

Hiyal in Islamic finance: a recognition of genuine economic need or circumvention of Riba?

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Abstract

Purpose – This paper aims to develop a *Sharī ah* framework for using *hiyal* in Islamic finance. *Hilāh* (singular of *hiyal*) is an Islamic juristic term which refers to the application of acumen and ingenuity to avoid hardship in one's commitment to Islamic rulings. It has been used as a legal device in Islamic jurisprudence to actualize a legitimate objective. Particularly, it plays a significant role in financial engineering, as it alleviates financial predicaments with remedies.

Design/methodology/approach – The study adopted qualitative method of research by using content analysis approach. Inductive reasoning is applied to drive legal provisions from *Sharī ah* sources that would be used as basic principles to develop an objective measure for using *hiyal* in Islamic banking and finance.

Findings – This study attempted to identify the distinctive features of legitimate *hiyal* for the purpose of developing a *Sharī ah* framework. It is observed that a *hilāh* would be considered permissible in Islamic finance if it meets the prescribed criteria of (1) *Sharī ah* objectives, (2) user's motivation, (3) means, (4) benefit and (5) concessionary rules. This proposed framework may serve as an 'objective measure' that will determine whether a *hilāh*-based financial engineering aims to actualize a genuine economic need or to circumvent the prohibition of *riba*.

Practical implications – The proposed standard of *hiyal* will enable *Sharī ah* advisors, economists, financial engineer, legal experts and policy makers to develop comprehensive guidelines for using *hiyal* in Islamic financial engineering.

Originality/value – Islamic financial institutions rely heavily on *hiyal* to operate in a predominant conventional financial system. The application of these legal stratagems in Islamic finance has been the center of an intense debate between Islamic economists and jurists. The former argues that over-reliance on *hiyal* not only divorces morality from technicality but also defeats the noble purposes of Islamic economics. This paper provides a synthesis of the diverse views on the subject to facilitate a minimum level of convergence among scholars on the permissibility of *hiyal*.

Keywords Islamic finance, Hiyal, Legal stratagem, Riba

Paper type Research paper



1. Introduction

Islamic financial services industry has emerged as one of the fastest growing segment of the finance industry. Currently, the industry is growing at an annual rate of 15 to 20 per cent, with more than US\$2t assets (Ernst and Young, 2016). This tremendous growth led the industry to encounter some unique challenges. The challenges emerged mainly because of the predominant

conventional financial framework. Accordingly, Islamic financial institutions (IFIs) are compelled to use *hiyal* to operate in the current conventional financial system. The proponents of *hiyal* opine that *hiyal* are adopted based on the principle of *maṣālahah* (public interest) and *ḍarūrah* (necessity) to promote the nascent industry (Agha, 2015a; Mashal, 2016; *Sharī'ah* Advisory Council of BNM, 2010).

Contemporary scholars of Islamic finance argue that “financial transaction” is an inevitable component of modern life, which involves naturally dealing with the banking system (Al-Qaradawi, 1984; Usmānī, 2002, 2009, 2015; Al-Zuhaili, 2015). The non-*Sharī'ah* compliant nature of current financial system led the Muslim jurists to introduce Islamic finance (ISRA, 2016). Nevertheless, the predominance of the conventional financial framework exposed IFIs to various challenges. To overcome these challenges, *hiyal*-based financial engineering was proposed for the development and growth of the newly born industry (Usmānī, 2009; Mansoori, 2011). From a juristic perspective, *hiyal* in Islamic finance follow the premise of famous Islamic legal maxims (1) “harm shall be eliminated”, (2) “hardship begets facility”, and (3) “need, whether general or specific, is treated as necessity” (Ibn Nujaym, 1985). These maxim are used in Islamic jurisprudence to achieve the prime objective of *Sharī'ah*, which is to prevent any form of harm that afflicts people in essential aspects of life, i.e. religion, life, progeny, intellect, dignity and wealth (Laldin *et al.*, 2013).

