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REVERSAL OF DEBT IN *MURĀBAḤAH* FINANCING RESTRUCTURING IN TANZANIA: A WAY FORWARD

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Abstract:

In Tanzania, *murābaḥah* is one of the contracts which is used to be offered by the banks offering Islamic banking business on various consumer use and trade financing products. One of the matters which arises in the practice of *murābaḥah* is restructuring of the financing. Therefore, this paper deliberates and analyses the aspect of restructuring in *murābaḥah* financing in banking practices in Tanzania. In doing so, this discussion focuses on the *Sharīʿah* discourse on the concept of *qalb al-dayn* (reversal of debt). The aim of the study is to reveal the issues which are associated with *murābaḥah* financing restructuring in Tanzania and to propose the ways forward. The findings of this paper reveal that there is a regulatory issue which has impact on *Sharīʿah* compliance. This is the regulatory requirement to banking institutions to charge extra amount in respect of restructuring arrangement which results to *ribā*. The methodology adopted in this study is based on qualitative and descriptive approaches. It encompasses documentary review which involves authoritative and non-authoritative legal and *Sharīʿah* sources. The study recommends introduction of regulations for *murābaḥah* financing. Also, financial institutions are advised to adopt acceptable forms of *qalb al-dayn* when they are restructuring the financing.

Keywords:

Qalb Al-Dayn, Debt, Murābaḥah Financing, Restructuring, Tanzania

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Introduction

In the contemporary Islamic banking practices, *murābaḥah* is one of the most popular modes of financing which gives avenues to customers to purchase various commodities on credit basis (Iqbal & Mirakhor, 2011; Usmani, 2002). By definition, it refers to a kind of sale which is featured by disclosure of cost of the commodity and the margin of profit (El-Gamal, 2006). The act of disclosure enables the purchaser to know exactly all actual costs which were incurred by the seller to acquire the commodity as well as a profit which will be earned by the seller upon selling it to the purchaser on *murābaḥah* basis (Usmani, 2002). The duty to disclose the costs and profit margin is fundamental in the sense that any kind of dishonesty renders the transaction of sale to be invalid (Zuhayli, 1985). This duty distinguishes *murābaḥah* from the other kind of sale called *musāwamah* which does not require disclosure of the costs and the profit margin. (Ibn Rushd, 1996; El-Gamal, 2006).

Murābaḥah is a valid sale and mode of financing based on the proofs from the *Qur'an, sunnah, ijmāʿ* and *qiyās* (AAOIFI, 2015; Bank Negara Malaysia, 2013). In fact, it is accepted and approved in all four major *sunni* schools of Islamic jurisprudence (Badr Al-Din Al-ʿAyn, 1990; Ibn Juzay, 1397 A.H; Al-Nawawī, 1914; Al-Shīrazī, 1997; Ibn Qudāmah, 1997). This position has also been adopted by the contemporary international *Sharīʿah* institutions such as the Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI) (AAOFI, 2015). Moreover, the *Sharīʿah* regulatory bodies of countries which practiced Islamic banking business such as the *Sharīʿah* Advisory Council (SAC) of the Central Bank of Malaysia (CBM) has also approved the application of *murābaḥah* (Bank Negara Malaysia, 2013).

Originally, *murābaḥah* was not used as a mode of financing. It was used in ordinary sales. Currently, it is used as an instrument in banking and financing (Guney, 2015; Abduh, 2019). *Murābaḥah* in its classical form can be observed from the description of Imām Mālik. He states that a person would travel from one town to another to buy a piece of cloth and sells it to another person at cost price with profit (Anas, 1417 A.H). He considers this practice to be valid. Besides that, Imām Al-Shāfiʿī approves another form of *murābaḥah* which involves a purchase order from the customer. He states that a person can request another person to purchase a commodity with an accord that he will later purchase it from him at cost price with profit (Al-Shāfiʿī 1410 A.H). However, due to the development of Islamic banking business, the shape of *murābaḥah* turned significantly from the way it was practiced to the current mode of practice.

The current mode of *murābaḥah* practice was introduced by Sami Humud in 1976. It is commonly known as *murābaḥah* to the purchase orderer (MPO) (Humud, 1976). This mode involves a customer's order. Thus, in practice, the financial institution (FI) purchases an asset to be sold on *murābaḥah* basis upon receiving an order from the customer (Lee, 2019). The MPO involves several arrangements such a purchase promise and contracts of security like *rahn* (pledge or mortgage) *kafalah* (guarantee) and *takaful* (Islamic insurance) (Obaidullah, 2005, Ayub, 2007). With the new mode of *murābaḥah* practice, a customer may approach the FI to seek financing for various purposes including consumer products such as motor vehicle, or home assets, or for trade and commercial purposes such as working capital. Therefore, currently, *murābaḥah* is one of the most useful modes of financing in Islamic banking industry for consumer goods and trade. (Sadique, 2018).

In Tanzania, *murābaḥah* financing is one of the modes of financing which is used by banking institutions to offer various financing products for consumer use as well as trade and business

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purposes (Mapeyo, et al., 2022; Mustafa & Othman, 2020; Moh'd & Abdullah, 2019). In practice, a customer who seeks financing, approaches the bank and lodges his or her application (Mzee, 2021). The bank will consider and process the application and finally offer the financing to the customer. The financing involves several arrangements such as purchase promise, agency contract, security undertakings as well as conclusion of a sale contract (Mapeyo, et al., 2022; Mzee, 2021). Once all arrangements are completed, a customer will receive the financing for asset or assets. Thereafter, he or she will start to repay the selling price on deferred basis as agreed in the contract (Mapeyo, et al., 2022; Mzee, 2021). However, due to several reasons the whole arrangement or just part of it may be subjected to restructuring. Some of the reasons include the need to assist the customer who is facing hardship to repay his or her debt in one hand and on the other hand to avoid financial risks and losses which are likely to face the FI (Amalia, et al., 2018).

Basically, restructuring in *murābaḥah* financing is surrounded by *Sharīʿah* issues including rules relating to the prohibition of *ribā*, sale of a debt for debt and roll-over (Muneem, et al, 2020). In Tanzania, it is also associated with a regulatory issue which has impacts to *Sharīʿah* compliance. This is because the Bank of Tanzania (BOT) which is the main regulator of banking business requires banks to impose additional amount in respect of restructuring arrangement in *murābaḥah* financing. This requirement conflicts with the rules of the *Sharīʿah* because it leads to *ribā*. Thus, as a way forward, there is a need to introduce the regulations and guidelines for *murābaḥah* financing which are in line with the *Sharīʿah*.

Therefore, this study deliberates and analyses the aspect of restructuring in *murābaḥah* financing in banking practices in Tanzania. In doing so, the discussion focuses on the *Sharīʿah* discourse on the concept of *qalb al-dayn*. The aim of the study is to reveal the issues which are associated with *murābaḥah* financing restructuring in Tanzania and as a way forward.

Literature Review

There are several literatures which address the concept of *murābaḥah* in Islamic banking generally and in particular as a mode of financing. The aspect of restructuring is one of the areas which has also been addressed. However, in the context of Tanzania, the discussion in this area is very limited.

To begin with the application of *murābaḥah*, Kok (2014) views it as one of the most popular modes of financing in Islamic banking industry which is useful for short-term and long-term financing. This is supported by Abduh (2019) who says that it can be used to structure and offer various banking and financing products. Mapeyo et. al., (2022) show the application of *murābaḥah* in Tanzania through the practices of several banks which offer various consumer use and trade financing products using *murābaḥah*. On the other hand, Moh'd and Abdullah (2019) reveal that the application of *murābaḥah* financing in Tanzania faces *Sharīʿah* compliance problems. One of the problems is fraud which is done by the customer and the supplier who collude in a manner that the customer collects cash from the supplier and not the asset which should be purchased under the financing. This practice turns *murābaḥah* financing to resemble a conventional loan leading to the occasion of *riba*. Similarly, Mzee and Othman (2020) have also mentioned this problem. In addition to this, they have also exposed some legal and *Sharīʿah* issues which have various impacts to the application of *murābaḥah* financing in Tanzania. Some of the issues are the presence of double taxation and the requirement of disclosure of defects of a commodity. They say, under the laws of Tanzania, disclosure of

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defects is not necessary and such non-disclosure does not automatically invalidate the contract. While under the *Sharīʿah,* non-disclosure of defect may render the contract to become invalid.

