

**CRITICAL STUDY OF COMMODITY  
MURĀBAḤAH PRACTICE OF ISLAMIC BANKS  
FROM SHARĪ‘AH PERSPECTIVE**

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**Abstract**

Commodity *MurābaḤah* prevalent in Islamic banks resembles Tawarruq contract and *MurābaḤah* lil Amir bi al-shira. Classical fiqh used to be a trust sale in which known profit was charged above the cost price. Islamic banks use Commodity *MurābaḤah* as a tool for managing interbank liquidity between the banks. There are mainly two methods to conclude it, i.e., finance giving and finance taking. For the sake of concluding this financing, metals are used as underlying commodities. It is reported that these metals never change hands or possessions. The same metals are sold as underlying commodities numerous times. The deposit based on these metals gives fixed returns to the Financial Institutions. Islamic Banks conclude these transactions with Conventional Banks most of the time. In 2020, the Islamic Development Bank and Dubai Islamic Bank decided to invest USD 500 million each in commodity *MurābaḤah* financing. The volume of such contracts has increased by more than USD 70 billion; till 2019, the total volume reached up to USD 2.88 trillion. There are reports of its increase of 12 % per annum. Commodity *MurābaḤah*, a last variant of *MurābaḤah* to the Purchase Orderer, is doubted by many and needs thorough analysis from the perspective of *Sharī‘ah* rulings. This research aims to analyze in detail the questions on the validity of Commodity *MurābaḤah*. It employs a qualitative research method and analyses the commodity *MurābaḤah* from the perspective of Islamic jurisprudence principles. The

findings of the article show some serious issues with this product.

**Keywords:** *Murābahah, Commodity-Murābahah, Tawarruq, Islamic Banks*

## 1. Introduction

Islamic banking can be described as one of the fastest-growing industries. Many Western countries are offering Islamic banking services. Most conventional banks have Islamic banking windows. Islamic banking has introduced several financing modes like *Murābahah*, *Sukūk*, and *Muḍārabah*, *Ijārah* etc. Per Islamic financial institutions' opinion, products offered by them are *Sharī'ah* compliant. These modes or products need to be analyzed from the Islamic law perspective.

Islamic banking started back in the 1940s.<sup>1</sup> Later in 1976, Dr. Sami Hamoud recommended *Murābahah* to the Islamic Development Bank and Dubai Islamic Banks. Initially, Islamic banks introduced simple *Muḍārabah* and two-tier *Muḍārabah*.<sup>2</sup> After almost two years, *Murābahah* to the Purchase Orderer was introduced,<sup>3</sup> and the real business started. This transaction had such a huge impact on the Islamic financial industry that it was termed the backbone of the Islamic banking sector.<sup>4</sup> It was estimated that almost 90 % or more<sup>5</sup> of the finance of Islamic Banking was utilised in the transaction of *Murābahah*.

*Murābahah* to the Purchase Orderer was the most popular product of the Islamic banking sector. It accounted for trillions of dollars worldwide. This mode of finance is a mixture of different contracts. There are certain commodities that a customer purchases on behalf of the bank, then he purchases them from the bank on a deferred payment basis. In return, he keeps paying the installments of the money he has taken from the bank. Later, these goods were replaced by Metals provided by London Metal Exchange (LME). *Murābahah* to the purchase orderer, then transformed into Commodity *Murābahah*.

Commodity *Murābahah* was introduced in the Malaysian market as a treasury product. This product is a more advanced form of Ordinary Commodity *Murābahah*, as it uses crude palm oil so that sole reliance on London Metal Exchange (LME) can be avoided.<sup>6</sup> It was recorded that internationally Commodity *Murābahah* industry has surpassed more than USD 1.2 trillion. It has dominated or overshadowed other modes of finance for the Islamic liquidity management system.<sup>7</sup> The methods used for completing this process are very doubtful. There are many question marks on implementation

procedures by banks. Contract of commodity *Murābahah* is the most popular transaction of Islamic Banking sector, but it has invited much criticism and question marks on its implementation methods worldwide.

It is a sale in Islamic Banking, derived from the *Tawarruq*, *Murābahah* in the classical text refers to trust sale. This research explores the questions of the legal validity of Commodity *Murābahah* in light of *Shari'ah* and its current application in Islamic banks.