On the other hand, some Islamic economists consider the *hiyal*-grounded product development in Islamic finance as a circumvention of prohibited interest. They believe that Islamic finance is a branch of the overall Islamic ecosystem that emphasizes on a just, fair and moderate social system, as prescribed in *maqāṣid al-Sharī'ah* (objective of *Sharī'ah*) (Khan and Ahmed, 2001; Ayub, 2011; Agha, 2015b). Hence, over-reliance on *hiyal*, not only divorces morality from technicality but also defeats the noble purposes of Islamic economics (Kuran, 2004; Al-Suwailem, 2009). According to them, *hiyal*-based financial engineering in Islamic finance leads to legalism, which ignores the values and principles that represent the essence of Islam (El-Gamal, 2001; Dar, 2016). In fact, overemphasis on form over substance is considered a major factor that contributes to the failure of Islamic finance in addressing the real economic and ethical issues beyond the legal realm of *Sharī'ah* compliance (Iqbal, 2007). The lack of consideration toward the negative impacts of debt in Islamic finance is an example of legalism (Zulkifli, 2016). Furthermore, they argue that *hiyal* in Islamic finance are being used extensively as a legal device without appreciating their historical contextual framework (Ismail, 2010). Hence, there is a need for synthesizing the diverse views on the subject to facilitate a minimum level of convergence among scholars on the permissibility of *hiyal*.

2. Literature review

2.1 Definition

Hiyal is the plural of Arabic word *hīlah*. *Hīlah* literally means artifice, stratagem and an efficient way to change the external condition of a thing to achieve certain objectives (Majma' al-Lughah al-'Arabiyyah, 2008). Technically, in Islamic jurisprudence, it may be defined as “the use of legal means for extra-legal ends that could not (whether themselves are legal or illegal) be achieved directly with the means provided by *Sharī'ah*” (Schach, 1965). Al-Khaṣṣaf (2003) described *hīlah* as “a solution used by an individual to exit from something that is sinful and *ḥarām* (prohibited) to something that is *ḥalāl* (permissible)”. From a legal perspective, *hīlah* is a formalistic approach to contract in the sense of a concern for the external form of transaction instead of the parties' substantive intentions (Vogel and Hayes, 1998). Thus, *hiyal* constitute a stratagem that enables a needy person to actualize a legitimate goal without violating the *Sharī'ah* rules.

2.2 Legitimacy of *hiyal*

In financial transaction, the best example of *hīlah* could be the famous prophetic narration of Khyber. As narrated by [Al-Bukhari \(2010\)](#), a man – appointed by the Prophet (p.b.u.h) as a governor of Khyber – brought for him an excellent kind of dates. Upon the Prophet's question whether all the dates of Khyber were such, the man replied that this was not the case. In fact, he exchanged a *sā'* (a measure) of this kind for two or three (of other kinds). The Prophet replied: "do not do so (as that is a kind of usury), but sell the mixed dates (of inferior quality) for money, and then buy good dates with that money" (ḥadīth no. 2201, 2202). This story supports explicitly the use of acumen and ingenuity to avoid hardship in one's commitment to *Sharī'ah* rulings ([Usmānī, 2009](#)). In addition, various supportive evidences in Qurān and prophetic traditions permit use of such innovative approaches. Nevertheless, there are also some verdicts in *Sharī'ah* sources that condemn subterfuge of Islamic law by subversive artifices. This divergence led classical jurists to differ on the legitimacy of *hiyal*. Ḥanafī and Shāfi'ī scholars permits *hiyal*, whereas Mālikī and Ḥanbalī school of thought invalidated *hiyal* ([Mansoori, 2011](#); [Zaki et al., 2016](#)).

