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A Framework of Income Purification for Islamic Financial Institutions

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Abstract

The concern over Shariah compliant transactions is firmly entrenched in activities and operation of Islamic financial institutions (IFI). As a business entity established within the ambit of Shariah, IFI is expected to be guided by values, principles, objectives and rulings of the Shariah. However ensuring effective Shariah compliance is not a straightforward matter. As financial markets are increasingly becoming sophisticated, heightened product innovations and engineering in Islamic finance entails the genuine concern over the need to strengthen Shariah compliance throughout the product life cycle. This inevitably means while a product may be deemed Shariah compliant prior to its launch (ex-ante), IFI must also be cognizant of the need to ensure the entire ex-post process including contract execution, utilization of fund, investment activities, audit and governance process are all in place. This paper focuses on the framework of dealing with Shariah non-compliant transactions in Islamic finance. The framework delineate the concept of illegitimate income and its sources from Islamic perspective insofar to develop a cohesive approach in dealing with diverse non-compliance situations based on established principles of Shariah. Although it is not expected for IFI to deliberately involve in illegitimate activities, any incident of non-compliance needs to be immediately addressed, rectified and reported. This is not only to ensure the purity of the income earned but more importantly for IFI to put in place adequate systems and controls to ensure such non-compliance with Shariah rules and principles can be averted.

I. Introduction

Strengthening Shariah governance framework and practices is imperative for Islamic financial institutions (hereafter IFI), as it is an institution that governed by Shariah rules and principles. Institutions offering Islamic financial products and services are starting to realize the negative repercussions of paying inadequate attention to the whole process of Shariah compliance. Indeed, failure to comply with Shariah not only invokes financial risk but may eventually expose IFI to the risk of breaking the trust and confidence of investors and depositors. This inexorably leads to dire consequences, including massive withdrawal and insolvency risk. As a case in point, governance failure had cost Dubai Islamic Bank USD50 million in 1998 when a bank official did not conform to the ethical term of advancing financing. This had subsequently resulted in a run on its deposits of USD138 million, representing 7% of the bank's total deposits, in just one day (Warde, 2000).

In Malaysia, endeavor to reinforce sound Shariah regulation and supervision leads to new issuance of Bank Negara Malaysia's Shariah Governance Framework for the Islamic financial

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institutions on 1st January 2011. The main objective of this guideline is to enforce and strengthen the IFI's Shariah governance structures, processes and arrangements, ensuring that all of their operations and business activities to be consistent with the requirement of Shariah. The Guideline necessitates IFI to institute a clear internal control and process on how to address the issue of Shariah non-compliant in a holistic manner. In other words, Shariah compliant should not only focus on structuring and issuing Shariah pronouncement alone but covers the whole spectrum of IFI operation, both ex-ante and ex-post aspects of Islamic financial transactions.

However, there is a misperception in the market today for having the general view that should a bank fails to act in accordance with the Shariah rules, the transaction should be considered null and void from Shariah viewpoint and hence all income derived thereon is considered tainted and everything should be channeled to charity. Essentially, not all Shariah non-compliant transactions result in the tainted income to be purified by way of channeling it to charity. There are also possible instances whereby the proceeds generated need to be returned to the original owner. In other instance, only the prohibited portion is supposed to be channeled to charity while the remaining portion could be retained as income. In certain situation whereby rectification could be made to the contract or transaction, the proceeds can still be recognized as IFI's income provided all the necessary amendments have been made.

Against this backdrop, this present study focuses on the approach and methodology in dealing with non-Shariah compliant transactions or non-halal income. Specifically, the paper sets out to provide answers to the following research objectives:

- To identify sources of non-halal income
- To provide the framework on the treatment of non-halal income for Islamic financial institutions.

Following this brief introduction, the paper is organized according to the following structure: the next section provides detailed description on the concept of illegitimate income from Shariah viewpoint. The section also delineates various sources of illegitimate income which can either be derived from the two main categories, namely haram lizatihi (prohibited due to its essence) and haram li ghairihi (prohibited due to external reasons). The third section then elaborates on the approaches in dealing with various sources of illegitimate income. While the fourth sections provides examples of scenarios in which Islamic financial transactions could treat their tainted income, the final section concludes this study.

2. Concept of Non-Halal Income

Some contemporary scholars defined mÉl harÉm (non-halal income) as wealth which Shariah has prohibited the holder to utilize it in any possible way (Yasin, 1414AH). Other scholars provided a broader scope of definition which states: Anything that Shari'ah has prohibited Muslim from appropriating due to a preventive factor. The latter is more general that the former definition as the prohibition is not confined to only utilize the items but also to possess it. Meanwhile, Al-Ghazali defined it as any property which is acquired through illegal way, such as via corruption, theft, *riba*, hoarding, gambling, etc. (Al-Baz, 2004).

Jurists categorized non-halal income into two major types: First, what is prohibited in it essence and second, what is prohibited due to external reasons (al-Baz, 2004). Muslim jurists considered certain items to be prohibited in themselves if the prohibition is due to their essence and nature. These include pork, wine and other impure items (al-SarakhsÊ, 1993). On the other hand, there are incomes that are permitted in their essence but become prohibited due to external reasons or an auxiliary attribute. For instance, accumulating wealth is basically permissible, but if the method by which it is accumulated is illegitimate, the income is non-halal (Ibn Taymiyyah, 1408/1987).

