of trade which is similar to *riba*) and they follow the tails of the cows and leave the *Jihad* in the Path of Allah, Allah places upon them humiliation which will not be raised from them until they return to their *deen*."<sup>33</sup>

In the Hadith of Abu Daud, the Prophet also said, "If you do *'inah* transactions to buy oxen, do "*muzara'ah*" and leave *jihad*, then Allah will bring humiliation to you. The humiliation will not be removed from you so that you will return to your religion."

The next Hadith is the Hadith narrated by Ibn Abbas that he was once asked about a person who sold a piece of silk to another person in delay for one hundred dirhams, then he repurchased it for 50 dirhams in cash. Ibn Abbas replied, "That means selling dirhams with dirhams accompanied by flowers, but the mediator is a piece of silk." Furthermore, in the Hadith narrated by Anas bin Malik when asked about *bai' al-īnah*, where silk is the mediator, he replied, "Verily Allah cannot be deceived. That includes actions that Allah and His Messenger forbid."<sup>34</sup>

Muhamad Khalid Mansur and Nazih Hammad delivered harsh criticism of *bai' al-īnah* by emphasizing several explanations as follows:<sup>35</sup>

<sup>30</sup> Muslim.

<sup>31</sup> Muhammad Farid, "Murabahah Dalam Perspektif Fikih Empat Mazhab," *Epistemé: Jurnal Pengembangan Ilmu Keislaman* 8, no. 1 (2013): 113–34, <https://doi.org/10.21274/epis.2013.8.1.113-134>.

<sup>32</sup> Syafi'i, *Al-Umm*.

<sup>33</sup> "Agustianto, Materi Pelatihan, Pembiayaan Multiguna, 14 February 2018" (Yogyakarta, 2018).

<sup>34</sup> "Agustianto, Materi Pelatihan, Pembiayaan Multiguna, 14 February 2018."

<sup>35</sup> Muhammad Khalid Manshur,"

1. The opinion of the ulama states that the 'inah transaction is more valid in terms of authenticity (*tsubut*) and from the point of view of its appointment (*dalalah*). Meanwhile, the *ulama's* argument, which allows it, is not free from weaknesses and can be criticized.
2. The essence of the contract of 'inah transaction is a *qardh* (debt) contract, a *qardh* in the form of sale and purchase containing *riba*. Goods in 'inah transactions are only media to validate the seller's profits in the second sale and purchase.
3. The will of the parties who buy and sell *inah*, is an effort to legalize the *qardh* contract in exchange. The purpose of such 'inah transaction makes it *haram*.
4. The essence of buying and selling 'inah is *qardh*, which contains *riba*. The formality is buying and selling, which is without the intention of buying and selling. 'Inah transaction is an act of treason against Allah and is manipulative.

'Inah transaction is different from *tawarruq* transaction. The simple criteria for 'inah transaction are that there are two sales and purchase agreements for the same item carried out by the same two parties, with the seller's exchange and the buyer's roles in the first and second sale and purchase. Meanwhile, the sale and purchase of *tawarruq* as explained by Rafiq Yunus al-Mishri, states that "The sale and purchase of the offering are similar to buying and selling of 'inah, but the buyer for the second sale and purchase is another party (not the seller of the first sale).<sup>36</sup>

In more detail, Rafiq Yunus al-Mishri explained the difference between *bai 'al-inah* and *tawarruq*, namely that "In fact, 'inah buying and selling occurs when someone buys goods at a specific price firmly, then the goods are resold to the seller in the first sale and purchase with smaller price in cash. If the item is sold to the first buying and selling seller, it is called buying and selling *inah*. Meanwhile, if the goods are resold to another party (not the seller in the first sale and purchase), this kind of transaction is called *tawarruq*.<sup>37</sup>

Regarding the sale and purchase of the *tawarruq*, El-Gamal explained that Hanafi madhhab (school of Islamic law) allows *bai' al-inah* only if the sale and purchase involve a third party acts as an intermediary between the seller and the buyer.<sup>38</sup>

Hasan Abd al-Qadir al-Izani considered that the opinion that allows the sale and purchase of the *tawarruq* makes the argument more robust and does not violate sharia principles.<sup>39</sup>

The difference between *bai' al-īnah* and *bai' tawarruq* was put forward by Nidal, as follows:

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<sup>36</sup> Rafiq Yunus Al-Mishri, *Buhuts Fi Fiqh Al-Muamalat Al-Maliyyah* (Damaskus: Dar al-Maktabi, 2009).

