


## IJTIHAD IN ISLAMIC FINANCE: A METHODOLOGICAL APPROACH

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### Abstract

*Islamic classical contracts have been revitalized in creating various financial products in Islamic banking institutions. However, their application in the current banking industry is not without argument. It is viewed that the classical contracts are not practiced as propounded in the classical fiqh doctrines. The article discusses the issue by proposing a different methodological approach for Shariah advisors in guiding Islamic banks. Shariah advisors in Islamic banking institutions are encouraged to unbind themselves from nominated Islamic classical contracts (uqud al-musamma'). They need to unveil new contracts that suit with modern practices and authentically able to solve problems and limitations faced by Islamic banks. Based on examination of twelve main classical texts of the four Sunni schools, it is found that Islamic classical commercial contracts evolved over times especially in the Hanafis, Shafi'is and Hanbalis schools. Past Muslim scholars expanded the classical contracts in response to new challenges and problems encountered by Muslim community in their commercial dealings. The evolution of Islamic commercial contracts can be further enhanced by adhering to the principles of transparency, honesty, mutual consent and humanitarian goals.*

**Keywords:** *Shariah scholars, ijtihad, Islamic finance*

### INTRODUCTION

The main distinction between Islamic and conventional finance lies on its compliance to Shariah principles. To ensure that all operations of Islamic banks adhere to the principles, the banks appoint Shariah scholars as their advisors. The main role of the Shariah advisors is to perform oversight function on matters related to bank's business operations. They ensure that Islamic banks do not contravene with Shariah principles and endorse the compliance of products and services offered by Islamic banks. The endorsement is vital especially for customers. Customers entrust Shariah advisors and put the burden of accountability related to Shariah matters entirely on their shoulders.

Interestingly, although the role of Shariah advisors are important to Islamic banks but their appointment is temporary and short term. In Malaysia, Shariah advisors are appointed for a renewable two years contract. Furthermore, the recent Shariah Governance Framework issued by Bank Negara has put a maximum duration of 9 years for a Shariah advisor to serve an Islamic bank (BNM, 2019). Such a policy is to demonstrate the independency of Shariah advisors in making their judgement. Hence, the existence of a permanent and full time Shariah department within Islamic banks is essential. The department is the backbone of Shariah compliance. The Shariah department functions as advisory body to various internal departments within Islamic banks, conduct initial research for deliberation and assist Shariah advisors in discharging their fiduciary duties. In addition to that, there is internal Shariah review team who will continuously examine and evaluate bank's level of compliance to Shariah principles. The review team will check the overall business operations including end to end product development and offering processes to avoid risk of Shariah non-compliance.

Despite all these efforts, Islamic banks are still facing criticism over its Shariah compliance. Argument and questions such as 'is Islamic banks really Islamic?', substance over form, Shariah based versus Shariah compliance, assertion that Islamic banking products merely mimicking conventional products have dominated critics' literature for the past three decades (see for example Khan, 2010 and Mirakhor, 2010). The issues continue unresolved and unsettled until today. Islamic banks maintain their traditional way of doing thing. They treat the issues raised by critics as 'easier said than done'. According to Islamic bankers, not much can be changed since Islamic banks operate in the current conventional legal and regulatory requirements not in the ideal Islamic economic system.

It is true that there is no way out to the problem? It is a valid argument that there is not much can be improved to the current operations of Islamic banks. The present article aims to discuss the issue by advocating a different methodological approach among Shariah advisors in their consultation with Islamic banks. It is argued in this article that Shariah advisors are required to be more 'innovative' and have courage to unbind themselves from the nominated Islamic classical contracts in *fiqh* (Islamic jurisprudence) texts. In other words, Shariah advisors need to unveil new contracts that suit with modern practices and authentically able to solve problems and limitations faced by Islamic financial institutions. The application of the classical contracts in modern banking environment must be re-looked and re-assessed particularly in response to technological advancement of the 4th industrial revolution. Unlike the current approach, Shariah advisors must dare to question whether a contract developed in the 6th century continues relevant and applicable in the 21st century.

