

DEFINING SHARIAH BOUNDARIES: *AL-I'ĀNAH* '*ALĀ AL-MA'ŠIYAH* IN MALAYSIA'S ISLAMIC BANKING OPERATIONS

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ABSTRACT

Islamic banking in Malaysia operates within a dual banking system alongside conventional banks, raising concerns about the potential facilitation of activities that contradict Shariah principles. A key issue arises when Islamic banks share resources with conventional counterparts, potentially leading to al-i'ānah 'alā al-ma'šiyah (facilitation of acts of

disobedience). This study examines the Shariah status of al-i'ānah 'alā al-ma'ṣiyah by analysing the views of classical Shariah scholars through comparative Fiqh analysis. The views of the scholars are gathered through reviewing the classical manuscripts of respective school of jurisprudence. It found that the classical scholars agreed that directly facilitating sinful acts, e.g. selling weapons to enemies, is prohibited. In the case of indirect facilitation, most scholars prohibited this act when the seller knew that the buyer had a sinful intent, e.g. selling grapes to someone who intends to turn them into wine. In contrast, Imam Abu Hanifa permits a transaction where the object is not inherently sinful and the sinful outcome depends on the buyer's choice. By contextualising these classical juristic positions within the operational realities of Malaysia's contemporary Islamic banking industry, this study proposes the development of structured dawābiṭ (Shariah parameters) to assist Shariah committee members, regulators, and industry practitioners in distinguishing between permissible operational interdependence and impermissible facilitation. The proposed framework aims to support clearer regulatory guidance, strengthen Shariah governance, and enhance risk management practices in Malaysia's evolving Islamic banking ecosystem.

Keywords: *al-I'ānah, al-Ma'ṣiyah, Islamic banking, dual banking, Malaysia*

INTRODUCTION

Islamic banking operates based on Shariah and must always adhere to its principles. According to Section 28 (1) of the Islamic Financial Services Act 2013, all operations, businesses, affairs, and activities of Islamic banking must comply with Shariah principles. In the 1990s, Bank Negara Malaysia (BNM) permitted conventional banks to offer Islamic banking services under the “Islamic banking window” framework. Subsequently, new regulations were introduced, requiring Islamic banking to function as a separate entity from conventional banking, operating as subsidiary banking within a dual banking system.¹ In subsidiary banking, Islamic banking is

¹ Laldin, Mohamad Akram & Furqani, Hafas. “Islamic Financial Services Act (IFSA) 2013 and the Sharī'ah-compliance Requirement of the Islamic Finance Industry in Malaysia,” *ISRA International Journal of Islamic Finance*, vol. 10/1 (2018): 94-

sometimes required to share operations, business activities, and resources with conventional banking, such as technological infrastructure, marketing campaigns, staff training, treasury functions, and shared services (e.g., legal, risk management, and audit).² This raises questions about whether such collaboration could facilitate acts of disobedience (*al-i'ānah 'alā al-ma'siyah*) from a Shariah perspective. This is because conventional banking involves *ribā* (interest), *ghārar* (uncertainty), and *maysir* (gambling).³ There is a possibility that Islamic banks may, in some way, associate themselves with *ribā*-based transactions in conventional banks.

According to Shariah, any means that lead to an evil action are prohibited. For instance, in the case of *ribā* (usury), a prophetic narration forbids the act of *ribā* itself and any form of association with it. The Prophet (peace be upon him) cursed the one who records a contract involving *ribā* and those who bear witness to it.⁴ Furthermore, the Qur'an explicitly forbids any form of cooperation in sinful actions (Al-Ma'idah: 2). In Islamic jurisprudence, the principle of *sadd al-dhārā'i'* (blocking the means) establishes that any lawful action likely to lead to a prohibited act should also be prohibited.⁵ However, not all forms of association are prohibited in Islamic law. Scholars differ on the types of legal actions that should be prohibited based on their likelihood of leading to prohibited acts. Some Hanafi scholars, for instance, do not prohibit indirect associations with an

101/Muhammad, Mustafa, Sairally, Salma Binti, & Zada, Najeeb. "Issues and Challenges in Islamic Banking Structures: The Malaysian Experience," *ISRA International Journal of Islamic Finance*, vol. 8/1 (2016): 165-172.

² Ariff, Mohamed. "Islamic Banking in Malaysia: The Changing Landscape," *Institutions and Economies*, vol. 9/2 (2017): 1-13/Shamsher, Mohamad, Mohamed, Zabri, & Kamil, Nordin. "Islamic Banking Business of Conventional Banks: Transition from Windows to Islamic Subsidiaries," in *Islamic Finance in Malaysia: Growth & Development*, ed. Mohamed Ariff (Petaling Jaya: Pearson Malaysia Sdn. Bhd., 2017), 86-114.

³ Ibrahim, Mansor H., Salim, Kaliappa, Abojeib, Marwan, & Yeap, Lee W. "Structural Changes, Competition and Bank Stability in Malaysia's Dual Banking System," *Economic Systems*, vol. 43/1 (2018): 111-129, <https://doi.org/10.1016/j.ecosys.2018.09.001>, accessed on 23 April 2025.

⁴ Sahih Muslim, Hadith No: 1598.

⁵ Al-Hūrī, N. "Al-I'ānah 'alā al-Ḥarām wa Taṭbīqātuhā 'alā 'Uqūd al-'Amal fī ash-Sharikāt wa al-Bunūk at-Tijārīyah Dirāsah Ta'sīliyyah Taṭbīqiyyah (Al-Ifṭā' al-'Amm al-Urdunī Anmūdḥajan)," *Al-Majallah al-Urdunniyyah fī ad-Dirāsāt al-Islāmiyyah*, vol. 13/3 (2017)/Al-Jiblī, K. Z. "Al-I'ānah 'alā al-Ma'siyah fī al-Mu'āmalāt al-Māliyyah," *Majallat al-Jāmi'ah al-Islāmiyyah*, vol. 155 (2010): 359-405/Al-Ketbi, A. M. A. "At-Takhrīj 'alā al-Qā'idah al-Fiqhiyyah 'Al-I'ānah 'alā al-Ḥarām Ḥarām, wa Taṭbīqātuhā al-Fiqhiyyah," *AQU Journal of Shari'a Sciences and Islamic Studies*, vol. 3/2 (2023): 125-174.

evil action.⁶ Moreover, certain forms of association are operationally necessary for the functioning of Islamic banking, such as the shared use of automated teller machine (ATM) facilities.⁷ Prohibiting such associations could potentially cause greater harm to the Islamic banking industry than the benefits gained. Thus, it is crucial to examine the types of associations with acts of disobedience (*ma'siyah*) within the context of Malaysia's dual banking system. This study aims to investigate the concept of *al-i'ānah 'alā al-ma'siyah* (facilitation of acts of disobedience) from a Shariah perspective and the extent of Malaysian Islamic banks' involvement in *al-i'ānah 'alā al-ma'siyah* (the facilitation of acts of disobedience).

MALAYSIAN DUAL BANKING SYSTEM

The push towards formal Islamic banking gained momentum in the 1980s. After much consultation and research, the Islamic Banking Act (IBA) 1983 was enacted, which facilitated the establishment of Malaysia's first Islamic bank, Bank Islam Malaysia Berhad (BIMB) in July 1983. With a capital of RM 80 million, BIMB pioneered Islamic financial services, offering products like *Qard al-Hasan*, *Murabahah*, and *Bay' Bithaman Ajil*.⁸ However, for the first decade, Bank Islam held a monopoly on Islamic banking, with no competition from other banks or foreign entities.⁹ In 1993, BIMB's exclusive hold on Islamic banking came to an end when Bank Negara Malaysia (BNM) launched the world's first Islamic money market as part of its strategy to expand Islamic banking. The new Islamic money market was designed to streamline interbank transactions, particularly between BIMB and upcoming Islamic banks.¹⁰ In the same year, Bank Negara Malaysia (BNM) also introduced the Islamic Banking Scheme (IBS), allowing conventional banks to offer Islamic banking products via "Islamic

⁶ Al-Hūrī, N. "Al-I'ānah 'alā al-Ḥarām wa Taṭbīqātuhā 'alā 'Uqūd al-'Amal fi ash-Sharikāt wa al-Bunūk at-Tijārīyah Dirāsah Ta'sīliyyah Taṭbīqiyyah, 13/ Al-Jibli, K. Z. "Al-I'ānah 'alā al-Ma'siyah fi al-Mu'āmalāt al-Māliyah, 359-405/ Al-Ketbi, A. M. A. "At-Takhrīj 'alā al-Qā'idah al-Fiqhiyyah 'Al-I'ānah 'alā al-Ḥarām Ḥarām, wa Taṭbīqātuhā al-Fiqhiyyah, 125-174.

⁷ Muhammad, Mustafa, Sairally, Salma Binti, & Zada, Najeeb. "Issues and Challenges in Islamic Banking Structures: The Malaysian Experience," *ISRA International Journal of Islamic Finance*, vol. 8/1 (2016): 165-172.

⁸ Abubakar Balarabe, Md. Faruk Abdullah, Uzairu Gwadabe, Auwal, and Jibril Muhammad, "History of Islamic Banking in Malaysia: A General Review," 46.

