

# FACTORS INFLUENCING HIYAL APPROACH IN ISLAMIC BANKING INDUSTRY MALAYSIA

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## ABSTRACT

*Malaysia plays a pivotal role in the global Islamic finance industry, particularly in Islamic banking. Despite its success, Islamic banking faces challenges, especially in developing products that meet both Shariah principles and market demands. The hiyal (legal stratagem) approach has been employed to bridge this gap, although its usage has raised concerns about Shariah compliance, particularly accusations of facilitating riba (interest). This study explores the factors influencing the adoption of hiyal in Islamic banking product development in Malaysia. A qualitative methodology was employed, using semi-structured interviews with eight practitioners, including Shariah executives and Shariah committee members from various Islamic banks. The study revealed that the use of hiyal is driven by the need to meet regulatory, Shariah, and market demands. However, practitioners acknowledge that its application can lead to ethical concerns, potentially undermining customer trust. The findings highlight the importance of transparent Shariah governance and regulatory oversight in maintaining consumer confidence in Islamic banking products.*

**Keywords:** *hiyal; legal stratagem; Shariah compliance; product development; Islamic banking*

## 1.0 INTRODUCTION

Islamic banking has emerged as a vital component of the global financial ecosystem, with assets reaching approximately USD 3.06 trillion in 2022 (IFSB, 2022). This growth reflects the increasing demand for Shariah-compliant financial products, driven by both Muslim and non-Muslim investors seeking ethical alternatives to conventional banking. However, the expansion of Islamic finance also brings significant challenges, particularly in balancing market competitiveness with strict adherence to Islamic principles, such as prohibitions on *riba* (interest), *gharar* (excessive uncertainty), and *maysir* (gambling). The concept of *hiyal al-syar'iyah* (legal stratagems) plays a central role in addressing these challenges, enabling Islamic financial institutions to structure products that comply with Shariah while meeting modern financial needs.

*Hiyal* refers to legal mechanisms that allow Islamic banks to achieve Shariah compliance by structuring transactions in ways that avoid explicit violations of Islamic law. For instance, products such as *tawarruq* (commodity *murabahah*) and *Bai' Bithaman Ajil* (deferred payment sales) are commonly used to provide financing solutions that mimic conventional credit facilities but adhere to

the form and structure required by Shariah. These products have been instrumental in making Islamic banking competitive in markets (Ahmad et al., 2020; Hassan et al., 2024). Nevertheless, the application of *hiyal* has raised ethical concerns among scholars and practitioners alike, with critics arguing that excessive reliance on such mechanisms risks reducing Islamic finance to a mere replication of conventional banking models, potentially undermining the ethical foundations of Shariah (Smolo & Musa, 2020).

The debate surrounding *hiyal* touches on the broader issue of how Islamic banks balance the need for innovation with the imperative of maintaining Shariah integrity. While *hiyal* provides flexibility in product development, its use has sparked concerns that it may prioritize formal compliance over the ethical objectives of Islamic law, including justice, fairness, and social welfare (*maqasid al-Shariah*) (Laldin & Furqani, 2016). These concerns are particularly relevant in the context of Malaysia, which has established itself as a global hub for Islamic finance. The dual banking system in Malaysia comprising both conventional and Islamic banking creates a competitive environment in which Islamic banks must innovate continually to offer products that meet the expectations of both Muslim and non-Muslim clients.

Malaysia's regulatory environment, spearheaded by Bank Negara Malaysia (BNM), has been instrumental in shaping the development of Islamic finance. The central bank's Shariah Advisory Council provides rigorous oversight, ensuring that financial products comply with Shariah principles while fostering innovation in Islamic banking (Haridan et al., 2018). However, the use of *hiyal* in product development remains a subject of debate, with questions surrounding whether these legal stratagems enable true adherence to the ethical values of Shariah or merely provide a legalistic framework for avoiding prohibitions such as *riba*. The regulatory framework in Malaysia, though robust, must balance the need for strict compliance with the flexibility required to compete in global financial markets.

This study aims to explore the factors influencing the implementation of *hiyal* in Islamic banking, particularly in Malaysia. While much of the existing literature focuses on the theoretical aspects of *hiyal* or its macroeconomic implications, there is a gap in empirical research that examines how Islamic banking practitioners perceive and apply these legal mechanisms in practice. By investigating the motivations, challenges, and regulatory considerations involved in the application of *hiyal*, this research contributes to a more nuanced understanding of how Islamic banks navigate the complexities of Shariah compliance while striving for market competitiveness.

## 2.0 LITERATURE REVIEW

### 2.1 The Definitions of *Hiyal*

*Hiyal* is an Arabic word, and it is a plural noun of *hiyal*, meaning the skills and abilities to perform something well (Ibn Manzur, 2008). *Hiyal* also means stratagems and effective ways to change the façade of a plan, especially those used to outwit or achieve the end (Majma' al-Lughah al-'Arabiyyah, n.d.). Linguistically, *hiyal* has two distinct connotations, which are positive and negative. However, in customary (*'uruf*) usage, if the word is in general, a negative connotation is more dominant (Khir et al., 2011). However, the application of *hiyal* is also used in a positive context to represent the wisdom of doing something or finding a solution to achieve a specific goal that is not contrary to the Shariah, which is known as *hiyal mashruah* (Ibn Nujaym, 1983).

The terminology of *hiyal* among Muslim scholars or *fuqaha* also varies in defining *hiyal*. For example, Al-Khassaf (1314H) defines *hiyal* as something used as a solution to free oneself from what is sinful and prohibited (*haram*) and leave it for what is permissible (*halal*), whereas Ibn Qudamah (1405H) defines *hiyal* as outwardly using a lawful contract while intending thereby an unlawful one, exercising deception to achieve what Allah has forbidden and make it lawful, or to cancel an obligation, or to deprive someone of their right, and the like. According to Ibn Taimiyyah (1987), generally, *hiyal* is the use of covert means to achieve a goal that is not discerned except by a certain degree of intelligence and astuteness. If the goal is good, then the *hiyal* is good, and if it is evil, then the *hiyal* is evil. However, in another context, Ibn Taimiyyah (1987) defines *hiyal* more specifically, which is to intend the evading of an obligation or making lawful what is unlawful by an act done with an intention at variance with the purpose for which it

was legislated. On the other hand, contemporary jurists, Ibn Ashur (1998) defines *hiyal* as doing something that the Shariah forbids in a form that is neither forbidden nor recommended or doing an act that the Shariah does not forbid in a permissible form to achieve a specific purpose.