According to Omar et al., (2017) as well as Pradeep and Ali (2018), most of the issues in the application of Islamic banking products generally and in particular *murābaḥah* financing are associated with the absence of legal and regulatory framework for Islamic banking business. This is the reason as to why most of the studies in Tanzania in respect of Islamic banking have recommended for the establishment of a legal and regulatory framework for Islamic banking as well as amendment of some of the laws to accommodate Islamic banking business (Kisilwa, 2012; Hamduni, 2015; Mzee, 2016; Hikmany & Oseni, 2016; Omar & Yusoff, 2019; Tamano, 2022).

The application of *murābaḥah* financing is related to the concept of *qalb al-dayn*. The juristic discourse on this concept shapes the way how restructuring arrangement should be done in *murābaḥah* financing. Hossain and Al-Din (2013) describe the concept of *qalb al-dayn* as an act or process of replacing the original or previous debt which is due by a new debt of the same or different kind with increase in quantity or quality. Apart from its meaning, scholars have discussed in detail on the permissibility of *qalb al-dayn* from the *Sharīʿah* perspective. Al-Qarī (2003) considers that the use of *qalb al-dayn* is only permitted under the *Sharīʿah* if the debtor is insolvent. But, if a debtor is solvent and can settle his debt, it is not permissible. This is also the position of Al-Manī (2011). However, he adds that the use of *qalb al-dayn* should fulfil certain conditions. They include, a debtor should not be forced to restructure the debt and should have enough property which can be used to settle the debt. Furthermore, the debtor should not be a person who prefers to get into debts for the purpose of living luxurious life. On the other hand, Hammad (2013) describes five forms of *qalb al-dayn* along with the juristic opinions on the validity of each form. He concludes that some of the forms of practices of *qalb al-dayn* are not permitted while some are allowed. Thus, FIs can use the accepted forms to restructure the financing arrangements whenever necessary. But Usmani (2015) accepts the use of *qalb al-dayn* with a status of dislike or non-recommended (*makrūh*).

Hassan et al., (2018) view that *qalb al-dayn* is only permissible for a solvent debtor as well those who are facing temporary financial difficulties. They have mentioned important conditions which must be considered in the use of *qalb al-dayn*. They include firstly the two contracts which are the original and the new one must be separate. Secondly, the new contract should not have terms which stipulate that it is made to settle the existing or original contract. Lastly, the debtor should have freedom to entertain and enjoy the proceeds of the new contract. On the other hand, Aziz (2018) discusses the use of *qalb al-dayn* in debt restructuring in Islamic banking practices in Malaysia. Among other things, he says, in Malaysia, most of the Islamic financial institutions (IFIs) employ *qalb al-dayn* by providing new *murābaḥah* or *tawarruq* to defaulting customers. Aziz (2018) concludes that these practices according to the majority opinion of the Muslim jurists are impermissible. Moreover, Nor et al. (2020) shows that in *murābaḥah* financing so far as recovery issues are concerned, one of the matters which carries more weight is restructuring. He points out that there are instances where banks do not adhere to rules issued by the regulator.

Muneem et al., (2020) show the essence of restructuring of financing facility in Islamic banks in Malaysia. They say that it assists customers with financial difficulties to meet their debt obligations. However, they consider that in practice, still there are some *Sharīʿah* compliance issues in some respects which are related to *qalb al-dayn* such as imposing new selling price

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with profit as well as using the same asset for a new contract. Their study concludes that, making of a new contract with an increased amount result to *ribā*. Furthermore, there is no transfer of ownership in the making of a new contract for restructuring of the financing. This results to *qalb-al-dayn* which is not permitted according to the majority opinion of the Muslim scholars.

Moreover, Muneem et al., (2021) have made a study on the juristic views on the use of *qalb al-dayn* in Islamic banks. The study reflects the classical as well as contemporary juristic views. They have concluded that Muslims jurists have disagreed on the validity of *qalb al-dayn*. The majority do not approve it. While some of them allow only for solvent debtors with strict conditions. Therefore, their study recommends the use of rescheduling instead of restructuring to ensure *Sharīʿah* compliance. In fact, these two aspects are different. According to Lee (2019), rescheduling involves modification of the payment terms of the financing without significantly changing the principal terms, conditions and the structure of the financing. The changes may relate to the payment tenor for instance being extended, instalment amount and the payment pattern. While restructuring involves significant changes to the terms, conditions and the structure of the financing (Lee, 2019).

To sum up, the literatures show the general picture in as far as application of *murābaḥah* financing generally and in Tanzania is concerned. However, a critical observation on most of the current studies shows that there is a gap in the aspect of restructuring in *murābaḥah* financing in banking practices in Tanzania. This study comes to add value of knowledge in as far as this gap is concerned.

Research Methodology

This study involves qualitative and descriptive approaches to deliberate the existing challenges in *murābaḥah* financing restructuring in Tanzania which have impacts on *Sharīʿah* compliance. In doing so, documentary review was employed to gather relevant information for the study. Thus, various primary sources including the *Qur'ān* and *sunnah*, laws, regulations and case laws were considered and utilized. Secondary sources covering various law and *Sharīʿah* books, journal articles, research papers and other important writings of different scholars were consulted and used.

Due to the nature of the study, a qualitative data analysis method was employed in determining the validity and correctness of the collected information to achieve the intended objective. This is followed by descriptive reporting of the information and study findings.

Nature and Concept of Qalb Al-Dayn

According to Hammad, the concept of *qalb al-dayn* as a *fiqh* terminology was introduced by the jurists Ibn Taymiyyah and his student Ibn Qayyim Al-Jauziyyah in their f*iqh* compilations (Hammad, 2013). On the other hand, the Mālikī jurists including Shihāb Al-Dīn Al-Qarāfī and Aḥmad Ibn Muḥammad Al-Dardīr used the term *faskh al-dayn fī al-dayn* (defeasance of a debt for a debt) for the similar concept (Muneem, et al., 2021). Moreover, the concept of *qalb al-dayn* is not expressly mentioned within the books of the Ḥanafī school and does not have much emphasis within the Shafiʿī school as well (Muneem, et al., 2021).

According to the Shari'ah Advisory Council of the Securities Commission Malaysia, the term *qalb al-dayn* refers to conversion of an existing debt with a new debt. This may take one of

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either two forms. The first form involves converting an existing debt by restructuring a debt or the amount payable by extending the duration of payment which results to an increase of the original amount without discarding or terminating the original or existing contract. While the other form involves restructuring of a debt or amount payable by terminating the original or existing contract and replacing it with a new contract which has a new amount payable along with extension of the payment period (Securities Commission Malaysia, 2020). In other words, *qalb al-dayn* can be defined as an act or process of replacing a formerly agreed debt which is due with a new debt of the same or different nature or type with an increase in quality or quantity (Ibn Taimiyyah, 1398 A.H; Hossain and Al-Din 2013).

Therefore, *qalb al-dayn* arises when at the initiatives of either a creditor or a debtor, a debt is sought to be converted or restructured to give more time to the debtor to repay the debt or variation of terms which are related to the debt obligation. Thus, there are several forms of *qalb al-dayn* depending on the manner as to how the debt is sought to be restructured. It is significant to note that, not all forms of restructuring of a debt or *qalb al-dayn* are acceptable under the *Sharīʿah*. Therefore, the following section tries to describe those forms along with the juristic opinions regarding their permissibility.