A careful examination of jurists' discussions on legality of *hiyal* reveals that the variances in juristic views are only at the outset. In fact, the center of debate is the "context" in which *hīlah* has been used. If the purpose of *hīlah* is to achieve an unlawful goal by circumventing *Sharī'ah* ruling, it would be considered illegitimate ([Fairooz et al., 2015](#)). For instance, if a lender wants to charge interest by using *hīlah* of superficial buyback transaction, then such a sale contract will be considered illegitimate. This is called *bayū' l'īmah*, which is prohibited by majority of scholars as it violates the prohibition of *ribā* (interest) ([Ibn al-Qayyim, 1968](#)).

In contrast, if *hīlah* leads to actualization of a desired object without jeopardizing Islamic law, it would be recognized permissible by a majority of jurists ([Al-Shātibī, 1997](#)). In this positive sense, *hiyal* are also known as *makhārij* (normative exits). For example, a landowner rents his land on the condition that the lessee must pay tax (*kharāj*) of the land. This condition is invalid because paying tax is the responsibility of the landowner. A permissible *hīlah* could be to increase the rent to a limit that incorporates tax rate. The lessee would pay the tax and deduct the amount paid from the rental due ([Ibn al-Qayyim, 1968](#)).

The classification of *hiyal* into permitted and prohibited is supported by various classical Muslim jurists, such as [Al-Khaṣṣaf \(2003\)](#) of the Ḥanafī School, [Al-Shātibī \(1997\)](#) from the Mālikī School, [Al-Qazwīnī \(1924\)](#) a Shāfi'ī jurist and [Ibn al-Qayyim \(1993\)](#) of the Ḥanbalī School. In this regard, al-Khaṣṣaf (2003) rightly mentioned:

A *hīlah* is a solution used by an individual to exit from something that is sinful and *ḥarām* to something that is *ḥalāl*. Therefore, if a *hīlah* is used for this purpose, it does not pose any issues. On the other hand, if someone uses a *hīlah* to prejudice other's right, or to provide cover for an invalid act by replacing it with something that is apparently permitted, or causes suspicion that this is the intent, such forms of *hīlah* are reprehensible (*makhārij*).

Furthermore, the contemporary jurists also endorsed some financial products that are based on permitted *hiyal*, such as diminishing partnership, lease ending with ownership ([Islamic Fiqh Academy, 2000](#); [AAOIFI, 2015](#)) and Islamic FX forward ([Shariah Advisory Council of BNM, 2010b](#); [Dubai Financial Market, 2016](#)).

3. Discussion

After analyzing the classical debate on *hiyal* and its contemporary application in the context of Islamic finance, it can be concluded that *hīlah* is an indirect permissible approach to achieve a legitimate goal. A *hīlah* would be considered permissible as long as it does not jeopardize a

Sharī'ah ruling or prejudice established right. This discussion leads to an important question, what are the criteria (ḍawābīṭ) that distinguish legitimate *hiyal* from illegitimate one. International *Sharī'ah* Research Academy for Islamic Finance (ISRA) conducted a comprehensive study to develop *Sharī'ah* parameters for *hiyal*. The study considered five fundamental principles, namely, *qaṣḍ al-Shāri'*, *qaṣḍ al-mukallaf*, *wasīlah*, *maṣlaḥah* and *rukhas* (Fairooz *et al.*, 2015). Based on these principles, ISRA proposed the following five parameters of *hiyal* to be used in Islamic financial engineering, as depicted in Table I.

4. Proposed *sharī'ah* framework of *hiyal*

Following five are the basic rules that may serve as a proposed *Sharī'ah* framework for using *hiyal* in Islamic finance:

4.1 Employment of a *ḥīlah* must be consistent with the purposes of the lawgiver (*qaṣḍ al-shāri'*) and based on the hierarchy of priority

Qaṣḍ al-Shāri' refers to the wisdom considered by the Lawgiver (Allah) as a rational behind certain legislative cases and *Sharī'ah* rulings (Ibn 'Āshūr, 2006). It is evident in *Sharī'ah* sources that the purpose of *Sharī'ah* is to eliminate harm and preserve public interest (*maṣalaḥah*) (Al-Shaṭībī, 1997). According to Imam Al-Ghazālī, public interest lies in: “safeguarding their faith (dīm), their human self (nafs), their intellect ('aql), their posterity (nasl) and their wealth (māl)” (Chapra, 2007). These five elements are also known as “the objectives of Sharī'ah”, which are subdivided into three levels based on the hierarchy of priority, i.e. essentials (*ḍarūriyyāt*), exigencies (*ḥajjiyyāt*) and embellishments (*tahṣīniyyāt*).