⁹ Hideki Kitamura, "Policymakers' Logic on Islamic Banking: Islamic Banking as an Ethno-Political Tool in Malaysia," *Journal of Current Southeast Asian Affairs* 40, no. 2 (August 2021): 251.

¹⁰ Hideki Kitamura, "Policymakers' Logic on Islamic Banking: Islamic Banking as an Ethno-Political Tool in Malaysia," 251.

windows”. This approach enabled banks to use their existing infrastructure and staff to provide Shariah-compliant services, which was cost-effective and efficient.¹¹

This initiative marked the beginning of Malaysia's dual banking system, where both Islamic and conventional financial services co-existed within the same institution but were managed separately. The concept of Islamic windows contributed significantly to the accessibility and popularity of Islamic banking among a broader customer base, including non-Muslims. With the continued growth of Islamic banking, BNM took further steps to strengthen the structure. By 2002, it allowed both domestic and foreign banking groups to establish full-fledged Islamic subsidiaries governed under the IBA 1983, unlike the Islamic windows, which fell under the Banking and Financial Institutions Act (BAFIA) 1989.¹² This step was driven by some concern regarding Islamic windows activities, such as commingling funds when managing daily transactions, the issue of marketing Islamic products where there was a lack of product differentiation, and the shortage of qualified staff in the Islamic products to explain the details to prospective customers interested in Islamic products. Another issue of concern under the window system was the difficulty in objectively ascertaining the Islamic banking division's performance, as the conventional parent bank absorbed most of the costly overheads, resulting in the tendency to overstate the profits for the Islamic windows.¹³ This strategic shift sought to consolidate Islamic banking operations and ensure better regulatory oversight. These subsidiaries operated independently with dedicated staff, systems, and capital, offering full Islamic banking services.

The practice of the Islamic Banking Window was previously guided by Guidelines on *Skim Perbankan Islam*, which was last amended on 2 November 2012. To guarantee equal opportunity among various institution types, BNM has amended its Islamic Banking Window policy to maintain

¹¹ Hanudin Amin, *Lectures in Islamic Banking* (Kota Kinabalu: Universiti Malaysia Sabah Press, 2021), 180./ K. Beladjine and L. Yamani, “Malaysian Experience in Islamic Banking,” *Les Cahiers Du Mecas* 16, no. 1 (2020): 66.

¹² Shamsheer M., Mohamed Z., and Kamil N., “Islamic Banking Business of Conventional Banks: Transition from Windows to Islamic Subsidiaries,” in *Islamic Finance in Malaysia: Growth & Development*, ed. Mohamed Ariff (Petaling Jaya: Pearson Malaysia Sdn. Bhd., 2017), 97.

¹³ Shamsheer M., Mohamed Z., and Kamil N., “Islamic Banking Business of Conventional Banks: Transition from Windows to Islamic Subsidiaries,” in *Islamic Finance in Malaysia: Growth & Development*, 8-9.

its efficiency amid changing market conditions.¹⁴ This revised policy specifies the established guidelines applicable to Islamic banking windows to provide a thorough and supportive regulatory environment. It also offers legal assurance to facilitate comprehensive Shariah compliance throughout marketplaces and operational situations.¹⁵ Malaysia operates a dual banking system, where Islamic and conventional banks function concurrently under a unified financial and legal framework. Bank Negara Malaysia (BNM) regulates both banking systems, with the Financial Services Act 2013 (FSA) overseeing conventional banking activities and the Islamic Financial Services Act 2013 (IFSA) governing Islamic banking operations. Islamic banking operations in Malaysia can be categorised into four different categories:¹⁶

1. Full-Fledged Islamic Banks: These institutions exclusively offer Islamic banking services. Examples include:
 - a) Al Rajhi Banking & Investment Corporation (Malaysia) Berhad
 - b) Bank Islam Malaysia Berhad
 - c) Bank Muamalat Malaysia Berhad
 - d) Kuwait Finance House (Malaysia) Berhad
 - e) P.T Bank Muamalat Indonesia, Tbk
2. Islamic Banking Subsidiaries: According to the Islamic Financial Services Act 2013 (IFSA), the term subsidiary in the context of Islamic banking has the same meaning assigned to it under Section 5 of the Companies Act 1965.¹⁷ Examples include:¹⁸
 - a) Affin Islamic Bank Berhad
 - b) Alliance Islamic Bank Berhad
 - c) AmBank Islamic Berhad
 - d) CIMB Islamic Bank Berhad
 - e) Hong Leong Islamic Bank Berhad
 - f) HSBC Amanah Malaysia Berhad
 - g) Maybank Islamic Berhad
 - h) OCBC Al-Amin Bank Berhad

¹⁴ Bank Negara Malaysia, *Annual Report 2024* (Kuala Lumpur: Bank Negara Malaysia, 2024), 74.

¹⁵ Bank Negara Malaysia, *Annual Report 2024*, 74.

¹⁶ Malaysia International Islamic Financial Centre (MIFC), *Islamic Banks* (Kuala Lumpur: MIFC, 2025), <https://www.mifc.com/islamic-banks>, accessed on 22 April 2025.

¹⁷ Islamic Financial Services Act 2013, 24.

¹⁸ Malaysia International Islamic Financial Centre (MIFC), *Islamic Banks* (Kuala Lumpur: MIFC, 2025), <https://www.mifc.com/islamic-banks>, accessed on 22 April 2025.

- i) Public Islamic Bank Berhad
 - j) RHB Islamic Bank Berhad
 - k) Standard Chartered Saadiq Berhad
3. Islamic Banking Windows: According to the Policy Document of Islamic Banking Windows by Bank Negara Malaysia (BNM), “*Islamic Banking Window Institution*” refers to a licensed bank and licensed investment bank approved under section 15 of the Financial Services Act 2013, and a prescribed institution authorised under section 33B(1)(b) of the Development Financial Institution Act (2002 DFIA 2022) to carry on Islamic Banking Window operations.¹⁹ Examples include:
- a) BNP Paribas Malaysia Berhad
 - b) Citibank
 - c) Deutsche Bank (Malaysia)
 - d) Mizuho Bank (Malaysia) Berhad²⁰
 - e) MUFG Bank (Malaysia) Berhad
 - f) Sumitomo Mitsui Banking Corporation Malaysia Berhad²¹
 - g) United Overseas Bank (M) Bhd
4. Development Financial Institutions:²² According to the definition by Bank Negara Malaysia (BNM), Development Financial Institutions (DFI) in Malaysia are specialised financial institutions established by the Government with a specific mandate to develop and promote key sectors that are considered of strategic importance to the overall socio-economic development objectives of the country. These strategic sectors include agriculture, small and medium enterprises (SMEs), infrastructure,

¹⁹ Bank Negara Malaysia, *Islamic Banking Window Policy Document* (Kuala Lumpur: Bank Negara Malaysia, [Year]), 3, <https://www.bnm.gov.my/-/pd-ibw-en>, accessed on 3 April 2025.

²⁰ Mizuho Group. “*Mizuho Bank Malaysia has launched Islamic Banking Window*”, Mizuho Group Asia-Pacific News, <https://www.mizuhogroup.com/asia-pacific/news/2024/2024-09-20.html>, accessed on 22 April 2025.

²¹ Sumitomo Mitsui Banking Corporation (SMBC). “*Islamic Finance*”, SMBC Asia, https://www.smbc.co.jp/asia/products/islamic_finance/, accessed on 22 April 2025.

²² Bank Negara Malaysia, *Financial Sector Participants Directory*, Bank Negara Malaysia, <https://www.bnm.gov.my/regulations/fsp-directory>, accessed on 21 April 2025.

maritime, export-oriented, capital-intensive and high-technology industries.²³ Examples include:

- a) Bank Kerjasama Rakyat Malaysia Berhad (Bank Rakyat)
- b) Bank Pembangunan Malaysia Berhad
- c) Bank Pertanian Malaysia Berhad (Agrobank)
- d) Bank Simpanan Nasional
- e) Export-Import Bank of Malaysia Berhad (EXIM Bank)
- f) Small Medium Enterprise Development Bank Malaysia Berhad (SME Bank)

AN OVERVIEW OF COLLABORATION BETWEEN ISLAMIC AND CONVENTIONAL BANKS

The operational structure of Islamic banking subsidiaries under conventional parent banks is a unique collaboration. This is because Islamic subsidiaries often rely on their parent banks for key support services, including the parent's well-established infrastructure, market presence, and technological capabilities. The purpose is to achieve cost efficiency while maintaining regulatory and Shariah compliance, although these objectives may not always align in practice. Outsourcing has been part of Islamic banking since its early phase, guided initially by the 2003 Guidelines on Outsourcing of Islamic Banking Operations. These guidelines identified several activities eligible for outsourcing, such as debt collection, IT infrastructure, marketing and promotional functions, information systems internal audit function, and electronic banking.²⁴ These activities were permitted because they did not involve the delegation of decision-making or management responsibilities, which remain central to Shariah accountability.

However, the 2019 Policy Document on outsourcing issuance introduced stricter governance requirements and clearer definitions to further strength the governance and regulation. The policy underscores that outsourcing must not compromise the financial institution's internal controls, customer obligations, or risk profile.²⁵ In practice, Islamic subsidiaries frequently share several functions with their conventional counterparts. Existing literature predominantly examines collaboration in

²³ Bank Negara Malaysia, *Development Financial Institutions (DFI) Overview*, Bank Negara Malaysia, <https://www.bnm.gov.my/dfi-overview>, accessed on 21 April 2025.