Debt Restructuring via Rescheduling with Increase of Amount of Debt

One of the forms of *qalb al-dayn* is to delay a debt for additional amount in return. In this case, the creditor extends the duration of the repayment of the debt as long as the debtor agrees to repay the debt in future with increased amount (Hammad, 2013). For instance, a person may have a debt which is worth 1000 USD which is due. The creditor may instruct the debtor to choose either to repay or be granted a respite for additional amount of 10 percent so that he will repay later a total amount of 1110 USD. This practice is prohibited under the *Sharīʿah*. This is *ribā al-nasiah* which was practiced since the pre-Islamic era (Hossain & Al-Din, 2013). On this matter, Imām Mālik has reported as narrated by Zaid Ibn Aslam that since the pre-Islamic era, people used to lend money to others. When the debt was due for the repayment, the creditor would ask the debtor to either repay or delay it with a condition that he will pay later with an increased amount on top of the principal amount of the debt. Prophet Peace Be Upon Him (PBUH) forbade this way of practice (Anas, 1417 A.H). According to Hammad, the Muslim scholars have unanimously agreed that this form of *qalb al-dayn* is forbidden (Hammad, 2013). Moreover, Ibn Qayyim who is one of the prominent Ḥanbalī school jurists opines that a lender who asks the debtor to repay with increase over the principal debt is an infidel. Therefore, he should be asked to repent and if he does not do so, he should be executed. (Hammad, 2013; Ibn Qayyim, 1410 A.H).

According to the AAOIFI, in *murābaḥah* financing, *qalb al-dayn* involving extension of a time of a debt with additional amount is not permitted regardless as to whether the debtor is solvent or not. The statement reads as follows:

> *5/7 "It is not permissible to extend the date of payment of the debt in exchange for an additional payment in case of rescheduling, irrespectively of whether the debtor is solvent or insolvent"* (AAOIFI, 2014).

Similarly, the CBM has also ruled against this form of restructuring to be used in *murābaḥah* financing based on the same effective cause of avoiding *ribā*. The provision reads as follows:

> *14.13 "The contracting parties may agree to extend or reschedule the payment period of the remaining debt without any increase in amount to the remaining debt"* (Bank Negara Malaysia, 2013).

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In short, *qalb al-dayn* involving mere extension of time with additional increase in the amount of debt is not permissible under the *Sharīʿah*. This rule applies to restructuring arrangement to be made in respect of *murābaḥah* financing which takes this form. However, the parties may agree to extend the duration of payment as they wish without increasing the amount of debt.

Debt Restructuring by Using a Sale Transaction

Another form of *qalb al-dayn* involves delaying repayment of a debt by using a commercial or sales transaction (Hammad, 2013; Hossain & Al-Din, 2013). In this form, the creditor will demand the debtor to repay his debt which is due. If he cannot, then he can be given respite on the condition that he accepts a deferred sale on credit basis from the creditor with additional payment for an item purchased from a third party (Hammad, 2013; Hossain & Al-Din, 2013). For instance, the creditor will demand the debtor to repay on due date. If the debtor cannot do so, the creditor approaches a third party and purchases an item for let say 100 USD and sells it to the debtor at 120 USD to be paid in future.

This form of *qalb al-dayn* which involves such a sale transaction as described above is disapproved by the Mālikī school jurists. The disapproval is made based on the rationale of blocking a means which would lead to *ribā* (Al-Maliki, 1357 A.H). Moreover, Ibn Taymiyyah disapproves using a transaction to delay the repayment for both solvent and insolvent debtor. He says, as for a solvent debtor, it is incumbent upon him to repay his debt once its due. It is impermissible to have such an arrangement to extend the duration of a debt based on the consensus of the Companions of the Prophet (PBUH) (Ibn Taymiyyah, 1398 A.H). The Muslim scholars have disagreed on the prohibition of using a transaction for *qalb al-dayn* only for transactions which are made by mutual free will such as *ʿinah* (buy back sale) and *tawarruq* (monetisation). Hammad is of the view that, it is permissible to create an arrangement for *tawarruq*, or *istisnā,* or *salam* which will make the debtor obtain a means to repay his debt. But this arrangement should be made by mutual free will of both parties (Hammad, 2013). However, he is of the view that *ʿinah* is not permissible because it is a stratagem to practice *ribā* (Hammad, 2013). This position is held by the prominent Ḥanbalī school jurists including Ibn Taymiyyah and Ibn Qayyim (Ibn Taymiyyah, 1370 A.H.; Ibn Qayyim, 1369 A.H.). Thus, based on this view, it is not permissible to use *ʿinah* transaction for debt restructuring.

Within the Shafiʿī school, using a transaction such as *ʿinah* and *tawarruq* to restructure a debt by creating a new obligation is considered as permissible. This is because, under this school, a test for the validity of a contract is determined based on the nature and form of a contract. Therefore, if a contract meets all the essential requirements as provided under the *Sharīʿah*, such a contract is valid (Nyazee, 2003; Al-ʿInzī, 2011). Based on this position, under the Shafiʿī school, *ʿinah* sale is permissible (Nyazee, 2003; Al-Ramlī, 2003). Basically, with *ʿinah*, sale, the creditor may purchase back the asset he sold earlier to the debtor on cash and resell it again to him on deferred basis with additional amount of price. This practice enables the creditor to extend the debt and secure additional payment and it is acceptable (Al-ʿInzī, 2011).

In the Malaysian practice, restructuring in *murābaḥah* financing can be done by using a mutually agreed transaction involving *ʿinah* sale *and ijārah muntahia bi al-tamlīk* (leasing ending with transfer of ownership). As for the *ʿinah* sale, the FI or the seller would purchase the same asset or part thereof from the customer who defaulted in repayment at a mutually agreed price. Then, the proceeds of that sale will be used to satisfy or clear the outstanding payment based on set-off (Bank Negara Malaysia, 2013). This arrangement can be made

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together with another contract of *ijārah muntahia bi al-tamlīk.* Thus, the asset will be leased to the customer for a specified duration with the transfer of asset ownership to the customer upon ending of a lease duration (Bank Negara Malaysia, 2013). Also, in Malaysia, *tawarruq* or commodity *murābaḥah* can be used for the purposes of *murābaḥah* financing restructuring. This arrangement enables the customer to purchase an asset from the FI on *murābaḥah* basis to be sold to a third party so that he can obtain cash to be used to settle the original debt in the original *murābaḥah* financing facility (Aziz, 2018; Lee, 2019).

Debt Conversion by Selling of a Debt on Credit Basis for a Deferred Value of Another Kind

Qalb al-dayn can involve selling a debt which is due on credit basis to the same debtor by the same creditor for a deferred value of another kind (Hammad, 2013; Hossain & Al-Din, 2013). For instance, a person is owed 100 dirhams by another person, deferred from a sale. Upon maturity, the creditor demands the payment. Instead of paying off the debt, the debtor offers to sell him a *kurr* (unit of measure = 15.638 kg) of wheat to be delivered in future in return for dirhams which are due (Hammad, 2013). This practice is deemed as impermissible according to the majority scholars of the Ḥanafī, Mālikī, Shafiʿī and Ḥanbalī schools. This is because it falls within selling of a debt for a debt which is regarded as unanimously prohibited under the *Sharīʿah* (Al-Bājī, 1332 A.H). However, the Mālikī scholars regard this form of practice to be valid. This is because, the former debt is cancelled and replaced by the new one (Al-Mawwaq, 1329A.H).