Hence, Shariah scholars have different views on the acceptance of Shariah contracts that contain *hiyal*. Hanafi and Shafi'i scholars are more open to accepting them, unlike Maliki and Hanbali scholars (Khir et al., 2010; KMAIA, 1990). Meanwhile, the majority of Islamic scholars believe that if the objective of *hiyal* is to legalise something *haram*, then it is categorised as a forbidden *hiyal* or *hiyal al-mamnu'ah*. Whereas, if the purpose of *hiyal* is to abandon what is *haram* and achieve something *halal*, then it falls in the category of permissible *hiyal* or *hiyal al-masyru'ah* (ISRA, 2011).

## 2.2 *Hiyal* in Muslim History

The usage of *hiyal* has existed in Islam since the Prophet Muhammad (PBUH). A familiar story with the use of *hiyal* was narrated in the hadith of the Prophet Muhammad (PBUH) when dealing in exchange for a *tamar* or dates with another type of dates by changing the scales of the dates.

*Abd Sa'id reported: Bilal (Allah be pleased with him) came with fine quality dates. Allah's Messenger (May peace be upon him) said to him: From where (you have brought them)? Bilal said: We had the inferior quality of dates, and I exchanged two sa's (of low quality) with one sa' (of fine quality) as food for Allah's Apostle (may peace be upon him). Whereupon Allah's Messenger (may peace be upon him) said: Woe! It is in fact usury; therefore, don't do that. But when you intend to buy dates (of superior quality), sell (the inferior quality) in a separate bargain and then buy (the superior quality). And in the hadith transmitted by Ibn Sahl, there is no mention of "whereupon". (Sahih Muslim, vol. 10, hadith no. 3871).*

This hadith shows that the Prophet (PBUH) forbade Bilal from exchanging low-quality dates with good-quality dates as it was the practice of *riba*. Thus, the Prophet Muhammad (PBUH) taught how to find a way out and exit from the transaction by selling the inferior quality dates first, then buying the superior quality. That is the way of *hiyal* to circumvent *riba*. Therefore, the transaction directed by the Prophet (PBUH) is a solution to obtain superior quality dates through sale and purchase transactions. This hadith also does not specify whether the sale and purchase can be carried out between the same two parties or other parties. The real intention of this transaction is not to buy and sell but to get fine-quality dates. This hadith has shown a form of artifice or an exit as the solution. That has been taught by our Prophet Muhammad (PBUH) and the necessity of carrying it out.

Besides, Allah SWT gives flexibility to those who are incapable of finding an exit (*hiyal*) to migrate to Madinah and is narrated in the Qur'an surah al-Nisa' verse 98, which means: "*Except helpless men, women and children who cannot afford a way out*". (Qur'an, 4: 98). Based on the verse quoted, Allah SWT has given flexibility to the weak and unable to migrate to Madinah by seeking *hiyal* (a way to escape) and not considering them part of the members of Hell. According to the tafsir composed by Al-Qurtubi (n.d.), the word *hiyal* in the above verse is a general pronunciation that encompasses various forms of the way out. Thus, Allah SWT uses the word *hiyal*, which means a way out to escape from the restraints of the infidels. Furthermore, as for the other surah, which is surah Sad, verse 44 Allah SWT has said:

*(And We said to him), "Take in your hand a bundle of grass, and strike 'your wife' with it, and do not break your oath." We truly found him patient. What an excellent servant 'he was'! Indeed, he 'constantly' turned 'to Allah' (Qur'an, 38: 44).*

Based on this verse, Allah inspired Prophet Ayyub to use one hundred pieces of grass and strike her just once with the grass so as to fulfil his oath. According to the tafsir of (Ibn Kathir, 1999), the Prophet Ayyub's actions are considered a way to perform his oath and prevent him from violating it. Al-Sarakhsi (1986) also argues that this verse contains a lesson in the form of exit (*makharaj*) to the Prophet Ayyub, and Allah SWT has taught how to get out of the oath he uttered.

The concept of *hiyal* emerged in the formative period of Islamic jurisprudence, particularly as scholars sought to reconcile the ideal application of Shariah with real-world circumstances. According to Ibn Qayyim al-Jawziyyah, a prominent Hanbali scholar, *hiyal* was employed to navigate difficult legal situations without violating the letter of the law. Ibn Qayyim (1993) emphasised that while some *hiyal* might be necessary, they should not be used in a way that contravenes the ethical objectives of Shariah.

Different Islamic legal schools (*madhahib*) are varied in their acceptance and application of *hiyal*. The Hanafi school is known for its pragmatic approach, allowing for the use of *hiyal* as long as they do not explicitly violate Shariah. Hanafi jurists like Imam Abu Hanifa permitted the use of legal stratagems in transactions, provided they aligned with the broader objectives of Islamic law (Kamali, 2008).

Meanwhile, the Maliki and Shafi'i schools were more conservative regarding the use of *hiyal*. Imam Malik and Imam Shafi'i, the founders of these schools, emphasised that *hiyal* should be scrutinised carefully to ensure that they did not undermine the spirit of Shariah. They were concerned that the misuse of *hiyal* could lead to the manipulation of Islamic law, allowing actions that would otherwise be prohibited. These schools focused more on the intentions behind the use of *hiyal* and its alignment with the ethical goals of Shariah. For instance, in financial matters, both schools were cautious about the use of *hiyal* to structure transactions that might appear to circumvent prohibitions on *riba* (Al-Raysuni, 2005).

The Hanbali school, following the teachings of Ahmad ibn Hanbal, generally disapproved of *hiyal*, which could be seen as circumventing clear prohibitions in Shariah. This school emphasised a stricter adherence to both the letter and spirit of the law, advocating for transparency and integrity in legal and financial matters (Vogel & Hayes, 1998).