2.1 Sources of Non-×alal Income

Essentially, income-generating or wealth-accumulation activities that involve money do not invoke the issue of *ÍarÉm li dhatihi* (non halal in its essence) since money in its substance is permissible. However, a particular sum of money may be deemed impermissible if it is derived from illegitimate sources. This is known as *ÍarÉm li ghayrihi* (prohibited due to external factors). The following discussion will shed further light on the possible sources of impermissible income (*mal Íaram*, hereafter referred to as non-*Íalal* income) due to external reasons.

In general, there are two external factors that make income non-halal (al-Baz, 2004):

1. The income is acquired without the consent of the legal owner. Examples are income realized through theft, usurpation and deception.
2. The income is earned with the consent of the owner by a transaction that is not approved by the Shariah. In this regard, Ibn Taymiyyah further divided this category into two possible scenarios; (i) non-Íalal income possessed through nominate contracts; and (ii) non-Íalal income earned without having any specific contractual forms, such as income from bribery, gambling, gifts to employees while executing their duties, etc. (Ibn Taymiyyah, 2005). While income earned without a specific underlying contract is clear and easily understandable, the following discussion will delineate non-Íalal income sources through specific nominate contracts.

2.1.1 Non-Halal Income from Invalid Contracts

In Islamic transaction, validity of contract is important in determining whether a transaction can be considered permissible or impermissible. A valid contract from an Islamic viewpoint is when all the essential pillars and conditions of the contract are fulfilled. This categorically determines the status of income derived from any transaction conducted.

According to the majority of jurists, there are only two possible rulings on the status of a contract: valid (*shahih*) and invalid (*ghayr sahih*), and this latter category has other names (*baÏil* and *fasid*) which can be used interchangeably for it (Zuhaily, 2004). *ØaÍiÍ* is a contract in which all the essential elements —such as the contracting parties, subject matter, and offer and acceptance—and all the underlying conditions are fulfilled (al-Minyawi, 2010).

From a Shariah point of view, a valid contract establishes all the legal implications that the Shariah has assigned to a contract of that type (al-Namlah, 1999, 1:412). For example, the buyer attains the exclusive right to possess and utilize the asset while the seller becomes entitled to the consideration. All income generated from this class of contract is deemed legal (Ayyub, 2007).

On the other hand, a contract that is invalid is one that violates the pillars and Shariah conditions of the contract (al-Shawkani, n.d). The following are examples of factors that render a contract invalid: the sold asset is an impure or prohibited commodity such as blood, pork, wine, a carcass; the asset is not fully possessed by the seller or is undeliverable; there is excessive uncertainty in the delivery date or price; or the contract is performed by parties without legal eligibility to execute contracts. From the Shariah point of view, an invalid contract does not produce the legal effects of that contract. There is no exchange of financial rights and responsibilities due to it; the buyer does not have any right to dispose of the asset, while the seller cannot possess the income realized. Such a contract must be properly re-executed, starting from scratch.

The majority of jurists do not distinguish between *baÏil* (void) and *fasid* (voidable) in financial transactions, both terms are the opposite of *saÍiÍ*, having a single legal implication (al-Ramli, n.d, 25), and are often used interchangeably. On the other hand, the ×anafÊ School took a different position from the majority of classical jurists. They classified contracts into three categories: *saÍiÍ* (valid), *fasid* (irregular) and *baÏil* (void), and considered *baÏil* and *fasid* to be different in substance and ruling. *FÉsid* is an intermediary class of contract between *ÎaÍÊÍ* and *bÉÏil* (al-Bukhari, 1997).

According to the ×anafÊ School, *bÉÏil* is a contract that is invalid due to a defect in any of the essential elements (pillars) of the contract (al-KÉsÉnÊ, 1986, 5:305). The following are examples of such defects: if the contract involves impure or prohibited items as the subject matter; the subject matter has no value from the SharÊÑah perspective; the asset is not fully owned by the seller; the acceptance is not in conformity with the offer; the contracting parties have not reached the age of maturity; the contract contains fraud, deceit, etc.

The ×anafÊ conception of a *bÉÏil* contract has the same implications as the majority's category, *ghayr ÎaÍÊÍ* (invalid). A *bÉÏil* contract does not give rise to any legal consequences. The contract is treated as if it does not exist. Therefore, the buyer in a sale contract is not entitled to the asset while the seller has no right to the consideration. All income generated from a void contract is ruled as non-*ÍalÉl*; hence, it cannot be possessed or utilized (al-BÉz, 2004).

