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BANKER-CUSTOMER RELATIONSHIP IN THE CONVENTIONAL AND ISLAMIC BANKS IN MALAYSIA, REVISITED

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Abstract: *The distinct feature of Islamic banking operations is the multiple contractual relationships between Islamic banks and their customers being that of partners, investors and traders, as well as buyer and seller. Conversely, conventional banking is primarily based on the debtor-creditor relationship (as enunciated in Foley v Hill) between the banks and the borrower with the bank earning money from a spread made between interest it receives from the borrower on loans and other assets and interest paid to the depositors in interest-bearing accounts. This article revisits previous papers related to these different types of banker-customer relationships. Afterwards, a reconsideration in comparative sense of the nature of banker-customer relationship in conventional and Islamic banks is discussed. This study is a library research which analyses the literature from books, research articles, official websites, industry report, journals and online newspapers to explore the development in the application of equity-based Shariah contract for deposit and financing to see whether the Islamic banks have distinctly move away from the debt-based financing of Foley v Hill position or otherwise. The research findings show that not many Islamic banks bode well with equity-based financing since the risks are above and beyond the threshold a normal bank is willing to take and it seems that Islamic banks are reversing back to the debt-based financing of Foley v Hill position. This study concludes with a call for a review of the duty of care of Islamic banks towards performing prudent risk management in debt-based financing in striving to adhere to higher objectives of Shariah (Maqasid al-Shari'ah). This study will be helpful for bringing policy formulation by Islamic banks to facilitate innovation in Islamic product offerings.*

Keywords: *Banker-Customer Relationship, Conventional and Islamic Banks, Multiple Contractual Relationship, Foley v Hill.*

Introduction

As Malaysia aspires to be a developed country by 2020, the sustained soundness and efficient functioning of the Malaysian financial system has played a major role in facilitating the growth and development of the domestic economy. As a key component of the financial system, banks' role as financial intermediaries is crucial in facilitating the flow of funds of the economy and allocating its resources to bank consumers efficiently. It is envisioned that the financial landscape of Malaysia in 2020 amongst others will be characterised by both conventional and Islamic banks offering wider range of financial products and services to meet more advanced and differentiated needs of bank consumers.

Underpinning the dynamic banking sector is an overall culture of responsibility in rendering high quality of personal service to banking customers. In this way, banker and customer have a legally binding and enforceable contract which arises once they enter into an agreement when one party makes an offer and the other party communicates acceptance of that offer (Furmston, 2012). This banker-customer relationship eventually starts when an agreement or contract is entered into with banks undertaking to perform certain banking services to the bank consumers. The nature of the banker-customer relationship arises from the varieties of services that banks provide to depositors and borrowers. Each and every service calls for a contractual relationship having certain terms and conditions applicable to both banker and customer. The banker-customer relationship is contractual in nature which depends upon the customs and usages of normal banking business. The significance of banker-customer relationship cannot be underestimated. Such relationship relates to the society, emotional attachment and legal aspects since both banker and customer serve the country in helping it to grow and expanding the economy. Like any other legal relationships, it formed a basis when resolving any disputes between the banker and customer, (Noor & Nor, 2018a).

The banking system in modern market economies has proven to be significant not only for the resource allocation and distribution but also for their crucial role in growth and the functioning of markets in Malaysia. The significant role played by banks including the size of their activities makes it imperative to study the banker-customer relationship under Malaysian law. The aim of this paper is to ascertain the legal relationship existing in conventional and Islamic banks with their customer by means of case law and statutory regulations, with emphasis on Malaysia. Following this introduction, section 2 commences with the methodology of this study. Section 3 highlights the relevant literature on the contractual relationships pertaining conventional and Islamic banks. Section 4 then analyses the types of relationships existing between a banker and customer in conventional and Islamic banks in providing the theoretical framework for such relationships. This section then proceeds to explore the development of banker-customer relationships in conventional and Islamic banks with latest information from BNM reports, relevant judicial decision and scholarly writing. In addition, this section also analyses whether the multi-contractual relationships in Islamic banks are becoming more debt-based as in *Foley v Hill* or maintains the equity-based financial relationship. Section 5 applies a similar approach as section 4, except that the analyses and discussions here involve the comparative difference between the concepts and principals of Islamic banking to their conventional counterparts and the implications of adopting more debt-based than equity-based financing on policy implications of Islamic banks. Finally, Section 6 provides the concluding remarks and an end of this study. This study intends to fill the gap in the current literature on the current development of banker-customer relationship in

Islamic banking, relating to debt-based versus equity-based financing contracts as popularly employed by Islamic banks in Malaysia.