### 2.3 Contemporary Challenges in Islamic Banking

Islamic banking faces numerous contemporary challenges as it strives to maintain its ethical and religious distinctiveness in a competitive global financial market particularly with the use of *hiyal* (legal stratagems). As previously discussed, *hiyal* allows Islamic banks to structure financial products that comply with Shariah prohibitions on *riba*, *gharar*, and *maysir* (Smolo & Musa, 2020). However, critics argue that the overuse of *hiyal* risks reducing Islamic finance to a system that merely replicates conventional banking models, thus undermining its ethical foundations (Abdul-Rahman, 2014).

The tension between formal Shariah compliance and substantive adherence to Islamic ethical principles is a growing concern, particularly as Islamic banks face increasing pressure to offer products that compete directly with conventional financial institutions. Research suggests that many *hiyal*-based products, such as *tawarruq*, are perceived as offering only superficial compliance with Shariah, as they replicate the economic effects of interest-based loans without fulfilling the broader ethical objectives of Islamic finance (Ahmed & Aleshaikh, 2014). This perception could damage the credibility of Islamic finance, especially among consumers who expect Islamic banking to promote fairness, social justice, and equity, in line with the *maqasid al-Shariah*.

Maintaining product authenticity and ethical credibility remains a significant challenge for Islamic banks, particularly as they expand into highly competitive global markets. Financial institutions must navigate the delicate balance between innovation and ethical compliance, ensuring that their products not only meet the formal requirements of Shariah but also align with its broader ethical objectives (Laldin & Furqani, 2016). This challenge is compounded by the growing sophistication of financial markets, which demand increasingly complex financial products that may stretch the boundaries of Shariah compliance.

Furthermore, Islamic banks face the ongoing challenge of competing with conventional financial institutions, particularly in non-Muslim-majority markets where Islamic finance is relatively new. While Islamic banks have successfully positioned themselves as ethical alternatives to conventional banks, they often struggle to offer the same range of products and services due to the constraints imposed by Shariah law (Wilson, 1999; Zainordin et al., 2016).

The need for Islamic banks to compete with conventional banks has led to the development of products that closely resemble their conventional counterparts, such as *murabahah*-based home financing and *ijarah*-based leasing. However, as discussed earlier, these products are sometimes criticized for offering only nominal Shariah compliance, raising concerns about whether Islamic banks can truly differentiate themselves from conventional financial institutions (Smolo & Musa, 2020).

Additionally, the global financial landscape is increasingly dominated by large multinational banks with significant resources and extensive product offerings. For Islamic banks, which often operate in smaller markets, competing with these financial giants presents a significant challenge. To remain competitive, Islamic banks must continue to innovate while maintaining their ethical and religious distinctiveness (Laldin & Furqani, 2016).

## 2.4 Current Realities of *Hiyal* and Practices in Islamic Banking

*Hiyal* has played a significant role in Islamic financial transactions, particularly in contexts where strict adherence to Shariah prohibitions, such as those against *riba* (usury), might limit the ability to conduct business. Islamic scholars developed *hiyal* to structure financial transactions in ways that complied with Shariah while still meeting practical economic needs.

The Islamic banking industry in Malaysia takes a pragmatic approach to structuring Islamic financial products and services by applying *hiyal* known as a ‘replication approach’ of conventional financial models. The replication approach is one form of *hiyal* because among the methods implemented in the replication approach is to make additions to the original contract, such as additional contracts or other conditions that the contracting party does not require. The addition of a contract or other condition is used in support of the main contract, and it is one of the indications of *hiyal* (ISRA, 2011; Khir et al., 2011).

The advent of Islamic finance in modern times has presented a challenge, as there is no historical precedent for the operational framework of financial institutions within the Islamic context (Hasan et al., 2016). Contemporary Muslim scholars and financial practitioners are forced to depend on the well-established conventional financial structures while striving to create a prototype that adheres to Islamic principles and remains feasible in the contemporary financial landscape (Laldin & Furqani, 2016).

The replication approach in the development of Islamic banking products has undoubtedly helped immensely in the rapid development and maintaining the stability of the Islamic banking industry through the advancement of conventional finance. Given that the modern financial environment is something complicated, it is crucial to develop efficient and competitive products with appropriate approaches to harmonise between revelation and current realities (Ishak & Asni, 2020).

However, this replication approach has provoked controversial debate, and it has been criticised by scholars and society about its authenticity and issues of form and substance (Hamour et al., 2019; Yaakob et al., 2016). In addition, several issues and problems occur in the current practice of Islamic finance and are brought to court following confusion in the context of Islamic banking products and services that resemble conventional products and are considered as a way to legalise *riba* or something that was originally illegal (Habil, 2010; Syed & Omar, 2017). These problems have raised public scepticism towards banking products and affected the image of banking institutions rooted in Islamic principles (Ashraf et al., 2015; Smolo & Musa, 2020).

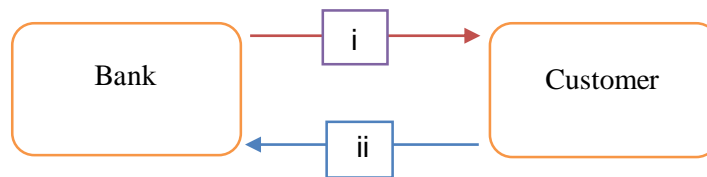
The usage of *hiyal* in product development is informal, which is not something intended and planned in the beginning, but it is the outcome at the end of the whole process. Syahmi et al. (2022) found the reasons for the widespread of *hiyal* due to several constraints in the existing banking system and view of customer preferences. *Hiyal al-Syar’iyyah* is needed to reconcile the requirements of Shariah demanded by Islam and the current complex economic factors. Therefore, a pragmatic approach that is balanced between revelation and reality is very important to adapt the *maqasid Shariah* into the modern banking system without having to compromise the principles of Shariah (Ishak & Asni, 2020).

*Hiyal*-based contracts play a crucial role in shaping Islamic banking products. For example, the *tawarruq* contract involves two sale and purchase transactions to acquire liquidity. Scholars concur that the *tawarruq* contract embodies the *hiyal* concept since its objective is to obtain cash through the buying and selling of the asset rather than focusing on the underlying asset itself (Abozaid, 2016).