## **2. Literature Review**

Ahsan Khan Nyazee (2009), in his book entitled “*Murābahah and Credit Sale*”<sup>8</sup> critically examines various aspects of *Murābahah* financing. It thoroughly discusses the deep Islamic legal problems in the *Murābahah* mode of financing and Commodity *Murābahah*. The author focused on primary sources of Islamic law, mainly Imām al-Shāfi‘ī’s text from *Kitāb-al-Umm* and text from *Badā’i‘ al-Sanā’i‘* by Imam Kasani, etc. Muhammad Ayub (2009), in his book “*Understanding Islamic Finance*”<sup>9</sup> also covers the main areas of commodity *Murābahah* and its different avenues. He gives arguments in favor of this financing. Natalie Schoon (2009), in her book “*Islamic Banking and Finance*”<sup>10</sup> wonderfully explains the internal mechanisms of Commodity *Murābahah* with pictorial descriptions. Mufti Taqi Usmani also wrote several books on Islamic banking, in which he discussed different areas of *Murābahah*, like, “*Jadeed Maeshat aur Tijarat*”, “*Islami bankari ki bunyadain*” etc. Another book titled “*Murawija Islami Bankari*” by Jamia Al-Ulum Al-Islamia, Banori Town, is a great contribution to the enlightenment of different issues of Islamic banking and *Murābahah*. In the whole book, Islamic banking transactions, especially *Murābahah* are closely analysed from angles from *Shari'ah* perspective. The book concludes that the *Murābahah* mode of finance is a strategy to give and take Riba. It carries many doubtful elements. Logical answers to this query were supposed to be included in the book at hand, but it is not within the author’s knowledge if they have been. Current research is aimed at comparing the views of both sides and deriving a conclusion on the commodity *Murābahah* as its *Shari'ah* analysis in detail is still not given because of its status as a new transaction. Current research shall address issues in commodity *Murābahah* from a *Shari'ah* perspective and will discuss its procedure in detail. Heavy investment in this transaction requires thorough analysis.

### 3. Meaning and Characteristics of *Murābaḥah* in Classical Text

#### 3.1. Classical *Murābaḥah*

*Murābaḥah* in its literal sense is derived from the word *Ribḥ*, which means profit.<sup>11</sup> It is a sale in which a seller must disclose the cost. The contract of *Murābaḥah* takes place at an agreed sum of profit. It is the sale of anything for the exact cost at which the seller purchased it plus an addition of a fixed sum of profit.<sup>12</sup> *Bay' al-Murābaḥah* is defined as “The sale of goods for a stated cost and original price plus a stated profit that together form the *Murābaḥah* price. The profit must be stated with sufficient clarity so that the cost and profit are clearly determined.”<sup>13</sup> *Badā'i' Al-Ṣanā'i'* defines *Murābaḥah* as “sale for a price (exactly) similar to the first price along with an excess as profit”<sup>14</sup>.

Imam Kāsānī, Imam Sarakhsī, and other jurists state the different characteristics of *Murābaḥah* sale mentioned above. Like, if a person sells the commodity for a hundred pounds and charges ten pounds as profit over and above the original price. There is no harm in fixing the profit in percentages, i.e., 5 %, 10 % of the cost. That is why it is termed a trust sale (*bay' al-'Amānah*) in which the buyer depends on the seller's integrity<sup>15</sup>. Thus it is morally and legally binding on the seller to be truthful and honest about the facts about the actual cost and price of the goods. If the seller has received a discount or rebate, he should disclose it and transfer it to the purchaser.<sup>16</sup>

The objective of *Murābaḥah* sale in the classical period was to protect the easily tricked buyers, especially those residing in villages and small towns. Those consumers, unaware of the market prices in cities and lacking expertise in trade, had to be saved from the tricks and stratagems of cunning traders.<sup>17</sup> “*Murābaḥah*” is a term of classical Islamic Fiqh, categorized as a specific kind of sale that has no relation with financing originally. If a purchaser agrees to buy certain commodities at a known profit and cost from the seller, it is called a *Murābaḥah* sale. The basic element of *Murābaḥah* sale is that the cost price must be disclosed to the purchaser.<sup>18</sup>

#### 3.2. Banking *Murābaḥah*

*Murābaḥah* to the Purchase Orderer is an arrangement where the client requests the bank to purchase assets from the market or suppliers. The banks purchase those commodities and sell them to the client on deferred payment basis.<sup>19</sup> Under banking *Murābaḥah*, there is a change from *Murābaḥah* with introduction of credit sales to

make it a mode of finance. Three models were developed over a period of time based on a relationship of two parties and three parties that is (a) Bank and Client, (b) (Bank - Vendor) and Client (c) Bank and (Vendor – Client). The third model is practiced in contemporary Islamic banking, where a bank appoints the client as its agent. The client goes to the market and buys a commodity on behalf of the bank, which is finally sold to the customer at a mark-up price with deferred payment. This agency contract is a safe way for banks to avoid commodity-based risks. This arrangement is more likely to make MPO a back door to interest and therefore requires extra care.<sup>20</sup> The reason is that the client is buying the commodities for himself on behalf of the bank, where there is a greater possibility of misuse as the bank is not in a strong position to verify the case. Sometimes an arrangement may result in a synthetic *Murābahah*, where the bank's role is reduced to simply providing finance and receiving it back in installments with extra charges without taking any recognized risk. Hence, the critics term it a backdoor of interest rather than a sale contract. So, the bank's role is to lend the money and receive it back in installments with extra charges, which can be interest due to the following two reasons.

