PROCEEDINGS

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TABLE OF CONTENTS

	Page
1. Islamic Banking: A Way Out (Current Global Financial Crisis & Islamic Banking)	4
2. Watch Dogs for Cross-Border Islamic Banking: Is There a Need for an International Shari'ah Advisory Board?	16
3. Contract of al-Muzara'ah: Concept and Application in Islamic Banking	31
4. Critical Comparison on Investment of Takaful Funds in Family Takaful: A Case Study of PT. Asuransi Takaful Keluarga and Takaful Ikhlas Sdn. Bhd.	56
5. Hubungan Pulangan Saham dengan Dasar Monetari: Saham Generik dan Islam	86
6. Malaysian Islamic Banks Ethical Disclosure Level	114
7. Sale of Debt (Bay' al-Dayn) in the Malaysian Experience [Arabic]	146
8. Operational Risk in Islamic Banks: Examination of Issues	172
9. Islamic Banks: Stability and Survival during Financial Crisis	208
10. A Revisit to Several Issues in Zakat: A Case Study of Zakat Collection Centre - Majlis Agama Islam Wilayah Persekutuan (MAIWP)	228
11. A Comparative Study of Interest Rates in Kuwaiti Commercial Banks and the Returns of Kuwait Finance House [Arabic]	259
12. Factors Adopting Islamic Home Financing: A Case Study among Consumers of Islamic Banks in Malaysia	270
13. Kedudukan Sukuk sebagai Harta yang Bernilai (al-Mutaqawwim) Mengikut Perspektif Islam	290
14. Risk Management of Corporate Firms Using Insurance: A Comparison between Islamic and Conventional Insurance Demand in Malaysia	311
15. Education Financing Scheme in Islamic Banks in Malaysia: From the Perspective of Maqasid al-Shariah	335
16. Al-'Ibadah wal Kasb: A Comparative Analysis of the Superiority of Acquisition of Wealth and Worship, the Thankfulness of the Wealthy and the Patience of the Impoverished	352
17. Conditions Attached to Contracts in Light of Civil Laws and Their Application in Islamic Banks (Murabahah Sale as a Model) [Arabic]	372
18. Off-Balance Sheet: Liquidity, Leverage and Default Risk of Malaysian Islamic Banks	393
19. Pendedahan Risiko dalam Kalangan Institusi Perbankan Islam di Malaysia: Bukti Empirik	410
20. Realizing Maqasid al-Shariah in Islamic Financial Planning	434
21. The Realization of Maqasid al-Shari'ah in Family Takaful	451
22. The Importance of Training and Development in Initiating Human Capital Relevancy for the Sustenance and Development of Islamic Banking and Finance: An Overview	469
23. Analysis of the Islamic Banks' Depositors Behavior in Indonesia: A Vector Auto Regressive Approach	485

24. Combination of Sukuk, Zakat and Waqf: The Role of Islamic Finance to Alleviate Poverty and Reduction of Unemployment in Indonesia 506

25. Determining Factors in Paying Zakat on Business Income: An Exploratory Study 529

26. Mengukuhkan Pelaksanaan Sistem Lesen Tumpang Sementara Pertanian di Negara Brunei Darussalam menerusi Khidmat Kewangan Islam 542

27. SBBA Transaction: Shariah Issues and Implications 558

28. The Causes of World Financial Crisis from the Islamic Point of View 571

29. Data Management Challenges to Selected Financial Sectors in Malaysia: Tools and Practices 595

30. Measuring Religiosity among Micro-Entrepreneurs in Malaysia 610

31. Service Climate from Employee's Perspective in Malaysian Local Banks 620

32. Sukuk Structure and Underlying Risks: Lesson from Malaysia 632

33. Sustainable Development Indicators of Selected Muslim Countries 655

34. Wadi'ah: Akad Kontrak Insurans Syariah dalam Syarikat Insurans Syariah "Mubarakah" di Indonesia 664

35. The Adoption of AAOIFI Accounting Standards: Diffusion of Innovation 690

36. Budaya Berhutang dalam Masyarakat Masakini: Satu Penelitian Berdasarkan Konsep Hutang dalam Islam 704

37. Shariah Risk and Clawback Effect of al-Bai Bithaman Ajil in Default 731

38. The Performance of Governance of Nonprofit/Charitable Organizations: The Insight of Malaysian Waqf Institutions 748

39. Use of Islamic Financing Instruments: Case Study of Selected Private Healthcare Providers 757

40. A Preliminary Study of Customers' Satisfaction on Islamic Pawning Service (Ar-Rahnu): From Kelantanese's Perspectives 779