Ibn Qayyim is one among the scholars who argues that debt conversion by selling of a debt on credit basis for a deferred value of another kind is permissible. His position is based on the ground that the transaction is made for a valid purpose. It involves such a benefit which is desired and required by the parties. This is because the former debt is cancelled by the later debt which becomes more easier to be settled (Hammad, 2013). Ibn Qayyim further argues that the evidence which is based on the prohibition of this form of practice is weak and no other evidence to support it can be found (Hammad, 2013). Nevertheless, based on the majority opinion of the Muslim scholars from all schools, debt conversion by selling of a debt on credit basis for a deferred value of another kind is not permissible under the *Sharīʿah*.

Replacing the Original Debt as a Capital for Salam

Salam refers to a sale contract which involves commodities or goods which are to be delivered in future time (Hassan et al., 2016). Therefore, it is a forward sale. However, the payment of the selling price is made in advance or on the spot (Abduh, 2019). *Salam* can be applied in respect of industrial, agricultural as well as services (Obaidullah, 2005). It is a good financing instrument which can be used by the FI to enable farmers to obtain cash to grow their crops and meet their demands before harvesting (Hassan, et al., 2016). It is crucial to note that the arrangement of *salam* creates a debt obligation to the seller. This is because, he has an obligation to deliver the commodities in future time as agreed between him and the purchaser.

Basically, *qalb al-dayn* may take a form which involves replacing a debt by converting it as a capital for *salam* in debtor's liability in return for deferred delivery of a described object (Hammad, 2013; Hossain & Al-Din, 2013). The majority of the Muslim scholars consider this form to be invalid because it involves selling of a debt for a debt (Ibn Al-ʿAbidīn, 1271 A.H; Az-Zaylaʿī, 1313 A.H; Al-Kāsānī, 2010; Ibn Qudāmah, 1997). Ibn Qudāmah states that it is invalid for a person who has a debt of one dirham in the liability of someone else to convert it into *salam* contract for food to be delivered in future (Ibn Qudāmah, 1997). He states further

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that according to Ibn Mundhir, all scholars whom he knows including Imām Mālik, Al-Awzaʿī, Ath-Thawrī, Aḥmad, Is-ḥāq, Ḥanafī scholars and Shafiʿī scholars have unanimously agreed on its invalidity (Ibn Qudāmah, 1997). However, some of the Mālikī scholars consider that it is permissible to defer a debt which is due with an increase in the amount of a debt to be paid later in kind (Hossain & Al-Din, 2013; Hammad, 2013).

Also, Ibn Taymiyyah and Ibn Qayyim view that it is permissible to replace a debt with another debt (Hammad, 2013; Hossain & Al-Din, 2013). Ibn Taymiyyah argues that the narration which is used as the basis for the prohibition of selling a debt for debt is weak and not authentic. He says that there is no narration from the Prophet (PBUH) prohibiting selling of a debt for a debt through either authentic narration or a weak one. He states further that the existing narration is disconnected (Hammad, 2013, Hossain & Al-Din, 2013). To conclude, based on the majority opinions of the Muslim scholars, it is not permissible to replace a debt by converting it as a capital for *salam*. However, Hammad considers the opinions of Ibn Taymiyyah and Ibn Qayyim as more preferrable. (Hammad, 2013).

Replacing of a Debt with Usufructs of the Debtor Properties

Qalb al-dayn may involve replacement of a debt by the creditor with usufructs of the debtor's properties to be delivered at a specified deferred date (Hammad, 2013; Hossain & Al-Din, 2013). For instance, the creditor rents the house which belongs to the debtor for a period of let say one year as a replacement of the debt which is due. An example of this form of *qalb al-dayn* in *murābaḥah* financing can take the following form. Suppose the purchased asset was a car, then the FI takes it on lease from the customer for a period of let say one year. At this period, the FI may benefit from the usufruct of the said asset may be by leasing it to another person and collect rent to satisfy its outstanding payment.

Basically, there are two views regarding the permissibility of *qalb al-dayn* which involves replacement of a debt by usufructs. According to the first view, it is not permissible under the *Sharīʿah.* On the other hand, it is valid according to the second view. The first view prevails within the Mālikī school, and it has been adopted by Ibn Al-Qāsim. According to this view, this form of *qalb al-dayn* falls within the scope of selling of a debt which is due for a debt. Therefore, this practice is prohibited by the Prophet (PBUH). It is reported that Imām Mālik considers to be invalid an act of a creditor to replace the debt by renting a house from the debtor for one year as it amounts to selling of a debt for debt (Al-Bājī, 1332 A.H). Basically, in this view, deferred usufructs are considered as a debt. The second view is held by Ashhab who considers that it is permissible to replace a debt with usufructs of a specified property. In this view, the recipient of a property by the creditor from the debtor is regarded as recipient of a usufruct and therefore there is no selling of a debt for debt (Hammad, 2013). Ibn Qayyim supports the second view and relates it to Caliph Umar. During the period of Caliph Umar, a transaction involving selling of usufruct for a period of five years as a replacement of a debt was made and it was not questioned as regard to its validity. It is narrated that, "when Usayd Ibn Hudayr died while being indebted for sixth thousand-dirham, Caliph Umar decided to send to the creditors and sold to them fruits of Usaid's orchards for a certain number of years" (Ibn Taymiyyah, 1370 A.H). Ibn Qayyim argues that this practice was done in Medina in the presence of many other companions and none of them disputed. (Hammad, 2013).

Therefore, based on the opinion of Ashhab, Ibn Taymiyyah and Ibn Qayyim, it can be argued that it is permissible in *murābaḥah* financing for the FI to take an asset of the defaulting customer on lease. The rent will be used to set-off its unpaid amount of debt. At this time the

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FI may lease the asset and collect rent which may enable it to secure more income from the financing arrangement.

The Concept of Restructuring and Issues in *Murābaḥah* Financing

The concept of restructuring can involve extension of time or reconditioning of the financing with reduction of the repayment schedule, or changes on instalment amount, or changes on repayment duration and rebate (Amalia et al, 2018). Basically, the concept of restructuring in financing relates to debt restructuring. Debt restructuring according to Thomas (1994) refers to any action which is performed by the creditor which officially alters the original terms of repayment of the debt in a manner that provides a lessening in the near-term debt service obligation. It may include arrangements such as buy-backs, debt and debt service reduction exchange, forgiveness, rescheduling, rephasing or refinancing (Hassan et al, 2017). According to Lee, restructuring refers to the process which involves significant changes to the principal terms and conditions of the financing including changing the type or structure of the financing (Lee, 2019). For instance, a *murābaḥah* financing may be restructured to *tawarruq* or commodity *murābaḥah* or to *ʿinah* sale combined with *ijarāh muntahia bi al-tamlīk*. In short, this is done to assist the customer to meet his debt obligation for a business or a project which is still feasible.

The definition of restructuring can also be observed under the regulations. The Banking and Financial Institutions (Management of Risk Assets) Regulation 2014 (Government Notice No. 287 of 2014) hereinafter mentioned as "the MRAR 2014") defines restructuring as follows,

> *"Restructured credit accommodation" means a credit accommodation whose terms and conditions have been modified in terms of repayment period, repayable amount, installments, or rate of interest due to economic or other reasons relating to the borrower's financial difficulty"* (MRAR 2014, regulation 2.)

In fact, from the above definition, restructuring involves modification of the terms and conditions of the credit accommodation or a loan. To be more specific, the modification applies to the term of repayment such as extension of time. It also applies to the amount to be repaid such as increase in the amount along with variation of installments to be repaid under the repayment schedule. Moreover, the modification may involve increasing or lowering of the interest rate to be charged. In short, the definition of restructuring resembles to the concept of *qalb al-dayn* as understood in Islamic jurisprudence.