- a. *Wa'd* (promise) is necessary because the bank must be sure that once it has purchased the commodities, the client must buy them.
- b. Delay in payments, that is, deferred sale or credit sale,

The above two characteristics are vital in *Murābahah* to the Purchase Orderer (MPO). It cannot work without it. So MPO is based on credit sales. This arrangement of credit sale in MPO is the basis of buyback sale.<sup>21</sup>

#### **4. Binding property of a Promise**

Islamic bankers specify in their documents that a bank is not a retailer or trader.<sup>22</sup> They only offer financial services. So, they appoint the client as their agent to purchase the commodities for himself based on a binding promise. Even though *Shari'ah* standards by AAI OFI clearly stipulate that *Murābahah* in Islamic Banks cannot be based on a binding promise or else it will become a buyback sale. *Shari'ah*'s standards state:

“It is not permissible that the document of promise to buy (signed by the customer) should include a bilateral promise which is binding on both parties (the institution and the customer)”<sup>23</sup>

It is also stated at another place,

“It is permissible for the institution to purchase the item from a supplier on a ‘sale or return’ basis, i.e., with the option to return it within a specified period. If the customer then does not purchase the item, the institution is able to return it to the supplier within the specified period based on the conditional option that is established in Sharia”.<sup>24</sup>

The following document is the sample of the undertaking (binding promise) being taken by the bank from the client:

“Appendix BN to Master Mūrabāḥah Agreement

To Meezan bank

Dear sir,

.....we request you to acquire the asset.... Under the following terms and conditions: we shall immediately acquire the assets from you... failing which we undertake to compensate you for any actual loss suffered.....[etc]”<sup>25</sup>

In case of any loss, the bank must be compensated.

## 5. Deferred Payment

The second most important characteristic of banking *Murābaḥah* has delayed payments or credit sale. In the original and classical *Murābaḥah* sale, the case of delayed payment was not mentioned or practiced. Hence, no discussion exists on differed payments attached to the *Murābaḥah* sale. However, the case of high price in credit sale is a subject of discussion among classical jurists. Imām Kāsānī defines *Murābaḥah* as “It is the sale for a price exactly similar to the first price along with an excess as profit”. In the event of delayed payments, the first price will not be the same due to the product’s change in time and value. The reason for it is that delay changes the value and certainty of the first price.

But Mufti Taqī Usmani and *Sharī‘ah* standards allow delayed payments. Mufti Taqī states regarding the payment to be made in *Murābaḥah lil-‘Amir bi al-shirai* that, “The payments in the case of *Murābaḥah* may be at spot, and may be on subsequent date not necessarily imply the concept of deferred payment”<sup>26</sup>

## **6. Commodity *Murābahah***

Commodity *Murābahah* is another variant of *Murābahah* to the Purchase orderer wherein an Islamic bank first buys an asset from a commodity broker and then sells it to the customer, who then sells the commodity to a third party (also a commodity Broker) through the bank as his agent. Thus, the customer finally receives money in place of the asset.<sup>27</sup> The lender bank, which provides finance to buy commodities, receives a fixed markup. The CIMB bank, Malaysia describes commodity *Murābahah* as “the purchase of certain specified commodities on a cost-plus profit basis (*Murābahah*) agreed upon by both parties (buyer & seller) and subsequently, the commodity is sold to another commodity trader (third party) to obtain cash”<sup>28</sup>.

Two types of commodity *Murābahah* transactions are introduced in Islamic banks. These are deposits given and deposits taken. Commodity *Murābahah* transactions are usually short-term, with a maximum period of one year.<sup>29</sup>

1. Financing is given; it is the first type of commodity, *Murābahah*. The purpose of Islamic financial institutions is to provide financing to their counterparty to generate a return.
2. Financing taken; this process is called reverse commodity *Murābahah*. The purpose of reverse commodity *Murābahah* is for the Islamic financial institution to take a loan from the client (usually a conventional bank) and to return it in pre-planned and agreed time installments, including a markup.

## **7. Liquidity Management**

Commodity *Murābahah* is mainly used for liquidity management. Metals other than gold and silver are bought from a commodity exchange like London Metal Exchange (LME) and sold to customers with a mark-up on a deferred payment basis. The customer further sells it to receive the money.