²⁴ Bank Negara Malaysia (BNM), *Guidelines on Outsourcing of Islamic Banking Operations* (Kuala Lumpur: Bank Negara Malaysia, 2003), 8.

²⁵ Bank Negara Malaysia (BNM), *Policy Document on Outsourcing* (Kuala Lumpur: Bank Negara Malaysia, 2019), 3.

Takaful operators (Sharifah, 2020; Lahsasna & Sharifah, 2018). However, similar dynamics may apply to other Islamic banking subsidiaries under conventional parents, where their key shared functions include risk management, compliance, underwriting, and human resources, which has governance implications. In the takaful industry, many operators continue to rely on their conventional counterparts for critical functions across finance, operations, marketing, human resources, and information technology, reflecting a form of shared function in Islamic banking subsidiaries.²⁶

Human resource sharing is a common practice. Employees from conventional banks often serve in the Islamic banking subsidiaries, and it is also a common practice for staff from both banking systems to participate in the same training programs. This shared approach fosters skill development and operational efficiency across the dual banking system. This raises a Shariah concern of assisting in sins. The shared services structure is typically implemented at both group and entity levels. At the group level, corporate planning, compliance, and risk management are often shared across conventional and Islamic operations. While each Islamic subsidiary may have its own CEO, overarching governance and strategic functions are usually integrated with the parent company's. This model ensures cost efficiency but may limit the degree of operational independence expected from Islamic subsidiaries.²⁷ In conclusion, collaboration between Islamic and conventional banks presents significant challenges, particularly in balancing efficiency with Shariah governance. Balancing between leveraging shared services and maintaining Shariah compliance remains an ongoing concern for regulators, financial institutions, and industry stakeholders.

²⁶ Sharifah Fairuz Syed Mohamad, "Full Fledged vs Shared/Outsourced Takaful Operators: A Maqasid Index Approach," *The Journal of Muamalat and Islamic Finance Research*, November 30, 2020, 22; Mohamad, S., Alhabshi, S., Lahsasna, Ahcene, and Syed Mohamad, Sharifah, "Shariah Non-Compliance Risks in Shared and Outsourced Services of Takaful Operators," *International Journal of Accounting and Finance* 3 (2018): 122-123.

²⁷ Mohamad, S., Alhabshi, S., Lahsasna, Ahcene, and Syed Mohamad, Sharifah, "Shariah Non-Compliance Risks in Shared and Outsourced Services of Takaful Operators," 122-23.

DEFINITION OF *AL-I'ĀNAH 'ALĀ AL-MA'ŠIYAH* (FACILITATION OF THE ACTS OF DISOBEDIENCE)

1. Linguistic Definition

The term *al-i'ānah 'alā al-ma'šiyah* is composed of two Arabic words: *Al-I'Ānah* and *Al-Ma'šiyah*. Linguistically, *al-i'ānah* is derived from the root word *al-'awn*, which means assistance or help in a matter. For instance, the phrase “*A'antu-hu I'ānah*” means that I helped him and also a man described as “*mi'wān*” means he is good at helping or provides abundant assistance to people.²⁸ There are a few words derived from this word in the Arabic language. The term *al-'awān* describes something of intermediate age or status. It can also refer to a middle-aged woman, symbolising the stage between youth and old age, or metaphorically describe a recurring battle. Besides that, the term *al-'ānah* denotes a herd of wild donkeys, and *'al-'awānah* refers to an old date palm tree.²⁹ Similarly, the word *al-'awn* has been used in the Quran with the same meaning: assistance, support, and cooperation.³⁰ The word *at-ta'āwun*, which is a related term to the word *al-'awn*, has also been used in the Quran, signalling mutual cooperation as mentioned by Allāh:

وَتَعَاوَنُوا عَلَى الْبِرِّ وَالتَّقْوَىٰ وَلَا تَعَاوَنُوا عَلَى الْإِثْمِ وَالْعُدْوَانِ وَاتَّقُوا اللَّهَ إِنَّ
اللَّهَ شَدِيدُ الْعِقَابِ ﴿٢٨﴾

“*And cooperate with one another in virtuous conduct and piety, but do not cooperate in sin and hostility*”

(Surah al-Ma'idah, 5: 2)

Another important derivative is *al-isti'ānah*, which refers to the act of seeking help coming from Surah al-Baqarah:

يَا أَيُّهَا الَّذِينَ ءَامَنُوا اسْتَعِينُوا بِالصَّبْرِ وَالصَّلَاةِ إِنَّ اللَّهَ مَعَ الصَّابِرِينَ ﴿١٥٣﴾

²⁸ Ibn Manzūr, *Lisān al-'Arab*, ed. by a group of researchers (Beirut: Dār Ṣādir, 3rd ed., 1414 AH), vol. 13, p. 278.

²⁹ Al-Raghib al-Asfahani, *Al-Mufradat fī Gharib al-Quran*, ed. Safwan Adnan al-Daudi (Damascus and Beirut: Dar al-Qalam, 1412 AH), 598.

³⁰ Al-Raghib al-Asfahani, *Al-Mufradat fī Gharib al-Quran*, 598.

“O you who have believed, seek help through patience and prayer. Indeed, Allāh is with the patient.”

(Surah al-Baqarah, 2:153)

On the other hand, *ma'siyah* originates from the root word *'aṣā*, which is also related to the word *al-'iṣyān*, the opposite of the means of obedience (*tā'ah*). For example, the phrase *'Aṣā al-'abdu rabbahu* means the servant disobeyed his Lord. Other derivatives from this root include *'Aṣyan*, *Ma'siyah*, *'Aṣin*, *'Aṣiyy*. The word *'aṣā* and its derivatives appear 32 times in the Quran, referring to disobedience.³¹ For example, the word *'asa* itself, in its simplest form, is used to indicate basic defiance. Allāh said in the Quran:

وَعَصَىٰ آدَمُ رَبَّهُ فَغَوَىٰ ﴿١٢١﴾

“So they both ate of it, and their private parts became apparent to them, and they began to fasten over themselves from the leaves of Paradise. And Adam disobeyed his Lord and erred.”

(Surah Ṭāhā, 20:121)

Other forms are mentioned in the Quran, like *'isyan*, signifying stubborn refusal to obey and *'aṣiyyā* describing intense defiance against God's command.³² Both words are mentioned in the following verses:

ءَأَلَّنْ وَقَدْ عَصَيْتَ قَبْلُ وَكُنْتَ مِنَ الْمُفْسِدِينَ ﴿٩١﴾

“Now? And you had disobeyed [Him] before and were of the corrupters?”

(Surah Yūnus, 10:91)

³¹ Majma' al-Lughah al-Arabiya al-Qahira, *Mu'jam Alfaz al-Quran al-Karim*, (Cairo: Majma' al-Lughah al-Arabiya, 1989), vol. 2, 769. /Al-Raghib al-Asfahani, *Al-Mufradat fi Gharib al-Quran*,570.

³² Majma' al-Lughah al-Arabiya al-Qahira, *Mu'jam Alfaz al-Quran al-Karim*, vol. 2, 769.

يَأْتِ لَا تَعْبُدِ الشَّيْطَانَ إِنَّ الشَّيْطَانَ كَانَ لِلرَّحْمَنِ عَصِيًّا ﴿44﴾

“O my father, do not worship Satan. Indeed Satan has ever been, to the Most Merciful, disobedient.”

(Surah Maryam, 19:44)

2. Terminological Definition

From their linguistic meaning, the terminological meaning for both words, *i'ānah* and *ma'siyah*, is similar. From a theological perspective, the former make complex tasks easier for others through various forms of support. This assistance can take multiple forms, such as providing physical tools or resources, offering physical help like carrying heavy loads or giving verbal guidance through teaching or advice.³³ Ibn Āshūr elaborates more in his tafsir *At-Tahrīr wa-t-Tanwīr*, explaining that *al-I'ānah* involves enabling the seeker to accomplish their goal more easily, like preparing transportation for someone who could technically walk but would benefit from a ride.³⁴

For the latter, al-Suyuti define *ma'siyah* as opposing Allāh's command while being subject to accountability,³⁵ while al-Jurjani describes it as intentionally committing a prohibited act.³⁶ Similarly, Al-Bazdawi agree with the definition of al-Jurjani by specifying that *ma'siyah* refers specifically to a deliberately performed forbidden act.³⁷ From these definitions, three key criteria must be present for an act to qualify as *ma'siyah*: intention to disobey, the violation of an explicit prohibition, and the resulting accountability from Allāh.

³³ Ibn 'Āshūr, Muḥammad al-Ṭāhir, *Al-Tahrīr wa al-Tanwīr: Tahrīr al-Ma'nā al-Sadīd wa Tanwīr al-'Aql al-Jadīd min Tafṣīr al-Kitāb al-Majīd* (Tunis: Dār al-Tūnisīyah li al-Nashr, 1984 CE), vol. 1, p. 184.