Basically, there are several reasons which may necessitate restructuring. Some of the reasons include customers' inability to settle the debt due to financial constraints, or to better the financial management for the prospects' financial strength. Also, restructuring may be preferred to assist customers in avoiding legal repercussions ((Muneem et al., 2020). Generally, restructuring is one of the best options which can assist to preserve the business value of the customer in one hand and on the other hand to protect the interests of the creditor (Hassan et al., 2017). Therefore, due to these reasons, the question of restructuring may also arise in the practices of *murābaḥah* financing. When this matter happens, it is crucial to ensure that the process of arrangement for restructuring does not lead to the violation of the rules of the *Sharīʿah.*

When the issue of restructuring is sought in *murābaḥah* financing, it is significant to put into consideration the question of ownership of an asset. It should be noted that once a *murābaḥah*

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contract is concluded, ownership of an asset is transferred to the customer (purchaser). It is also worth to note that according to the *Sharīʿah*, ownership of an asset is an essential condition for a valid sale. A seller is required to have ownership over an asset before he can conclude a sale contract (Al-Fawzān, 2005). So, based on this position, the same asset which was a subject matter in the *murābaḥah* financing transaction cannot be sold again by the FI (seller) to the customer. This is because, the FI is not the owner of that asset. It is the customer who owns that asset irrespective of default in repayment. Selling or booking another *murābaḥah* in respect of the same asset amounts to roll-over which is not permissible under the *Sharīʿah* (Usmani, 2002).

Another important issue which emerges and relates to restructuring in *murābaḥah* financing is *ribā*. As discussed above one of its forms arises when a debt is extended in exchange for increase in the amount of a debt. It should be noted that *murābaḥah* financing which is concluded on deferred basis creates a debt obligation to the customer. Therefore, extension of time with an increase in the amount of debt results to *ribā* which is prohibited. Thus, to ensure *Sharīʿah* compliance in restructuring arrangements in *murābaḥah* financing, the *Sharīʿah* standards of the AAOIFI has made clear provisions to address this matter. The AAOIFI permits restructuring to be made with a condition that no additional amount should be imposed against any extension of time of the financing (AAOIFI, 2014) The same position has also been adopted under the guidelines of the CBM. Similarly, the guidelines permit rescheduling on repayment particularly extension of time again with a condition of not increasing any amount on top of the remaining debt (Bank Negara Malaysia, 2013, s. 14.13).

It is worth to point out that in the Malaysian practices, the guidelines are clear in as far as restructuring in *murābaḥah* financing is concerned. The parties in particular the seller and purchaser may choose to make agreement for the purposes of settling the earlier obligation which arose in the preceding *murābaḥah* contract (Bank Negara Malaysia, 2013, s. 14.14). The arrangement for restructuring may involve additional security if the seller wishes that to be done (Bank Negara Malaysia, 2013, s. 14.15). Moreover, the guidelines allow the seller to purchase the same asset back from the customer at a mutually agreed price with a view that the proceeds of the sale will be used to settle the outstanding debt (Bank Negara Malaysia, 2013, s. 14.16). Furthermore, the asset may be leased back to the customer on the basis that the lease will end with transfer of ownership from the lessor to the lessee after the end of the duration of lease (Bank Negara Malaysia 2013, s. 14.17).

Furthermore, following the Covid-19 pandemic, the SAC of the CBM issued important ruling for restructuring and rescheduling (Bank Negara Malaysia, 2020). The ruling was issued to address the challenging economic situation which was affecting customers. However, after the Covid-19 pandemic, based on the consideration of *maslaḥah* (benefits) and *dharar* (harm) to the customers, the application of the ruling continues to have legal effect (Bank Negara Malaysia, 2021). In fact, the ruling applies to all customers, solvent and insolvent. The ruling provides that in the course of restructuring or rescheduling a financing, if no additional financing is involved, the new principal amount of restructuring and rescheduling must be equivalent to the outstanding principal amount of the original financing facility. Moreover, the amount of the accrued profit and late payment charges if applicable, from the original financing can be added to the total new obligation. But this amount cannot be capitalised in the calculation of new profit (Bank Negara Malaysia, 2021).

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In short, based on the *Sharīʿah* views, the guidelines and the ruling on restructuring, it is possible to extend the duration of repayment of a debt in the sense that the seller or the FI is able to secure additional payment when a new contract is involved (Nyazee, 2003; Al-Ramlī, 2003; Al-ʿInzī, 2011; Hammad, 2013, Bank Negara Malaysia, 2013; Bank Negara Malaysia, 2021). For instance, in restructuring of *murābaḥah* financing which involves *ʿinah* sale and *ijārah muntahia bi al-tamlīk*, when the asset is purchased back by the FI, the proceeds of the sale are used to settle the debt. Not only the proceeds of the sale that goes to the FI, but also the income which will be collected as rent from the lease arrangement between the FI and the customer also goes to the FI.

Mode, Incidents and Issues of Restructuring in *Murābaḥah* Financing Practices in Tanzania

Some of the matters relating to restructuring of credit facilities which include loans are provided under the MRAR 2014. Under this regulation, banks and other non-banks financial institutions are supposed to establish and implement clear and comprehensive policies to regulate restructuring arrangements. In fact, the MRAR 2014 permits credit facilities to be extended, renewed, rolled over or even being restructured (MRAR 2014, regulation 7). Though, it has imposed a restriction in respect of non-performing loans (NPLs). These loans cannot be extended more than twice (MRAR 2014, regulation 7(5)). However, this restriction can be waived by the BOT whenever necessary. For instance, this waiver was done for two years between 2018 and 2020 whereby banks were allowed to extend NPLs up to four times (BOT, 2018). In short, the MRAR 2014 also affects the matters relating to restructuring of *murābaḥah* financing. This is because a *murābaḥah* financing is also considered as a credit facility. Therefore, this section considers the mode of restructuring which is used by banks in Tanzania along with its *Sharīʿah* position. The section also covers incidents as well as issues relating to restructuring in *murābaḥah* financing in Tanzania.

Mode of Restructuring

In Tanzania, the mode which is used for restructuring in *murābaḥah* financing is *tawarruq* commodity *murābaḥah* (A. Jamal, personal communication, July 25, 2022; *Amana Bank Limited v. Urban and Rural Engineering Services Limited* (2021)). This mode combines two different types of sale contracts which are *murābaḥah* and *tawarruq*. The AAOIFI defines *tawarruq* as:

> "*The process of purchasing a commodity for a deferred price determined through musāwamah (bargaining) or murābaḥah (mark-up sale) and selling it to a third party for a spot price so as to obtain cash*" (AAOIFI, 2006).

Thus, *tawarruq* is a type of sale which involves three separate sale contracts. The first sale contract involves the FI and the supplier to enable the FI to acquire the asset. The second sale contract involves the FI and the customer on deferred basis. This is commonly made based on *murābaḥah*. The last sale contract involves the customer and the third party which is done on spot basis to enable the customer to obtain cash (Lee, 2019). In as far as the application of *tawarruq* is concerned, Muslim scholars have disagreed on its permissibility. According to the AAOIFI and the majority of the Muslim scholars, *tawarruq* is permissible under the *Sharīʿah*. (AAOIFI, 2006). Moreover, the Islamic Fiqh Academy of the Muslim League and the Standing Committee of the Supreme Board of *Sharīʿah* Scholars of the Kingdom of Saudi Arabia validate the use of *tawarruq* (AAOIFI, 2006). Similarly, the application of *tawarruq* is approved by the SAC of the CBM (Bank Negara Malaysia, 2018). However, Ibn Taymiyyah and Ibn Qayyim do not approve *tawarruq* and see it as a means to circumvent *ribā* (Ibn

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Taymiyyah, 1987; Ibn Qayyim, 1991). In short, based on the majority opinion of the Muslim scholars, *tawarruq* can be used in Islamic banking products including *murābaḥah* financing.