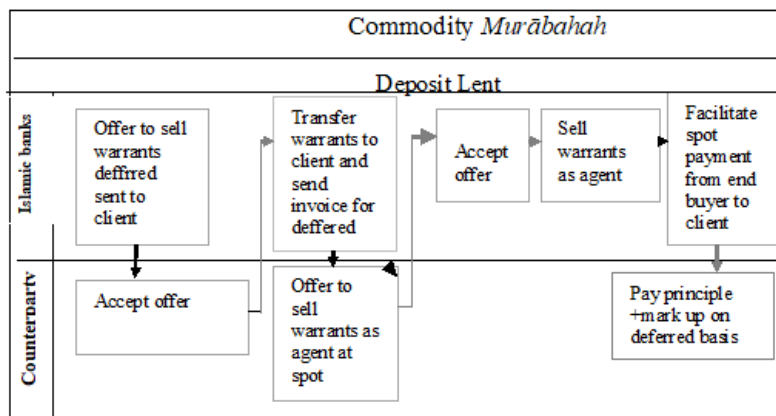
*Murābahah* sale is designed so that the cost of the goods and the profit over it is decided in the beginning, along with the mode of payment, date of delivery, and repayment price. Here the banks usually do not intend to buy the commodities as they do not require them. Metals or underlying commodities are bought and sold just to maintain *Sharī‘ah* compliance.<sup>30</sup>

The criteria for commodities used as underlying assets in commodity *Murābahah* is that the goods should be non-perishable,

easily available, and identifiable. The ribawi items like gold, silver, barley, date, wheat, and salt are not allowed for this purpose. Most of the banks that use commodity *Murābahah* and Tawarruq transactions pursue London Metal Exchange base metals as an asset since they cover all commodity criteria and are easily identifiable and available via warrants.<sup>31</sup>

## 8. Financing Given Taken

The purpose of such transactions involving deposits either taken or extended for Islamic banks is to facilitate deposits to the other party based on returns. The process of cash flow is as follows.



## 9. Commodity *Murābahah* - Deposit Given<sup>32</sup>

- a) Counterparty purchases warrants from Islamic Financial institution: The counterparty accepts the offer from the Islamic bank to purchase warrants on a deferred payment basis, where the mark up and the repayment date are already decided.
- b) Title of ownership of warrants transfer from the Islamic bank to the counterparty: The counterparty becomes the owner of the commodities without even seeing them or getting the physical possession. The goods do not change hands and place. The counter party becomes the owner of the warrants but does not make a payment until a later date.
- c) Counterparty appoints Islamic bank as his agent and authorizes it to sell warrants on his behalf: The Islamic bank now acts as an agent to sell the warrants at the spot market to another party (usually a broker). Ownership of the warrant is transferred to the end buyer.



- d) Payment from end buyer to counterparty: The counterparty is paid for the commodities with spot price. Whether the counterparty appoints the Islamic bank as an agent to sell the warrants on their behalf or arranges to sell it to a third party himself, the counterparty will be paid at the spot counter value of the warrants.<sup>33</sup> In other words, the counterparty is paid for the deposit he required for.
- e) The return of money by the counterparty to the Islamic bank: This payment takes place with pre-agreed installments in the future, including the original purchase price plus a pre-agreed markup.<sup>34</sup> But it is to be noticed that the payments to the Islamic bank are in installments with fixed profits. The *Murābahah*, as we studied earlier, does not involve delay. Delay is permitted in ordinary credit sales. But *Murābahah* and credit sale, if amalgamated, is a ditto copy of conventional loans lent on *Ribā*.

The net result of the above movements of warrants and cash is that the counterparty now holds an amount of money against an offsetting payment to the Islamic bank for a principal plus a mark-up at a pre-agreed future date, thus creating a synthetic deposit. The flow of cash and warrants in a commodity *Murābahah* is designed in the following way.

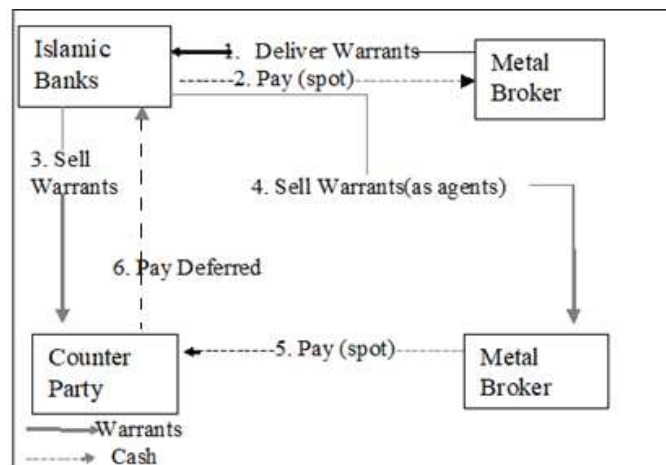


Figure 3. Flow of Cash and warrants in the process of Commodity *Murābahah*<sup>35</sup>

## 10. Discussion

Two schools of thought exist on this transaction's permissibility or impermissibility status<sup>36</sup>. Scholars belonging to the

first group are in favour of this transaction. They allow binding promises for both parties, i.e., the client and the financial institution. These scholars try to prove the significance of binding promises while signing *Murābahah*. Their views are based on *Hiyal* (legal devices), which they try to prove are purely legal. Although the majority of scholars accept that legal devices are used only in exceptional cases. But they use them permanently. This school of thought belongs to renowned scholars like, Sami Hammoud, Yosuf Al-Qaradawi and Sheikh Abdul Hamid al-Sae'h, Ijaz Ahmad Samdani,<sup>37</sup> and Mufti Taqi Usmani<sup>38</sup>.