³⁴ Ibn 'Āshūr, Muḥammad al-Ṭāhir, *Al-Tahrīr wa al-Tanwīr: Tahrīr al-Ma'nā al-Sadīd wa Tanwīr al-'Aql al-Jadīd min Tafṣīr al-Kitāb al-Majīd*, vol. 1, p. 184.

³⁵ Abd al-Rahman ibn Abi Bakr, Jalaal al-Din al-Suyuti, *Mu'jam Maqali'd al-'Ulum fi al-Hudud wa al-Rusum*, ed. A. D. Muhammad Ibrahim Abada (Cairo: Maktabat al-Adab, 2004), 75.

³⁶ Ali ibn Muhammad ibn Ali al-Zayn al-Sharif al-Jurjani, *Al-Ta'arifat*, ed. A group of scholars under the supervision of the publisher (Beirut: Dar al-Kutub al-'Ilmiyyah, 1983), 222.

³⁷ Alaa al-Din Abdul Aziz ibn Ahmad al-Bukhari, *Kashf al-Asrar 'an Usul Fakhr al-Islam al-Bazdawi*, first ed. (Istanbul: Ottoman Press, 1890), vol. 3, 200.

The concept of *al-i'ānah 'alā al-ma'siyah* can be traced in several verses of the Quran, and the most obvious one is in the following verse:

وَتَعَاوَنُوا عَلَى الْبِرِّ وَالتَّقْوَىٰ وَلَا تَعَاوَنُوا عَلَى الْإِثْمِ وَالْعُدْوَانِ وَاتَّقُوا اللَّهَ إِنَّ
اللَّهَ شَدِيدُ الْعِقَابِ ﴿٢٨﴾

“And cooperate with one another in virtuous conduct and piety, but do not cooperate in sin and hostility”

(Surah al-Ma'idah, 5: 2)

This verse indicates the prohibition of assisting others in acts of disobedience to Allāh, and it is a general prohibition against cooperation in all sin and transgression.³⁸ This prohibition extends even to the facilitation of sin indirectly.³⁹ The Mālikīs scholars used this as evidence to invalidate specific contracts, such as hiring oneself to transport wine, selling grapes to someone who will press them into wine, or selling a knife to someone known to intend to kill a man with it.⁴⁰

Another verse provides additional clarity by specifying the prohibition of involvement in an unlawful act. Allāh said:

قَالَ رَبِّ إِنَّمَا أَنْعَمْتَ عَلَيَّ فَلَنْ أَكُونَ ظَهيرًا لِّلْمُجْرِمِينَ ﴿١٧﴾

“My Lord, for the favor You bestowed upon me, I will never be an assistant to the criminals.”

(Surah al-Qasas, 28:17)

A group of scholars cite this verse as evidence to prohibit serving unjust rulers and assisting them in their affairs even in tasks not directly involving sin, such as working as a scribe for rulers or participating in managing their affairs. This is considered a form of aiding in sin, even if one

³⁸ Ahmad ibn Ali Abu Bakr al-Razi al-Jassas, *Ahkam al-Quran*, ed. Muhammad Sadiq al-Qamhawi, first ed. (Beirut: Dar Ihya' al-Turath al-Arabi, 1405 AH), vol. 3, 296.

³⁹ Abu Muhammad Izz al-Din Abd al-Aziz ibn Abd al-Salam al-Dimashqi, known as Sultan al-Ulama, *Qawa'id al-Ahkam fi Masalih al-Anam*, ed. Taha Abd al-Ra'uf Saad (Cairo: Maktabat al-Kuliyat al-Azharīyah, 1414 AH), 156.

⁴⁰ Ibn al-Farras al-Andalusi, *Ahkam al-Quran*, ed. Manjiya bint al-Hadi al-Nafri al-Sawahi (vol. 2), (Beirut: Dar Ibn Hazm, 1427 AH / 2006), vol. 2, 317.

is not directly involved in oppression.⁴¹ Scholars like ‘Ata ibn Abi Rabah and others explicitly declared this prohibition, citing the verse where Musa (AS) refused to support wrongdoing. In the story of Abu Hanzalah, ‘Amir al-Sha’bi advised him to quit working as a scribe for rulers after citing the verse, leading the man to resolve never to write for them again, trusting in Allāh for provision. Similarly, ‘Ata ibn Abi Rabah advised the brother of ‘Ubaydullah ibn al-Walid al-Rusafi, who worked as a scribe for Khalid ibn ‘Abdullah al-Qasri, to throw away his pen and avoid any work that aids oppression.⁴² These narrations emphasise the prohibition of any act, even if it indirectly may contribute to facilitating sin.

This prohibition is not limited to the verse in the Quran, but also includes several Hadiths explicitly mentioned in this matter. It is narrated on the authority of Jabir bin ‘Abd, who said:

لعن رسول الله صلى الله عليه وسلم أكل الربا، وموكله، وكاتبه، وشاهديه،
وقال: هم سواء

“The Messenger of Allāh (peace be upon him) cursed the one who consumes usury, the one who pays it, the one who writes it down, and the two who witness it. He said, ‘They are all the same (in sin)’”⁴³

The Prophet (peace be upon him) cursed not only the one who consumes or pays usury but also the scribe who records it and the witnesses who validate it by declaring them equally sinful.⁴⁴ The scribe and witnesses were cursed because they aided in the sin by documenting or validating the transaction instead of rejecting it,⁴⁵ and also because neither can achieve it without the other’s cooperation and participation.⁴⁶ This indicates the

⁴¹ Ibn al-Farras al-Andalusi, *Ahkam al-Quran*, vol. 3, 405.

⁴² Abu Muhammad Abd al-Rahman ibn Muhammad ibn Idris ibn al-Mundhir al-Tamimi al-Hanzali al-Razi, *Tafseer al-Quran al-Azim* (Beirut: Dar Nizar Mustafa al-Baz, 1419 AH), vol. 9, 2956.

⁴³ Abu al-Husayn Muslim ibn al-Hajjaj al-Qushayri al-Naysaburi, *Al-Musnad al-Sahih al-Mukhtasar min al-Sunan*, ed. Muhammad Fuad Abd al-Baqi (Beirut: Dar Ihya' al-Turath al-Arabi), Hadith no. 1598, vol. 3, 9121.

⁴⁴ Abu Zakariya Muhyi al-Din Yahya ibn Sharaf al-Nawawi, *Al-Minhaj Sharh Sahih Muslim ibn al-Hajjaj* (Beirut: Dar Ihya' al-Turath al-Arabi, 1392 AH), vol. 11, 26.

⁴⁵ Hasan ibn Ali ibn Sulayman al-Badr al-Fayumi, *Fath al-Qareeb al-Mujib ‘ala al-Targhib wa al-Tarhib* (Riyadh: Dar al-Salam, 1439 AH), vol. 8, 384.

⁴⁶ Abu al-Abbas Ahmad ibn Umar ibn Ibrahim al-Qurtubi, *Al-Mufham Lima Ashkal min Talkhis Kitab Muslim*, ed. Muhyi al-Din Dīb Mīstū, Ahmad Muhammad al-Sayyid, Yūsuf

prohibition of assisting in falsehood in any form, whether directly or indirectly, because aiding in falsehood is considered participation in sin and entails deserving punishment.⁴⁷ In another hadith narrated by Anas Ibn Mālik:

لعن رسول الله صلى الله عليه وسلم في الخمر عشرة: عاصرها، ومعتصرها،
وشاربها، وحاملها، والمحمولة إليه، وساقيتها، وبائعها، وآكل ثمنها، والمشتري
لها، والمشتراة له

*“The Messenger of Allāh (peace be upon him) cursed ten types of people concerning wine: the one who presses it, the one for whom it is pressed, the one who drinks it, the one who carries it, the one to whom it is carried, the one who serves it, the one who sells it, the one who consumes its price, the one who buys it, and the one for whom it is bought”*⁴⁸

From this Hadith, it is understood that the Prophet (peace be upon him) cursed everyone involved in the wine process, from production to consumption. Many scholars, including Ibn Qudāmah, use this Hadith as evidence in prohibiting being the cause of sin (*tasabbub li 'l-ma'siyyah*).⁴⁹ Aforementioned, all of the verses from the Qur'ān and Ḥadīth explicitly mention that any act which contributes to sin is considered as the sinful act itself. This concept is related to the concept of *sadd al-dharā'i* that has been used by the Ḥanbalī and Ḥanafī scholars in deciding the permissibility of anything that leads to ḥarām. Although the Shāfī'ī and Ḥanafī scholars do not recognise *sadd al-dharā'i* as part of their adillah shar'iyyah (أدلة شرعية), it can be traced in their application of aḥkām (أحكام) that they practically employ this principle.⁵⁰

Ali Badawi, and Mahmūd Ibrahim Bazzāl (Damascus: Dar Ibn Kathir, 1417 AH), vol. 4, 500.

⁴⁷ Zakariya al-Ansari, *Fath al-'Allam bi Sharh al-'Ilm bi Ahadith al-Ahkam*, ed. Ali Muhammad Mu'awad and Adel Ahmed Abdul Mawjud, with introduction by Abdul Fattah Abu Sannah (Beirut: Dar al-Kutub al-'Ilmiyyah, 1421 AH), 438.