Meanwhile, a *fÉsid* (voidable) contract is a unique class of contract recognized in the ×anafÊ School's categorization scheme. Unlike a *bÉtil* contract, the essential elements of a *fÉsid* are present, but the contract is tainted by a defect in an accessory attribute (*waÎf*) (MahmËd, 2000, 8:139). ×anafÊ jurists identified various factors leading to a *fÉsid* contract, as highlighted below:

1. Ignorance (*jahÉlah*); i.e., insufficient information. The *jahÉlah* may exist with regard to four matters:
   a. the asset; e.g., the seller says, "I hereby sell you some of my cloth," and the parties disperse without the seller specifying which cloth is being sold.
   b. the price; e.g., the seller says to the buyer, "I hereby sell this asset to you for RM 100 spot payment or RM 200 deferred payment" and the parties disperse without the buyer accepting one of the prices in particular (al-ÑImrÉnÊ, 2006, 80).
   c. the time of delivery.
   d. the guarantee, surety or the pledge; e.g., a seller stipulates a guarantee or pledge without specifying what it is (Zuhaily, 2004, 5:3444-3446).
2. The existence of an invalid condition. The ×anafÊ School defined an invalid condition (*shart mufsid*) as a condition that is neither consistent with the nature and implication of the contract, nor endorsed by textual authority, nor admitted by customary practice. In fact, the condition offers a benefit to only one of the contracting parties (or a third party) at the expense of the other contracting party (Zuhaily, 2004, 5: 3471). One example is tying a loan agreement to a sale contract; e.g., ÑAlÊ agrees to give a loan to Zayd on the condition that Zayd sells his asset to ÑAlÊ. In this case, Zayd may consider discounting the price in favour of ÑAlÊ due to the loan facility, resulting in a loan that extracts profit (Arbouna, 2007, 346).
3. The existence of an element of *ribÉ*. The majority of jurists consider the existence of *ribÉ* to invalidate the contract (make it *bÉÏil*). However, the ×anafÊ School holds that *ribÉ* does not make a contract void (*bÉÏil*); rather, it makes it irregular (*fÉsid*) and, hence, rectifiable (WizÉrat al-AwqÉf wa al-Shu'Ën al-IslÉmiyyah, 1404-1427AH, 9:101).

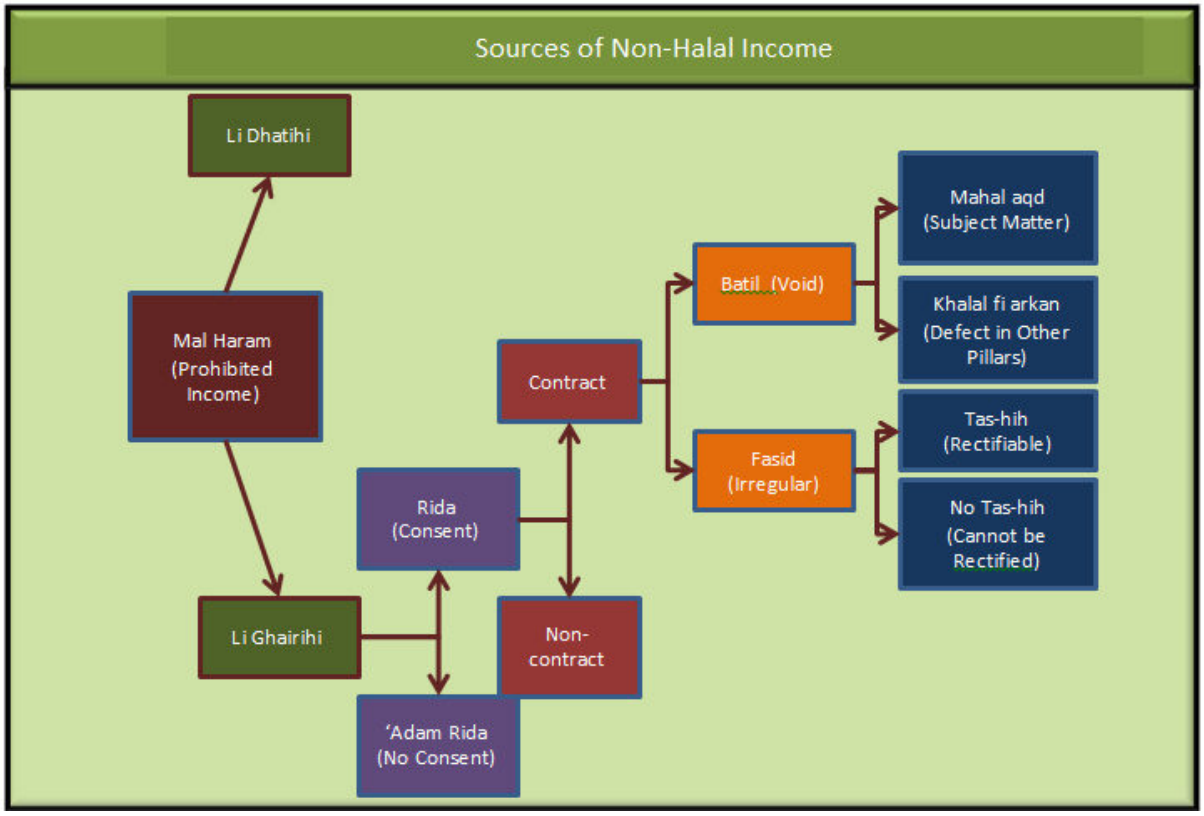
Unlike a *bÉÏil* contract, the income from a *fÉsid* contract is not irretrievably illegal; it is irregular but rectifiable. Once the intolerable elements are eliminated, the contract becomes *ÎaÍÊÍ*; thus, the income becomes legal (*ÍalÉl*).