The opinion of proponents is based on the following arguments:

1. *Al-aşlu fil-ashya' al-ibahah* (الأصل في الأشياء الإباحة). This legal maxim means that the basis of the transaction is permissibility. By default, all the contracts will be considered permissible until otherwise proved. Hence, a sale contract will remain valid unless any prohibited element like interest is proved.
2. In the case of a credit sale, a higher price can be charged.
3. Binding promises in the *Murābahah* contract is Islamically legal.

All the scholars who issued these rulings mostly belong to different Islamic banks, and issue fatwas for such banks.

The opponents who do not approve such transactions argue that *Murābahah* is a mixture of many contracts in one contract; the seller sells what it does not have, which is not allowed in Islamic law. They further argue that the procedure of *Murābahah* is similar to *Inah* (buyback sale). Imran Ahsan Khan Niazi, Muhammad Sulaiman al. Ashqar, Rafiq al Masri, Hassan Abdullah, and scholars of Banori Town Karachi. *Jāmi'ah of Banuri Town Karachi*<sup>39</sup> compiled a book of comprehensive fatāwa delivered by many learned scholars on this issue and expressed that this mode of finance contradicts Islamic law.

This school of thought relies on the following arguments.

1. This contract is not valid from the perspective of Islamic law because it sells what it does not have.
2. This sale is conditional and not permissible. The bank tells the client that if he is ready to buy, the bank shall buy it.
3. This contract is just like a buyback sale, which is not allowed in Islamic law based on strong evidence.
4. It is just like selling debt for debt because it is a facility agreement.

5. This arrangement mixes two sales in one sale. Credit sale and *Murābahah* sale. This type of mixing is not allowed by any classical jurists; some even stated it as unlawful<sup>40</sup>.

Initially, when different modes of finance were being designed for Islamic banks, it was agreed by the scholars that this process should work on two modes that are *Shirkah* and *Muḍāribah*. They started *Ijārah* and *Murābahah* temporarily to kick-start the industry. Mufti Taqī Usmani states about *Murābahah*: “In Islamic Banks, this Mode (*Murābahah*) is being practiced excessively, but it is a very sensitive mode. A little carelessness can mix it up with Ribā based system. Nowadays, it is practiced in Banks without understanding its reality or giving due care to its conditions. As a result, lots of problems are being created in this mode”.<sup>41</sup>

The commodity *Murābahah* and Organized Tawarruq<sup>42</sup> are similar contracts as far as the procedure and mechanism are concerned.<sup>43</sup> Tawarruq is a reverse *Murābahah*<sup>44</sup>. Organized Tawarruq (modern banking tawarruq) is quite different from real tawarruq<sup>45</sup>, which is used more beneficially in Islamic banks. Commodity *Murābahah* and Organized Tawarruq are good alternatives to the conventional modes for liquidity requirements.

However, the structure of Commodity *Murābahah* and Tawarruq is widely criticized by different *Shariāh* experts.

### **10.1. Bank must be the owner of the commodity (base metal) before selling it to the customer**

In commodity *Murābahah*, the banks do not own the commodities as they get the warrants from an institution called London Metal Exchange (LME), where no physical possession is given. The status of warrants is expressed as the ownership certificate by LME,<sup>46</sup> which is not real because the same metal is used for the same purpose many times, and the title of the metal does not change. Warrants are receipts containing the details of the locality of the commodities. The whole contract or procedure takes place on paper or electronically.

### **10.2. Bank must not sell the commodity before getting possession of the commodity**

Another important condition of sale is that the property must exist and be owned by the seller. According to the principles of Islamic Jurisprudence, the seller shall hand over the goods to the buyer or grant access without any restriction. Our Prophet (*Ṣal Allāh-u- ‘alaihe wa sallam*) has prohibited selling what one does not

have or own.

Prophet (*Ṣal Allah-u- 'alaihi wa sallam*) narrated, "لا تتبع ما ليس عندك".

According to a narration of Hakeem Ibn Hizām-may Allah mercy upon him-which, he reported, "O Prophet of Allah, a man comes to me asking to buy a commodity that I do not have, do I conclude the sale and purchase for him from the market? He (*Ṣal Allah-u- 'alaihi wa sallam*) replied: "Do not sell what you do not have".<sup>47</sup>

In Commodity *Murābahah*, many doubts arise about whether permission and delivery ever take place or not. It is technically impossible to take permission and delivery because the commodities do not move from warehouses, and the transaction ends in a few minutes.<sup>4849</sup>