This parameter requires the adoption of *hiyal* to be in total conformity with the objectives of *Sharī'ah*. In other words, *hiyal* must follow the hierarchy of priority in actualizing *Sharī'ah* objectives. Hence, if the use of a *ḥīlah* leads to materialization of a *Sharī'ah* objective at the expense of a greater objective, it would be invalid. For instance, *hiyal* that satisfy objectives at the level of *tahṣīniyyāt* (embellishments) shall not be adopted if they

Underlying concepts	<i>Sharī'ah</i> framework of <i>hiyal</i>	Examples
<i>Sharī'ah</i> objectives	Employment of a <i>ḥīlah</i> must be consistent with the purposes of the Lawgiver (<i>qaṣḍ al-Shāri'</i>) and based on the hierarchy of priority	Essential: tawarruq for interbank liquidity management Needs: selling goods to use the proceeds for <i>mushārakah</i> investment Embellishments: provision of free services to current account holders
User's motivation	User's motivation (<i>qaṣḍ al-mukallaf</i>) must be consistent with the intent of the Lawgiver (<i>qaṣḍ al-Shāri'</i>)	Usage of <i>mushārakah</i> contract as a <i>ḥīlah</i> for guaranteeing the capital and fixed rate of return is not permissible
Means(<i>wasīlah</i>)	The means (<i>wasīlah</i>) used for a <i>ḥīlah</i> shall not contravene <i>Sharī'ah</i> ruling	Escaping the obligation of zakāh by transferring the money to spouse account is against <i>Sharī'ah</i> ruling
Benefit(<i>maṣlaḥah</i>)	The intended benefit (<i>maṣlaḥah</i>) of a <i>ḥīlah</i> must be one that is recognized by <i>Sharī'ah</i> and is weightier than any harm associated with it	Debt-based Islamic financial products
Concessionary rules (<i>rukhas</i>)	A time-bound <i>ḥīlah</i> cannot be used perpetually	Determination of administrative cost of interest-free loan

Source: Author's compilation

Table I.
Sharī'ah standard of
hiyal

invalidate a greater objective of the *Sharī'ah*, such as *ḍarūriyyāt* (essentials). Following are the examples of *ḥiyal* used in Islamic finance based on the hierarchy of priority:

4.1.1 *Ḥiyal at the level of ḍarūriyyāt. Ḍarūriyyāt* (essentials) are defined as fundamental factors contributing to spiritual and material well-being of human. Failure to realize or to preserve them will endanger human existence (Al-Shaṭībī, 1997). Financial system is considered an indispensable need of modern life, in which liquidity management is an essential component (Greuning and Iqbal, 2008). Currently, IFIs are facing liquidity shortage that potentially can endanger their survival (IFSB, 2005). To facilitate IFIs, the *ḥīlah* of *tawarruq* is applied in Malaysian market as one of the liquidity management instruments to encourage overnight deposits and short-term deposits (Fairooz et al., 2015).

4.1.2 *Ḥiyal at the level of ḥājīyyāt. Ḥājīyyāt* (needs) refer to comfortable factors that eliminate hardship and distress (Al-Shaṭībī, 1997). *Ḥiyal* at this juncture are used as complements that support primary objectives to circumvent difficulties in Islamic finance operations. For example, a majority of Muslim jurists opine that investment capital in *muḍarabah* contract shall be in the form of gold, silver or currencies. An investor who possesses assets other than gold, silver or currencies, may not be able to fulfill this condition. To eliminate this difficulty, the *ḥīlah* could be to advise the prospective investor to sell his assets. The proceed could be invested in a *muḍarabah* venture (Al-Zayla'ī, 2000).