In Malaysia, there are currently 109 Shariah advisors who are actively advising Islamic banking and Takaful institutions. Majority of them are academics in the higher learning institutes who possess strong background in Shariah knowledges. As Shariah advisors, they are expected to give Shariah opinion on operational problems faced by Islamic banks. Their decisions have strong influence in shaping Islamic banks' direction. For instance, following the introduction of Islamic Financial Service Act 2013, all Islamic banks in Malaysia are forced to shift their *mudarabah* saving and current accounts into *qard* or a new form of deposit by 30 June 2015. Under IFSA 2013, *mudarabah* contract should be behave as pure investment instrument as the contract did not allow its principal to be guaranteed.

Islamic banks are left with two options; whether to migrate the *mudarabah* saving and current accounts into *qard* based account or to create a new form of deposit account. The first option is not favoured by some Islamic banks because *qard* based account has strict restriction in terms of giving *hibah* (return) to depositors. The restriction will not be attractive for many depositors because monetary returns is still considered important factor to patronage Islamic banking products. Another option is to create a new form of saving account which have the flexibility to offer certain rate of return to depositors. In coming out with new form of saving account, two local banks propose to adopt commodity *murabahah* or *bay' al-tawarruq* as the underlying contract.

The move is commendable as new Islamic product will appear in the market. However, the adoption of commodity *murabahah* contract in creating deposit account make its operation very complicated. In order to facilitate the right of withdrawal and to justify advance return to depositors, the banks need to perform commodity trading daily and match the amount of transaction with depositors' money. The bottom line is that in figuring out with solution, the Shariah advisors seem to be 'trapped' with the classical nominated contracts (*qard*, *murabahah* and *bay' al-tawarruq*). A question prompt to our mind; can the Shariah advisors think out of the box and propose a new form of deposit account based on a new Islamic contract? Putting it differently, can Islamic banks create new financial products without applying nominated classical contracts as the underlying principle?

In order to discuss the issue further, this article is organized into five sections. After this introductory section, section two will explain the limitation of applying nominated classical contracts in the existing banking products. The two cases will be highlighted are home financing product based on *musharakah mutanaqisah* (diminishing partnership) contract and vehicle financing based on *ijarah thuma al-bay'* (AITAB) contract. The third section will examine the development of Islamic classical contracts in *fiqh* texts. The discussion is vital in supporting the main idea of this article. It will investigate

whether the classical contracts were evolved throughout the development of *fiqh* doctrines or they are fixed since the early *madhahib* (Islamic law schools) formation period. If the finding supports the former, then the proposed method is valid. The fourth section will discuss the fundamental of *fiqh muamalat* principles which become the basis of the new method to be adopted by Shariah advisors. Finally, section four will conclude the proceeding discussion.

## THE APPLICATION OF ISLAMIC CLASSICAL CONTRACTS IN ISLAMIC BANKS

As mentioned earlier, many Islamic classical contracts have been put into practice in offering Islamic banking products and services. For examples, the contracts of wadi'ah, mudarabah, wakalah, qard are applied to create deposit and current accounts. Meanwhile, murabahah, ijarah, musharakah, bay' al-tawarruq contracts are commonly used to develop financing instruments. These nominated contracts are the treasure of medieval Muslim scholars. They are all well explained and elaborated in *fiqh* doctrines. The contracts are believed to be practised by Muslim community during their golden time from Abbasid in 10 century to Ottoman Empire in 19 century. However, during the colonial period the contracts were frozen from practice. As new business concept such as corporation and limited liability emerged, the Islamic classical contracts were slowly replaced by the Western commercial law.