### **10.3. Bank should not sell commodities on the customer's behalf**

Regarding the Tawarruq transaction *Sharī'ah* Standard, no 30 of AAOIFI clearly stipulates that the bank is not allowed to sell the commodity on behalf of the customer, or they should not arrange any proxy or third party for this purpose. Instead, the client should sell the commodity himself or through his agent. But this does not happen. The pictorial description above shows that the bank sells them on the customer's behalf. As a result, the transaction becomes a mere tool of financing.<sup>50</sup> If a bank appoints al-Mustawriq as its agent to purchase the commodity on its behalf, he later purchases it for himself; this type of transaction is invalid because the agent is not permissible to manage both sides of the sale.<sup>51</sup>

### **10.4. Commodities must not be gold or silver**

The commodities underlying the Commodity *Murābahah* contract are not gold and silver but serve the same purpose for which gold and silver are forbidden. The purpose of avoiding gold and silver is to avoid Ribā or Interest. Commodity *Murābahah* is such a tricky contract designed which acts as a *Hīlah* (legal device) for legalizing benefits from Ribā. The Ribā being earned from this sale is Ribā-an-Nasihah.

### **10.5. Deferred sale (bay al Nasiyah) cannot be combined with *Murābahah***

This condition is for the general credit sale. Merging the contract of Commodity *Murābahah* into a credit sale is without any valid reason, and further, it does not conform to the classical literature

of *Murābahah*, as discussed earlier.

#### **10.6. Commodities must be specified, and certain**

Commodities are not identified in the Commodity *Murābahah* contract. The warrants issued from the warehouses of the London Metal Exchange are just the receipts telling the number of certain commodities. How many sales are concluded on the same volume of commodities is unknown. It is also debated that the volume of sale contracts of commodity *Murābahah* is so big that this much amount of existence of metal is doubtful.

#### **10.7. Dealing with conventional banks**

The Islamic banks also deal with conventional banks through Commodity *Murābahah* for interbank liquidity. Conventional Banks deal with Ribā without paying heed to the modes and mechanisms designed to make this sale “*Sharīah* compliant”. They do not bother about what they buy, its quality, and how the contract should be executed in the first place.<sup>52</sup>

#### **10.8. Contracts based on Commodity *Murābahah***

Commodity *Murābahah* has become a popular tool for meeting parties’ needs. Worldwide, financial institutions, as well as governments, are heavily relying on the commodity *Murābahah*. For instance, Commodity *Murābahah* is used in the oil and gas industry to purchase crude palm oil and other things. In 2015 Saudi Aramco, one of the world’s biggest oil companies, collected 10 billion USD through this mode of financing. Similarly, the commodity *Murābahah* is used in agricultural financing also. Like in 2020, the Islamic Corporation for the Development of the Private Sector (ICD) provided 25 million USD in CM financing to an Indonesian business company, PT Perkebunan Nusantara III.<sup>53</sup>

CM is used in the Aviation sector to purchase aircraft and related equipment. In 2019, the International Air Finance Corporation (IAFC) announced the completion of a 1.2 billion USD commodity *Murābahah* financing transaction to support the purchase of eight Boeing 787 Dreamliners by the Dubai-based airlines.

Commodity *Murābahah* is also used in real estates, like purchasing land and constructing buildings. For instance, in 2017, the Dubai-based real estate developer, Emaar Properties, raised 500 million USD through a commodity *Murābahah* financing arrangement.

Different countries are using different modes of finance

according to their suitability. Kuwait and Bahrain are heavily utilizing *sukūk*, reverse *Murābahah*. The United Arab Emirates relies heavily on foreign exchange swaps and Islamic Certificates of Deposits based on commodity *Murābahah* contracts for liquidity and monetary policy implementation. To manage liquidity, they are forced to hold excess liquidity with the Bank of England and use *Sharīah*-compliant instruments, such as the commodity *Murābahah*.<sup>54</sup>

## 11. Conclusion

It can be concluded that since the contract of commodity *Murābahah* does not fulfill the conditions of a valid sale, it is not permissible under *Sharīah*. There are many other reasons for its impermissibility. Commodity *Murābahah* transaction is conducted through the exchange process of the sale so rapidly that thousands of sales are transacted in a few minutes electronically. Such contracts do not seem to be realistic, as the commodities are hardly delivered to the buyer.

Further, in commodity markets, proper specification of the commodities is impossible because thousands of tons are kept in one warehouse. No one even knows how many transactions are concluded on one commodity. The involvement of commodity in this contract is a backdoor to provide finance at a premium. Even if the Tawarruq and commodity *Murābahah* transaction is properly executed and *Sharī'ah* compulsions are fulfilled, its impact on society is very harmful, particularly for Islamic Banking. It is time to apply *Sad-al-Dharae* to close the doors of *Ribā* in society.

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<sup>3</sup> *Ibid*, 5.

