Basis of the Ruling

The undetermined and uncertain sale price would lead to the element of *gharar* in a sale contract which is forbidden in Shariah because it would cause injustice and dispute. The sale price must be determined either by way of amount or by certain specific and definite methods agreed at the time of an agreement is concluded.

Rasulullah SAW prohibits conclusion of contract or imposition of condition which contains element of *gharar* as mentioned in the following *hadith*:

"From Abu Hurairah who said that Rasulullah SAW prohibited sale that is based on throwing of pebbles (hasat) and an uncertain sale (gharar)." \(^{214}\)

Among the elements of *gharar* which annuls a financial transaction is *gharar* in the determination of price, whereby the sale is executed without determining the price, or the price is determined unilaterally or by a third party. \(^{215}\)

135. Underlying Concept for Islamic Block Discounting Transaction

As an alternative to credit companies for acquiring additional fund to be used as business revolving capital, an Islamic financial institution would like to implement Islamic block discounting concept based on *bai` wadhi`ah* which is a sale contract with a lower price than the acquisition cost. Briefly, Islamic block discounting involves the sale of ownership of a contracted right in an Islamic hire purchase (*ijarah*) agreement by a credit company on discount to the Islamic financial institution (financier). The credit company will be appointed as an agent to collect rent on behalf of the Islamic financial institution. If the credit company failed to surrender the rental collection to the Islamic financial institution within an agreed period, the Islamic financial institution will terminate the facility and take over the duty of direct rental collection.


In this regard, the SAC was referred to on the issue as to whether the application of *bai` wadhi`ah* concept as the underlying contract in Islamic block discounting transaction as proposed is allowed by Shariah.

**Resolution**

The SAC, in its 66th meeting dated 22 February 2007, has resolved that the application of *bai` wadhi`ah* concept for Islamic block discounting transaction is inappropriate. The SAC further resolved that *bai` al-usul bi al-khasm* (sale contract at discount) is more suitable underlying concept to be used as a *takyif fiqhi* in Islamic block discounting transaction.

**Basis of the Ruling**

It appears that the application of *bai` wadhi`ah* does not correspond to the features of Islamic block discounting transaction. This is because *bai` wadhi`ah* is a sale with a discount of the cost price, whereas Islamic block discounting is a sale with a discount of the cost price plus profit (principal + profit).

In this regard, *bai` al-usul bi al-khasm* is viewed as the more appropriate underlying concept to be used as *takyif fiqhi* in Islamic block discounting transaction. Although there is no juristic discussion and classical *fiqh* literature on *bai` al-usul bi al-khasm*, it is an acceptable concept in the context of current practice. The term *usul* refers to the underlying asset in the hire purchase agreement that also covers the economic value generated from the asset.