Literature Review

There is an extensive theoretical literature on the banker-customer relationships (Akakabota 2016, Mahmood 1989, Noor & Nor 2018, Rafe & Edib 2010, Razinah & Najla 2012 & Muneeza, Adeyemo & Mobolaji 2012 & Wisham 2011. In the course of his day to day business, a banker enters into different kinds of relationships with its customers whereby such relationship between a bank and its customers can be broadly categorized into general relationship of debtor-creditor or creditor-debtor as the case may be and that of special relationship such as: bank as a trustee, bailee-bailor, lessor-lessee, agent-principle as well as bank acting as a guarantor (Poh, 2016). The rules that govern the relationship between the banker and its customers are derived from various sources including: the contract terms between the banker and its customers, the legislation, the common law principles including equity, and the banking practices (Islam R., 2016). To ensure long-term survival of Islamic banking industry there must exist mutual interest, trust and consultation between professionals representing the banks and bank customers who seek services of the bank (Adeyemo & Mobolaji, 2012).

Malaysia has gained the attention of the world for having a systematic and dual banking system with dual legal infrastructure which operates parallel of each other, the conventional banks are based on the Common Law while Islamic banks being based on Islamic law (Muneeza, et.al, 2010). However, in the context of Malaysia, the Federal Constitution places Islamic banking matters as a commercial matter which is under the jurisdiction of the civil court, hence not only do Islamic banks have to adhere to SharÊÑah framework but they also are bound by other SharÊÑah compliant law of Malaysia which is based on common law (Noor 2018c). The smooth flowing of Islamic banking practice are modified and harmonised with the existing conventional banking laws (Razinah & Najla, 2012).

In Islamic banking law, the relationship regarding deposit and providing financing is that of multi-contractual relationship depending on the nature of contracts to which parties have chosen, while in the conventional banking law the major banker-customer relationship is that of creditor-debtor based on the principles decided in the landmark case of *Foley v Hill* (Norhashimah, 2005). All the rights and obligations of a banker and customer in conventional banks are also applicable is Islamic banks, except that some rights and duties of banker and customer are a bit different from that of conventional banks depending on which contract or product is being utilised and that with regard of interest (Muneeza et all, 2011). According to Norhashimah (2005), the multi-contractual relationships of Islamic banks which adapts equity-based financing and deposit, has departed from the debt-based *Foley v Hill* relationship of conventional banking. Rafe & Edib (2010) opined that unlike conventional banks, the seller's standard of care of Islamic banks is based upon *maqasid al-Shariah* which implies that debt-based banking products should be Shariah compliant and be just/ fair to both seller (creditor) and buyer (debtor). Furthermore, BNM must also ensure that seller's standard of *caveat venditor,* are imposed on both conventional and Islamic banks to avoid 'regulatory arbitrage' and conventional banks having comparative advantage in the market even if for some period of time (Rafe & Edib, 2010).

Methodology

This study explores the current state of multi-contractual relationships in Islamic banks and analyse the development of Shariah contract for deposit and financing by Islamic banks as to whether Islamic banks promote more equity-based products as compared to debt-based products. In doing so, this study applies a qualitative research by library based study. For this study, secondary data is obtained from relevant literatures such as books, case laws, judicial decisions, academic research, industry report, official websites, and other sources like BNM Financial Stability and Payment Systems Report 2016.

Findings

Debtor and Creditor Relationship in Conventional Bank

The traditional relationship subsisting of a conventional bank and its customer is purely contractual in nature and primarily that of debtor-creditor depending on the nature of customers' account, which begins when an account is opened. Apart from the basic relationship of debtor-creditor or creditor-debtor relationship, other types of relationships subsisting in conventional banks also include: agent-principal relationship with customer requiring bank to collect cheques on their behalf; mortgagor-mortgagee relationship where customer grants lending interest in property to bank; and trustee-beneficiary relationship with banks acting as trustee (Demetriades, 2018).

Conventional banks are based on interest-based system with the main source of income being the interest/ profit it received from the spread between interest earned on loans and other assets and interest paid to customers who make deposits into interest-bearing accounts, whereby high spread equates to higher profit margin for conventional banks (Rafe & Edib 2010). In other words, as business entities conventional (commercial and retail) banks make money by charging higher rate of interest on money they lend (e.g. mortgages, credit card facilities etc) than what they borrowed from other banks or from bank customers who deposit money with them. For example if conventional banks pays 1% interest on deposits, they may charge 6% interest on loans. They also charge bank customers fees for services rendered in managing their accounts as well as earning money from bank charges levied on overdrafts that exceeds agreed limits.