The application of *tawarruq* in *murābaḥah* financing restructuring involves a new contract with a new asset and not the one which was used in the original *murābaḥah* financing. Therefore, the FI purchases the asset and sells it to the customer on *murābaḥah* basis for a deferred price. Upon transfer of asset ownership to the customer, the FI acts as an agent of the customer to sell the same asset to the third party for a spot price. With this sale transaction, the customer obtains cash which is used to settle the outstanding debt of the original *murābaḥah* financing facility. Thereafter, the customer starts to repay the debt of the new *murābaḥah* financing facility (A. Jamal, personal communication, July 25, 2022; A. Yahya, personal communication, July 25, 2022; R. Hemed, personal communication, July 26, 2022).

Though *tawarruq* is used for restructuring in Tanzania, still there are issues which have not been clearly settled. This is because the country lacks regulations and guidelines to govern *murābaḥah* financing including matters relating to restructuring. This is contrary to the position in other countries. For instance, in Malaysia when there is the question of restructuring, the guidelines provide that if no additional financing is involved, the new principal amount of restructuring or rescheduling must be equivalent to the outstanding principal amount of the original financing facility (Bank Negara Malaysia, 2021). Moreover, even the question of calculation of new profit is also not regulated as it is in the Malaysian practice where the amount of accrued profit and the late payment charges can be added to the total obligation. However, these two components cannot be capitalised in the calculation of a new profit (Bank Negara Malaysia, 2021).

To conclude, the application of *tawarruq* for restructuring of *murābaḥah* financing as practiced in Tanzania is acceptable under the *Sharīʿah*. However, absence of regulations and guidelines creates challenges in as far as *Sharīʿah* compliance is concerned.

Incidents and Issues in Murābaḥah Financing Restructuring in Tanzania

Due to several factors, the question of restructuring also arises in *murābaḥah* financing practices in Tanzania. Incident of restructuring can be observed in the case of *Amana Bank Limited v. Shaban Athumani Mshana and 3 Others* (2014). In this case the 3rd defendant was granted a *murābaḥah* facility by the plaintiff on 15th May 2012. It was worth Tanzanian Shillings Two Hundred Million (TZS. 200,000,000/-). Pursuant to the agreement, the plaintiff was required to purchase and sell 700 pairs of shoes to the defendant. The goods were to be imported from Trimpex and Shoes Trading Company which was based in the United States of America. However, on 24th of September 2012, the 1st defendant, who was the company, wrote a letter to inform the plaintiff the shipping of the goods was delayed. Consequently, amendments were made to the *murābaḥah* agreements. The facts went on, that the 3rd defendant requested for the second amendment. Thus, on 18th March 2013, the *murābaḥah* facility agreement was restructured by the plaintiff. The restructuring was made with an increase of a ten percent of the principal financing amount (*murābaḥah* facility amount) to be repaid. The addition of 10 percent amount was made in compliance to the regulatory requirement of the BOT. However, the customer failed to repay and hence the plaintiff filed this case before the Court.

The issues for determination in this case included whether *murābaḥah* was valid, whether the parties had entered into *murābaḥah* agreement and what reliefs were the parties entitled to be

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granted by the Court. The Court decided in favour of the plaintiff. Therefore, the defendants were ordered to pay the outstanding amount to the plaintiff as prayed before the Court. However, the Court did not grant costs of the case because of failure to prove by the plaintiff. One of the interesting matters which is related to the above-mentioned case is that the defendants were not able to pay the outstanding amount as ordered by the Court. Hence, the plaintiff filed an application to the Court so that the judgment debtors could be detained as civil prisoners. However, this application was not granted.

Another case which involved restructuring was the case of *Amana Bank Limited v. Urban and Rural Engineering Services Limited* (2021). It is stated that on the 22nd of July 2014, the plaintiff granted the defendant a working capital financing facility on *murābaḥah* basis. The *murābaḥah* facility was worth TZS 2,450,823,040.00/-. By December 2016, the defendant had accumulated the total outstanding amount of TZS 2,574,742,293.91/- from disbursements which were made on various time. However, the defendant failed to repay accordingly. Consequently, the *murābaḥah* facility was restructured for the first time and changed its name to commodity *murābaḥah*. Therefore, a total sum of TZS 2,957,293,364.16/- was approved and granted to the defendant. This amount included the outstanding balance which stood at TZS 2,574,742,293.91/-, accrued profit which stood at TZS 308,942,974.94/- and TZS 67,972,511.64/- which was supposed to be paid to the TIB. The facts went on, that the defendant failed to repay in the first restructured arrangement in which the amount stood at TZS 1,202,810,587.75/-. Hence, another restructuring was made. The principal sum was then booked separately. As of August 2019, the principal amount which was booked stood at TZS 418,164,031.26/-. The facts went on that again, the defendant failed to repay in the second restructuring arrangement. Hence, another restructuring arrangement was made for the third time. However, the defendant again failed to repay. Thus, another restructuring arrangement for the fourth time was made. Therefore, the defendant was required to pay a total sum of TZS 131,970,389/- within 12 months between 30th November 2019 to 30th November 2020. However, he failed again and hence the plaintiff filed a suit for recovery before the Court. Finally, the Court decided in favour of the plaintiff and granted the prayed relief including payment of the outstanding amount, payment of penalty as well as costs of the suit.

A critical observation to the above two mentioned cases among other things, reveal two issues. The first is a regulatory issue and the second one is purely a financial risk issue. Regarding the regulatory issue, this is related to the directive of the BOT which requires banks to impose or charge additional amount in respect of restructuring of a credit facility such as loans. This has implication to *Sharīʿah* compliance. This is because *murābaḥah* financing which is carried on deferred basis creates a debt. Thus, restructuring the arrangement by extending the repayment duration along with increase in the amount of a debt results to *ribā* which is prohibited under the *Sharīʿah*. The *Sharīʿah* standards and guidelines are very clear on this issue. They provide that in *murābaḥah* financing, restructuring involving extension of time is permitted. Although, it should not involve any increase in the amount of a debt (AAOFI, 2014; Bank Negara Malaysia, 2013). Therefore, there is a need for BOT to reconsider its directive on restructuring to ensure *Sharīʿah* compliance.

The second issue is related to financial risk of loss which have impacts to the interests of the banks and even the economy at large. The two cases reveal that the problem of default in certain occasion is very serious. Therefore, it is crucial for the protection of the interest of the banking business to have strong risk assessment and control measures. This is because, occasionally, even restructuring arrangement does not yield good outcome.

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Conclusion

Muslim scholars have discussed in depth the concept of *qalb al-dayn* and its application in commercial transactions. In fact, there are different opinions regarding its permissibility under the *Sharīʿah*. Nevertheless, it is sufficient to argue that the permissibility of *qalb al-dayn* largely depends on the way it is done. This is since, some of its forms are acceptable while some are not. Basically, it is vital to appreciate that the concept of *qalb al-dayn* is very relevant in the application of *murābaḥah* financing. This is because, due to unavoidable circumstances, the financing arrangement may need to be restructured. This done not only to assist the customer to meet his debt obligation but also to safeguard the interests of the FI as well.

So far as the rules of the *Sharīʿah* are concerned, it is not permissible in practice to extend merely the duration or payment tenor of the *murābaḥah* financing in exchange for additional amount on top of the principal debt to avoid occasion of *ribā*. However, based on the opinion of the Muslim scholars, the financing can be restructured by using different contracts such as *tawarruq* commodity *murābaḥah* which can enable the FI to extend the duration of the financing with additional amount on *Sharīʿah* basis. In fact, this does not amount to *ribā,* and it is acceptable. In Malaysia, for the purposes of restructuring of a *murābaḥah* financing, several modes such as *ʿinah* sale combined with *ijārah muntahia bi al-tamlīk* as well as *tawarruq* can be used. However, the mode of restructuring which involves *ʿinah* is a controversial matter in as far as its validity is concerned. This is contrary to the use of *tawarruq* which is accepted by the majority of Muslim scholars.