4.1.3 *Ḥiyal at the level of taḥsīniyyāt. Taḥsīniyyāt* (embellishments) are defined by Al-Shaṭībī (1997) as an adoption of appropriate customary practices. In the context of Islamic finance, *ḥiyal* of this type are normally adopted to enhance the quality of banking products and services. For instance, to compete with conventional peers, IFIs may need to provide some kind of free services to “current account” holders. From a contractual perspective, that might not be requirements of the contract, but some scholars endorsed it on the presumption of a (*ḥibah*) gift. Nevertheless, engagement in this kind of *ḥīlah* must not lead to materialization of a *Sharī'ah* objective at the expense of a greater objective. For instance, the *ḥīlah* of *tawarruq* for holiday financing – *taḥsīniyyāt* – shall be discouraged, as it undermines a greater objective which is being free from indebtedness – *ḥājīyyāt*.

4.2 User's motivation (*qaṣd al-mukallaf*) must be consistent with the intent of the Lawgiver (*qaṣd al-Sharī'*)

From a juristic perspective, two factors contribute to the formation of a contract known as *qaṣd al-mukallaf* and *siḡḡah al-aqad*. *Siḡḡah al-aqad* refers to external factor that appears in the form of offer and acceptance. While *qaṣd al-mukallaf* is an internal factor, which is defined as the ultimate rational that motivates an individual for a contractual act (Al-Iyadi, 2012). It may be in conformity with the external form of the contract or it may conflict with it (Fairooz et al., 2015). As *qaṣd al-mukallaf* is a hidden intention, a majority of the jurists opine that legitimacy of a contract depends on the execution of *siḡḡah al-aqad* provided that no circumstantial evidence contradicts purpose of the contract. In this regard, the above parameter necessitates that the motivational factor behind a *ḥīlah* shall be in conformity with the objectives of the *Sharī'ah*. In fact, this is the reflection of a famous legal maxim that states “in contracts, greater weight is given to intention and meaning than words and forms” (Affendi, 1991).

Nonetheless, if strong evidences appeared to indicate that *qaṣd al-mukallaf* is not in accordance with the external form of the contract, the contract would be considered invalid, despite the execution of offer and acceptance (Al-Iyadi, 2012). For instance, it is not permissible for an Islamic bank to use *mushārahah* or *muḍarabah* contract as a *ḥīlah* for guaranteeing the capital and fixed rate of return. These two elements turn the arrangement into an interest-bearing loan, whereby the contract is merely used as a stratagem (Laldin

et al., 2013). Ibn al-Qayyim (1993) considered these kinds of *hiyal* as “legal stratagems” to circumvent *ribā*, which are more harmful than *ribā* itself.

4.3 The means (*wasīlah*) used for a *hīlah* shall not contravene *Sharī'ah* ruling

Wasīlah is a means used for achieving a desired goal. In the context of *hiyal*, *wasīlah* refers to the contractual arrangement adopted to actualize an objective. The parameter requires the approaches and tools used in *hīlah* arrangement to be in line with *Sharī'ah*. In this regard, the perceived means may violate *Sharī'ah* rulings in two forms; unfulfillment of contractual requirements and negation of a *Sharī'ah* ruling (Usmānī, 2009). The former occurs when a *hīlah* arrangement does not comply with the legal requirement of a contract. For instance, if an Islamic bank uses *ijārah* (lease) contract as a *hīlah* for home financing but transfers all the ownership liabilities to the client (lessee), the *ijārah* contract will be invalid. The second type of violation happens when a *hīlah* leads to nullification of a *Sharī'ah* ruling. For example, in some Muslim countries, banks deduct *zakāh* from individuals' account after completion of a year and the required amount. An account holder may escape the obligation of *zakāh* by transferring money from his account to spouse's account as a gift, a day before the completion of the year (*ḥawl*).