The fundamental characteristics of the traditional debtor-creditor relationship was first highlighted by the House of Lords in *Foley v Hill* whereby Lord Cottenham L.C. said the following.

> "Money, when paid into a bank, ceases altogether to be the money of the principal; it is then the money of the banker, who is bound to return an equivalent by paying a similar sum to that deposited with him when he is asked for it. The money paid into the banker's is money known by the principal to be placed there for the purpose of being under the control of the banker; it is then the banker's money; he is known to deal with it as his own; he makes what profit he can, which profit he retains to himself, paying back only the principal, according to the custom of bankers in some places, or the principal and a small rate of interest, according to the custom of bankers in other places. The money placed in the custody of a banker is, to all intents and purposes, the money of the banker, to do with it as he pleases; he is guilty of no breach of trust in employing it; he is not answerable to the principal if he puts it into jeopardy, if he engages in a hazardous speculation; he is not bound to keep it, or deal with it, as the property of his principal, but he is of course answerable for the amount, because he

> was contracted, having received that money, to repay to the principal, when demanded, sum equivalent to that into his hands."

In summary, the traditional debtor-creditor relationship in *Foley v Hill* has established that in the relative situations of banker and customer, the banker is a debtor and not that of an agent or trustee. When customer deposits money in bank, it becomes property of the bank where bank is allowed to co-mingle the cash as well as use it for its own business purposes, which means bank should treat money deposited with them as their own and are only obliged to return an equivalent amount to depositors (Wei, 2018). Bank owed only a contractual obligation to repay customer/ creditor the mere debt bank owed excluding any interest since money deposited in bank accounts are not subjected to any fiduciary duty or trust arrangement to place money in trust. Unlike the general rule that a debtor must seek to repay the creditor, the bank/ debtor can do what it pleases with the money that bank customer deposits and only pays to a customer/ creditor on demand or at call (on notice). The implication in *Foley v Hill* is that banks do not have to act in customer best interests since this debtor-creditor relationship is based on express contract and not a trust arrangement or fiduciary duty like principal/ agent or trust/ trustee relationship, therefore should the bank becomes insolvent the bank customers loses all or some of their money.

Ellinger (2011, p.121) mentioned that *Foley v Hill* (1848) together with *Joachimson v Swiss Bank Corporation* [1921] forms part of the foundational cases with regards to English banking law relating to the fundamental nature of banker-customer relationship to a bank account. In these cases it was held that the bank is obliged to repay money owed to customer when demanded at the branch where the account is kept provided only during normal banking hours. The same applies when the customer's account is overdrawn, rather than seeking to pay bank the money the customer waits for bank to demand payment. Sir John Paget in *Law of Banking* describes the debtor-creditor relationship as follows:

> "The relationship of banker and customer is primarily that of a debtor and creditor, the respective position being determined by the existing state of the account. Instead of money being set apart in the safe room, it is replaced by a debt due from the banker. The money deposited with him becomes his property and is absolutely at his disposal."

To sum up, whoever owes money to another person is the debtor whereby this position could be reversible many times in a day. Prof Dr Norhashimah (2005, p.28) clearly explains this interest-based relationship which begins when a customer deposits money with the bank, such relationship arising is that of debtor-creditor such that "the money belongs to the bank and free to use it as he sees fit; he is not guilty of breach of trust in employing the depositors' money; he is not answerable if he puts the money at risk, however the banker is under obligation to repay his depositor/customer on demand and interest is granted if so agreed". Similarly, when banks provide loan and credit facilities to customers, the contractual relationship is that of creditor-debtor, with bank as creditor and customer as debtor (Norhashimah, 2005). Thus, it is a settled position of law that money deposited in banks becomes banks' money and customer become a creditor to the bank.

Thus far, the debt-based debtor-creditor relationship of *Foley v Hill* as decided in 1848 still stands as the primary relationship of the conventional banks since the bank earn profit by making a spread between the interest charged on the borrower of funds and interest paid to the depositors. Even if other types of relationship such as principal-agent, bailor-bailee to name a few also arise depending on the types of services rendered by the conventional banks.

Multi-contractual Relationship in Islamic banks

The modern world's affairs are dependent on interest (*riba*), however it is prohibited (*haram*) in Islam. To completely avoid (*riba*) in banking business, scholars and Islamic banking practitioners have developed various modes of transaction that is claimed to be Shariah compliant which is primarily on the basis of equity-based profit-loss-sharing (PLS) financing modes. Hence, Islamic banks undertake to do investments to earn profit for themselves and depositors in the investment account since they cannot earn interest by lending the money.