<sup>37</sup> Rafiq Yunus Al-Mishri, *Fiqh Al-Mu'amalat Al-Maliyyah*.

<sup>38</sup> Mahmoud A. El-Gamal, *Islamic Finance: Law, Economics, and Practice* (New York: Cambridge University Press, 2006).

<sup>39</sup> Hasan Abd al-Qadir al-Izani, *Haqiqah Bai Al-Tawarruq Al-Fiqhi Wa Al-Tawarruq Al-Mashrafi* (Dubai: Dairat al-Syu'un Al-Islamiyah wa Al-Amah Al-Khair, 2008).

“The bank sells its asset to the client (on credit), whom immediately sells back the same to the bank (on a case basis) and obtains the sum that he seeks. *Bai‘ al-īnah* only involves two parties while commodity *murabahah* involves more than two.”

According to Nidal, *bai‘ al-īnah* occurs when a bank sells assets to a customer (on credit), the customer immediately sells it back to the same bank and gets the amount of money he needs. *Bai‘ al-īnah* only involves two parties, while the *tawarruq* involves more than two parties.

### 3.2. The Applications of *Bai‘ Al-Īnah* in Islamic Banking in Indonesia & Malaysia

The National Sharia Council of the Indonesian Ulema Council (DSN MUI) does not have a specific fatwa regarding the sale and purchase of *īnah*. However, based on the MUI DSN Fatwa Number 31/DSN-MUI/VI/2002 concerning Debt Transfer, it can be understood that the DSN MUI attitude towards *bai‘ al-īnah*. The fatwa emphasizes that *īnah* transactions are only allowed in the context of transferring customer debts from Conventional Financial Institutions (LKK) to Sharia Financial Institutions (LKS), because there is an urgent need (*al-hajah*) to carry out the contract. In this case, the argument is that the sin of the *ribawi* agreement at LKK is more decadent than doing *īnah* transactions. Thus, it is treated as an emergency solution based on the rule of *al-akhdz bi akhlaf al-dhararain* (doing less sinful actions).

Based on the DSN fatwa, it can be inferred that *īnah* transactions apart from transferring debt from LKK to LKS is forbidden.

However, in Indonesia, it is suspected that a similar transaction model has been carried out with *bai‘ al-īnah* in gold-based financing. In one of the Baitul Maal wa at Tanwil (BMT) in Yogyakarta, the customer may apply for *murabahah* financing (buying and selling) by buying gold from BMT with installment, and then the customer can sell the gold back to BMT or other parties by cash at a lower price. This case can be categorized as an *īnah* transaction since the gold that has been purchased under the *murabahah* scheme in installment is then sold back to the BMT or other parties. The purpose of reselling it is to get cash.<sup>40</sup> Such a case contradicts the state policies that reject the application of *bai‘ al-īnah* in Sharia Financial Institutions. Thus, the institution authorized to carry out supervision needs to straighten out and maintain consistency in the prohibition of enacting the *bai‘ al-īnah* in Indonesia.

In comparison, the Malaysian Financial Authority allows *bai‘ al-īnah* to be used in the practice of Islamic financial institutions based on the opinion of Imam al-Syafi'i. The Council of SAC Malaysia, in its eighth meeting held on December 12, 1998 (23

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<sup>40</sup> Richa Angkita Mulyawisdawati and Mufti Afif, “Jual Beli Model ‘Inah Di Lembaga Keuangan Syariah: Tinjauan Konsep, Hukum Dan Implementasi,” *FALAH: Jurnal Ekonomi Syariah*, 2018, <https://doi.org/10.22219/jes.v3i1.5835>.

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Sya'ban 1419 H), stated that *bai' al-īnah* transactions in the Islamic Inter-Bank Money Market are permitted under the following terms or conditions:

1. Transactions of *bai' al-īnah* must follow the mechanism accepted by the Syafi'i school; and
2. The goods must not belong to *ribawi* criteria.<sup>41</sup>

In line with the permitting regulations, in Malaysia *bai' al-īnah* is applied to several types of transactions at Islamic financial institutions, such as issuing Islamic credit cards. AmBank first developed the sharia credit card in Malaysia in December 2001. This bank launched the Al-Tsaqif Credit Card, which uses a *bai' al-īnah* contract with a profit margin of 1.25% per month or 15% per year of total purchases. There are two separate contracts in the transaction, namely *bai' al-mutlaq* (cash sales), and the second is *bai' bithaman ajil* (sales with payment terms), where both take place after a contract is completed. In the initial transaction, the bank (LKS) agrees to sell particular goods or assets to credit card holders at a specific price. Then in the second transaction, the credit card holder agrees to sell back the goods or assets that have been purchased from the bank (LKS) at a lower price.