4.4 The intended benefit (*maṣlahah*) of a *hīlah* must be recognized by *Sharī'ah* and shall be weightier than any harm associated with it

In Islamic jurisprudence, *maṣlahah* refers to protection of religion, life, lineage, intellect and property (Al-Ghazālī, 1988; Al-Zarkashī, 1992). The practice of *hiyal* shall contribute to an accredited *maṣlahah* and shall not lead to negation of a greater *maṣlahah* (Fairooz *et al.*, 2015). For instance, most of the contemporary Islamic financial products are debt-based, which are widely criticized because of the associated negative economic impacts. From a macroeconomic perspective, the current practice of Islamic finance may not be the ideal form of Islamic economy, but it caters the financial need of Muslim population in a *Sharī'ah*-compliant manner. The provision of interest-free financial services itself is an accredited *maṣlahah* and it is weightier than any economic harm associated with it (Usmānī, 2009).

4.5 A time-bound *hīlah* cannot be used perpetually

The ISRA study concluded that the maxim of “adversity allows for measures to bring about ease” plays a significant role in developing *hiyal* in Islamic finance. In fact, this principle constitutes the basis of legal *rukhsah* (concessionary rule) and ‘*azīmah* (initial rule). The maxim denotes Islam's concern for relieving hardship by providing relaxation in initial rules, throughout the full range of human life (Al-Suyuti, 2005). A *hīlah* could be used as a concessionary rule to eliminate the difficulty. In this regard, such a *hīlah* would be adopted temporarily because of an urgent situation or certain constraints that would prevent the product from being used without the use of a *hīlah*. Nevertheless, when the situation changes, the product structured shall be returned to the original ruling (Fairooz *et al.*, 2015).

An example could be the determination of “actual cost” by Islamic banks for administrative expenses occurred in interest-free loans. It is hard for financial institution to trace the actual expense of every project. From a legal perspective, charging above the notional amount in a *qard* contract is considered “interest”. Nonetheless, alternative method was proposed by Islamic Fiqh Academy for an Islamic bank to determine the total actual costs incurred in administering the aggregate of loans in a year. That can be divided across the total loan amount of one year. This

method will identify a cost ratio as a percentage of the loan amounts, which could be used for the administrative expenses of individual's loan. This will enable Islamic bank to charge the clients this percentage as a service fee without calculating the cost of each transaction (Usmānī, 2000). Although this arrangement facilitates IFIs, but it is a time-bound *hīlah* that shall be applicable until more accurate method is discovered.

5. Conclusion

After analyzing the scholarly debate, it could be concluded that *hīlah* in Islamic finance refers to an indirect valid legal means used in a challenging time to materialize a legitimate objective, which cannot be achieved directly with the means provided by *Sharī'ah*. A *hīlah* could be considered permissible if it meets the prescribed criteria of *Sharī'ah* objectives, user's motivation, means, benefit and concessionary rules. This proposed framework may serve as an 'objective test' that will determine whether a *hīlah* based financial engineering aims to actualize a genuine economic need or to circumvent the prohibition of *ribā*. It will identify if a particular artifice merely overcomes the inconvenience in Islamic law or wholly defeats its noble purposes. The study also supports the view that contemporary Islamic finance operates in a predominant conventional financial system, which forces IFIs to adopt *hiyal*. Nevertheless, to ensure the originality and authenticity of Islamic finance, *hiyal*-based Islamic financial engineering shall be governed by the teleology of Islamic jurisprudence, which demarcates them as normative exits (*makhārij*) instead of preferred legal sources. In this regard, Ibn al-Qayyim articulated rightly that everything that lapses out from justice into injustice, from mercy into its opposite, from benefit to harm and from wisdom into the frivolous does not belong to *Sharī'ah*, even if it is inducted into it by interpretation.