The PLS equity-based investment procedures based on the Islamic contract principles, makes the banker and customer relationship under Islamic banking law different from that of the conventional banks. The relationship between the bank and the customer is special which are due to the Shariah principles derived from Quran and Sunnah (Najib, 2009). The banker-customer relationship is not primarily debtor-creditor relationship but is based on a different equity-based contract that is entered by the Islamic banks and the customer, whereby banks operate like equity-based companies and depositors are treated as quasi-shareholders (Aysan et al, 2017). The banker-customer relationships are established on a PLS income sharing arrangement in ensuring that justice is established in banking contracts and to avoid unjust exploitative elements such as interest (*riba'*), gambling (*maysir*), elements of uncertainty (*gharar*) and speculation (Manan & Kamaluddin, 2010). The multi-contractual relationships means that a customer may be engaged in a partnership relationship or lessor-lessee relationship etc depending the type of contract they entered into which are consistent with the Shariah principles.

The Islamic banking products are also unique since there are no universal Islamic banking products used across the nation or globe, which means that products differ in name and nature from bank to another bank. Thus, it can be said that several underlying Shariah contracts consistent with the Shariah principles are combined to create one product. This concept is different from that of the conventional banks. The crux of these PLS modes is commonly presented as various forms of trustee-based partnerships such as *mudharabah* (profit sharing) and equity-based financing like *musharakah* (joint venture) which are similar to venture capitalism instead of debt-financing in the likes of *Murabahah* (cost plus), *Ijarah Thumma al Bai'* (hire purchase), *Bai' Bithaman Ajil* (deferred sales contract), *Bai Inah* (buy back) and *Tawarruq*. Other products of Islamic banks include *Wadiah yad al damanah* (safekeeping with guarantee), *Hawalah* and *Qard* (interest free financing) to name a few. Although Islamic banks discourage high leverage but their corporate finance strategy adopts prudent risk management of raising capital via equity-based financing modes of *mudharabah* and *musharakah*. The investment product and Shariah contract development from phase 1 in 1983 when Islamic banking started in Malaysia until phase 6 as the current scenario in Malaysian Islamic banking industry are presented in Table 1.

Table 1 Product and Shariah contract Development

Time	Products	Shariah Contract Applied
Phase 1 - 1983	*Wadi'ah* Savings Account *Wadi'ah* Current Account *Mudharabah* Investment Account BBA Home Financing	*Wadi'ah Yad Dhamanah/ Mudharabah* *Wadi'ah Yad Dhamanah* *Mudharabah/ Wakalah lil-Istithmar* *Bai' Bithaman Ajil* (BBA)
Phase 2 - 1993	*Murabahah* Working Capital Fin. Interbank Islamic Money Market Securitization of Asset	*Murabahah* for Purchase Order (MPO) *Mudharabah* *Hawalah*
Phase 3 - 1998	Islamic Credit card Islamic Hire-Purchase Ijarah Fixed Asset Financing	*Bai' Inah/ Tawarruq/ Ujrah* *Ijarah Thumma Bai'*(AITAB) *Ijarah*
Phase 4 - 2010	Structured Deposit Derivatives & Hedging Products	*Mudharabah* Financing *Musharakah* & *Musharakah Mutanaqisah* Financing
Phase 5 - 2013	Investment Account Holders (Equity)	*Mudharabah* & *Musyarakah*
Phase 6 - current	Personal Financing	*Tawarruq*

Source: Based on Bank Islam Malaysia Berhad, 2010 & modified by the author

In summary, the implementation of PLS as an equity-based financing structure by Islamic banks which prioritise Islamic ethical culture of service is pertinent for the mutual benefit of bank and customer. While PLS equity-based contracts is emphasised as the main financing mode of Islamic banking practice, in reality many Islamic banks have deliberately and systematically avoided using PLS financing modes. The research findings show that not many Islamic banks bode well with equity-based financing modes since the risks are above and beyond the threshold a normal bank is willing to take.

Progress to date of Shariah contract application

Then, the role of Islamic banking was enhanced to develop profit and risk-sharing investment and financing facilities such as equity and quasi-equity-based financing. This was complemented by sufficient safeguards to ensure that such activities are not funded by retail deposits in the Islamic banks. Only Shariah-compliant financial instruments can be used for trade and production purpose in Islamic banks but must be based on risk/profit sharing as a return for the entrepreneurial efforts and financial capital (Iqbal, 2011). Some examples of Islamic banking contracts that can be used and are the most widely used in Islamic banking are trustee contract (*mudharabah*), equity contract (*musharakah*) and debt-based transactions (*tawarruq, murabahah, ijarah* etc).