<sup>4</sup> Imran Ahsan Khan Nyazee, *Murābahah and the Credit Sale* (Rawalpindi: Federal Law House, 2009), 2. Turakulovna, Yuldasheva Faroghat, Tursunova Inobat Mirkamilovna, Alimbaeva Iroda Marufjanovna, and Chutbaeva Aziza Baxodirovna. "Possible applications of Tawarruq (commodity Murabaha) as a cash financing tool in Islamic Banks Institutions in Somalia." *Journal of Positive School Psychology* (2022): 4380-4396

<sup>5</sup> Imran Nyazee, "Murabaha and the Credit Sale", (Federal Law House: Rawalpindi, 2009), 3. Shah, Burhan Ali, and Ghulam Shabbir Khan Niazi. "Issues in contemporary implementation of murabaha." *Turkish Journal of Islamic Economics* 6, no. 2 (2019): 1-24.

<sup>6</sup> Muhammad al-Bashir Muhammad al-Amine, "Managing Liquidity Risk in Islamic Banking" in *Contemporary Islamic Finance: Innovations, Applications, and Best*

*practices*, ed. Karen Hunt-Ahmed (New Jersey: John Wiley and sons, 2013), 126. And Hassan, Abdulwahid. "The Challenges and Prospects of Islamic Finance in Australia: A Case Study of Murabaha Contract." PhD diss., Victoria University, 2020.

<sup>7</sup> Ibid, 124.

<sup>8</sup> Imran Ahsan Khan Nayazee, *Murabahah and Credit Sale*, (Islamabad: Federal Law House, 2009) and Yusoff, Adnan, Rusni Hassan, and Syed Ahmed Salman. "Risk Assessment of Islamic Banking Products: A Case Study of Murabaha and Ijarah." In *Digitalisation: Opportunities and Challenges for Business: Vol 2* (Cham: Springer International Publishing, 2023), 581-592.

<sup>9</sup> Muhammad Ayub, *Understanding Islamic Finance* (West Sussex: John Wiley and Sons, 2007) and Allaymoun, Mohammad Hamad, and Omer Awad Hag Hamid. "Integrated system (e-Murabaha) a new approach to e-commerce." In *2019 International Conference on Fourth Industrial Revolution (ICFIR)*, pp. 1-6. IEEE, 2019.

<sup>10</sup> Natalie Schoon, *Islamic Banking and Finance* (London: Spiramus press limited, 2009).

<sup>11</sup> Muḥammad bin Makram, *Lisān al-‘Arab* (Berut: Dār Sadīr, n.d), vol. 4, 42.

<sup>12</sup> Abu Hassan Ali bin Abī Bakar Bin ‘Abd al-Jalīl Al-Marghīnānī, *al-Ḥidayah Sharḥ Bidāyat al-Mubtaday* (Maktabat al-Islāmīyah, n.d), vol. 3, 56.

<sup>13</sup> Imran Ahsan Khan Nayazee, *Murabahah and Credit Sale* (Islamabad: Federal Law House, 2009), 9.

<sup>14</sup> Abū Bakar Bīn Mas‘ūd Al-Kāsānī, *Badāye Al-Ṣanā‘i‘ fī Tartīb al-Sharā‘i‘* (Berut: Dar Kitāb al-Arabi, 1982), 5/135

<sup>15</sup> Al-Imam Abu Bakar Muḥammad al-Sarakhsī, *Al-Mabsut* (Berut: Dar al-fikr, 2000), vol. 13, 143.

<sup>16</sup> Muḥammad Tahir Mansoori, *Islamic law of contracts and business transactions* (Islamabad: Sharī‘ah Academy, 2008), 214.

<sup>17</sup> Marghīnānī, *al-Ḥidayah*, vol. 3, 56.

<sup>18</sup> Muḥammad Taqī Usmani, *An Introduction to Islamic Finance* (Netherlands: Kluwer Law International, 2002), 38.

<sup>19</sup> Muhammad Ayub, *Understanding Islamic Finance*, (New Jersey: John Wiley and Sons, 2009), 221

<sup>20</sup> Ayub, *Understanding Islamic Finance*, 221.

<sup>21</sup> Nyazee, *Murabahah and the credit sale*, 51.

<sup>22</sup> Ijaz Ahmad Samdani

<sup>23</sup> Accounting and Auditing Organization for Islamic Financial Institution, *Sharī‘ah standards*, Sharī‘ah standards no. 2/3/1

Sharī‘ah Board, compilers (Bahrain, Public library: 2002)

<sup>24</sup> AAIOFI, *Shariah standard*, 2/3/5

<sup>25</sup> Dār al-Iftāh, Jamīatal-Uloom al-Islāmīyah, Allama Muḥammad Yousaf Banori Town, *Murawija Islamic Bankari* (Karachi: Maktaba Bayenaat Jamia Uloom Islamia, 2008), 241.

<sup>26</sup> Ibid.

<sup>27</sup> <http://www.reuters.com/article/idUSKLR43272420090728> Malaysian bourse eyes Murābahah trading system as debate rages. (accessed January 30, 2011)

<sup>28</sup> Commerce International Merchant Bankers Berhad, "Commodity Murabaha" <https://www.cimb.com.sg/en/personal/help-support/faq/accounts/cimb-starsaver-i/what-is-commodity-murabahah.html#:~:text=Commodity%20Murabahah%20is%20the%20purchase,th e%20objective%20of%20obtaining%20cash.>

<sup>29</sup> Natalie Schoon, *Islamic Banking and Finance* (London: Spiramus press limited, 2009), 73.