Indeed, the ×anafÊ approach to invalid contracts in financial transactions is not limited to them. It is also supported by some MÉlikÊ and ShÉfiÑÊ jurists. Al-QarÉfÊ, of the MÉlikÊ School, acknowledged that the ×anafÊ approach is sound (al-QarÉfÊ, n.d, 2:83). Some ShÉfiÑÊ scholars also differentiate between *fÉsid* and *bÉÏil* in certain contracts such as *wakÉlah*, *iÑÉrah*, and *ijÉrah*. Some even follow the ×anafÊ view regarding all types of contracts (al-Ramli, n.d, 25). Contemporary *fiqh* scholars have generally adopted the ×anafÊ view. Therefore, this paper has employed the ×anafÊ categorization of invalid contracts as the approach for income purification process for Islamic financial institutions. The authors view the ×anafÊ differentiation between *bÉÏil* and *fÉsid* to be more practical and relevant to the current context and the needs of market players. There are a number of reasons for that judgement:

First, practically speaking, not every contractual defect is serious enough to warrant re-execution. Some defects are minor and can easily be rectified by removing the objectionable elements. Second, in the current context, re-execution of contracts creates practical complexity as institutions tend to use boilerplate contracts to undertake the same basic type of transaction with thousand of clients, and some contracts involve cross-border transactions. Adopting the majority view will undoubtedly impose hardship and difficulty on the market. Thirdly, the ×anafÊ categorization provides more options to the market players to apply the Islamic law of contract in modern financial operations.

Exhibit 1 depicts the summary of the discussion so far pertaining to the sources of impermissible income. It is pertinent to be clear about the sources of impermissible income before developing a holistic income-purification framework for Islamic financial institutions. The following subsection shall delineate the approaches and mechanisms for dealing with various sources of impermissible income as discussed above.

Exhibit 1: Potential Sources of Impermissible Income



3. Dealing with Non-Halal Income

In Islam, a Muslim is not supposed to enter into any transaction that is in violation of SharÊÑah rulings and principles. However, in the event that he does transgress the boundary of SharÊÑah principles, the SharÊÑah requires the Muslim to repent and rectify the wrongdoings immediately. Therefore, it is imperative that any income derived from impermissible sources undergo an immediate process of rectification or purification.

However, the rectification and purification process may vary, depending upon sources and scenarios. Some non-*ÍalÉl* income may have to be purified by channeling all of the tainted money to charity while in some cases it may be required to return the wealth to the original owner. In certain scenarios, rectification can be made without resorting to channeling all the income to charity or the original owner. The following discussion examines the treatment of non-*ÍalÉl* income from various sources and scenarios identified in the preceding section.

3.1 Non-×alÉl Income Due to Its Essence (×arÉm li DhÉtihi)

As described in the foregoing discussion, ÍarÉm li dhÉtihi is what is prohibited due to the intrinsic nature of the item, such as pork, wine and other impure items (Ibn Rushd 2004, 3:52; Ibn QudÉmah, 1968, 9:162). In this case, the SharÊÑah does not recognize the items as assets having value that can be owned and treated as legal property by the holder. Hence, the holder should immediately rectify the wrongdoing by destroying the items (itlÉf); they should neither be returned to the original owner nor channeled to charity. It is narrated by Anas that AbË ÙalÍah asked the Prophet (peace be upon him) about orphans who had inherited wine. Allah's Messenger (peace be upon him) told him "Pour it out." AbË ÙalÍah asked if he could make vinegar of it. He replied, "No." (AbË DÉwËd, n.d, 3:326)."

Nevertheless, if the original owner is a non-Muslim, the recipient may return these items to him, as these are recognized as property in the hand of a non-Muslim, according to the MÉlikÊ and ×anafÊ viewpoint. However, generating income or accumulating wealth through ownership or transacting items of this category of prohibition is completely prohibited from the SharÊÑah viewpoint.

3.2 Non-×alÉl Income from Elements Prohibited Due to External Reasons

Within this category, there are two possible scenarios: the prohibited income is derived either with or without the original owner's consent. The treatment of income for each of these two scenarios shall be discussed in brief

3.2.1 Non-×alÉl Income Acquired without the Owner's Consen

This type of prohibited income is realized without prior consent from the legal owner, such as income derived from robbery, theft, etc. In this case, the income must be purified by returning it to the owner. The obligation to return the income back to the original owner is justified by a ÍadÊth in which RasulullÉh (peace be upon him) said:

"Whoever oppresses his brother with regard to his honor or any other matter should seek his forgiveness today, before [repayment] is no longer in dinars or dirhams" (BukhÉrÊ, 1422H, 3:129).

3.2.2 Non-×alÉl Income Acquired with the Owner's Consent

As indicated in the previous section, the non-ÍalÉl income acquired with the consent of the owner may be realized through either a nominate contract or a non-specific form of contract. The following discussion delineates the treatment of each scenario.

3.2.2.1 Consent via a Nominate Contract

The ×anafÊ's categorization of invalid contracts as bÉÏil or fÉsid is employed to deal with this type of income. Each type of invalid contract has a different treatment.

In a case of batil contract, SharÊÑah does not consider the contract to be existent. Therefore, the transaction does not have any legal effects or implications. Hence, any income derived from this type of contract is unlawful and must be purified. A void sale contract, for example, does not cause any transfer of ownership. The seller should therefore refund the price while the buyer has to return the "purchased asset".