To promote the diversification of Islamic financial business, in 2013 the Central Bank of Malaysia, also known as Bank Negara Malaysia (BNM) implemented the Shariah contract-based regulatory framework. Towards this end, BNM has intensified industry engagements to encourage more innovative applications of Shariah contracts in funding, financing as well as investment instruments (BNM, 2016). Over the last six years (refer Table 2), there is a notable development in the increased application of debt-based *tawarruq* contracts as the underlying contract for Islamic banking business. According to BNM, in 2016 the debt-based *tawarruq* financing grew over 34% which accounts for 22.4% of total outstanding for Shariah-compliant financing. Such growth has been largely spurred by the commodity trading operation of Bursa Suq Al-Sila to the extent of reducing the costs and risks associated with tawarruq-based transactions. On the same account, there is also an increase by 104% on debt-based *tawarruq* contract due to higher demand for fixed rates of return offered under *tawarruq* contracts. Findings are that most instruments used in the Islamic banks are generally debt based as not many Islamic banks bode well with equity-based financing since the risks are above and beyond the threshold a normal bank is willing to take.

Table 2: Financing Composition and Change by Shariah Contracts

Shariah Contracts	Type	Financing Composition	Change in Shariah Contract Application (based on financing from 2014-2016)
Tawarruq	Debt-based	22.4%	104%
Murabahah	Debt-based	18.7%	34%
Ijarah	Debt-based	18%	5%
Bai Bithaman Ajil	Debt-based	12%	-18%
Musyarakah	Equity-based	9.2%	60%
Bai' Inah	Debt-based	7.2%	-24%
Others (include unspecified Islamic financing concepts: *baÊ dayn, baÊ salam, baÊ al-sarf, istisna, kafalah, mudarabah, qard, rahn, ujrah, wakalah*)		12.5%	Ujrah 60%; istisna 17%; qard -13%; mudarabah -28%

Source: BNM, 2016.

Despite the call from academicians on the superiority of equity-based PLS financing over debt-based financing mode, Islamic banks have overwhelmingly employed the latter modes of financing such as *tawarruq, murabahah, ijarah, istisna* as evidenced in Table 2. This study discusses the top two modes of financing which are the debt-based *tawarruq* which accounts of 104% increase in usage and equity-based *musyarakah* with 60% increase. The contract of *tawarruq* aims to provide cash or personal financing to bank consumer. It involves some goods or assets between the provisions of cash to the customer whereby he repays of a larger sum in the future. However, the goods are not meant for use by buyer but rather as a legal trick *(hilah)* in legalising the transaction. The second transaction takes place between the customer and a third party other than the seller. Since organised *tawarruq* involves a bank acts on behalf of bank consumer, the cost of financing or debt also increases due to buy and sell commission of the broker. Instead of developing banking activity in contracts, a hidden interest which satisfies the demand for money is found in organised *tawarruq* and in the long run such product of 'bad reputation' would lead to loss of confidence in the Islamic identity of Islamic banks (Abdur Rahman, 2009). Organised *tawarruq* disconnects financing from the real exchange and production market failing the socio-economic objectives of *maqasid al-Shariah* since commodities that are purchased and sold are not intended for transactions but enters back the market without giving signals to producers to replace them (Kahf, 2010). The economic role of organised *tawarruq* and Islamic bank practising it is no different than that of lending and borrowing money of conventional banks giving interest-based loans to their customers (Afiga, 2012). A *tawarruq*-based system that arranges the exchange of money with more money will suffer from the inequity from the exchange involved and instability as a single piece of real asset forms the basis of innumerable successive *tawarruq* deals which subsequently inflates the cash market with unreal transactions (Siddiqi, 2006).

The contract of *musyarakah* normally involves a form of partnership which is based on profit and loss sharing, whereby profits are shared in accordance with the terms of the *musyarakah* agreement, while losses are shared in proportion to each partner's share of capital and examples of modern application of *musyarakah* takes the form of *musyarakah* investment or *musyarakah* financing such as *Musyarakah Mutanaqisah* (BNM, 2010). *Musyarakah Mutanaqisah* or diminishing *musyarakah* allows one party to obtain equity through some payment or instalments depending on the agreed requirement of the contract (Maheran, 2010). According to Maheran (2010) the rate of profit and loss sharing in the *musyarakah* model ensures a fair investment and reasonable joint venture between the capital provider and entrepreneur which indirectly help reduce incompetence and business mismanagement since they contributed to their own capital. However, the equity-based PLS of *musyarakah* is not without challenges since there exist high risk of investment; difficulty in selecting appropriate partners; demand comes from low credit worthiness customers; and lack of capital security (Aisyah & Shifa, 2016).