Thus, Islamic banking provides similar facilities in different mechanisms to customers by offering financing facilities and using appropriate Shariah contracts such as partnership agreements such as *musharakah*, *mudarabah*, or sale and purchase agreements such as *murabahah* to justify profit from revenue in contracts executed. Therefore, *Hiyal al-Syar’iyyah* is used as an alternative way to avoid usury in transactions performed.

Khair et al. (2015) divided Islamic banking products into two categories which are *hiyal*-based products and non-*hiyal*-based products. *Bai' al-'inah* and *tawarruq* are the current practice for *hiyal*-based products, while non-*hiyal*-based products include *murabahah*, *musharakah*, *ijarah*, and *istisna'*.

In Islamic banking, *bai' al-'inah* contracts are often used for most financing products especially personal financing, Islamic credit cards, and assets (Amin et al., 2014). This contract is used at the beginning of Islamic financing products to meet customers' needs to obtain instant cash facilities. The BNM SAC approved this application at the first meeting held on 8th July 1997, which resolved that the *bai' al-'inah* transaction is permissible based on the following conditions. *Bai' inah* transaction must follow the mechanism accepted by Shafi'i school, and the goods transacted must not be a *ribawi* item (Bank Negara Malaysia, 2010). Figure 1 below is an illustration of the permitted *bai' al-'inah* transactions.



**Fig 1:** *Bai' al-'inah* structure

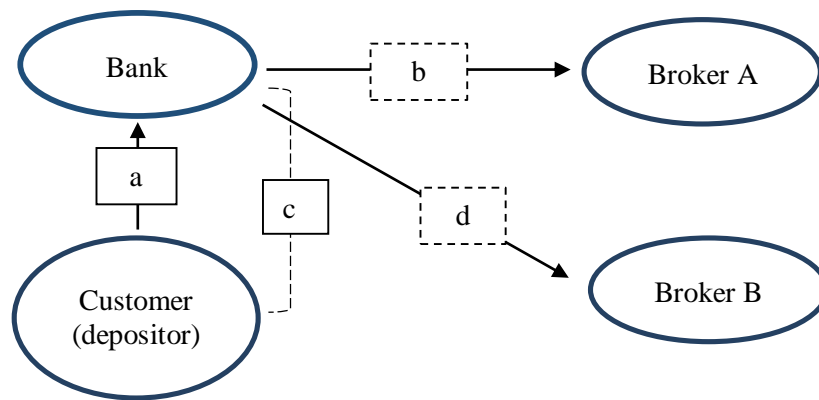
- i: Banks sell assets to customers such as a piece of land worth RM100,000 in deferment within ten years for example;
- ii: Then, the bank repurchased the land for RM80,000 in cash.

The concept of *bai' al-'inah* is an alternative solution for customers who need liquidity of money. Banking institutions use *bai' al-'inah* by creating and selling goods or assets to customers on credit. Then, the bank repurchases the goods in cash at a lower price. In *bai' al-'inah* transactions, the bank performs *hiyal* by moving from a loan contract to a contract of sale and purchase of goods to avoid the occurrence of *riba* (Abu Bakar, 2009).

However, the usage of *bai' al-'inah* is not accepted by fatwa-issuing bodies in the Middle East because it leads to the practice of *riba*. Applying *bai' al-'inah* in Shariah contracts has provoked criticism from scholars, especially Middle Eastern scholars (Shofian & Sulaiman, 2012). Following that, the BNM SAC also issued a new circular, which came into effect on 1st January 2013 and further detailed the implementation of the *bai' al-'inah* contract in Islamic banking products to ensure Shariah compliance (Bank Negara Malaysia, 2012). This criticism has indirectly made Islamic financial institutions move to more suitable alternatives such as *tawarruq* or commodity *murabahah* (Yusof, 2012).

*Tawarruq* is the concept that is considered an alternative to the *bai' inah* concept and is used for product financing, deposits, and financial liquidity management. *Tawarruq* means buying a commodity at a deferred price in the form of *musawamah* or *murabahah* and then selling those to a third party to obtain

cash. At the 51st meeting held on 28th July 2005, the Shariah Advisory Council allowed deposit products and financing based on the concept of *tawarruq*, known as commodity *murabahah*.

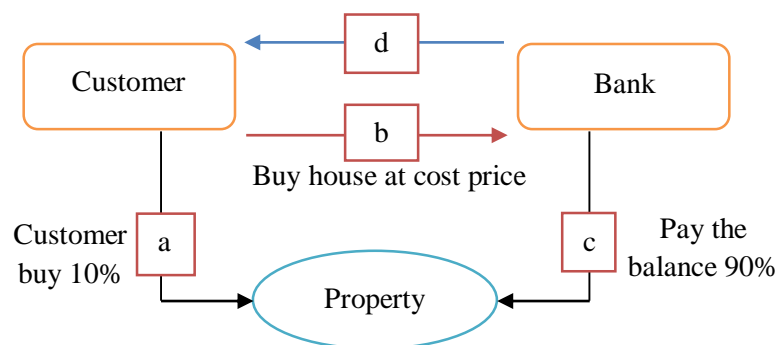


**Fig 2:** Deposit product based on *tawarruq*

- a: The customer (depositor) appoints the bank as a representative to purchase the commodity;
- b: The Bank, as the customer’s representative will purchase the commodity from Broker A in cash/spot;
- c: The bank then buys the commodity from the customer on a deferred purchase basis at cost price plus profit margin;
- d: After that, the bank resells the commodity to Broker B at a cash price in the commodity market.

As a result of transaction C above, the bank will incur a liability (total cost of the commodity plus profit margin) to be paid to the customer at maturity. The price of the commodity purchased from Broker A and the price sold to Broker B are the same.

Other than *bai’ inah* and *tawarruq*, Islamic banking institutions use *bai’ bithaman ‘ajil* (BBA) as a contract in asset financing products such as houses. BBA housing financing was introduced by Bank Islam Malaysia Berhad (BIMB) at the beginning of its establishment in 1984. At that time, BBA products were an alternative to housing loans provided by conventional banking and avoided elements prohibited by Shariah. The practice of BBA in Islamic banking in Malaysia consists of several contracts, namely *bai’ murabahah* (surcharge cost), *bai’ al-’inah* (sale and purchase of the same goods), and *bai’ ‘ajil* (future) (Syahidawati Shahwan et al., 2013).