<sup>30</sup> Ibid.

<sup>31</sup> Warrants are the certificate of the specified metals present in warehouses of London Metal Exchange (an international institute carrying out forward contracts on

the basis of commodities, which is metal). These warrants are later on used to carry out contract. The certificates are issued to the clients, as a proof of being the owner of the commodity for the time being only.

<sup>32</sup> Natalie, *Islamic Banking and Finance*, 74.

<sup>33</sup> Ibid, 75.

<sup>34</sup> Ibid.

<sup>35</sup> Natalie, 75.

<sup>36</sup> Mohamad Sabri Haron, Rashila Ramli, Malek Marwan Yousef Injas, and Raghaz Azzam Injas. "Reputation risk and its impact on the Islamic banks: Case of the Murabaha." *International Journal of Economics and Financial Issues* 5, no. 4 (2015): 854-859.

<sup>37</sup> Ijaz Ahmad Samdani, "Islamic Banakari ka Haqeeqat pansandana Jaiza", (*Idara Islamiat Karachi*: Karachi, 2006)

<sup>38</sup> Mufti Taqi Usmani, *Jadīd Ma'āshat aur Tijarat* (Karachi: Maktaba Idārat al-Ma'arif, n.d), 39.

<sup>39</sup> Title of the book is "Murawija Islamic bankari, Tajziati mutala, Shari Jaiza, Fiqhi Naqdo Tabsira".

<sup>40</sup> Imran Nyazee, "Murabaha and the Credit Sale", (Federal Law House: Rawalpindi, 2009), 48.

<sup>41</sup> Mufti Taqi Usmani, *Jadīd Ma'āshat aur Tijarat* (Karachi: Maktaba Idārat al-Ma'arif, n.d), 39.

<sup>42</sup> Tawarruq contract is also referred to as Reverse Murabaha, and it is defined as: "Tawarruq is a financial instrument in which a buyer purchases a commodity from a seller on a deferred payment basis, and the buyer sells the same commodity to a third party on a spot payment basis". To fully understand what is tawarruq, it is important to observe that in Tawarruq "Commodity" is not the actual need of the buyer, and it is only bought to fulfill the running cash requirements. Joan Friedman and Jamal Din defines Tawarruq, "Islamic Fiance for Dummies" (John and Willey sons: New Jersey, 2012), 156.

<sup>43</sup> Abdul Samad, "Commodity Murābahah", *Al-Huda Centre of Islamic Banking and Economics*, no. 39 (December 2010-January 2011): <http://www.alhudacibe.com/AlhudaMagazine/Issue-039/article04.php>.

<sup>44</sup> Natalie Schoon, *Islamic Banking and Finance*, 77. also in Muhammad Ayub, 349.

<sup>45</sup> "Classical tawarruq is defined as the purchase of a commodity possessed owned by the seller for a delayed payment, whereupon the buyer resells the commodity for cash to other than the original seller in order to acquire cash (al-wariq)" I. S. Mihajat, "The Real Tawarruq Concept: The Product of Islamic Banks for Liquidity Risk Management." *IRTI Islamic Development Bank, IIUM Institute of Islamic Banking and Finance* (2012), 6.

<sup>46</sup> The institution of LME was made in 17<sup>th</sup> century in London, keeping in view the growing needs of commodities to be used for business transactions and future contracts., see Natalie, 113.

<sup>47</sup> Abu Eesa Al-Tirmidhi, *Sunan Al-Tirmidhi*, Tradition number 1153, (Mauka'a Al-Islam n.d) p. 5/9. <http://www.al-islam.com>.

<sup>48</sup> Mohammad Ayub in his book "Understanding Islamic Finance" states that "Nobody cares whether any actual transaction has taken place or not, and at which point in time risk was transferred to the bank. There are doubts about the quantity of metal being sufficient to cover the transaction volumes. As the brokerage cost makes the product less competitive, there is a chance that no actual transaction might be taking place".

<sup>49</sup> Mohammad Ayub, 233.

<sup>50</sup> Ibid.

<sup>51</sup> Nyazee, Murbaha and credit sale, 35.

<sup>52</sup> Ibid.



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<sup>53</sup> The Guardian, Saudi Aramco's \$161bn profit is largest recorded by an oil and gas firm, <https://www.theguardian.com/business/2023/mar/12/saudi-aramco-161bn-profit-is-largest-recorded-by-an-oil-and-gas-firm>.

<sup>54</sup> Islamic Bankers Resource Centre, Financing : Tawarruq (Commodity Murabaha) available at: <https://islamicbankers.me/islamic-banking-islamic-contracts/financing-commodity-murabaha-tawarruq/>.