Notwithstanding the above, in case the transacted asset is an item clearly prohibited by the SharÊÑah, such as pork, wine or other impure items, the counter-value of such asset must be channeled to public benefit (maÎÉliÍ ÑÉmmah) (Ibn Taymiyyah, 2005, 29:291) and is not to be returned to the original owner. This is in consideration of the SharÊÑah principle that it is unlawful to assist others to commit sins.

Unlike a batil contract, a fÉsid contract, as promulgated in the ×anafÊ and contemporary fiqh approach, does not necessarily require re-execution of the contract. In most cases, the rectification process can be done in one of two ways. The first way is to eliminate objectionable elements that render the contract fÉsid. If such elements are eliminated, the contract becomes valid. This is based on the ×anafÊ legal maxim:

"When the impediment disappears while the reason for the ruling is present, the [original] ruling returns" (WizÉrat al-AwqÉf wa al-Shu'Ën al-IslÉmiyyah, 1404-1427AH, 12:60).

However, if the objectionable elements persist, the contract becomes void, and all income generated and assets received must be returned to their original owner.

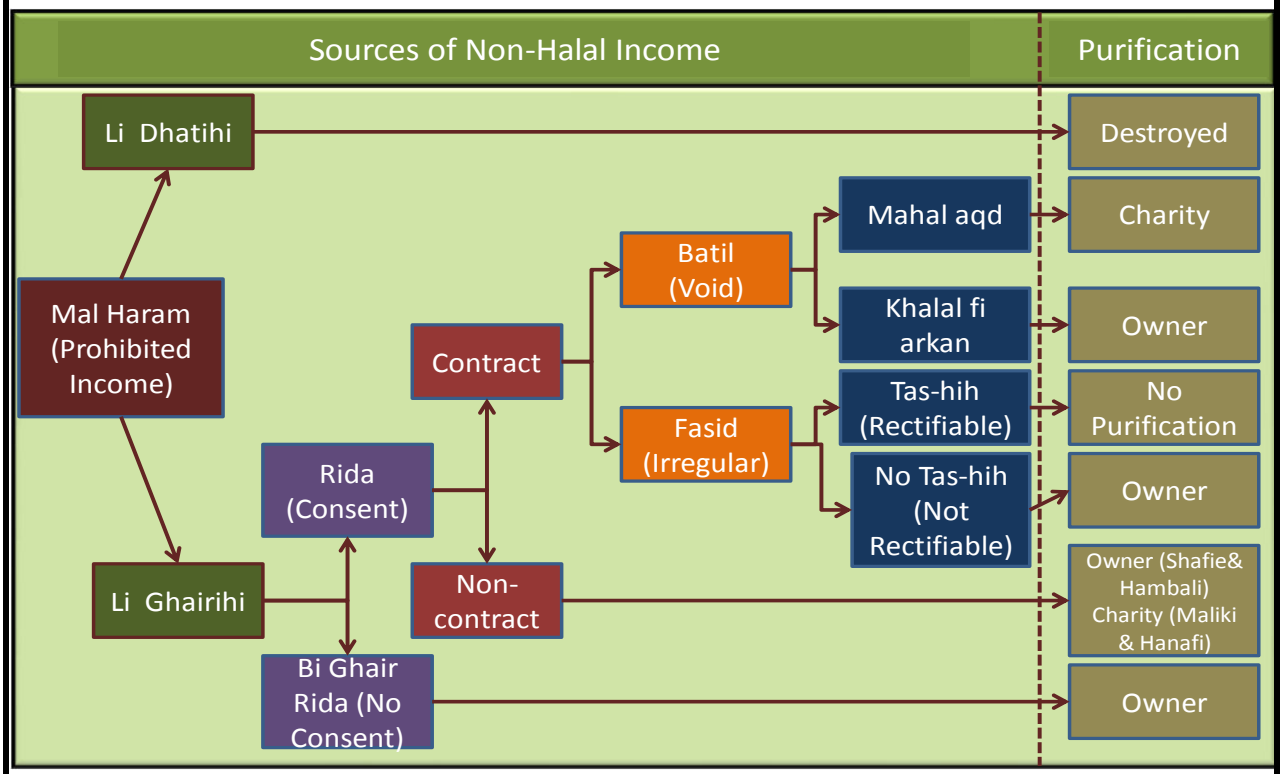
3.2.2.2 Consent without a Nominate Contract

There are instances in which illegal income is derived with the consent of the owner from a transaction without using a specific nominate contract; for example, the income generated from gambling (maysir), bribery (rishwah), gifts to officeholders, etc. (Ibn Taymiyyah, 2005, 28:593-594).

Jurists have different opinions with regard to the treatment of such income. Some scholars held that the income derived by illegal means with the consent of the owner must be returned to the original owner. This was the view of the ×anbalÊ and the ShÉfiÑÊ Schools in their authentic opinion, based on qiyÉs (analogy) with an invalid contract (Ibn Taymiyyah, 1995, 28:593-594). Under this view, one who receives a non-ÍalÉl gift (rishwah) must return it to the donor (al-MÉwardÊ, n.d, 128; al-MardÉwÊ, n.d, 11:212). Other scholars are of the view that the income should neither be returned to the original owner nor be possessed (al-BalkhÊ, 1310AH, 3:236). It cannot be returned to the owner to avoid any form of assistance in committing sins (iÑÉnah ÑalÉ maÑÎiyah). Likewise, the asset cannot be possessed by the recipient because a prohibited action cannot legally justify transfer of ownership (al-BÉz, 2004, 351). Therefore, the income should be channeled to the Bayt al-MÉl (the Public Treasury).