⁴⁸ Al-Tirmidhi, *Sunan al-Tirmidhi*, ed. Ahmad Muhammad Shakir (vol. 3, Cairo: Mustafa al-Babi al-Halabi, 1395 AH/1975 CE), 581, hadith 1295.

⁴⁹ Ibn Qudamah, *Al-Mughni*, ed. Taha al-Zayni, Mahmoud Abdul Wahab Fayad, and Abdul Qadir Atta (Cairo: Maktabat al-Cairo, 1388 AH/1968 CE), vol. 4, p. 167.

⁵⁰ Ḥūrī, Nash'āt. “Al-I'ānah 'alā al-Ḥarām wa Taṭbīqātuhā 'alā 'Uqūd al-'Amal fī al-Sharikāt wa al-Bunūk al-Tijariyyah: Dirāsah Ta'siliyyah Taṭbīqiyyah (al-Iftā' al-'Āmm

Islamic Legal Maxims Related to The Concept Of *Al-I'ānah 'Alā Al-Ma'ṣiyah*

As previously explained, the concept of *al-i'ānah 'alā al-ma'ṣiyah* (facilitation of the acts of disobedience) is derived from the Quran and Hadith. Consequently, there are also legal maxims related to this concept. It is mainly derived from the detailed reading of the rules of *fiqh* on various themes. These principles have been widely accepted and are considered essential doctrines that must be mastered by later jurists (*fuqahā'*) in their efforts to understand Islamic law. They must also be internalised as essential guidelines for deriving new rulings. Among these legal maxims, some are closely related to the concept of *al-i'ānah 'alā al-ma'ṣiyah* (facilitation of the acts of disobedience). These include:

1. Assisting in Sin is a Sin (*Al-I'ānah 'Alā Al-Ma'ṣiyah Ma'ṣiyah*)

The general principle is that a sinner must bear the consequences of their sin, whether it is associated with the rights of Allāh (*ḥuqūq Allāh*) or the rights of people (*ḥuqūq al-'ibād*). This rule indicates that the sinner not only directly commits the sin but also includes anyone who aids in its commission. Thus, whoever assists a sinner in sinning is also a sinner and assisting in sin is itself a sin. This is because such an act encourages wrongdoers to persist in their disobedience. A sinner might abstain from sinning altogether if they find no one to enable their misdeeds.⁵¹

Assisting in sin can occur in various forms. One of the forms is failing to denounce it when it is witnessed. Remaining silent while facing wrongdoing is itself a type of assistance. This is why Islamic teachings strongly emphasise forbidding evil according to one's capability. Besides, this negligence indirectly contributed to the normalisation of sinful behaviour. Another way people assist in sin is by actively encouraging or facilitating it. This includes downplaying the seriousness of sins like drinking alcohol, smoking, or illicit relationships, making them appear harmless or acceptable. It also involves situations where a group plans to commit a crime, even if only one person directly acts towards it. Organised

al-Urdunī Anmūdhan).” *Al-Majallah al-Urdunniyyah fī al-Dirāsāt al-Islāmiyyah*, Jāmi'at Āl al-Bayt 13, no. 3 (1438H/2017).

⁵¹ n.a, *Mu'allimah Zayed li-l-Qawa'id al-Fiqhiyyah wa-l-Usuliyyah*, (Abu Dhabi: Zayed Bin Sultan Al Nahyan Foundation for Charitable and Humanitarian Works, International Islamic Fiqh Academy of the Organization of Islamic Cooperation, 1434 AH/2013 CE), vol. 12, p. 231.

crimes such as theft rings, which also rely on collective participation and support, fall under this category.⁵²

For example, if a person directs someone to an innocent victim so they can kill them unjustly, they are complicit in the crime. This act of assistance is itself sinful, and the one who facilitated the murder shares in the sin. The same principle also applies if someone is complicit in theft, such as acting as a lookout or providing tools like ladders, contributing to that theft.⁵³ It is worth mentioning that there are exceptions where assisting in what would typically be a sinful act becomes permissible or even obligatory if it serves a greater good or prevents a greater harm.⁵⁴ Scholars like Imam Al-'Izz ibn 'Abd al-Salām argued that Islam prioritises the prevention of greater harm over rigid adherence to prohibitions in some circumstances. For instance, when a person is forced to pay a bribe to obtain their legitimate right, such as claiming an inheritance, most jurists across all four major schools permit paying the bribe out of necessity.⁵⁵

2. The Means (to Something) Take the Rulings of Their Intended Ends (*Al-Wasā'il lahā Ahkām Al-Maqāsid*)

Al-Wasā'il refers to the means that lead to an intended objective, while *Al-Maqāsid* means the ultimate goal or purpose behind an action. Based on this legal maxim, means (*Al-Wasā'il*) inherit the same ruling as the ultimate purpose (*Al-Maqāsid*) intended. Hence, any means leading to something permissible must be permissible and vice versa.⁵⁶ Besides, the value and merit of means are directly tied to the significance of their intended ends. The more noble and rewarding the objective, the greater the status of the means leading to it. Similarly, means leading to harm differ in severity based

⁵² n.a, *Mu'allimah Zayed li-l-Qawā'id al-Fiqhiyyah wa-l-Usulīyyah*, 231–232.

⁵³ Muhammad Sidqi Al-Burno, *Mawsū'at al-Qawā'id al-Fiqhiyyah* (Beirut: Maktabat al-Risālah, 1424 AH / 2003 CE), vol. 1, p. 211.

⁵⁴ Al-Shātibī: Ibrāhīm bin Mūsā bin Muḥammad al-Lakhmī al-Ghernāfī al-Shahīr bi-al-Shātibī (al-Mutawaffā: 790 AH), *Al-Muwāfaqāt fī Uṣūl al-Sharī'ah* (Bayrūt: Dār al-Ma'rifah, Taḥqīq: 'Abd Allāh Darāz), vol.1, 268.

⁵⁵ Nasser bin Muhammad bin Omar Al-Obeidi, 'Dawābiṭ Man' al-Ta'āwun 'ala al-Ithm wa al-'Udwan wa Taqībātuh fī Ba'd al-Mu'āmalāt al-Māliyah,' *Majallat al-Andalus li-l-'Ulūm al-Insāniyah wa al-Ijtimā'iyah*, no. 101 (2024): 148-177, p. 158.

⁵⁶ Abu al-'Abbās Shihāb al-Dīn Aḥmad bin Idrīs bin 'Abd al-Raḥmān al-Mālikī, *Al-Furūq: Anwār al-Burūq fī Anwā' al-Furūq*, (Beirut: 'Ālam al-Kutub), no publication date, vol. 3, 112.

on their ends.⁵⁷ As explained by classical scholars like Al-Qarāfī, the default ruling regarding wearing fine clothing is permissible. However, the ruling on wearing fine clothes can change depending on the intention behind it and its consequences. Under certain circumstances, wearing fine clothes can become obligatory for someone in positions of authority and leadership, such as judges, government officials, or scholars. Conversely, wearing fine clothes can become forbidden (*ḥarām*) when it serves sinful purposes, such as to attract the attention of people from the opposite gender or to use clothing as a means to show off wealth and create class distinctions.⁵⁸

OPINIONS OF CLASSICAL SCHOLARS ON DIFFERENT ISSUES RELATED TO THE CONCEPT OF *AL-I'ĀNAH 'ALĀ AL-MA'ŠIYAH*

In this matter, the juristic rulings (*fatāwā*) concerning facilitation of the acts of disobedience appear contradictory and inconsistent. Some opinions indicate permissibility (*jawāz*), while others affirm prohibition (*ḥurmah*). Still others suggest either reprehensible prohibition (*karāhah taḥrīmiyyah*) or discouraged avoidance (*karāhah tanzīhiyyah*). However, upon deeper examination, it becomes clear that these differing rulings derive from the varying degrees and contexts of assistance.⁵⁹ Scholars across four different *madhhab* have included some issues (*masā'il*) that can be considered as assistance in the sin of others (*al-i'ānah 'alā al-ma'šiyah*). Among these are:

- a) Selling grapes to someone who will turn them into wine
- b) Selling weapons and anything used to make them
- c) Renting a house to someone who will use it for prohibited (*ḥarām*) purposes

In these issues (*masā'il*), there is a difference of opinion between scholars, but the most obvious one is on the opinion of Abū Ḥanīfah. These opinions result from differing views on what constitutes (*al-i'ānah 'alā al-ma'šiyah*).

⁵⁷ Abū Muḥammad 'Iz al-Dīn 'Abd al-'Azīz bin 'Abd al-Salām al-Sulamī al-Dimashqī, *Qawā'id al-Aḥkām fī Maṣāliḥ al-Anām*, ed. Tāhā 'Abd al-Ra'ūf Sa'd (Cairo: Maktabat al-Kuliyyāt al-Azharīyah, 1414 AH/1991 CE), vol. 1, 165.

⁵⁸ Abu al-'Abbās Shihāb al-Dīn Aḥmad bin Idrīs bin 'Abd al-Raḥmān al-Mālikī, *Al-Furūq: Anwār al-Burūq fī Anwā' al-Furūq*, (Beirut: 'Ālam al-Kutub), no publication date, vol. 4, 384.