Looking at the position in Tanzania, there are incidents of restructuring. In practices, *tawarruq* commodity *murābaḥah* is used to *restructure murābaḥah* financing facilities. However, the country does not have regulations and guidelines which have legal effects to regulate this matter. Therefore, currently, there are some regulatory issues in *murābaḥah* financing restructuring. One of them is absence of guidelines and regulation to regulate restructuring matters. This is unlike to Malaysia where there are clear guidelines and rulings for Islamic financing restructuring. Another regulatory issue is the regulatory requirement to banking institutions to charge extra amount in respect of restructuring which results to *ribā.* Thus, as way forward, considering the need to ensure legal, regulatory and *Sharīʿah* compliance, and based on the experience of other countries such as Malaysia, it is recommended that there is a need to introduce regulations to guide the application of Islamic banking products including *murābaḥah* financing in Tanzania. Also, currently, the FI's should also employ acceptable forms when it comes to the question of restructuring of the financing.

References

AAOIFI. (2006). Shari'ah Standards, No. (30): Monetization (Tawarruq).

AAOIFI. (2014), Shari'ah Standards, No. (8): Murabahah.

AAOIFI. (2015). Shari'ah Standards: Full Text of Shari'ah Standards for Islamic Financial Institutions (As at Safar 1439 A.H. - November 2017, A.D.), (English text). Riyadh: Dar AlMaiman for Publishing & Distributing.

Abduh, M. (2019). Foundation of Islamic Finance. Kuala Lumpur: IIUM Press.

Al-Bājī, A. (1332 A.H). Al-Muntaqa Sharh Al-Muwatta, Vol. 5. Egypt: As-Sa'dah Press.

Al-Fawzān, S. (2005). A Summary of Islamic Jurisprudence. Vol. 2. Riyadh: Al-Maiman Publishing House.

Al-ʿInzī, ʿI. K. (2011). Qalb Al-Dayn: Tajdīd 'Uqūd al-Murābaḥah wa al-Wakālāh al-Istithmāriyyah. Paper presented at the 4th Fiqh Conference for Islamic Finance Institutions. Shura Sharia Consultancy. Kuwait.

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IRJSMI
EISSN: 2682-8553
Volume 4 Issue 12 (December 2022) PP. 10-28
DOI: 10.35631/IRJSMI.412002

Al-Kāsānī, A. (2010). Badaʿi al-Sanaʿi fī Tartīb al-Sharaʿi. Vol. 5. Beirut: Dār al- Kutub al-ʿIlmiyyah.

Al-Maliki, A. (1357 A.H). Kifāyat At-Tālib Ar-Rabbānī Waḥāshiyat Al- ʿAdawī ʿAlayh, Vol. 2. Egypt: Mustafa Al-Babi Al-Halabi Press.

Al-Manī A. (2011). "Ḥukm Qalb al-Dayn 'ala al-Madīn". Paper presented in 4th Fiqh Conference for Islamic finance Institutions, Kuwait.

Al-Mawwaq, A. (1329A.H). At-Taj Wa Al-Iklīl ʿ ala Mukhtasar Khalīl, Vol. 4. Egypt: As-Sa'dah Press.

Al-Nawāwī, A. (1914). Minhaj aṭ-Ṭālibīn: A Manual of Mohammedan Law According to the School of Shafiʿī, translated by E. C. Howard. London: William Clowes and Sons Limited.

Al-Qarī, M. (2003). "Al-Tawarruq Kamā Tajrīh al-Maṣārif". In Al-Majmaʿ al- Fiqh al-Islāmī of Muslim World League, Makkah.

Al-Ramlī, M. (2003). Nihāyah al-Muhtāj Ila SharÍ al-Minhāj, (3rd ed). Beirut: Dār al-Kutub al-ʿIlmiyyah.

Al-Shāfiʿī, M. I. (1410 A.H). Al-Umm. Beirut: Dār al-Maʿrifah.

Al-Shīrazī, A. (1997). Al-Muhadhdhab fī Fiqhi al-Imām Shafiʿī, Vol. 3, (1st ed). Damascus: Dār al-Qalam.

Amalia, R. C. et al. (2018). Restructuring of Non-performing Financing Murabahah Contracts in Shari'ah Banks. In Proceedings of the 2nd International Conference Postgraduate School.

Anas, M. (1417 A.H). Al-Muwaṭṭa' lil Imām Dār al-Hijrah Mālik Ibn Anas, Riwāyat Yahya Ibn Yahya Al-Laythī. Beirut: Dār al-Gharb al-Islāmī.

Ayub, M. (2007). Understanding Islamic Finance. Chichester: John Wiley & Sons Ltd.

Aziz, A. (2018). Application of Qalb al-Dayn on Debt Restructuring in Islamic Banking and Finance. (Unpublished Master thesis), International Islamic University Malaysia.

Az-Zaylaʿi. U. A. (1313 A.H). Tabyīn Al-Hāqaiq ʿAla Kanz Ad-Daqāʿiq. Bulaq. Al-Amiriyyah Press.

Bank Negara Malaysia, (2020). The Shari'ah Advisory Council of Bank Negara Malaysia (SAC) Ruling on Restructuring and Rescheduling of Islamic Financing Facility During Covid- 19 Crisis. 30th SAC Special Meeting dated July 14, 2020. (Revised on October 16, 2020)

Bank Negara Malaysia, (2021). Ruling of the Shari'ah Advisory Council of Bank Negara Malaysia (SAC) on Compounding Profit for Restructuring and Rescheduling (R&R) of Islamic Financing. SAC 214th Meeting dated June 30, 2021.

Bank Negara Malaysia. (2013). Murabaḥah. BNM/RH/STD 028-4

Bank Negara Malaysia. (2018). Tawarruq. BNM/RH/PD 028-8

Bank of Tanzania. (2018). Measures to Increase Credit to Private Sector and Contain Non-Performing Loans. Circular No. FA. 178/461/01/02.

El-Gamal, M. (2006). Islamic Finance Law, Economics, and Practice. New York: Cambridge University Press.

Guney, N. (2015). "Murābaḥah Financing Revisited: The Contemporary Debate on Its Use in Islamic Banks". Intellectual Discourse, 23(Special Issue), 495-506.

Hammad, N. (2013). Fiqh of Contemporary Financial and Banking Transactions. Manama: Al-Baraka.

Hasan, A. et al. (2018). Rescheduling, Refinancing and Restructuring of Islamic Financing Facilities from the Shari'ah Perspective. ISRA Research Paper, No. 100. Malaysia: International Shari'ah Research Academy for Islamic Finance.

International Research Journal of Shariah, Muamalat, and Islam
IRJSMI
EISSN: 2682-8553
Volume 4 Issue 12 (December 2022) PP. 10-28
DOI: 10.35631/IRJSMI.412002

Hassan, R. (2017). "Challenges of Islamic Debt Restructuring in Multi Creditor Environment". Journal of Islamic Finance, (Special Issue), 054-072.

Hassan, R., et al. (2016). Islamic Banking and Takaful. Kuala Lumpur: Pearson Malaysia Sdn Bhd.

Hikmany, A. & Oseni, U. (2016). "Dispute Resolution in the Islamic Banking Industry of Tanzania: Learning from Other Jurisdictions". International Journal of Islamic and Middle Eastern Finance and Management, 9(1), 125-142.

Hossain, M. M. & Al-Din, M. N. (2013). "Qalb al-Dain and Its Shari'ah Rules". The Islamic University Studies, 9(1), 263-280.

Ibn Al-ʿAbidin, M. A. (1271 A.H). Radd Al-Muḥtar ʿAlā Ad-Durr Al-Mukhtār. Vol. 4. Bulaq: Al-Amiriyyah Press.