It is important to appreciate that although implementing more "Islamic" banking ideal in the form of equity-based financing, in reality the management of Islamic banks will pursue the best-return on investment by offering debt-based instead of equity-based financing products since shareholders expect medium to high returns on their equity with lowest risk and operating cost possible. Despite strong tendency by Islamic scholars to consider *musyarakah* as a dynamic concept, almost all Islamic banks across the globe use this concept not more than 10% of their financial portfolio (Sudin & Shanmugan, 2001). A careful examination on Shariah contracts in Table 2 of "equity-based" and "debt-based" instruments seems to suggest that Islamic banks are reversing back to debt based of *Foley v Hill* position and moving away from equity-based PLS financing.

Discussion

The establishment of Islamic banks as a different system from the conventional banks and its substantial progress over more than four decades, have raised considerable attention and comments among religious scholars, practitioners and academicians alike. They claimed Islamic banks either different from conventional banks or 'business as usual'. For example, the issue over equity-based versus debt-based financing has often been debated. It is important to note that Shariah accepts both debt based and equity based financing transactions. However, there are fundamental differences in the key concepts of functions and operations of conventional and Islamic banks as shown in Table 3 below.

Table 3 Key differences in Concept of conventional and Islamic Banks

	Conventional Bank	Islamic Bank
Financial purpose	Mobiliser of funds from the surplus sector to the deficit sector of the economy and providing financial assistance to those in need of such financial facilities to carry out their business.	Mobiliser of funds from the surplus sector to the deficit sector of the economy and providing financial assistance to those in need of such financial facilities to carry out their business.
Profit oriented	√	√
Operation Model	Basis of functions and operations from manmade principles (capitalism theory)	Functions and operating model based on Shariah law
Indulge in interest-based financing	√	X
Rights & duties	Not bound by religious nor moral norms	Bound by religious, ethical and moral norms
Profit and loss sharing	X	√
Ethical banking	X	√
Primary banker-customer relationship	Debt-based Debtor-creditor relationship as in *Foley v Hill*	"Islamic" Equity-based Multi-contractual relationship of *musharakah* and *mudharabah* as custodian, entrepreneur and financier.
Governance	As per conventional model	Inclusive of Shariah Governance Framework (SGF) by BNM
Governing Act	Financial Services Act 2013	Islamic Financial Services Act 2013
Profit/ returns	Lenders / investors are guaranteed of a predetermined interest rate or returns	Profit/ risk is shared between capital provider/ investor and user of funds (entrepreneur)
Basis for earning profit	Time value is the basis used to charge interest on capital	Profit from trading of goods or charging of service provided

The analysis of the data in Table 3 provides in number of insights. First, both conventional and Islamic banks perform the role of financial intermediaries. However, the conventional bank is an unethical banking system which is based on man-made law, profit-oriented and make profit/ money through interest. Islamic bank on the other hand conduct their borrowing and lending activities without interest but mobilises funds based on equity-based PLS of *mudharabah* or *musyarakah* financing mode as well as accepting demand deposits with equal distribution of benefit on such deposits. It also deploy funds on PLS basis or debt-based financing mode according to Shariah guidelines. Islamic banks apply risk-sharing mode so that in the event of loss the entire burden is not shifted to the entrepreneur alone.

Second, the conventional banking is based on interest whereby the customer as the contracting party do not share neither the profit-and-loss nor risk associated with the financing. The instrument of interest widens the gap between the rich and the common people by creating inequity and unequal wealth distribution. For example, when the rich industrialists borrow huge amounts from the bank for their projects, they utilise bank's cash holding due to bank customers' deposits. If they earn profit, they do not share such profit with the depositors but only a meagre interest rate paid by the bank. Instead, they add cost of their products and pay nothing to the depositors. In extreme cases of losses leading to their bankruptcy and the bank itself, the depositors are also dragged along to suffer the whole loss. This is one of the reasons why interest-based financing or *riba* is prohibited in Islamic banking since wealth is concentrated in the hands of the few. Islamic banking is based on tawhid epistemology which operates on the *al-falah* paradigm having virtues of fair wealth creation and distribution, responsible management as well as preservation of prosperity of the society (Adeyemo & Mobolaji, 2012).

Third, social impact is probably the most promising aspect of Islamic banking ecosystem. Based on this, to align with well-being of the society and their consumption patterns Islamic banking system should finance the real needs of the economy. As an ethical bank, it is focused towards just and equitable resource distribution compared to conventional banks (Siddiqi, 2006). Furthermore, Islamic banking which banks on Shariah principles that promotes responsible risk-sharing principles, just, fair and equitable distribution of income and wealth has the potential to provide solutions to the problems faced by the society.