Exhibit 2 is a diagram that summarizes the proposed framework for Islamic financial institutions to treat their non-ÍalÉl income based on the various scenarios mentioned in the discussion above.

Exhibit 2: Framework of Income Purification



4. Income Purification for Islamic Financial Institutions

The study on the principle of income purification together with the concept of non-halal income has been a subject of wide discussion in the field of Islamic jurisprudence. As discussed in the previous sections, different sources of illegitimate wealth necessitate different treatments and purification processes. For the purpose of this study, we simplify the discussion by providing a summary of its application to Islamic financial institutions in Table 1. Examples of their application to various Islamic finance operational issues are also provided in the corresponding column to further illuminate our understanding of the concept and the various approaches to dealing with illegitimate income.

Table 1: The Framework of Income Purification for Islamic Financial Institution

Sources	Description	Treatment
1. Non-halal income in its essence	1. In offering a trade facility based on *murÉbaÍah* for the purchase orderer (*murÉbaÍah lil Émir bi shirÉ'*), the IFI is found to have imported a mixture of goods (*ÍalÉl* and *ÍarÉm*). A portion of it is actually alcoholic beverages, which was only discovered after an audit was performed at the port by the SharÊÑah auditor. Under the facility agreement, the bank is supposed to enter into a sale contract with a customer who has undertaken to purchase once the goods are possessed and owned by the IFI.	1. The IFI needs to exclude the *ÍarÉm* portion of the imported goods, i.e. the alcohol. 2. The IFI can only proceed with the sale of the remaining *ÍalÉl* portion of the imported goods. 3. The bank needs to dispose of the alcohol at its own cost.

Sources	Description	Treatment
2. Non-halal income due to external factors		
A. Non halal income derived from a void (bÉÏil) transaction due to a defect in the subject of the contract.	In managing a portfolio, it is found that one of the securities which was previously classified by the Securities Commission as SharÊÑah-compliant stock has been reclassified as non-SharÊÑah-compliant.	1. The IFI must immediately dispose of the non-SharÊÑah-compliant stock. 2. Any capital gain derived from the divestment process can be retained if the disposal took place on the announcement date made by the Securities Commission. 3. If the disposal took place long after the announcement made, then only the principal amount can be retained while any capital gain from the announcement date until the date of actual divestment needs to be channelled to charity.
B. Non-halal income derived from a void (bÉÏil) transaction due to absence in one of the pillars in the contract	In extending a credit line or cash financing to a company which previously enter into a Letter of Credit (LC) *murÉbaÍah* agreement with the IFI, it is found that the second leg sales contract signed with the company does not involve any asset, but mere signing of a document.	1. The contract can be re-executed provided that the asset is still available. 2. If the asset is no longer available (e.g., it has been consumed) or the transaction was completed long ago, the IFI must return to the client all profits earlier recognized from the financing. If the client cannot be traced, it should be channelled to the Bayt al-MÉl. The principal amount can be retained.
C. Non-halal income derived from an irregular (fÉsid) transaction due to the presence of an alien condition that is rectifiable.	In reviewing a sale contract, it was found that a condition was imposed that the buyer would not have the right to take delivery of the asset purchased.	The clause in which the condition is stated must be removed, and the customer must be notified of the rectification.
D. Non-halal income derived from an irregular (fÉsid) transaction due to the presence of an alien condition that is not rectifiable.	In reviewing an inter-bank deposit-placement scheme based on the *wakÉlah bil istithmÉr* contract, it was found that a clause required the deficit bank (as agent or *wakÊl*) to guarantee a certain percentage of return to the Islamic bank as the principal (surplus bank). The contract has matured, and payment of both principal and profit has already been made and received by the IFI.	1. The *wakÉlah* contract is irregular due to the presence of the unwarranted condition. 2. The contract is deemed a loan. 3. The principal amount can be retained. 4. The profit amount which was previously recognized needs to be clawed back and returned to the counterparty.
E. Non-halal income derived from a transaction, albeit with consent of the owner, but without a specific nominate	A SharÊÑah auditor discovers that, in an attempt to be selected as panel lawyers for an Islamic bank, some law firms have given gifts in the form of entertainment packages to the regional managers of the Islamic bank. This inevitably impairs the bank's integrity in the selection process of panel lawyers.	1. Based on the ShÉfiÑÊ and ×anbalÊ Schools: - All "gifts" given must be returned to the client. 2. Based on the MÉlikÊ and ×anafÊ Schools: - All "gifts" given must be channelled to charity to avoid invoking the issue of assisting others to do evil.

Sources	Description	Treatment
contract permitted by the SharÊÑah.		
F. Non-halal income derived from a transaction done without the consent of the owner	An audit finds that the IFI imposed a compensation (*taÑwÊÌ*) charge on a delinquent client that did not reflect the actual cost incurred by the institution. Moreover, the charge is higher than the maximum allowable *taÑwÊÌ* charge stipulated by Bank Negara Malaysia, which currently stands at 1% of the outstanding balance without compounding.	1. The IFI needs to return the excess amount previously charged to the customer 2. The IFI must also send a letter notifying the customer of the mistake and offering its apology.