Thus, it is a natural response to re-introduce the Islamic classical contracts when Islamic bank were established in the late 1970's. The glory of Islamic civilization is hoped to be revived by implementing the classical contracts. Shariah scholars who understand the classical contracts helped bankers to apply them in the banks. Islamic banking products were then offered by using wadi'ah, mudarabah, wakalah, ijarah etc. The re-introduction of Islamic classical contract in modern banking world has attracted considerable interest from researchers. They were keen to investigate how the classical contracts are applied in the modern banking system. How the detail rules of mudarabah contract developed during the 6th century for instance are implemented in today banking environment (Shaharuddin, 2010). The research examines the theory and practice of Islamic classical contracts in Islamic banks. Such kind of topic was popular among postgraduate students especially those of Shariah background. There are many Master and PhD thesis produced in the area (see for example Sharif, 2015).

Reviewing all the studies, one can safely conclude that there is a gap between what was written in the classical *fiqh* texts with what has been practiced by Islamic banks. The studies found that there are modifications being made by Islamic banks in adapting the classical contracts. The

modifications are understandable because what had been described by classical Muslim jurists in the past are very challenging to be applied fully in the present context. The minor modification to the detailed implementation of the classical contract is acceptable. However, if the modifications change the basic character of the classical contract, then it would trigger Shariah issues.

Islamic home financing in Malaysia was first introduced using bay' bithaman ajil (sale of deferred payment) contract. The product, however, is criticized because of bay' al-inah (sale and buy back) issue. The contract is seen as not a real sale contract but merely a hilah (legal trick) to legalize interest. In response to the criticism, some Islamic banks developed a new home financing product based on musharakah (partnership) contract. Conceptually, Islamic bank and customer will form a partnership to purchase a house from developer. At the beginning, Islamic bank will own 90 percent of the shares and customer will own the remaining 10 percent share. The ownership of the shares will be gradually transferred to customer when he/she pays the installments throughout a certain period. In order to justify the installments, an ijarah (lease) agreement is included in the partnership. The bank will lease the house to customer who is also partner in the agreement. Interestingly, the bank as the major shareholder of the house is made free from legal and maintenance liabilities. All the costs related to land registration will be borne by the customer. Similarly, customer will bear the costs of maintenance if the house needs to be repaired.

Does the practice in line with the essence (muqtada' al-aqd) of musharakah contract? It is appropriate to claim that the product is based on musharakah when the liabilities is only shared by one party? Can we execute the agreement without supplementing it with ijarah contract and justify the installments based on new Islamic contract which does not exist in the fiqh texts. In other words, the new contract will recognize the obligation of customer to pay to the bank monthly and the responsibility to bear all associated costs in owning the house.

Another case in point is vehicle financing based on the contract of al-ijarah thuma al-bay' or better known as AITAB. The product is designed similar to that of hire purchase contract in conventional banks. Islamic banks will acts as lessor and will lease the vehicle to customer for an agreed period. At the end of the leasing period, the ownership of the vehicle will be transferred to customer by executing a sale contract. The conventional hire purchase is actually developed based on financing lease concept. It means the bank is providing financing to customer to purchase vehicle. According to accounting standard, finance lease will transfer substantially all the risks and reward of ownership of the asset to the lessee or customer. The rule appears to contradict the main rule of ijarah contract as explained in the fiqh texts.

Ijarah contract emphasizes that the bank as lessor or owner must assume the responsibility of repair and maintenance costs.

The conflict occurs because Islamic banks adapt the ijarah contract in different context. The ijarah contract which was found in the classical fiqh text is not meant for financing lease but is perfectly suitable for operating lease. The concept of financing lease is a new method of acquiring asset in our modern time. Since operating lease and financing lease are essentially distinctive, it would be problematic to apply the concept of ijarah in the latter. Should we maintain to apply the ijarah contract for financing lease? Can we formulate a new Islamic contract based on the principle of fiqh muamalat to suit the nature of financing lease?