Fourth, the primary banker-customer relationship in conventional bank is premised on an interest/ debt based debtor-creditor *Foley v Hill* type relationship with bank earning profit from the spread made between interest charged to borrower of funds and interest paid to the depositor. However, the banker-customer relationship in Islamic banking is of multiple contractual relationship since bank enter into different financing modes that have varying risk characteristics. Such relationship in Islamic banking is different due to its underlying philosophy on the prohibition of riba, and the limited scope of debt in Islam such that equity-based financing is usually offered to customers.

Fifth, product innovation is important in attracting more consumers, investors and investments into Islamic banks. As for the Islamic bank, being an ethical bank should favor equity-based financing mode of the PLS such as *mudharabah* and *musyarakah* which emphasise on banks' socio-economic responsibilities and religious commitments (Dusuki, 2007). BNM has pushed towards equity-based PLS risk-sharing model versus debt-based risk-transfer modes of financing in Islamic banks. The successful deployment of new Islamic banking bank offerings could potentially increase financial inclusion while leading to further economic growth for Malaysia and Islamic finance (Zainuldin & Lui, 2018). PLS has true potential to provide solutions to the problems faced by society through emphasising social welfare responsibilities and religious commitments of Islamic banks (Dusuki, 2007) and can reduce moral hazard since it is based on participatory finance (Bitar & Hassan, 2018). Undeniably, equity-based product innovation would be the transformative factor for Islamic banking to step up their game against conventional counterparts.

Conclusion

It is evident from the research that although Shariah accepts both debt and equity (profit and loss sharing) based contracts, a balance should be drawn to innovate equilibrium and competitive products based on both forms of activities so as accommodate the needs of customers, traders and industrialists in the complex and ever changing modern world in line with the *Maqasid al-Shariah*. Importantly, the strength of banker-customer relationship is economically meaningful in determining how successful the Malaysian banking industry would be in the future. As such, this study extends and develops the literature on banker-customer relationship in Islamic bank, hence paving the way for future studies specific to the area of self-regulation, best conduct, ethical banking, and ethical bankers in the realm of Islamic banking. Although debt-based financing mode such as *tawarruq* and *murabahah* are not negated, yet their wide use is not recommended since excessive consumption of this type of contract might lead to over spending by bank customers.

This study concludes with a call for a review of the duty of care of Islamic banks as socially-responsible banking system when innovating Islamic banking offerings and to be materially different from the conventional banking system by promoting more equity-based risk-sharing product than debt-oriented risk-transfer products. Islamic banks need to lead the market by becoming more responsible by providing consumer education on newly launched product while performing prudent risk management when selling Islamic banking products. This risk sharing aspect could potentially increase financial inclusion which is truly in line with higher objectives of Shariah (*Maqasid al-Shari'ah*) as what Islamic banks are aspired to adopt. Finally, it is the duty of Islamic banks to ensure that financing taken by bank consumers are used responsibly and in sustainable manner taking into account environmental, social and governance (ESG) or responsible investment in banking activities towards driving the growth of Islamic banks and becoming the dominant player in the marketplace in the future. The strength of banker-customer relationship will result in determining how successful the Malaysian banking industry would be in the future.

References

Abdur Rahman Y.A. (2009). Tawarruq, Its Concepts, Its Practice and Its Economics Implication on Its Promotion by Islamic Banks.

Adeyemo L.K., & Mobolaji H.I. (2012). Islamic Banking Practices and the Need for Ethical Concerns. Islam and Civilisational Renewal, IAIS Malaysia.

Afiga Heydarova (2012). Islamic Finance: Ethical Analysis of its Status Quo. CILE Research Centre for Islamic Legislation and Ethics.

Aishath Muneeza, Ismail Wisham (2011). Legal Obstacles in Establishing Islamic Banking in Malaysia. *World Journal of Social Sciences*, Vol.1, No.5, Nov 2011, pp.126-131.

Aisyah A.R., & Shifa M.N. (2016). Challenges of Profit and Loss Sharing Financing in Malaysian Islamic Banking. *Malaysian Journal of Society and Space*, 12 issue 2, pp.39-46.

Akakabota Edward Eta (2016). The Effectiveness of Bankers/Customer Relationship in Banks Performance. *European Journal of Business and Management*, Vol.8, No.31, pp.11-20.

Aysan, A.F, Disli, M., Dugyun, M. & Ozturk, H. (2017). Religiosity versus Rationality: Depositor Behaviour in Islamic and Conventional Banks. *Journal of Comparative Economic*, Vol.46, No.1, pp.1-19.

