

UNIVERSITI TEKNOLOGI MARA

**AL BAI BITHAMAN AJIL IN
ABANDONED HOUSING PROJECTS:
LEGAL PERSPECTIVES,
PRACTICES &
RECOMMENDATIONS**

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Thesis submitted in fulfilment
of the requirements for the degree of
Master of Laws

Faculty of Law

March 2020

AUTHOR'S DECLARATION

I declare that the work of this thesis was carried out in accordance with the regulations of Universiti Teknologi MARA. It is original and the result of my own work, unless otherwise indicated or acknowledged as referenced work. This thesis has not been submitted to any other academic institution or non-academic institution for any degree or qualification.

I, hereby, acknowledge that I have been supplied with the Academic Rules and Regulation for Post Graduate, Universiti Teknologi MARA regulating the conduct of my study and research.

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ABSTRACT

Al Bai Bithaman Ajil contract, an Islamic financing product invented and practiced by Malaysian banks, has emerged as a source of disputes between banks and customers as the claim for balance of selling price in abandoned housing projects cases proved to be unfair and burdening the customers. The problems of balance of selling price invited different views from Islamic scholars as well as judges pertaining to the rights of the bank to the balance of selling price. There is a need to review the performance of the obligation to pay the balance of selling price in abandoned housing projects particularly as there is no provision in the *Al Bai Bithaman Ajil* contract itself to deal with such unfortunate situation that befell the customers. This research intends to study whether the applicability of common law principles to the claim by the bank for full selling price under *Al Bai Bithaman Ajil* contract without the delivery of the house reflects the intention of the parties and whether under common law the claim by the bank for full selling price without the delivery of the house is truly justified. This study adopts library-based research methodology by examining the law, principles, concept, theories and doctrines of *Al Bai Bithaman Ajil* contract referring to primary material such as statutes including the Islamic Financial Services Act 2013 and court decisions as well as secondary materials such as books, articles and past theses. The common law principles, concept, theories and doctrines were analyzed with the aim to focus on the claim for the balance of the purchase price upon partial disbursement of bank's buying price to evaluate the reasonability of demanding the payment of selling price in abandoned housing projects. The analysis carried out support the contention that demanding balance of selling price despite the non-delivery of the subject matter is unfair and against the common law and Islamic principles. This study concludes that balance of selling price in non-delivery of house due to abandoned housing project is a critical issue as customer had to pay profit to the bank inconsistent with the principles of law and against the tradition of the Prophet (peace be upon him) that prohibited the sale of non-existent subject matter. For that reason, this research recommended that the courts to consider the application doctrine of frustration to prevent injustice due to the impossibility of performing the contract which would cause unfairness to the parties.

ACKNOWLEDGEMENT

Praise be to Allah the Most Beneficent and Most Merciful for giving me the opportunity to embark on my LLM and completing this long and challenging journey. My gratitude and thanks go to my supervisor. Thank you for the support, patience and ideas in assisting me in this project.

My appreciation goes to my lovely wife Dr. Noor Ashikin Mohd Rom for undying support and sacrifice and my little sons Izz Zharief and baby Izz Addeen. My appreciation is also extended to my friends, colleagues and the staffs at Faculty of Law for helping me with this project directly and indirectly.

Last but not least I dedicated this thesis in the loving memory of my very dear late mother and father for the vision and determination to educate me. Thank you and Alhamdulillah.

O Allah, I ask You for knowledge that is of benefit, a good provision, and deeds that will be accepted.

TABLE OF CONTENTS

	Page
CONFIRMATION BY PANEL OF EXAMINERS	ii
AUTHOR'S DECLARATION	iii
ABSTRACT	iv
ACKNOWLEDGEMENT	v
TABLE OF CONTENTS	vi
LIST OF TABLES	x
LIST OF ABBREVIATIONS	xi
CHAPTER ONE: INTRODUCTION	1
1.1 Background of Research	1
1.2 Problem Statement	2
1.3 Objectives	5
1.4 Research Questions	5
1.5 Scope of Study	5
1.6 Significance of Study	6
1.7 Definition of Terms	7
1.8 Organisation of Chapters	8
CHAPTER TWO: LITERATURE REVIEW	11
2.1 Introduction	11
2.2 <i>Al Bai Bithaman Ajil</i> (BBA) in Theory and Practice	12
2.3 The Law Relied Upon by Islamic Banking	15
2.4 The Similarity of <i>Al Bai Bithaman Ajil</i> (BBA) and Contractum Trinius	20
2.5 The Balance of Selling Price Under <i>Al Bai Bithaman Ajil</i> (BBA)	20
2.6 The Balance of Selling Price in Abandoned Housing Projects	24
2.7 Conventional Loan and Abandoned Housing Projects	26
2.8 Islamic Banking Ideas in Avoiding Interest	27
2.9 <i>Al Bai Bithaman Ajil</i> (BBA) and Justice	29