Based on the two previous cases (Musharakah Mutanaqisah and AITAB) financing we could see the challenges for Islamic banks to implement Islamic classical contracts in their fullest forms. Some changes that affect the substance of contracts (muqtada al-aqad) is necessary to make them practical and relevant in the current banking environment. However, changes in the substance will distort the meaning of contract itself. As discussed earlier, transferring all obligations to one party only (customer) do not qualify a contract to be categorized as a partnership (shirkah) contract. Similarly, when we require the lessee to act the role of lessor in maintaining the leased asset, the condition itself seems to disqualify the contract to be named as ijarah contract. This is the crux of the problems occurred in the current practices of Islamic banking. Hence, it is taught that new original contracts need to be created and developed rather than re-modify the classical contracts. However, before we could suggest to create new contracts it is advisable to examine the development of commercial contracts as developed by past Muslim scholars.

## **THE DEVELOPMENT OF ISLAMIC CLASSICAL COMMERCIAL CONTRACTS IN THE FOUR SUNNI SCHOOL OF LAW**

Islamic law was extensively developed between the 1st up to 4th centuries Hijri or between 6th to 10th Gregorian centuries. The period was the time where Islamic schools of law (madhahib) was formed and established. The schools were developed based on the fiqh methodology founded by their eponyms namely Abu Hanifa (d.150), Malik (d.179) Shafi'e (d. 204) and Ibn Hanbal (d.241). Disciples and followers of the eponyms expanded the schools by deducing legal rulings in response to new problems faced by Muslims community.

In this section, we will trace the development of Islamic classical commercial contracts in the four most significant schools that remain in practice in most parts of Muslims worlds namely the Hanafis, Malikis, Shafi'is and Hanbalis. The focus is to investigate the growth of the contracts in the schools' main classical texts. The hypothesis is that the Islamic commercial

contracts evolved as problem related to business transactions and dealings faced by Muslims increased. Three classical fiqh texts written in different centuries of each school are examined. The classical texts are selected based on criteria that they represent the main references in their respective schools.

a. Hanafis School

The three fiqh texts studied in the Hanafis school are al-Asl of al-Shaibani (d.189), al-Mabsut of Sarakhsi (d.483) and Bada'i al- Sana'i of al-Kasani (d.587). Table 1 below shows the lists of Islamic commercial contracts discussed in the three texts.

Table 1: List of Islamic Commercial Classical Contracts in the Hanafis Fiqh Texts

	<b>Al-Asl Shaibani (d.189)</b>	<b>Al-Mabsut Sarakshi (d. 483)</b>	<b>Bada'i al-Sana'i al-Kasani (d. 587)</b>
1.	Buyu'	Buyu'	Buyu'
2.	Salam	Sarf	-
3.		Shufa'ah	Shufa'ah
4.		Qismah	Qismah
5.		Ijarah	Ijarah
6.		Wakalah	-
7.		Kafalah	Kafalah
8.		Sulh	Sulh
9.		Rahn	Rahn
10.		Mudarabah	Mudarabah
11.		Muzara'ah	Muzara'ah
12.		Wakalah	-
13.		Shirkah	Shirkah
14.		'Ariyah	'Ariyah
15.		Wadi'ah	Wadi'ah
16.		Gasb	-
17.		Luqatah	Luqatah
18.		Waqf	Waqf

19.		Hibah	Hibah
20.			Hiwalah
21.			Sibaq
22.			Wasiah
23.			Qard
24.			Istisna'

The text of al-Asl is one of the earliest fiqh text available in the Hanafis school. It was written by Shaibani (d.189) who was one of Abu Hanifah's students (d.150). It is noticed that the discussion related to commercial transactions in the text is brief. Only two contracts, buyu' (sale) and salam (forward leasing) were elaborated. After two centuries later, Sarakshi (d.483) expanded the discussion significantly. Besides buyu' (sale), 18 new contracts were first explained in the Hanafis fiqh doctrine in great details. Then, al-Kasani (d.587) added 5 more contracts in his work a century later. The contract of istisna' (manufacturing) was the new contract introduced in by the Hanafis in sixth century Hijri.

b. Shafi'is School

The three fiqh texts studied in the Shafi'is school are al-Mukhtasar of al-Muzani (d.264), al-Iqna' of Mawardi (d.450) and Raudah al-Talibin of Nawawi (d.676). Table 2 below shows the lists of Islamic commercial contracts discussed in the three texts.