Bank Islam Malaysia Berhad (2010). An Overview on Shariah Contract Practice in Malaysian Islamic Banks. Seminar on Islamic Finance.

Bank Negara Malaysia (2016). Financial Stability and Payment Systems Report: Islamic Finance Development.

Bitar, M., Hassan, M.K. & Hippler, W.J. (2018). The Determinants of Islamic Banks Capital Decisions. *Emerging Markets Review*.

Dusuki, A.W. (2007). The Ideal of Islamic Banking: A Survey of Stakeholders' Perspective. *Review of Islamic Economics*, Vol 11 (special issue), pp.29-52.

Demetriades, G., (2018). The Creation of Express, Resulting and Constructive Trust in Banking Transactions. Journal of Financial Crime, Vol 25, No.2, pp.277-286.

E.P. Ellinger, E. Lomnicka & C. Hare (2011). *Ellinger's Modern Banking Law* (5th Ed). Oxford University Press.

Furmston M. (2012). *Cheshire, Fifoot & Furmston Law of Contract* (16th Edition). Oxford University Press.

Kahf M. (2010). Islamic Finance: Business as Usual. *Journal of Islamic economics, banking and finance,* Vol. 6, pp. 11-36.

Maheran M.J. (2010). *Mudharabah* and *Musyarakah* Models of Joint Venture Investments between Two Parties. Paper presented at the International Conference on Science and Social Research (CSSR), Kuala Lumpur, Malaysia.

Mahmood Ahmed (1989). *Some Deficiencies of Banker-Customer Relationships under the Conventional Banking System and Their Remedy under Islamic Banking System.* Bank Parikrama, Vol.14, pp.37-44.

Manan, S.K., and Kamaluddin, N. (2010). The Underlying Contracts of Islamic Banking Products and Some Related Issues in the Current Practice. *Malaysian Accounting Review, 9(2),* 99-144.

Muneeza A, Hassan R & Wisham I (2011). *Islamic Banking under the Malaysian Law*. Percetakan Zafar, Malaysia.

Muneeza A, Wisham I & R Hassan, 2010, The Paradox Struggle between the Islamic and Conventional Banking Systems, *Journal of Asia Pacific Studies*, Vol.1, No.2, pp.188-224.

Najib, M.Noor (2009). Islamic Banking and Financial Institutions in Malaysia: Current Developments. *Journal of International Studies.* Pp.109-123.

Noor Mahinar, A.B., & Norhashimah, M.Y., (2018a). Dispute Resolution over Unfair Terms in Islamic Banking Consumer Contracts: A Study of *SharÊÑah* Compliant Law of Malaysia and the United Kingdom Law. *Islamic Law Review, Vol. 14,* No.2, December 2018, pp.199-244.

Noormahinar A.B. & Norhashimah M.Y. (2018b). The Application of Maqasid al-Shariah: Wasatiyyah as a Significant Aspect in the Banker-Customer Relationship in Malaysian Islamic Banks. *International Journal of Fiqh and Usul Fiqh,* Vol.1, Issue 1, 1439/2017.

Noormahinar A.B. (2018c). Demystifying the Contractual Duty of Care of Islamic Banks in Malaysia. Paper presented at the International Conference on Religion, Culture and Governance in the Contemporary World (ICRCG2018), Kuliyyah of Islamic Revealed Knowledge and Human Sciences (IRKHS), Kuala Lumpur, 3-4 October 2018.

Paget, J. R. Sir. (1948). Law of banking. 5th ed. (amended reprint, 1948) / London: Butterworth.

Poh Chu Chai (2016). Law of Banker and Customer. *Lexis Nexis Malaysia Sdn. Bhd.* (6th Ed).

Rafe, H. & Edib, S. (2010). Reshaping the Islamic Finance Industry, Applying the Lessons Learnt from the Global Financial Crisis. ISRA Research Paper No: 11/2010.

Siddiqi, M.N. (2006). Islamic Banking and Finance in Theory and Practice: A Survey of State of the Art. *Islamic Economic Studies,* pp.2.

Wei, S., (2017). Demystifying Shadow Banking in a Bank-centric Paradigm: A Comparative Approach. *Banking & Finance Law Review*.

Zainuldin, M.H. & Lui, T.K. (2018). Earnings management in financial institutions: A comparative study of Islamic banks and conventional banks in emerging market. *Pacific-Basin Finance Journal*.

Cases

Foley v Hill [1848] 2 H.L.Cas.28, 9 ER 1002.
Joachimson v Swiss Bank Corporation [1921] 3 KB 110.