**Fig 3:** Illustration of BBA housing financing contract

However, the application of BBA in Islamic banking in Malaysia has caused controversy and raised Shariah issues (Abdul Aris et al., 2012). Middle Eastern scholars have criticised the practice of BBA housing financing for having the element of *bai' al-'inah*, which is prohibited. There is an element of *riba* besides the actual nature of the BBA practice in Malaysia, resembling a loan.

Aishath Muneeza et al. (2011) showed a clause in the Property Purchase Agreement (PPA) where the agreement stipulates that the customer must repurchase the asset from the bank. This clause contradicts the Shariah principle, where two contracts, PPA and PSA, are bound in one contract. The Property Purchase Agreement (PPA) should be independent of the Property Sale Agreement (PSA) and done separately to avoid Shariah issues occurring in the transactions performed.

To address this problem, she also suggested BBA practices as practised in the Middle East and Pakistan, where customers would identify the assets they wish to purchase in advance and inform the bank. Then, the bank will buy the asset and sell it to the customer at a cost price and add to the profit in instalments. Overall, this practice should be conducted in actual BBA implementation.

Bakar (1997) stated that the emergence and practice of debt-based instruments in current financial financing have their background and justification. This needs to be seen from a modern perspective where the Islamic banking system operates in parallel and in line with the conventional banking system (dual banking). Debt-based financing, such as BBA, has long been entrenched in the Islamic banking system. It is easier to operate than equity and partnership-based financing such as *musharakah mutanaqisah* (*musharakah* depreciation) (Ramli & Salleh, 2014).

As mentioned previously, all Islamic banking practices are free from loan-based agreements as the industry uses sale-based contracts. However, there are a few criticisms stating that Islamic banking practices are oppressive and usurious as a back door to *riba* and might contradict the spirit of Islamic law. They also question the methods used in Islamic banking product development, which mimic conventional banking. This claim is particularly evident in the ongoing debate over *tawarruq*, where critics argue that the structure effectively replicates interest-based lending, thus defeating the purpose of Shariah compliance. Thus, there is a need to identify what are the factors that need to be considered by the industry before developing a product.

Therefore, the identification of factors in the development of Islamic banking products by using *hiyal al-syar'iyah* can give an understanding that each product is developed carefully and several factors need to be considered before product structuring is carried out.

There is a need to ensure that Islamic banking products not only adhere to the technical requirements of Shariah but also align with its ethical principles. As the use of *hiyal* in Islamic finance continues to generate debate, particularly regarding their potential to undermine the spirit of Shariah, this research aims to address these controversies, provide insights into regulatory practices, and explore innovative alternatives. By critically examining the role of *hiyal*, the research seeks to contribute to the ethical integrity and sustainable growth of the Islamic finance industry.

### 3.0 METHODOLOGY

This study employs a qualitative research design to explore the factors influencing the adoption of the *hiyal* approach in the Islamic banking sector in Malaysia. The qualitative approach is particularly suitable for this research, as it allows for an in-depth understanding of practitioners' experiences and perspectives regarding Shariah-compliant product development (Creswell, 2013). The study focuses on semi-structured interviews, which provide both flexibility and consistency in data collection, enabling a comprehensive exploration of the research questions.

The qualitative research design adopted for this study is based on a constructivist paradigm, where reality is viewed as being constructed by social actors. This approach aligns with the study's objective of understanding the subjective interpretations and experiences of Shariah executives and Shariah committee members in relation to the *hiyal* approach in Islamic banking (Denzin & Lincoln, 2018). By using semi-structured interviews, the research captures the nuanced insights of participants, allowing for the exploration of complex and context-specific phenomena.

The population for this study consists of practitioners working in Islamic banking institutions in Malaysia, specifically those who hold decision-making roles in the development and approval of Shariah-compliant products. The sample comprises eight respondents, selected using purposive sampling. Purposive



sampling is a non-probability sampling technique that is widely used in qualitative research when the researcher aims to target specific individuals with unique knowledge or experience relevant to the research question (Patton, 2015). The criteria for inclusion were that participants had to have served in their roles for a minimum of three year and be directly involved in product development or Shariah compliance processes.

The sample includes Shariah executives and Shariah committee members from three Islamic banking institutions, representing a diverse cross-section of the industry. Of the eight respondents, three are Shariah executives involved in the operational aspects of product development, while the remaining five are Shariah committee members responsible for approving products from a regulatory and Shariah compliance perspective.

The research instrument employed in this study was a semi-structured interview guide, developed following the Interview Protocol Refinement (IPR) framework proposed by (Castillo-Montoya, 2016). This framework was utilized to ensure that the interview questions were directly aligned with the study's research objectives. The IPR process involved refining the interview questions to strike a balance between structure and flexibility, allowing respondents to elaborate on their experiences while ensuring that the core areas of interest were consistently addressed across interviews.

The interview protocol consisted of open-ended questions that focused on the respondents' experiences with *hiyal* in Islamic banking product development, the challenges faced in maintaining Shariah compliance, and their perceptions of the ethical implications of using *hiyal* in financial products. The open-ended nature of the questions encouraged respondents to provide detailed responses, facilitating the collection of rich, qualitative data (Brinkmann & Kvale, 2015).

Data were collected through semi-structured interviews conducted via email and telephone due to logistical constraints and participant availability. Each interview lasted between 30 to 60 minutes and was audio-recorded with the consent of the participants to ensure the accuracy of data capture. The interviews were then transcribed verbatim for analysis. Collecting data from multiple institutions enabled a comparison of perspectives, enhancing the depth and breadth of the findings (Guest et al., 2013).

Given the exploratory nature of the study, the relatively small sample size of eight respondents was considered appropriate, as qualitative research typically emphasizes depth of understanding rather than breadth (Creswell, 2013). Moreover, prior research suggests that in qualitative studies, data saturation — the point at which no new information emerges from additional data — can be achieved with as few as six to twelve participants when the focus is on understanding key themes rather than generalizability (Fusch & Ness, 2015).