Table 2: List of Islamic Commercial Classical Contracts in the Shafi'is Fiqh Texts

No.	Al-Mukhtasar Muzani (d. 264)	Al-Iqna' Mawardi (d. 450)	Raudah al-Talibin al-Nawawi (d. 676)
1.	Buyu'	Buyu'	Buyu'
2.	Salam	Salam	Salam
3.	Rahn	Rahn	Rahn
4.	Hiwalah	Hiwalah	Hiwalah
5.	Kafalah	-	-
6.	Shirkah	-	Shirkah
7.	Taflis	-	Taflis



8.	Wakalah	Wakalah	Wakalah
9.	Wadi'ah	Wadiah	-
10.	'Ariayah	'Ariyah	'Ariyah
11.	Sedaqah & Habs & Ataya	Hibah	Hibah
12.	Luqatah	Luqatah	Luqatah
13.	Musaqah	Musaqah	Musaqah
14.	Gasb	-	Gasb
15.		Ijarah	Ijarah
16.		Dhaman	Dhaman
17.		Hajar	Hajar
18.		Sulh	Sulh
19.		Qirad	Qirad
20.		Shufa'ah	Shufa'ah
21.		Ihya' mawat	Ihya' mawat
22.		Waqaf	Waqaf
23.			Ju'alah

Muzani (d.264) was one the three famous Shafi'i (d.204) students. His contribution to the development of Shafi'is school is obvious due to his magnum opus al-Mukhtasar. Al-Mukhtasar of Muzani emerged as the main reference of Shafi'i rulings in which almost all the school's texts were written based on the Mukhtasar. There were 14 classical contracts explained in the Mukhtasar. Mawardi in the fifth century Hijri advanced further the discussion by adding 8 more contracts in his text named as al-Iqna'. Nawawi (d.676) of the seventh century compiled all the contracts in his Raudah al-Talibin. It is noticed, he added a new contract (ju'alah) which did not discussed by Shafi'is scholars.

#### c. Hanbalis School

The three fiqh texts studied in the Hanbalis school are Masa'il Imam Ahmad reported by Sijistani (d.241), al- Mukhtasar of Kharkhi (d.334) and al-Mughni

of Ibn Qudamah (d.620). Table 3 below shows the lists of Islamic commercial contracts discussed in the three texts.

Table 3: List of Islamic Commercial Classical Contracts in the Hanbalis is Fiqh Texts

	Masa'il Ibn Hanbal (d. 241)	Al-Mukhtasar Kharkhi (d. 334)	Al-Mughmi Ibn Qudamah (d. 620)
1.	Buyu'	Buyu'	Buyu'
2.	Salaf	-	-
3.	Shirkah	-	Shirkah
4.	Mudarabah	-	-
5.	Muzara'ah	-	-
6.	Shufa'ah	Shufa'ah	Shufa'ah
7.	Hibah		Hibah
8.	Sulh	Sulh	-
9.	Ujrah	Ijarah	Ijarah
10.		Rahn	Rahn
11.		Muflis	Muflis
12.		Hajr	Hajr
13.		Hiwalah & Dhaman	Hiwalah & Dhaman
14.		Gasb	Gasb
15.		Musaqah	Musaqah
16.		Ihya' al-mawat	Ihya' al-mawat
17.		Waqf & 'Ataya	Waqf & 'Ataya
18.		Luqatah	Luqatah
19.		Wadi'ah	Wadi'ah
20.		-	Wakalah
21.		-	'Ariyah