⁵⁹ Muhammad Syafi' Al-Utsmani, *Tafsīl al-Kalām Fī Mas'alah al-Lā'anah 'Alā al-Ḥarām* (Markaz Anwaril Ulama', 2020),32.

1. Selling Grapes to Someone Who Will Turn Them into Wine

There are two main opinions regarding this matter, whether it is *ḥarām* (forbidden) or permissible (*jā'iz*).

a. Harām (Forbidden):

The Mālikīs and Ḥanbalīs held that this sale is *ḥarām* (forbidden). The most correct and relied-upon opinion among the Shāfi'īs is that it is forbidden if one knows or suspects it will turn into wine. If there is doubt, it is disliked (*makrūh*). A similar view was attributed to the two companions (*al-Ṣāhibayn*) as al-Ḥaṣkaḥī indicated its weakness that it is disliked (*makrūh*). However, when the term “disliked” is used unconditionally by the Ḥanafīs, it generally means prohibition (*tahrīm*).⁶⁰

b. Jā'iz (Permissible):

Abū Ḥanīfa held that this sale is permissible (*jā'iz*). Ibn al-Mundhir also narrated this view from al-Ḥasan (al-Baṣrī), 'Atā', and al-Thawrī.⁶¹ This issue is based on the principle of “blocking the means” (*sadd al-dharā'i'*), the extent to which intention and purpose affect the validity of a contract, and the disagreement over applying conjecture (*al-zann*) and doubt (*al-shakk*) in the absence of definitive knowledge.⁶²

2. Selling Weapons and Anything Used to Make Them

The ruling on this matter can be concluded into four main scenarios. The following are the scenarios:⁶³

- a) Selling weapons to hostile enemies.
- b) Selling weapons to rebels (*Ahl al-Fitnah / Bughat*).
- c) Selling materials like iron (used to make weapons) to hostile enemies.

⁶⁰ Ministry of Awqaf and Islamic Affairs - Kuwait, *Al-Mawṣū'ah al-Fiqhīyah al-Kuwayṭīyah*, ed. A group of authors (Kuwait: Ministry of Awqaf and Islamic Affairs, 1404-1427 AH), vol. 9, 208-209.

⁶¹ Ministry of Awqaf and Islamic Affairs - Kuwait, *Al-Mawṣū'ah al-Fiqhīyah al-Kuwayṭīyah*, vol. 9, 208-209.

⁶² “Imān bint Salāmah Tuwayrish, *Taqdīm al-Bank Khidamātihi li-'Umalā' Yuqūmūn bi-Tanfīdh Ba'd al-'Amaliyyāt Ghayr al-Mutawāfiqah ma'a al-Ḍawābiṭ al-Shar'iyyah*, 1st ed. (Riyād: Suleiman Abdullah Omar Al-Maiman Publishing & Distribution, 2023) 41.

⁶³ Abu Yahya, Dr. Ali. “*Al-I'ānah 'Alā al-Ithm wa-l-'Adwān: Ḥaqīqatuhā, Hukmuhā, Ḍawābiṭ Man 'ihā fī al-Fiqh al-Islāmī*”, *Journal Name*, vol. 12 (2018): 4346-4347.

d) Selling materials like iron (used to make weapons) to rebels (*Ahl al-Fitnah / Bughat*).

All scenarios are prohibited according to the majority of scholars (Mālikīs, Shafi'is, Hanbalis), and even though there is consensus on the prohibition of the first scenario.⁶⁴ While Hanafi scholars consider the first three situations as prohibitively disliked (*makrūh tahrīmi*) and the fourth as permissible (*jā'iz*) because they usually do not have the time or means to turn these into weapons during conflict.⁶⁵

3. Renting a House to Someone Who Will Use it for Prohibited (Ḥarām) Purposes

If a *dhimmi* (non-Muslim under Islamic rule) rents a property from a Muslim in order to use it as a church or a tavern for selling wine, the majority of scholars including the Mālikīs, Shāfi'īs, Ḥanbalīs, and the followers of Abū Ḥanīfa rule that the lease is invalid (*fāsīd*) because it facilitates sin. However, Abū Ḥanīfa alone opined that such a lease is permissible (*jā'iz*) by arguing that the contract is fundamentally for the general benefit of the property and does not explicitly obligate the tenant to use it for sinful purposes. Yet, there is a clear weakness in this reasoning. However, if a *dhimmi* rents a property for residential purposes, for example, and later converts it into a church or public place of worship, the lease remains valid without dispute. Nevertheless, the property owner or any Muslim acting in the public interest (*hisbah*) has the right to prevent this usage, just as they would if the *dhimmi* attempted to establish such a place in their own privately owned property.⁶⁶

According to the Ḥanbalī school, it is impermissible to lease an asset (*'ayn*) to someone whom the lessor knows or strongly suspects will use it for unlawful (*ḥarām*) purposes, regardless of whether this is explicitly stated as a condition in the contract. In contrast, Abū Ḥanīfa opines that such a lease is permissible provided that the use for the unlawful purpose is not stipulated in the contract itself. The Mālikī school holds that if the unlawful usage is stipulated as a condition in the contract, the lease becomes invalid (*fāsīd*). However, if no such condition is mentioned and the lessee engages in

⁶⁴ Al-Nawawi, Abu Zakariya Muḥyī al-Dīn ibn Sharaf. *Al-Majmū' Sharḥ al-Muhadhdhab* (Cairo: al-Manāriyya Printing, 1344-1347 AH), vol. 9, 353.

⁶⁵ Al-Kāsānī, 'Alā' al-Dīn Abū Bakr ibn Mas'ūd. *Badā'i' al-Ṣanā'i' fī Tartīb al-Sharā'i'* (Cairo: al-Maṭba'a al-'Ilmīyya, 1327-1328 AH), vol. 7, 142.

⁶⁶ *Ministry of Awqaf and Islamic Affairs - Kuwait, Al-Mawsū'ah al-Fiqhīyah al-Kuwaytiyyah*, ed. A group of authors (Kuwait: Ministry of Awqaf and Islamic Affairs, 1404-1427 AH), vol. 1, 286.

unlawful use, the contract will remain valid. In this case, the lessor is only obligated to perform *ḥisbah* (i.e., enjoin good and forbid evil), and the rental payment remains lawful. Nevertheless, some Mālikī scholars maintain that the lessor must actively prevent the lessee from using the asset unlawfully; if he fails to do so and the rental period elapses, he must donate the rent to charity. This view implies that if the lessor fulfils the duty of *ḥisbah*, the rental income remains lawful.⁶⁷

⁶⁷ Imān bint Salāmah Tuwayrish, *Taqdīm al-Bank Khidamātihi li-'Umalā' Yuqūmūn bi-Tanfīdh Ba'd al-'Amaliyyāt Ghayr al-Mutawāfiqah ma'a al-Ḍawābiṭ al-Shar'iyyah*, 1st ed. (Riyāḍ: Suleiman Abdullah Omar Al-Maiman Publishing & Distribution, 2023) 42-46.

DEFINING SHARIAH BOUNDARIES FOR *AL-I'ĀNAH 'ALĀ AL-MA'ŠIYAH*

Classical jurists adopted two main approaches to *al-i'ānah 'alā al-ma'šiyah*: the Ḥanafī position and the view of the majority (jumhūr). According to the Ḥanafīs, *al-i'ānah 'alā al-ma'šiyah* arises when one of two conditions is present.⁶⁸ The two different conditions are (1) when the object for which the person is being paid is inherently sinful (*ḥarām*) by itself which means it is only have sinful (*ḥarām*) use and (2) as for employment and services, it will be not considered as inherently sinful (*ḥarām*) by itself if the choice of the doer mediates it. Al-Kamāl ibn al-Humām states that it is reprehensible (*makrūh taḥrīmī*) to sell musical instruments since sin is inherently carried out through them. However, selling the wood from which such instruments are made is not reprehensible. he same distinction applies to wine and grapes, wine is inherently sinful, whereas grapes are not.⁶⁹ Al-Fakhr az-Zayla'i added, "It is permissible to sell grape juice to a wine-maker (*khammār*), because the sin is not inherent in the act itself but arises only after its transformation into wine. This differs from selling weapons to rebels (*ahl al-fitnah*), because the sin is inherent in that act, as it directly aids them and enables their wrongdoing. We have been forbidden from cooperating in aggression and sin. As for grape juice, it is suitable for all permissible purposes (e.g., vinegar, fresh consumption), making its sale lawful in principle. Any corruption (e.g., turning it into wine) stems solely from the buyer's choice."⁷⁰

As for employment and services, it will not be considered as inherently sinful (*ḥarām*) by itself if the choice of the doer mediates it. It is stated by Al-Fakhr az-Zayla'i that, according to the opinion of Abū Ḥanīfah, carrying wine for a dhimmi for a wage is permissible. However, the two companions (*al-Ṣāḥibayn*) held that it is prohibitively disliked (*makrūh taḥrīmī*) because the Prophet cursed ten people concerning wine, and among them was its carrier. Abū Ḥanīfah's reasoning on that permissibility is that hiring someone for the act of carrying (wine) is not inherently sinful since the actual sin occurs only through the deliberate action of a free-willed person. Additionally, drinking the wine is not an inevitable consequence of carrying it, as the transportation might be for purposes like disposal or

⁶⁸ Ṣalāḥ Muḥammad Abū al-Hāj, *Khulaṣat al-Kalām fī Mas'alat al-I'ānah 'alā al-Ḥarām* ('Ammān: Markaz Anwār al-'Ulamā' lil-Dirāsāt, 2020), 7.