Data analysis followed a thematic analysis approach, as described by Braun & Clarke (2006). This method was chosen for its suitability in identifying, analysing, and reporting patterns (themes) within qualitative data. The process of thematic analysis involved several stages: familiarization with the data, coding, searching for themes, reviewing themes, defining themes, and writing up the findings.

Thematic coding was applied to the interview transcripts, whereby key statements were identified and categorized according to recurrent themes related to *hiyal* implementation, regulatory challenges, and ethical concerns in product development. The coding process was iterative, with themes being refined as new insights emerged during the analysis. This ensured that the analysis captured the complexity and richness of the data while maintaining a focus on the study's research objectives (Miles et al., 2014).

To ensure the reliability of the analysis, two researchers independently coded the interview transcripts and subsequently compared their coding to identify and resolve discrepancies. This process of inter-coder reliability contributed to the rigor and trustworthiness of the findings (Lincoln & Guba, 1985).

Ethical approval for the study was obtained from the relevant institution, and all participants provided informed consent prior to their participation. The study adhered to the principles of confidentiality and anonymity, ensuring that participants' identities and their associated institutions were not disclosed. All data were stored securely and handled in accordance with ethical guidelines for qualitative research (Orb et al., 2001).

While the study provides valuable insights into the use of *hiyal* in Islamic banking, its findings are based on a limited number of participants from a specific geographical context. As a result, the findings may not be generalizable to all Islamic banking institutions, particularly those in jurisdictions with different regulatory frameworks. Future research could expand the sample size and include practitioners from a broader range of Islamic banking institutions to enhance the generalizability of the results.

## 4.0 RESULTS AND DISCUSSION

This section presents the key findings from the interviews with Shariah executives and committee members, focusing on three primary themes: Shariah requirements, banking institutions' requirements, and regulatory environment. These findings are based on thematic analysis and provide insights into the complex dynamics of *hiyal* (legal stratagems) in Islamic banking product development. The discussion contextualizes these findings within the broader literature on Islamic finance and product innovation.

Before delving into the findings, it is important to provide an overview of the demographic characteristics of the respondents, as they shape the insights provided in this study. A total of eight respondents participated in the interviews, consisting of Shariah executives and Shariah committee members from various Islamic banking institutions in Malaysia. The demographic background is summarized in the table below:

**Table 1: Respondents' profile**

Respondent	Position	Institution Type	Experiences (Years)
R1	Shariah Executive	Subsidiary foreign bank	7
R2	Shariah Executive	Subsidiary local bank	12
R3	Shariah Executive	Subsidiary local bank	9
R4	Shariah Committee	Full-fledged local bank	13
R5	Shariah Committee	Full-fledged local bank	5
R6	Shariah Committee	Subsidiary local bank	8
R7	Shariah Committee	Subsidiary foreign bank	11
R8	Shariah Committee	Subsidiary foreign bank	5

The respondents were selected based on their direct involvement in the development and approval of Shariah-compliant products. The sample reflects a diversity of perspectives, as it includes professionals from both full-fledged local Islamic banks and subsidiaries of foreign banks, with experience ranging from 5 to 12 years in the Islamic finance industry.

### 4.1 Shariah Requirements

A recurring theme across the interviews was the critical role of ensuring Shariah compliance in Islamic banking products, particularly through the use of *hiyal* to navigate the prohibitions on *riba* (usury), *gharar* (uncertainty), and *maysir* (gambling). The respondents highlighted that *hiyal* provides a strategic tool to structure products that meet the demands of the modern financial market while remaining compliant with Islamic law.

Respondent 1 emphasized the importance of *hiyal* in maintaining compliance:

*“The use of hiyal allows us to avoid riba and other prohibitions while still offering competitive products. It’s essential for us to ensure that the products are Shariah-compliant in both form and substance”*

While *hiyal* provides flexibility in product development, concerns were raised about its ethical implications. Respondents highlighted the importance of not merely achieving formal compliance but ensuring that the use of *hiyal* aligns with the ethical spirit of Islamic law. Respondent 4, for example, raised concerns that certain forms of *hiyal* might be perceived as exploiting loopholes within Shariah, thus potentially undermining the ethical foundations of Islamic banking:

*“There is always a concern that while hiyal ensures formal Shariah compliance, it may, in some cases, compromise the ethical spirit of Islamic law. It’s essential to avoid merely ‘ticking boxes’ for compliance”*

This concern resonates with critiques in the literature, where scholars argue that the excessive use of *hiyal* risks turning Islamic finance into a mere replication of conventional banking, without addressing the deeper ethical foundations of Islamic jurisprudence (Smolo & Musa, 2020). While *hiyal* helps Islamic banks navigate complex financial regulations, its over-reliance may lead to criticism that Islamic banking is merely replicating conventional finance under a Shariah-compliant veneer. Therefore, it is essential to ensure that its use upholds the principles of transparency, fairness, and justice, as emphasized in the *maqasid al-Shariah* (objectives of Shariah) (Laldin & Furqani, 2016).

The findings suggest that while *hiyal* is a valuable tool for achieving formal compliance with Shariah, its use must be carefully managed to avoid undermining the ethical principles that underpin Islamic finance. Islamic jurisprudence is concerned not only with technical compliance but also with adherence to the spirit of the law. Thus, while *hiyal* may allow Islamic banks to develop products that meet market needs, its application must be guided by Shariah scholars and regulatory bodies to ensure that it does not compromise broader Islamic ethical values.

Additionally, respondents emphasized the need for ongoing Shariah oversight and innovation to ensure that products developed using *hiyal* are not only compliant but also reflect the ethical aspirations of Islamic finance. This reflects a broader challenge in Islamic banking: the tension between maintaining formal Shariah compliance and achieving the ethical and social objectives that distinguish Islamic finance from its conventional counterpart. As Laldin and Furqani (2016) argue, the future of Islamic finance depends on balancing innovation with adherence to the ethical principles that differentiate it from conventional finance.