AmBank will sell the identified goods or assets to customers. The selling price is the total amount of costs and profit or profit (usually as a percentage). Furthermore, AmBank bought back the assets sold from the customer in cash.

Bank Muamalat Malaysia Berhad (BMMB) also uses *'inah* transactions agreement in home financing. Data for 2007 shows that home financing in BMMB reaches 70-80% of total financing, reaching more than 5.6 billion Malaysian Ringgit (RM). Conceptually, the home financing products offered by BMMB use the *Bai' Bitsamanil Ajil* (BBA) contract. The contract is a house *murabahah* (sale and purchase) contract with delayed payment. The BBA contract applied by BMMB is the same as the *bai' al-īnah* contract concept.

Although Malaysia has legalized *bai' al-īnah* since 1998, Malaysia has evaluated this decision in its development. On June 28, 2006, a Regional-Sharia Scholars Dialogue (regional sharia dialogue) was held to harmonize and increase understanding among sharia scholars involved in Islamic financing. The dialogue focuses on finding the best solution to using *bai' al-īnah* and *tawarruq* in the Islamic financial system. The council and the Sharia scientists involved have taken a comprehensive approach to the transaction of *bai' al-īnah* and *tawarruq*.

The Council in the Regional-Shariah Scholars Dialogue has made a new resolution as follows:

1. The acceptance of *bai' al-īnah* and *tawarruq* is still debated among sharia scientists based on their justifications.

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<sup>41</sup> Thomas Lane Stokes, "Shariah Resolutions in Islamic Finance," *Bank Negara Malaysia*, 2010.

2. The basis for justifying *bai' al-īnah* is the same as the basis for the justification of obtaining *bai' tawarruq*. Hence, the two concepts must be arranged in the same way
3. The concept of *bai' al-īnah* is still needed in the context of local Islamic finance development. However, market players are required to strengthen and improve operational processes and documentation to match the permitted characteristics of *bai' al-īnah*, and

Since the concept of *bai' al-īnah* is still debatable among sharia scholars, it is recommended that Islamic financial institutions limit its use in structurally challenging products and based on other contracts that can be accepted consensually.<sup>42</sup>

#### 4. CONCLUSION

Based on the above discussions, the following conclusions can be drawn. First, *bai' al-īnah* is a practice of buying and selling carried out by a seller to a buyer on a credit basis, and then the buyer resells the goods to the original seller at a higher price. Second, scholars have different opinions about *bai' al-īnah*. Abu Hanifah forbade *bai' al-īnah* because he believed that the legally binding sale and the purchase were illegal, so the second sale and purchase were also invalid. Also, Imam Malik and Ahmad ibn Hanbal prohibited *bai' al-īnah* because they both adhered to the argument of *sadd al-dharī'ah*. After all, *īnah* transaction contains elements of usury and manipulation to justify credit interest. In contrast, Imam al-Shafi'ī allowed *īnah* transaction because buying and selling activities were lawful and based on *qiyas*, and the buying and selling of this model were in line with Al-Qur'an. However, Imam al-Syafi'i also forbade *bai' al-īnah*, which contains *hilah/manipulative*. Third, Indonesia prohibits *bai' al-īnah* from being applied to Islamic Financial Institutions (LKS), except for emergency reasons, which is *bai' al-īnah* to take over credit or transfer customer debts from conventional financial institutions (LKK) to Sharia Financial Institutions (LKS). As opposed to that, Malaysia allows *bai' al-īnah* to be applied to Islamic Financial Institutions by referring to the opinion of Imam Syafi'i. However, Malaysia has also evaluated the regulation and recommended that *bai' al-īnah* be implemented with caution. *Bai' al-īnah* in Malaysia is practiced in several Islamic Financial Institutions' products, including sharia credit financing, home financing, gold transactions, and etc.

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<sup>42</sup> Stokes.

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