Nine commercial contracts were reported during the period of Ibn Hanbal as compiled by Sijistani. During the fourth century Hijri, al-Karkhi added 10 more new commercial contracts in his work. Three centuries later,

Ibn Qudamah enhanced the discussion with additional two more contracts namely wakalah and 'ariyah contracts.

d. Maliki School

The three fiqh texts studied in the Maliki school are Mudawwanah of Sahnun (d. 240), al- Kafi fi fiqh ahlu Madinah of Abd Barr al-Qurtubi (d.463) and al-Zakhirah of al-Qarafi (d.684). Table 4 below shows the lists of Islamic commercial contracts discussed in the three texts.

Table 4: List of Islamic Commercial Classical Contracts in the Maliki Fiqh Texts

	<b>Al-Mudawwanah Sahnun (d. D. 240)</b>	<b>al- Kafi fi fiqh ahlu Madinah Abd Barr al-Qurtubi (d. 463)</b>	<b>Al-Zakhirah al-Qarafi (d. 684)</b>
1.	Buyu'	Buyu'	Buyu'
2.	Salam	-	-
3.	Sarf	-	-
4.	Murabahah	-	-
5.	Wakalah	Wakalah	Wakalah
6.	'Ariyah	'Ariyah	'Ariyah
7.	Sulh	-	Sulh
8.	Dhaman	-	-
9.	Ju'alah & Ijarah	Ijarah	Ijarah
10.	Musaqah	-	-
11.	Shirkah	Shirkah	Shirkah
12.	Qirad	Qirad	Qirad
13.	Tafliis	Tafliis	Tafliis
14.	Kafalah	Kafalah	Kafalah/Himalah
15.	Hiwalah	Hiwalah	Hiwalah
16.	Rahn	Rahn	Rahn
17.	Gasb	-	Gasb
18.	Shufa'ah	-	Shufa'ah
19.	Wasiat	-	Wasiat

20.	Habs & Sedaqah	-	-
21.	Wadi'ah	Wadi'ah	Wadi'ah
22.	Luqatah	Luqatah	Luqatah
23.			Qismah
24.			Hajr

The Maliki school has an outstanding fiqh text in the earlier development of the school. Sahnun compiled reports from Imam Malik in his work al-Mudawwanah. Al-Mudawwanah consists of 22 commercial contracts which represent the most comprehensive texts in the subject in the third century Hijri. Based on the evidence in al-Mudawwanah, many commercial contracts were already discussed by Muslim jurists in the earlier formation of madhhab. Due to the comprehensiveness of the discussion in al-Mudawwanah, the fiqh texts written in the subsequent centuries by the Maliki scholars did not show significant improvement in terms of the list of the contracts. Qarafi of the seventh century Hijri added only two additional contracts when compared to the work of Sahnun.

Based on the proceeding discussion, it is obvious that the list of Islamic commercial contracts in classical fiqh texts developed over some periods particularly in the Hanafis, Shafi'is and Hanbalis schools. New commercial contracts were enhanced by later generation of scholars in each respective schools. The enhancement are made in respond to new problems faced by Muslim community. It is important to note, however, majority of the classical contracts are already in existence since the third century Hijri as documented in al-Mudawwanah of the Malikis. Despite the comprehensiveness of the Islamic classical contracts, it does not restrain the past Muslim scholars to think of new solution to meet the changing demand of peoples' commercial needs. For instance, the Hanafis introduced *istisna'* (manufacturing) contract in the sixth century Hijri. The contract was first used by Hanafis scholars and was not known in the earlier time in other schools.