In summary, the findings underscore the crucial role of *hiyal* in navigating the complexities of Shariah compliance in Islamic banking. However, they also highlight the need for a cautious and ethically conscious approach to its application, ensuring that it serves both the formal and ethical requirements of Shariah. This dual focus—on both the form and substance of compliance—will be critical for the sustainable growth of Islamic finance in a globalized market.

## 4.2 Banking Institutions' Requirements

Islamic banking institutions operate in a highly competitive financial environment, where the need to balance profitability with Shariah compliance is paramount. The findings indicate that *hiyal* play a crucial role in helping Islamic banks meet customer demands while adhering to Shariah principles. However, respondents highlighted that this balance is not without its challenges.

Respondent 2 elaborated on this challenge:

*“Islamic banks operate in a competitive environment. We are expected to offer products that not only comply with Shariah but also provide the same level of functionality as conventional products. Hiyal helps us achieve this balance.”*

Debt-based contracts such as *tawarruq* and *Bai' Bithaman Ajil* (BBA) were frequently mentioned as key applications of *hiyal* in Islamic banking. These products allow Islamic banks to offer credit-like facilities without breaching the prohibition on *riba* (interest). Despite their widespread use, the ethical validity of these products remains a contentious issue. Some scholars argue that they closely mimic conventional financial products, raising concerns about their alignment with the spirit of Shariah (Yaakob et al., 2016). Several respondents emphasized the delicate balance between achieving business objectives and maintaining Shariah compliance. Respondent 6 explained:

*“While we aim to meet market demands, there is a fine balance between profitability and Shariah compliance. The use of hiyal helps, but there is always a risk of crossing ethical boundaries.”*

This observation highlights the potential tension between form and substance in Shariah compliance. While *hiyal* provides Islamic banks with the flexibility to structure products that comply with the technical requirements of Shariah, there is a risk that these products may fall short of upholding the broader ethical objectives of Islamic finance, particularly when they closely resemble conventional banking products (Ahmed, 2014).

The importance of ongoing regulatory and Shariah oversight was underscored by respondents, who noted that regulatory frameworks play a critical role in ensuring that products developed using *hiyal* are not only compliant in form but also maintain ethical integrity. This view aligns with scholarly critiques, which argue that products should not merely achieve formal compliance but must also embody the ethical principles of fairness, transparency, and justice that underpin Islamic finance (Smolo & Musa, 2020). Without this balance, there is a risk that Islamic financial products could lose their ethical distinctiveness, thereby undermining consumer trust and confidence in the industry.

Respondent 8 further remarked:

*“We are trying to innovate within the Shariah framework, but it’s difficult to satisfy both compliance and customer demands. We’re constantly looking for new ways to develop products that balance these needs.”*

This finding highlights the ongoing need for innovation in Islamic finance, where institutions are tasked with developing products that not only meet market demands but also maintain the ethical and legal standards of Shariah. The respondents’ views suggest that while *hiyal* is a valuable tool for achieving compliance, there is an inherent risk in its overuse, which may compromise the ethical integrity of Islamic banking products.

### 4.3 Regulatory Environment

The regulatory environment plays a pivotal role in shaping the development and implementation of Shariah-compliant products in Islamic banking. In the context of Malaysia, Bank Negara Malaysia (BNM) provides a comprehensive regulatory framework that governs the use of *hiyal* (legal stratagems) in Islamic financial products. The findings from this study underscore the critical importance of regulatory oversight, not only to ensure Shariah compliance in form but also to preserve the ethical substance of Islamic banking practices. The role of regulators is crucial in maintaining the integrity of Islamic finance, particularly when banks employ complex legal devices like *hiyal* to develop products that meet modern financial demands while adhering to Shariah principles.

Respondent 6 emphasized the importance of BNM’s role in regulating the use of *hiyal*:

*“BNM’s regulations are key in making sure that we don’t misuse hiyal. The guidelines help maintain the integrity of our products and ensure that they comply with both Shariah and financial regulations.”*

The findings suggest that without stringent regulatory oversight, there is a risk that *hiyal* could be used as a tool to achieve technical compliance without adhering to the ethical objectives of Shariah. As such, BNM’s guidelines serve as a safeguard against the potential misuse of *hiyal*, ensuring that Islamic financial products maintain their ethical and religious distinctiveness. However, it was also evident from the interviews that the regulatory environment does not merely function as a compliance mechanism but also as a driver of innovation in Islamic finance. Respondent 4 pointed out how regulatory changes necessitate creative responses from Islamic banks:

*“As regulations change, we have to adapt. For example, restrictions on the use of certain contracts like bai’ al-‘inah have pushed us to explore other forms of hiyal, like tawarruq.”*

This observation illustrates the dynamic interaction between regulation and innovation in Islamic finance. As regulators tighten controls over specific financial instruments perceived as controversial, such as *bai’ al-‘inah* (sale and buy-back agreement), Islamic banks are compelled to develop alternative structures that meet both regulatory requirements and market needs. The transition from *bai’ al-‘inah* to *tawarruq* (commodity *murabahah*) in many Malaysian Islamic banks is a prime example of how regulatory scrutiny drives innovation. Yet, this shift also raises important questions about whether these alternative structures

truly embody the ethical aspirations of Islamic finance or merely replicate the economic features of conventional financial products in a Shariah-compliant form.

The study also revealed that regulatory inconsistencies between different jurisdictions present significant challenges for Islamic banks, particularly those that operate across borders. While Malaysia has developed a robust regulatory framework for Islamic finance, including the acceptance of *bai' al-'inah* and *tawarruq*, these same contracts face greater scrutiny in Middle Eastern markets, where interpretations of Shariah law differ. Respondent 8 highlighted the difficulties posed by such regulatory fragmentation:

*“The lack of consistency in how hiyal-based contracts are regulated across regions makes it difficult to operate across borders. What’s accepted in Malaysia might not be in the Middle East, and this creates confusion.”*

This finding aligns with scholarly critiques of the fragmented nature of Shariah governance in the global Islamic finance industry. Habil (2010) argues that the absence of a unified regulatory and Shariah governance framework across jurisdictions creates inconsistencies in the application of Islamic financial principles. This fragmentation leads to confusion among consumers, limits cross-border transactions, and undermines the global credibility of Islamic finance. The respondents in this study echoed these concerns, pointing to the need for greater harmonization of Shariah standards and regulatory practices across different markets.