⁶⁹ Ibn al-Humām al-Ḥanafī, *Sharḥ Faṭḥ al-Qadīr 'alā al-Hidāyah*, vol. 6 (Cairo: Sharikat Maktabat wa Maṭba'at Muṣṭafā al-Bābī al-Ḥalabī wa-Awladīhi, 1970), 108.

⁷⁰ 'Uṭhmān ibn 'Alī al-Zayla'ī al-Ḥanafī, *Tabyīn al-Ḥaqā'iq Sharḥ Kanz al-Daqā'iq wa-Hāshiyat al-Shilbī*, vol. 6, (Cairo: al-Maṭba'ah al-Kubrā al-Amīriyyah, 1896), 28.

turning it into vinegar. Thus, it is similar to hiring someone to press grapes or harvest them. He also added that if a person rents out his animal to transport wine or hires himself out to tend pigs for someone else, the payment is permissible (*halal*) according to Abū Ḥanīfah and prohibitively disliked (*makrūh tahrīmī*) according to his two companions (*al-Ṣāhibayn*).⁷¹

Meanwhile, the majority (*jumhūr*) scholars believe that anything that constitutes a sinful act is sinful. Al-Kharāshī says that any transaction where the seller knows the buyer intends to use the purchased item for prohibited purposes is prohibited (*ḥarām*) and invalid (*bāṭil*), including selling weapons of war to hostile combatants (*ḥarbī*) and selling a property to one who will convert it into a church.⁷² This position is shared by Ibn Ḥajar al-Haytamī and Ibn Qudāmah, both of whom hold that any intentional facilitation of prohibited acts renders the transaction unlawful and invalid. Ibn Ḥajar al-Haytamī states that any facilitation of sin (*tasabub fī ma'ṣiyah*) or assistance in it is prohibited based on the Hadith on the ten people cursed for involvement with wine.⁷³ Similarly, Ibn Qudāmah stated that all transactions with the intent (*qasd*) to facilitate something prohibited (*ḥarām*) are forbidden (*ḥarām*) and invalid (*bāṭil*), including selling weapons to combatants (*ahl al-ḥarb*) or highway robbers (*quṭā' al-tariq*) during times of conflict (*fitnah*).⁷⁴ Based on the discussion above, the following boundaries are set by the majority of classical scholars regarding *i'ānah 'alā al-maṣīyah*:

- a) Any facilitation involving intrinsically sinful objects is prohibited. For example, selling wine, pork and musical instruments is not permitted.
- b) Any facilitation involving objects that can be used lawfully is permissible. However, if the seller knows the buyer intends to use them for sinful acts, it is prohibited. For example, selling grapes to someone who intends to make them into wine.

⁷¹ 'Uthmān ibn 'Alī al-Zayla'ī al-Ḥanafī, *Tabayīn al-Ḥaqā'iq Sharḥ Kanz al-Daqā'iq wa-Ḥāshiyat al-Shīlbī*, vol. 6, 28.

⁷² Al-Kharashī, *Sharḥ al-Kharashī 'alā Mukhtaṣar Khalīl*, vol 5 (Cairo: al-Maṭba'ah al-Kubrā al-Amīriyyah, 1899), 10-11.

⁷³ Ibn Ḥajar al-Haytamī, *Tuḥfat al-Muḥtāj fī Sharḥ al-Minhāj*, vol 10 (Cairo: al-Maktabah al-Tijāriyyah al-Kubrā li-Ṣāhibihā Muṣṭafā Muḥammad, 1983), 317.

⁷⁴ Ibn Qudāmah al-Maqdisī, *al-Mughnī 'alā Mukhtaṣar al-Khiraqī*, ed. Tāhā al-Zīnī, Maḥmūd 'Abd al-Wahhāb Fāyid, 'Abd al-Qādir 'Aṭṭā, and Maḥmūd Ghānim Ghayth, vol 4 (Cairo: Maktabat al-Qāhirah, 1968-69), 168.

- c) Providing a service for an evil act is not permitted as employment. For example, carrying wine for a fee.

THE POTENTIAL CASES OF *AL-I'ĀNAH 'ALĀ AL-MA'ŠIYAH*

While *al-i'ānah 'alā al-ma'šiyah* is well established in classical fiqh, its application in contemporary financial systems particularly within Malaysia's dual banking framework raises complex interpretive challenge. However, its application in contemporary settings raises a number of complex questions. Determining the extent to which a particular act constitutes facilitation of sin has become increasingly challenging, especially in the practice of dual banking, such as in Malaysia. This section aims to explore the application of the concept by examining selected scenarios where *i'ānah* may be involved. Through these cases, the discussion seeks to illustrate how contemporary scholars interpret and apply classical principles in addressing modern issues.

1. Transfer of Funds for Funding and Liquidity Risk Management from an Islamic Financial Institution to a Conventional Financial Institution

Generally, any transfer of funds from an Islamic financial institution (IFI) to a conventional financial institution (CFI) is deemed impermissible under Shariah. This is mainly due to the risk of facilitating acts that contradict Shariah. Since conventional institutions may be involved in interest-based or other Shariah non-compliant financial activities.⁷⁵ However, in times of financial stress, interactions between Islamic and conventional institutions are crucial to prevent systemic contagion. For instance, an Islamic financial institution (IFI) operating under a conventional banking group may be required to transfer funds or high-quality liquid assets (HQLA) to its parent institution as a way to mitigate liquidity risk. In such scenarios, absolute prohibition may lead to greater harm to the IFI itself and potentially destabilise the wider financial ecosystem. Recognising this tension, the Shariah Advisory Council (SAC) of Bank Negara Malaysia has developed a set of parameters to govern such transfers. Two key principles underpin these guidelines⁷⁶:

⁷⁵ Shariah Advisory Council of Bank Negara Malaysia, *Shariah Resolutions in Islamic Finance (Second Edition)*, Bank Negara Malaysia, 2010, p. 199 – 200.

⁷⁶ The Shariah Advisory Council of Bank Negara Malaysia (SAC). *Ruling on the Shariah Parameters on Transfer of Funds for Funding and Liquidity Risk Management from an Islamic Financial Institution to a Conventional Financial Institution*. 217th SAC Meeting

- a) Funds belonging to IFIs must only be utilised for activities that comply with Shariah.
- b) Any exception to this rule must be justified under the principles of *hājah* (need) or *ḍarūrah* (necessity), with clear parameters to assess each case.

The SAC classifies the transfer of funds to a conventional financial institution (CFI) under financial distress as a *hājah* type 2. Bank Negara Malaysia defines *hājah* type 2 as a specific, non-customary hardship need of an Islamic financial institution that is not yet at a *ḍarurah* level, allowing temporary, restricted, and proportionate deviation from Shariah rulings. This is where a situation of genuine need that does not arise from prevailing commercial practices (*'urf tijārī*), involving only specific parties and is not severe enough to be categorised as *ḍarūrah*.⁷⁷ This conditional allowance is derived from classical legal maxims, including the principle that “*harm must be eliminated*” (*al-ḍarar yuzāl*) and “*necessities permit prohibitions*” (*al-ḍarūrāt tubīḥ al-maḥzūrāt*). Following that, scholars such as al-'Izz ibn 'Abd al-Salām opined that assistance in a normally prohibited act may become permissible or even obligatory if it prevents greater harm. As an example, there are some circumstances in which paying a bribe is deemed permissible, even though bribery is generally prohibited. It happens when someone wants to claim their rightful inheritance when there is no other legal recourse. Applying this rationale, the temporary and regulated transfer of funds by an Islamic financial institution (IFI) to a distressed conventional financial institution (CFI) can be considered a pragmatic measure that is only permissible when it serves to preserve the integrity of the IFI itself and avoids systemic disruption. A set of robust parameters is in place to ensure the transferred funds are not utilised in non-compliant activities.

2. Islamic Credit Card Used for Unlawful Activities and Shariah Non-Compliance Services

Islamic credit cards are used widely for credit limit usage and settling payments, such as bills as the customer will also benefit from the rebate offered by the issuer. Despite being structured on Shariah-compliant

(30 September 2021), 220th SAC Meeting (24 January 2022), and 236th SAC Meeting (30 January 2024).