5. Conclusion

This paper has presented a framework of the income purification process for Islamic financial institutions. It started by delineating the concept of illegitimate income from the SharÊÑah viewpoint. This includes identifying the various possible sources of illegitimate income derived from invalid and defective transactions from an Islamic commercial law perspective. Incidences of SharÊÑah noncompliance should be promptly, effectively and efficiently dealt with in the manner appropriate to each type of noncompliance. The Islamic principles of income purification elucidated in this paper shed light on how an IFI can immediately act to rectify and remedy the situation.

Overall the framework presented here may benefit the practitioners of Islamic financial institutions, and even Muslim entrepreneurs in general, who need specific guidance to improve their exercise of SharÊÑah-compliant practice and governance. The discussion on the diverse approaches to income purification not only provides adequate guidance to IFIs, who must decide which courses to take and how much to commit to them, but more importantly, assists them in constructing a robust SharÊÑah-risk-management framework to prevent noncompliant transactions from actually happening. It is crucial that potential SharÊÑah noncompliance exposure be understood and efficiently managed to ensure that IFIs continue providing Islamic financial services to their clients in a safe and sound manner.

Such a framework can, therefore, be instrumental in enhancing stakeholders' trust and confidence in the operations of IFIs. It is now commonly acknowledged that the consequences of a weak SharÊÑah governance and compliance process are not only financial but also legal and reputational and can impact the economy as a whole. Hence, sound SharÊÑah governance and compliance practices have become essential for the efficient, viable and sustainable growth of Islamic financial institutions. The fact that Islamic finance has become an integral part of the financial system in many countries means that the soundness of its operations is essential to maintaining the overall robustness of those economies.

References

AbË DÉwËd. (n.d), Sunan AbÊ DÉwËd, Beirut: al-Maktabah al-ÑAÎriyyah.

Al-BahËtÊ, M. (1993). SharÍ MuntahÉ al-IrÉdÉt, Beirut: Alam Al-Kutub.

Al-Balkhi. (n.d). Al-FatÉwa al-Hindiyyah. Beirut: DÉr al-Fikr.

Al-BayhaqÊ. (1425AH), MaÑrifah al-Sunan Wa al-ÓthÉr, Beirut: DÉr Qutaybah.

Al-BÉz, A. (2004), AhkÉm al-MÉl al-ÍarÉm wa DhawÉbitu al-IntifÉ' wa at-Tasharrruf bihi fi al-Fiqh al-IslÉmi, Urdun: DÉr Nafais.

Al-BukhÉrÊ, A. (1418/1997). Kashf al-AsrÉr Ñan UsËl Fakhr al-IslÉm al-BazdawÊ. Beirut: DÉr al-Kutub al-ÑIlmiyyah.

Al-BukhÉrÊ, M. (1422AH). ØaÍÊÍ al-BukhÉrÊ. DÉr Ùawq al-NajÉh.

Al-ÑImrÉnÊ, A. (2006). Al-ÑUqËd al-MÉliyyah al-Murakkabah, DirÉsah Fiqhiyyah Ta'ÎÊliyyah wa TaÏbÊqiyyah. Riyadh: DÉr KunËz IshbÊliya li Nashr wa al-TawzÊÑ.

Al-JazÊrÊ, A. (2003). Al-Fiqh ÑalÉ al-MadhÉhib al-ArbaÑah. Beirut: DÉr al-Kutub al-ÑIlmiyyah.

Al-KÉsÉnÊ. (1986). BadÉ'iÑ al-ØanÉ'iÑ fi TartÊb al-SharÉ'iÑ. Beirut: DÉr al-Kutub al-ÑIlmiyyah.

Al-MardÉwÊ. (n.d). Al-InÎÉf. Beirut: ÖÉr IíyÉ' al-TurÉth al-ÑArabÊ.

Al-MÉwardÊ. (n.d). Al-AÍkÉm al-SulÏÉniyyah. Cairo: DÉr al-×adÊth.

Al-MinyÉwÊ. (2010). Al-MuÑtaÎar min SharÍ Mukhtashar al-UÎËl min ÑIlm al-UÎËl. Egypt: Al-Maktabah al-ShÉmilah.

Al-Namlah. (1999). Al-Muhadhab fÊ ÑIlm UÎËl al-Fiqh al-MuqÉran, Riyadh : Maktabat al-Rushd

Al-NawawÊ & al-SubkÊ. (n.d). Al-MajmËÑ SharÍ al-Muhadhab. Beirut: DÉr al-Fikr.

Al-QarÉfÊ. (1994). Al-DhakhÊrah. Beirut: DÉr al-Gharb al-IslÉmÊ, 1st edition.

Al-QarÉfÊ. (n.d). AnwÉr al-BurËq fÊ AnwÉÑ al-FurËq. Beirut: ÑÓlam al-Kutub.