Moreover, the respondents emphasized that while regulatory oversight is essential for ensuring compliance, regulators must also strike a balance between stringent control and allowing enough flexibility for innovation. Too much regulatory rigidity could stifle creativity in the development of Islamic financial products. Respondent 5 elaborated:

*“Regulation is important, but it has to be balanced. If it’s too strict, we won’t be able to innovate and meet the needs of our customers. But without enough oversight, we risk developing products that are Shariah-compliant in name only.”*

This sentiment is echoed in the literature, where scholars argue that regulatory frameworks in Islamic finance must evolve to accommodate the complexities of modern financial markets without compromising the ethical foundations of Shariah (Laldin & Furqani, 2016). A robust regulatory environment must therefore be dynamic, ensuring that Islamic financial institutions have the freedom to innovate while maintaining the integrity of Shariah principles. This delicate balance is crucial to the sustainability and growth of Islamic finance, particularly in an era of rapid financial globalization.

#### **4.4 The Role of Shariah Boards and Global Standardization**

In addition to national regulatory bodies like BNM, the role of Shariah supervisory boards within Islamic financial institutions was repeatedly highlighted by respondents as a key element in the regulatory ecosystem. These boards are responsible for ensuring that Islamic financial products comply with Shariah law. However, respondents expressed concerns about the varying interpretations of Shariah across different jurisdictions and the potential for conflict between national regulators and Shariah boards.

Respondent 4 explained:

*“The Shariah board in each bank plays a vital role in product approval, but sometimes their interpretations differ from what regulators expect. This can lead to confusion, especially when operating internationally.”*

This highlights the need for greater alignment between Shariah boards and national regulators to avoid inconsistencies in product approval processes. Additionally, respondents pointed out the lack of global standardization in Shariah governance as a significant challenge. The absence of universally accepted Shariah standards creates barriers for Islamic financial institutions attempting to expand internationally, as products approved in one jurisdiction may be rejected in another.

The Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI) and the Islamic Financial Services Board (IFSB) have made efforts to standardize Shariah governance, but the effectiveness of these bodies is limited by the diverse interpretations of Shariah law across regions (Ahmed, 2014). As Islamic finance continues to grow, the need for a more coordinated approach to Shariah governance, both within and across jurisdictions, will become increasingly important.

The findings of this study underscore the complexities involved in the development of Shariah-compliant financial products in Islamic banking. The application of *hiyal* is instrumental in enabling Islamic banks to navigate Shariah prohibitions while meeting modern financial demands. However, the ethical implications of *hiyal* usage remain a concern, particularly in terms of whether these products uphold the deeper ethical values of Islamic finance or merely provide technical compliance.

From the perspective of banking institutions, the challenge of balancing profitability with Shariah compliance is ever-present. Islamic banks must continuously innovate within the confines of Shariah to offer competitive products, yet the criticism of debt-based *hiyal*-based products like *tawarruq* reflects a broader industry-wide need for more authentic Shariah-compliant solutions.

Finally, the regulatory environment is crucial in ensuring that Islamic financial products are both legally and ethically sound. While Malaysia's regulatory framework provides robust oversight, the study identified significant challenges related to the fragmentation of Shariah standards across different jurisdictions. Greater regulatory harmonization and collaboration between Shariah standard-setting bodies at the global level are necessary to support the sustainable growth and credibility of Islamic finance.

Overall, the study concludes that while *hiyal* serves as an essential tool for maintaining Shariah compliance, its application must be carefully managed to ensure that Islamic banking products not only comply with the technical requirements of Shariah but also reflect the ethical foundations of Islamic finance. The findings call for a balanced approach that incorporates innovation, regulatory oversight, and ethical integrity in the future development of Islamic financial products.

## 5.0 CONCLUSION

The use of *hiyal* in Islamic banking product development is shaped by a complex interplay of factors, including Shariah compliance, market demand, competitiveness, and regulatory oversight. These factors collectively drive Islamic financial institutions to employ *hiyal* as a means to offer innovative products that adhere to Islamic principles while meeting contemporary financial needs.

The findings underscore the importance of a robust regulatory framework that balances the need for innovation with the need to uphold Shariah principles. Policymakers should ensure that regulations governing *hiyal* not only enforce technical compliance but also promote ethical considerations consistent with the objectives of Shariah (*maqasid al-Shariah*). Enhanced regulatory oversight and clear guidelines on the use of *hiyal* can prevent potential misuse and ensure that Islamic financial products genuinely reflect Islamic values.

Despite their utility, *hiyal* is not without limitations. The reliance on *hiyal* can sometimes lead to the perception that Islamic financial products are merely conventional products repackaged to appear Shariah-compliant. Additionally, the complexity of *hiyal* can create challenges in ensuring consistent and transparent Shariah compliance across different institutions. There may also be practical difficulties in aligning *hiyal* with the evolving needs of the market while adhering to strict regulatory and ethical standards.

Future research should explore the impact of *hiyal* on the long-term sustainability of Islamic finance, particularly in terms of its ability to maintain genuine Shariah compliance while meeting market demands. Comparative studies on the application of *hiyal* across different jurisdictions could provide insights into best practices and regulatory approaches. Additionally, research could focus on the ethical implications of *hiyal* and its alignment with the broader objectives of Shariah, ensuring that innovation in Islamic finance does not compromise its foundational principles. Understanding the balance between innovation and compliance will be crucial for the continued growth and credibility of Islamic banking.

In summary, while *hiyal* serves as a vital tool for developing Shariah-compliant financial products that meet market needs, careful attention must be paid to regulatory practices, ethical considerations, and ongoing research to ensure that these legal stratagems contribute positively to the evolution of Islamic finance.

This study has its limitations as it focuses on the application of the *hiyal al-syar'iyah* in Islamic banking operations. Thus, other segments of Islamic finance, such as Islamic capital markets and Islamic insurance, are not included. We collected data from only eight interviewees from the Shariah committee and Shariah executive of Islamic banking in Malaysia and thus, the results cannot represent the whole Islamic banking practices of this country.

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