References

- AAOIFI (2015), *AAOIFI Shariah Standards*, The Accounting and Auditing Organization for Islamic Financial Institutions, Manama.
- Affendi, H.A. (1991), *Durarul Hukkam Fi Sharh Majallatul Al-Ahkam Al-Adliyah*, Dar al-Jil, Beirut.
- Agha, E.S. (2015a), "Current practice of Islamic finance: a trade-off between maqasid al-shari'ah orientation and profit maximization", *Global Islamic Economics Magazine*, Vol. 43, pp. 25-30.
- Agha, E.S. (2015b), *Shariah Review of Islamic Profit Rate Swap Strategies in Islamic Financial Institutions: The Case of Malaysia*, International Islamic University Malaysia.
- Al-Bukhari, I. (2010), *Sahih Al-Bukhari*, Darul Fikr, Cairo.
- Al-Ghazālī (1988), *Al-Mustasfā Fi 'Ilm Al-Uṣūl*, Dār Ihya' al-Turāth al-'Arabī, Beirut.
- Al-Iyadi, A. (2012), "Al-iradah al-batina wa asaruha ala al-tawarruq wa tatbeequha al-muaasirah", *Tawarruq Conference*, Jordan.
- Al-Khaṣṣaf, A. (2003), *Kitāb Al-Khaṣṣaf Fi Al-Hiyal*, Maktabat al-Qāhirah, Cairo.
- Al-Qaradawi, Y. (1984), *Bay Al-Murabaha Lil Amir Bishira Kama Tujihih Masarfi Al-Islamiyah*, Darul-Qalam, Kuwait.
- Al-Qazwīnī (1924), *Kitāb Al-Hiyal Fi Al-Fiqh*, OrientBuchhandlung Heinz Lafaire, Hanover.
- Al-Shāfi'ī, A.I. (1997), *Al-Muwāfaqāt Fi Uṣūl Al-Sharī'ah*, Dār ibn 'affān, Cairo.
- Al-Suwāilem, S. (2009) 'Muntajat Tawarruq al-masarafiyah', International Islamic Fiqh Academy, International Islamic Fiqh Academy, Jeddah.
- Al-Suyuti (2005), *Al-Ashbah Wa Al-Nazair*, Maktabah Rasheediyah, Quetta.
- Al-Zarkashī (1992), *Al-Baḥr Al-Muḥīṭ*, Dār al-Ṣafwah, Cairo.
- Al-Zayla'ī (2000), *Tabyīn Al-Haqā'iq*, Dār al-Kutub al-Islāmiyyah, Cairo.