Al-QazwÊnÊ. (n.d). FatÍ al-ÑAzÊz bi SharÍ al-WajÊz. Beirut: DÉr al-Fikr.
Al-RamlÊ, S. (n.d). GhÉyat al-BayÉn. Beirut: DÉr al-MaÑrifat.
Al-RËmi. (2004). AnÊs al-FuqahÉ' fÊ TaÑrÊfÉt al-AlfÉÐ al-MutadÉwilah Bayna al-FuqahÉ', Beirut: DÉr al-Kutub al-ÑIlmiyyah.
Al-SarakhsÊ, M. (1993). Al-MabsËÏ. Beirut: DÉr al-MaÑrifah.
Al-ShÊrÉzÊ. (n.d). Al-Muhadhab fÊ Fiqh al-ImÉm al-ShÉfiÑÊ. Beirut: DÉr al-Kutub al-ÑIlmiyyah.
Al-Shatibi, I. (1997). Al-MuwÉfaqÉt. Egypt: Al-Maktabah al-TijÉriyyah al-KubrÉ.
Al-ShawkÉni, (n.d), Al-Sayl al-JarrÉr al-Mutadaffiq ÑalÉ ×adÉ'iq al-AzhÉr. Beirut: DÉr Ibn Hazm.
Al-ShÉfiÑÊ, M. (1990). Al-Umm, Beirut: DÉr al-MaÑrifah.
Al-ÙabarÊ. (2000). JÉmiÑ al-BayÉn fÊ Ta'wil Óyi al-Qur'Én, Beirut: Mu'assasat al-RisÉlah.
Al-TirmidhÊ. (1975). Sunan al-TirmidhÊ. Egypt: Maktabat MuÎafÉ al-BÉbÊ al-×alabÊ.
Al-ZabÊdÊ. (n.d). TÉj al-ArËÎ. Beirut: DÉr al-HidÉyah.
Al-ZaylaÑÊ. (1313AH). TabyÊn al-×aqÉ'iq, SharÍ Kanz al-DaqÉ'iq wa ×Éshiyat al-ShalabÊ, Cairo: Al-MaÏbaÑah al-KubrÉ al-ÑÓmiriyyah.
Arbouna, M.B. (2007). The Combination of Contracts in SharÊÑah: A Possible Mechanism for Product Development in Islamic Banking and Finance, Thunderbird International Business Review, Vol. 49 (3) 341-369, May-June 2007.
Ayyub, M. (2007). Understanding Islamic Finance. England: John Wiley & Sons.
Hassan, H. (n.d). Al-Madkhal, in Niazi, L.K. (n.d). Islamic Law of Contract.
Hawawini, N. (ed). (n.d). Majallat al-AhkÉm al-ÑAdliyyah. Karachi: Karkhana Tijarat Kutub.
Ibn Manzur. (1414AH). LisÉn al-Arab. Beirut: DÉr Sadir, 3rd edition.
Ibn Nujaim. (1999). Al-AshbÉh wa al-NaÐÉ'ir. Beirut: DÉr al-Kutub al-ÑIlmiyyah.
Ibn ÑÓbidÊn. (1992). Radd al-MuÍtÉr ÑalÉ al-Durr al-MukhtÉr. Beirut: DÉr al-Fikr, 2nd edition.
Ibn QudÉmah. (1968). Al-MughnÊ. Cairo: Maktabat al-QÉhirah.
Ibn Rushd, M. (1988). Al-BayÉn wa al-TaÍÎÊl. Beirut: DÉr al-Gharb al-Islami, 2nd edition.
Ibn Rushd, M. (2004). BidÉyat al-Mujtahid wa NihÉyat al-MuqtaÎid. Cairo: DÉr al-Hadith.
Ibn Taymiyyah. (1418AH). Al-SiyÉsah al-SharÑiyyah. KSA: WizÉrah al-Shu'Ën al-IslÉmiyyah.
Ibn Taymiyyah. (1987). Al-FatÉwa al-KubrÉ. Beirut: DÉr al-Kutub al-ÑIlmiyyah, 1st edition.
Ibn QudÉmah. (2002). RawÌat al-NÉÐir wa Jannat al-MunÉÐir. Beirut: Mu'assasat al-RayyÉn.
Ibn Taymiyyah. (2005). MajmËÑ al-FatÉwÉ. Egypt: DÉr al-WafÉ'.
Mahmud, A. (2000). Al-BinÉyah SharÍ al-HidÉyah. Beirut: DÉr al-Kutub al-ÑIlmiyyah.
Muslim (n.d.). ØaÍÊÍ Muslim. Beirut: DÉr IÍyÉ' al-TurÉth al-ÑArabÊ.
Rayner. S. (1991). The Theory of Contract in Islamic Law.
Warde, I. (2000). Islamic Finance in the Global Economy. UK: Edinburgh University Press.
WizÉrat al-AwqÉf wa al-Shu'Ën al-IslÉmiyyah. (1404-1427AH). al-MawsËÑah al-Fiqhiyyah al-Kuwaitiyah. Kuwait: DÉr al-SalÉsil.
Yasin, M. (1414AH). ZakÉt al-MÉl al-MuÍarram. Paper presented in al-Nadwah al-RÉbiÑah li QaÌÉyÉ al-Zakah al-MuÑÉÎirah, 17-18 ShawwÉl, 1414 AH, in Bahrain.
Zuhaily, W. (1418H). TafsÊr al-MunÊr. Damascus: DÉr al-Fikr.
Zuhaily, W. (2004). Al-Fiqh al-IslÉmi wa Adillatuh. Damascus: DÉr al-Fikr.