## PRINCIPLES OF FIQH MUAMALAT

This section aims to recommend the idea that any new product or Shariah issue faced by Islamic banks is necessary to be assessed by using the principles of fiqh muamalat. The discussion tries to establish the idea that applying the principles and adopting contracts of fiqh muamalat is two different things. The former can be achieved without the latter. In other words, Islamic banking practices still considered 'Islamic' even though their products does not apply the classical Islamic contracts. This goes without saying that all Islamic classical contracts are irrelevant and impractical in the

current banking system. Rather, the application of the contracts need to be carefully selected so that the objectives (*maqasid*) of Shariah in Islamic banking industry could be assured.

The main objectives (*maqasid*) of Shariah in relation to muamalat transaction is to attain fair and just business deals for all contracting parties. The detailed rules and guidelines of commercial contracts elaborated by Muslim scholars are with one purpose; to ensure that all rights of stakeholders in the contract are safeguarded. Therefore, Shariah emphasizes on transparency, honesty and mutual consent elements in all commercial transactions.

The concept of transparent in fiqh muamalat means the contracting parties are all informed and clear with the conditions of subject matter. In a sale contract for example, transparency refers to information with regard to object of sale and price. Seller and buyer must be clear on terms and conditions (TOCs) of the contract as well as decide on the price. Any uncertainty (*gharar*) element in TOCs and price will make the contract null and void. The contracting parties must also fulfill their obligation with honesty. Trustworthiness is the core characteristic either for a seller or a buyer. There is no such mechanism which can guarantee both parties will perform their commitment with full responsibility. It all depends on the level of faith (*iman*) of a person. The third principle is the mutual consent element as stated in the Qur'an verses (4:29). Coercion is unacceptable either from seller or buyer.

In addition to that, Islam gives preference to social benefits over individual interest. Islam rejects the theory of wealth maximization to achieve the pursuit of self-satisfaction. Contrary to this secular's view, Muslims treat wealth as a trust (*amanah*). The absolute owner of the wealth rests with Allah and mankind is only entrusted to manage the wealth in this world. In Islam, the concept of wealth creation is wider than just making a lot of money. Since wealth is a test from Allah, making a lot of money can entail destruction of worldly life. For Muslims, the main aims are to achieve the true success (*al-falah*) which is the success in the world and the hereafter. This concept differentiates the behavior of Muslim in business and corporate environment. In theory, monetary profit will be secondary objective in pursuing and developing a business empire. Rather, the notion of serving the *ummah* will become the priority and main agenda.

Obviously, from our discussion, the motivation for a Muslim to engage into wealth creation is not due to the pursuit of self-satisfaction, greed, the desire to survive, the desire for individual power and the enjoyment for riches. Rather, Muslims embark into wealth creation activities because of the desire to serve others and the enjoyment of entrepreneurial spirit. The wealth re-distribution system found in the classical fiqh muamalat supports the first

motive. Many charitable contracts such as zakat, infaq, sadaqah, hibah, wasiah and waqf are created to redistribute private wealth into public wealth. The second motivation is particularly derived from the hadith of the Prophet when he was reported to say that nine tenth of the wealth come from business. These principles should be the basis in evaluating financial and banking products in Islamic financial institutions.

## CONCLUSION

Business operations and activities in Islamic banking institutions are based on the application of Islamic classical commercial contracts of the 6th century. These classical contracts are re-introduced in the modern banking environment to offer alternatives for interest-based transactions. Certainly, contemporary Shariah scholars contribute significantly in the process. They modified the Islamic classical contracts in adapting them to the modern financial system. However, the approach seems to be inadequate to sustain the changing demand of the industry. Some applications of the classical contracts are criticized for not truly demonstrate the essence and character of the contracts which lead to doubt over its Shariah compliance. Hence, the article advocates the need for Shariah advisors to think beyond their traditional method in deliberating Shariah matters in Islamic Financial Institutions. The approval of a new financial products, for example, does not necessarily be confined with Islamic classical contracts found in fiqh texts. New products could be developed based on the principles of transparency, honesty, and mutual consent as well as society humanitarian goals.

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### Penafian

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