41. Waqf Accounting Development for Greater Transparency and Accountability of Waqf Institutions 792

42. Performance of Islamic Unit Trust during the Global Financial Crisis: An Analysis of Fund Specific Characteristics 804

43. The Concept of Social Responsibility Disclosures for Islamic Banks 840

44. Asymmetric Behavior of Goods and Services Inflation in Selected Muslim Countries 871

45. Banking for the Poor: The Role of Islamic Banking in Indonesia as Microfinance Institution through Koperasi 883

46. Performance of Islamic Bonds (Sukuk) and Conventional Bonds: An Empirical Investigation from Public Listed Issuers in Malaysia 901

47. Validity of al-Bai Bithaman Ajil Contract in Malaysia: An Analysis of Judicial Decisions in Malaysia 924

48. Customers' Awareness and Acceptance of Islamic Internet Banking 952

49. Waqf Models in Iskandar Malaysia: An Analysis 962

ISLAMIC BANKING…….. A WAY OUT
(Current Global Financial Crisis & Islamic Banking)

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ABSTRACT

1. Banking as a social institution has had its successes and failures in the society. It is performing very useful and essential services to the community. That's why it can be said that the progress of modern society is based on it. However, certain drawbacks in the basic concept of conventional banking have been noticed since its inception mostly by its affected nations or individuals. Global financial crisis which jolted the world, in the year 2007/2008, completely exposed the shortcomings of capitalist economy. Since, in the Secular Capitalism, Profit motive or Private ownership are given unbridled powers to make economic decisions and there are no Divine restrictions in this regard, this unlimited liberty has led to some very harmful practices which cause imbalances in the society. Interest, gambling, speculative transactions tend to concentrate wealth in the hands of few. Unhealthy human instincts are exploited to make money through immoral and injurious products / activities. Unbridled profit making creates monopolies which paralyze the market forces. Some Influential circles control the economy and even legislation in this regard, on the basis of their political strength.

2. The evils emanating from this attitude can only be curbed through Divine Guidance / imposing restrictions. In Islamic Financing and Banking concept which is based on the guidance provided by Almighty Allah in Holy Quran as well as in other Revealed Books like Bible, certain restrictions have been imposed on the economic

activities. Prohibition of Riba (Usuary or Interest), gambling, hoarding, dealing in unlawful goods or services, short sales and speculative transactions are some examples of these divine restrictions. All these prohibitions if followed in true letter and spirit, have a cumulative effect of maintaining balance, distributive justice and equality of opportunities. Islamic Financing covers all spheres of society i.e. trade, industry, agriculture, science, technology, employment, benevolent sector and the environment, with special focus on the "human factor".

3. In this paper, an effort has been made to highlight certain fundamental weaknesses in the existing banking system which contributed in establishment and spread of global financial slump. In addition, the impact of this financial crunch on developing as well as developed countries has also been touched upon. Later on, a brief account of the concept of Islamic Financing vis a vis its comparison with current system of banking has been discussed. Aim of the paper is to present peculiarities of Islamic Banking due to which it remained unaffected from the current global financial turmoil and suggest it as an alternate to the existing system.

INTRODUCTION (COLLAPSE OF CONVENTIONAL BANKING / FINANCIAL SYSTEM)

4. Mid 2008 was a turning point of the contemporary financial world which is based on so called capitalist system. It proved that even the biggest powers in the world can go down due to their own mistakes. Starting from United States of America through Europe, Africa and then Asia, the financial crisis and its waves struck hard enough to collapse these super powers' financial system within a very short span of time.

5. Around the world stock markets had fallen, large financial institutions had collapsed or been bought out, and governments in even the wealthiest nations were shaken badly. On the one hand, many people were seriously concerned that those responsible for the financial crisis were being bailed out, while on the other hand, there was a fear that a global financial meltdown would affect the livelihoods of almost everyone in an increasingly interconnected world. Governments came up with rescue packages to bail out their financial systems. A collapse of the US sub-prime mortgage market and the reversal of the housing boom in other industrialized economies had a ripple effect around the world. It was known to be the worst of crisis since the great depression of 1930.