- Al-Zuhaili, W. (2015), *Al-Masarif Al-Islamiya*, Dar al-Irshad, Beirut.
- Ayub, M. (2011), "Use of Wad and Tawarruq for Swaps in the framework of Islamic Finance", *Eighth International Conference on Islamic Economics*.
- Chapra, M.U. (2007), "Challenges facing the Islamic financial industry", *Handbook of Islamic Banking*, Edward Elgar Publishing, Cheltenham, pp. 325-354.
- Dar, H. (2016), "Currency Salam: a real innovation or an example of misconception of an economic need", *Islamic Finance Review*, pp. 13-20.
- Dubai Financial Market (2016), *Standard No. 3: Hedging Against Investment and Finance Risks*, 3, Dubai.
- El-Gamal, M. (2001), "An economic explication of the prohibition of Gharar in classical Islamic Jurisprudence", *4th International Conference on Islamic Economics*, Leicester.
- Ernst and Young (2016), *World Islamic Banking Competitiveness Report*.
- Fairooz, M., Muhammad, M., Hashim, A., Hussain, L. and Iqbal, I. (2015), *The Parameters of Hiyal in Islamic Finance*, 80/2015, ISRA, Kuala Lumpur.
- Greuning, H. and Iqbal, Z. (2008), *Risk Analysis for Islamic Banks*, The International Bank for Reconstruction and Development, WA DC.
- Ibn al-Qayyim (1968), *I'lam Al-Muwaqqi'in*, Maktabah al-Kulhiyyat al-Azhariyyah, Cairo.
- Ibn Nujaym, Z.I. (1985), *Al-Ashbah Wa Al-Naza'ir*, Darul Fikr, Beirut.
- Ibn 'Ashūr, M. al-Tāhi. (2006) *Maqāṣid al-Sharī'ah al-Islāmiyyah, Dār alSaḥnūn li al-Nashr wa al-Tawzī'*.
- IFSB (2005), *Guiding Principles of Risk Management for Institutions (Other Than Insurance Institutions) Offering Only Islamic Financial Services*, 1, Kuala Lumpur.
- Iqbal, Z. (2007), "Challenges facing Islamic financial industry", *Journal of Islamic Economics, Banking and Finance*, Vol. 3 No. 1, pp. 1-14.
- Islamic Fiqh Academy (2000), *Resolutions and Recommendations of the Council of the Islamic Fiqh Academy 1985- 2000*, Council of the Islamic Fiqh Academy, Jeddah.
- Ismail, M.I. (2010), *Legal Stratagem (Hiyal) And Usury in Islamic Commercial Law*, The University of Birmingham.
- ISRA (2016), *Islamic Financial System: Principles & Operations*, 2nd ed., International Shari'ah Research Academy for Islam Finance (ISRA), Kuala Lumpur.
- Khan, T. and Ahmed, H. (2001), "Risk management: an analysis of issue in Islamic financial industry", Occasional Paper, 5, Jeddah.
- Kuran, T. (2004), *Islam & Mammon: The Economic Predicaments of Islamism*, Princeton University Press, Princeton.
- Laldin, M.A., Bouheraoua, S. and Ansari, R. (2013), *Islamic Legal Maxims & Thier Application in Islamic Finance*, ISRA, Kuala Lumpur.
- Majma' al-Lughah al-'Arabiyyah (2008), *Al-Mu'jam Al-Wasīf*, Dār Iḥyā' al-Turāth al-Islām.
- Mansoori, M.T. (2011), "Use of hiyal in Islamic finance and its shari'ah legitimacy", *Journal of Islamic Business and Management*, Vol. 1 No. 1, pp. 152-176.
- Mashal, B.A. (2016) "Improvement of personal financing products", *11th International Shari'ah Scholars Forum, ISRA, Kuala Lumpur*.
- Schach, J. (1965), *An Introduction to Islamic Law*, Clarendon Press, Oxford.
- Shariah Advisory Council of BNM (2010b), *Bank Negara Malaysia Shariah Resolutions in Islamic Finance*, 2nd ed, Bank Negara Malaysia, 2nd ed., Bank Negara Malaysia, Kuala Lumpur.
- Usmānī, M.T. (2015), *Fiqhul-Buyu Ala Madhaheb Al-Arbah*, Maktabah Mariful Quran, Karachi.
- Usmānī, M.T. (2000), *Buhos Fi Qazaya Fiqhiya Muasirah*, Darul-Qalam, Beirut.

- Usmānī, M.T. (2002), *An Introduction to Islamic Finance*, Maktabah Mariful Quran, Karachi.
- Usmānī, M.T. (2009), *Ghair Sodi Bankari*, Quranic Studies Publication, Karachi.
- Zaki, A., Khalid, M., Sirajudeen, D. and Osman, R. (2016), "Application of hiyal (legal stratagems) on al-ijarah-based contract in Islamic financial institution in Malaysia", *Contemporary Issues and Development in the Global Halal Industry*, Springer, pp. 390-400.
- Zulkifli, B.H. (2016), "From legalism to value-oriented Islamic finance practices", *Humanomics*, Vol. 32 No. 4, pp. 437-458.

Further reading

Shariah Advisory Council of BNM (2010a), *Bank Negara Malaysia Shariah Resolutions in Islamic Finance*, 2nd ed, Bank Negara Malaysia, 2nd ed., Bank Negara Malaysia, Kuala Lumpur.

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