Ibn Juzay Al-Kalb, A. M. (1397 A.H). Al-Qawānīn al-Fiqhiyyah fī Talkhis Madhhab al-Mālikīyyah Wal Tanbih ʿAlā Madhhab, Shāfiʿiyyah Wal Ḥanafīyyah Wal Hanbalīiyyah. Cairo: Maktaba Al-Khanaj.

Ibn Qayyim, A. (1410 A.H). At-Turuq al-Ḥukmiyyah fī as-Siyasah Ash-Sharʿiyyah. Damascus. Dār al-Bayan Press.

Ibn Qayyim, A. (1991). ʿIlām Al-Muwaqqiʿīn ʿan Rabb al-ʿĀlamīn. Beirut: Dār al-Kutub al-ʿIlmiyyah.

Ibn Qayyim, A. (1369 A.H.). Tahdhīb Sunan Mukhtaṣar Abū Dawūd. Egypt, As-Sunnah al-Muḥammadiyyah Press.

Ibn Qudāmah, A. (1997). Al-Mughni, Vol. 3 & 6. (3rd ed). Riyadh: Dār ʿĀlam Al-Kutub.

Ibn Rushd, M. A. (1996). The Distinguished Jurist's Primer: Bidāyat al-Mujtahid, Vol. 2, Translated by Imran Ahsan Khan Nyazee. Reading: Garnet Publishing Ltd.

Ibn Taymiyyah, A. (1370 A.H). Al-Qawaid an-Nuraniyyah al-Fiqhiyyah. Egypt: As-Sunnah Al-Muhammadiyyah Press.

Ibn Taymiyyah, A. (1398 A.H.). Majmūʿ Fatāwā Ibn Taymiyyah, Compiled by Abdur Rahman Ibn Muhammad Ibn Qasim. Riyadh Edition.

Ibn Taymiyyah, A. (1987). Al-Fatāwā al-Kubrā. Beirut: Dār al-Kutub al-ʿIlmiyyah.

Iqbal, Z. & Mirakhor, A. (2011). An introduction to Islamic Finance: Theory and Practice. (2nd ed). Singapore: John Wiley & Sons (Asia) Pte. Limited.

Kisilwa, Z. (2012). Emergence of Islamic Banking in Tanzania: A Critical Analysis of Its Impacts to the Subsisting Regulatory and Supervisory Regime: The Case of the Bank of Tanzania. (Unpublished LL.M thesis), Mzumbe University.

Kok, S. (2014). Islamic Finance in the Global Economy: An Exploration of Risk Management and Governance within Shari'ah Finance. (Unpublished PhD thesis), University of Liverpool.

Lee, M. J. (2019). Islamic Finance: Recovery, Rescheduling & Restructuring of Islamic Financial and Capital Market Products and Services in Malaysia. (2nd ed). Kuala Lumpur: LexisNexis.

Badr Al-Din al-Ayn, A. (1990). Bināyah fi Sharh al Hidāyah, Vol. 7, 2nd ed. Beirut: Dār al Fikr.

Mapeyo, R. et al. (2022). "Shari'ah Compliance Issues in the Practices of Murabahah Based Financing Products Offered by Banking Institutions in Tanzania". International Research Journal of Shari'ah, Muamalat and Islam, 4(10), 30-45.

Moh'd, F. & Abdullah, R. (2019). "Challenges on Cost Plus (Murābaḥah) Based Financing: Zanzibar Experience". European Exploratory Scientific Journal. 3(2), 1-16.

Muneem, A, et al. (2020). "Issues on Restructuring of a Financing Facility in Malaysian Islamic Banks". Jurnal Syariah, 28(1), 105-126.

International Research Journal of Shariah, Muamalat, and Islam
IRJSMI
EISSN: 2682-8553
Volume 4 Issue 12 (December 2022) PP. 10-28
DOI: 10.35631/IRJSMI.412002

Muneem, A. et al. (2021). "A Juristic Study of Qalb Al-Dayn in Islamic Banks from the Shari'ah Perspective". Hamdard Islamicus, 44(4), 95-119.

Mustafa, M. M., & Othman, A. A. (2020). "Issues & Challenges of Applying Islamic Banking in Zanzibar: A Way Forward". International Research Journal of Shariah, Muamalat and Islam, 2 (4), 22-34

Mzee, M. M. (2016). "The Legislative Challenges of Islamic Banking in Tanzania". Journal of Law, Policy and Globalization, 45, 131-137.

Mzee, M.M. (2021). The Lacuna in Judicial Settlement of Islamic Banking Disputes in Tanzania. (Unpublished PhD thesis), International Islamic University Malaysia.

Nor, A. et al. (2020). "Recovery Issues on Murābaḥah Financing in Malaysia". International Journal of Academic Research in Business and Social Sciences, 10(4), 323-336.

Nyazee, I. (2003). Islamic Jurisprudence. Kuala Lumpur: The Other Place.

Obaidullah, M. (2005). Islamic Financial Services. Jeddah: Scientific Publishing Centre, King Abdulaziz University.

Omar, H. & Yusoff, M. E. (2019). "Central Bank Impact on Practicing Mudarabah Financing in Islamic Banks: The Case of Tanzania". Banks and Bank Systems, 14(1), 81-93.

Omar, H., Yusoff, M. & Sendaro, A. (2017). "Regulatory Framework for Islamic Banking in Tanzania". Jurnal Kemanusiaan, 2(1), 32-41.

Pradeep, K. & Ali, M. (2018). "A Decade of Creating an Alternative Banking System in Tanzania: The Current State of Affairs of Islamic Banks". International Scholarly and Scientific Research & Innovation, 12(10), 1271-1276.

Sadique, M. A. (2018). "Issues in the Application of Murābaḥah Sale in Banking: Financing Consumer Goods and Trade". International Journal of Accounting, Finance, and Business, 3(15), 13-24.

Sami, H. (1976). Taṭwīr Al-Aʿmāl Al-Maṣrifiyyah Bimā Yattafiqu Wa Al-Sharīʿah Al-Islāmiyyah. Cairo: Dār al-Ittihad al ʿArabi Lil-Tibaʿa.

Securities Commission Malaysia. (2020). Resolution of the Shari'ah Advisory Council of the Securities Commission Malaysia.

Sulayman, H. (2015). "Growth and Sustainability of Islamic Finance Practice in the Financial System of Tanzania: Challenges and Prospects". Procedia Economic and Finance, 31, 361-366.

Tamano, N. (2022). IFN Country Analysis – Tanzania. Retrieved from https://www.islamicfinancenews.com/ifn-country-analysis/tanzania.

Thomas, K. M. (1994). External Debt Management: An Introduction. World Bank Technical Paper No. 245.

Usmani, M. (2002). An Introduction to Islamic Finance. The Hague: Kluwer Law International.

Usmani, M. (2015). Fiqh Al-Buyūʿ ʿAla al-Madhāhib al-Arbaʿah. Karachi: Maktabah Maʿārif Al-Qur'ān.

Zuhayli, W. (1985). Fiqhul Al Islami Wa Adilatuhu, Vol. 4. Beirut: Dār al-Fikr.

Case Laws

Amana Bank Limited v. Shaban Athumani Mshana and 3 Others (2014). Commercial Case No. 124, High Court of Tanzania - Commercial Division at Dar es Salaam, (Unreported).

Amana Bank Limited v. Urban and Rural Engineering Services Limited (2021). Commercial Case No. 78, High Court of Tanzania - Commercial Division at Dar es Salaam. (Unreported).

International Research Journal of Shariah, Muamalat, and Islam
IRJSMI
EISSN: 2682-8553
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Regulations

The Banking and Financial Institutions (Management of Risk Assets) Regulation 2014 (Government Notice No. 287 of 2014).