⁷⁷ Bank Negara Malaysia (BNM), *Policy Document on Hajah and Darurah* (Kuala Lumpur: Bank Negara Malaysia, 2024), 7-8.

contracts, Islamic credit cards may inadvertently facilitate *al-i'ānah 'alā al-ma'ṣiyah* when used for prohibited transactions. It happens when customers use the Islamic credit card for unlawful activity or payment of goods and services which are non-Shariah compliant, while the services offered by the issuer are permissible in nature. Islamic financial institutions have implemented mechanisms to mitigate the risk of *i'ānah 'alā al-ma'ṣiyah* by listing Merchant Category Codes (MCC) associated with unlawful activities. However, no specific list of prohibited MCC is endorsed by the Shariah Advisory Council (SAC) of Bank Negara Malaysia (BNM) or any fatwa bodies.⁷⁸ Additionally, the BNM Credit Card-i guidelines do not explicitly mention such a mechanism. Instead, they generally require that issuers implement appropriate safeguards. This includes the obligation to include a clause in the terms and conditions which prohibits the use of the credit card for unlawful activities and grants the issuer the right to terminate the card if misuse is detected.⁷⁹

Tuwayrish (2023) argues that blocking MCC related to unlawful activities or Shariah non-compliant services is not obligatory for issuers. The issuer's responsibility is limited to including a specific clause in the terms and conditions regarding the prohibition, while any further action involving blocking related MCC is not obligatory.⁸⁰ Opposing that, others argue that blocking such MCCs is obligatory due to the opinion that the potential risks of enabling transactions that facilitate prohibited activities. Islamic credit card issuers in Malaysia adopted this practice, though there are concerns about blocking accuracy, as some businesses selling prohibited items may also offer permissible goods.⁸¹ As a result, blocking transactions may rely

⁷⁸ Husni, Syairazi & Fozzi, Mohd. *'Isu Dalam Kredit Kad Berasaskan Ujrah'* (Paper Work on Muzakarah Cendekiawan Syariah Nusantara Ke-14: Kewangan Islam Kontemporari – Refleksi dan Inovasi, 2020), 25.

⁷⁹ Bank Negara Malaysia (BNM), *Policy Document on Credit Card-i* (Kuala Lumpur: Bank Negara Malaysia, 2019), 7-8.

⁸⁰ Imān bint Salāmah Tuwayrish, *Taqdīm al-Bank Khidamātihi li-'Umalā' Yuqūmūn bi-Tanfīdh Ba'd al-'Amaliyyāt Ghayr al-Mutawāfiqah ma'a al-Ḍawābiṭ al-Shar'iyyah*, 1st ed. (Riyāḍ: Suleiman Abdullah Omar Al-Maiman Publishing & Distribution, 2023) 42-46.

⁸¹ Imān bint Salāmah Tuwayrish, *Taqdīm al-Bank Khidamātihi li-'Umalā' Yuqūmūn bi-Tanfīdh Ba'd al-'Amaliyyāt Ghayr al-Mutawāfiqah ma'a al-Ḍawābiṭ al-Shar'iyyah*, 16-17.

on suspicion rather than certainty, which makes some customers prefer having conventional credit cards as a precautionary measure.⁸²

3. Joint-Campaign Where Islamic Deposits (Qard And/Or Tawarruq) Contributes to the Customer's Total Assets Under Management (AUM) To Earn Additional "Profit" Or "Interest"

As mentioned previously, many functions of Islamic subsidiaries are frequently shared with their conventional counterparts. These functions also include joint campaigns where there are combinations of Islamic products with the products from the conventional side. Aside from the issue of *Qard Jarra Naf'an* (loan that benefits the lender), this situation also triggered the issue of *i'ānah 'alā al-ma'siyah*, where the Islamic deposit is indirectly assisting the conventional banking portfolio to offer or earn *ribā*-based returns.⁸³ For instance, a customer's account from both Islamic, which is structured under *Qard* and/or *Tawarruq* and conventional savings accounts are pooled together to reach a certain amount of Assets Under Management (AUM) to qualify for a higher return than if only the conventional accounts were considered. While the Islamic *Qard* account may not directly receive the bonus, the fact that its balance enables the portfolio to reach a higher tier may imply *i'ānah 'alā al-ma'siyah* (assistance in sin), as it supports the accrual of interest in other accounts. However, if Islamic deposit accounts are excluded from these campaigns, it could lead to competitive disadvantages. In other words, the Islamic banking sector will lose out on potential growth that will likely be captured by conventional banks, leading to the growth of conventional banking over Islamic banking. Besides that, launching a separate campaign for Islamic deposits is costly and unlikely to be effective. This is due to a lack of economies of scale and a smaller target audience, which will lead to a reduced budget for future promotions.⁸⁴

⁸² Husni, Syairazi & Fozi, Mohd. '*Isu Dalam Kredit Kad Berasaskan Ujrah*' (Paper Work on Muzakarah Cendekiawan Syariah Nusantara Ke-14: Kewangan Islam Kontemporari – Refleksi dan Inovasi, 2020), 23.

⁸³ Bank Negara Malaysia (BNM), *Policy Document on Qard* (Kuala Lumpur: Bank Negara Malaysia, 2018), 5-6.

⁸⁴ Abdul Rahman, Zaharuddin, "Isu Ketidakpatuhan Syariah Dalam Produk Deposit dan Pelaburan" (Paper presented at Muzakarah Cendekiawan Syariah Nusantara Ke-18: Pemerkasaan Pematuhan Syariah: Ke Arah Mengukuhkan Industri Kewangan Islam, Lombok, Indonesia, 24-25 July 2024), 8-10.

4. Joint-Campaign Where the Islamic Banking Department Contributes to the Marketing Costs of the Campaign to Secure a Certain Percentage of the Acquisition of the Deposit Accounts

Apart from joint campaigns combining Islamic and conventional accounts, Islamic banking also leverages its conventional counterpart in marketing campaigns based on expected customer acquisition rates. For example, Islamic Banking may contribute 30% of the total money for the marketing budget to acquire 3,000 new accounts, while the conventional side contributes 70% of the marketing costs for 7,000 new accounts. There is a concern that Islamic banks may unintentionally subsidise the conventional side of business growth when the Islamic Banking division fails to meet its account acquisition target while the conventional side meets or exceeds its own. However, Islamic institutions' financial resources indirectly support and promote a ribā-based business's growth as the campaign is financed by both the Islamic and conventional banking. Nevertheless, as mentioned before, a separate campaign for the Islamic Banking division is incurring high costs and most likely ineffective because of the absence of economies of scale and fewer potential participants. As such, less funding will be allocated for future promotional activities.⁸⁵

5. Integration of Conventional Deposit Products (Based on Interest) with Islamic Deposit Products (Based on *Tawarruq* or *Qard*) under a Single Wealth Management Arrangement

There are also some situations involving the activity of pooling where conventional accounts are temporarily transferred into Islamic accounts that act as the “parent” account that contributes to the consolidated AUM (Assets Under Management) to qualify for a higher profit rate. It means the primary or central account used to aggregate funds for portfolio consolidation and AUM (Assets Under Management) calculation purposes. This higher profit is accrued in the Islamic account and later reallocated to the respective contributing accounts, which are conventional accounts. These returns are then labelled as “profit” for Islamic and “interest” for conventional accounts. Thus, this activity raises the issue of facilitating sinful acts as the conventional account indirectly benefits from the Islamic account in gaining additional interest. Despite that, consolidation, however, happens in conventional wealth management systems, which are solely based on the customer’s interest in transferring from conventional to Islamic accounts.

⁸⁵ Abdul Rahman, Zaharuddin, “Isu Ketidakpatuhan Syariah Dalam Produk Deposit dan Pelaburan”, 11-12.

Islamic banks seem not to have the control to mitigate such activity other than by providing necessary advice and assistance regarding this issue.⁸⁶ However, this limitation does not fully absolve Islamic banks from potential responsibility in relation to the facilitation of sinful acts (*al-i'ānah 'alā al-ma'ṣiyah*).

CONCLUSION

The concept of *al-i'ānah 'alā al-ma'ṣiyah* from a Shariah perspective is broader than what it means linguistically. A general ruling based on that strict definition, which resembles anything that constitutes *al-i'ānah 'alā al-ma'ṣiyah*, will practically cause hardship as the finance industry becomes more complex. Moreover, Malaysia is practising a dual banking system where Islamic banks work in parallel to conventional banks. This unique system presents challenges as some institutions, especially Islamic subsidiaries, outsource conventional counterparts to take advantage of their speciality in the industry. Generally, it can be said that any act that clearly constitutes a sinful act is considered sinful across all major schools of jurisprudence, notwithstanding certain differences in interpretation, scope, or evidentiary application. Following that, different opinions come on the indirect act of assistance. Most scholars prohibited this act when the seller knew the buyer had a sinful intent. In contrast, Imam Abu Hanifa permits a transaction where the object is not inherently sinful and the sinful outcome depends on the buyer's choice. In addition, contemporary applications are also analysed to emphasise the measures used to mitigate the element of facilitating sin. From the above discussion, it is found that contemporary scholars have attempted to consider what facilitates sin, aligned with the opinion of classical scholars. As for the transfer of funds from an Islamic financial institution to a conventional financial institution, suitable measures should be introduced to mitigate the facilitation of sin. In conclusion, a *ḍawābiṭ* (Shariah parameters) is crucial in eliminating impermissible forms of facilitation, which contributes to the development of clearer Shariah guidelines for Islamic banking practices in Malaysia. By discussing and analysing the application in the Islamic banking industry, this research provides an ongoing discourse on Shariah compliance in Islamic finance.

⁸⁶ Abdul Rahman, Zaharuddin, "Isu Ketidakpatuhan Syariah Dalam Produk Deposit dan Pelaburan" (Paper presented at Muzakarah Cendekiawan Syariah Nusantara Ke-18: Pemerkasaan Pematuhan Syariah: Ke Arah Mengukuhkan Industri Kewangan Islam, Lombok, Indonesia, 24-25 July 2024), 18-20.

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