FROM WHERE IT STARTED (ROOT CAUSES)

6. Most of the people around globe blamed the greed of Wall Street responsible for this financial crunch since most of the influential banks, institutions and ideologues that pushed for the policies that caused the problems are located in the US. United Nation's Conference on Trade and Development, in its Report for the Year 2008 summarized that the downturn after four years of relatively fast growth was due to a number of factors: the global **fallout** from the financial crisis in United States, the **bursting of the housing bubbles** in the US and in other large economies, soaring commodity prices, increasingly **restrictive monetary policies** in number of countries, and **stock market volatility**.

7. **US Housing Bubbles**. All the Americans have a dream of having a two kids family with a yard home, a car or two, multimedia room with flat screen etc. To achieve this vision, Bush administration pushed a new policy of encouraging home

ownership with “Zero down payment”. Some companies had government backed programs allowing getting mortgages with no down payment and some with no maturity payment. Most of these were without proper documentation. At the end, these turned into derivatives built on some other derivatives packed and repackaged in a manner where it could not be identified what it contained and how much is it worth of. Experts termed these derivatives as “Financial weapons of mass destruction”. This is because these are negotiated between two private parties. These are neither regulated by governments nor have any central reporting mechanism to determine their value.

8. This bubble busted after the housing prices went down due to supply overwhelming the demand. Money sub prime borrowers found that their homes were worth less than their mortgages. Defaults rose and the downward spiral started. Now investors piled on Collateralized debt obligations (**CDO**’s) which are complicated securities based on pools of mortgages. Consumers who got big mortgages with little documentations began to default. Due to rising neglect of obligations, CDOs lost their value. As a result, big names like Bear sterns, Lehman brothers went down.

9. **Paper Based Financing (Issuance of Derivatives)**. As discussed above the derivatives (conventional) were changed from forward to future contracts. In these contracts, delivery (receiving) was not necessary but the contract started moving hand to hand. In this way, the transactions had been done many times although the real assts were very little; ***It’s just similar to an inverted pyramid where the real asset lies on the bottom and the debt layers on top of it.***

10. **Gambling and Speculative Business**. As 95% of the money loaned through derivatives was used for **gambling** and **speculative** purpose, it started growing rapidly. And when the people were not in a position to repay the bank loans, the banks were also unable to face the depositors and collapsed. It's very clear that the sudden growth of the Credit Default Swap (CDS) were due to the gamblers interest which brought them multiple profits with no effort at all. The best example is Barings Bank (1762 - 1995) which was the oldest merchant bank in London until its collapse in 1995 after one of the bank's employees, Nick Leeson, lost 827 million pound ($1.4) billion) speculating primarily on future contracts

11. **Debt to Debt Financing**. Debit to debt financing was another problem in this system. Where an already existing debt was dealt with another new debt based transaction. Thus the debtor had an upper hand on the creditor while entering into the contract. Such contracts were mostly based on lot of conditions which subsequently created problems for the system.

12. **Compound Interest**. Interest factor, which is the basis of conventional banking, emerged as a root cause for this crisis. It brings multiple effects on the debtor's burden. It also makes the rich richer and the poor poorer. Following the **August 2000 G8 Summit in Okinawa, Nigerian President Obasanjo** told reporters**: "All that we had borrowed upto 1985 or 1986 was around $5 billion and we have paid about $16 billion, yet we are still being told that we owe about $28 billion. That $28 billion came about because of the injustice in the foreign creditor's rates, If you ask me what the worst thing in the world is, I will say it is compound interest."**

INGREDIENTS OF ISLAMIC FINANCING

13. Islam gave an all-embracing system of finance to the mankind, which takes care of not only the individual but also the societal interests and concerns. The constituents of the Islamic Financial System (IFS) are not only logically comprehensible but also appealing in that they are natural, compassionate and contemporary in all respects. The IFS is different from other prevalent financial systems because it is based on certain social objectives. Islam guides human life and ensures free enterprise. While the conventional banker may not be concerned with moral implications of the business, Islamic bank keeps a close eye on utilization of loaned capital..[1] Describing the IFS simply as "interest-free" does not provide a true and complete picture of the system. Certainly, prohibition of interest is the nucleus[2] of the system but it is supported by various other codes of finance. Similarly, the IFS is not limited to banking but covers capital formation, capital markets and all types of financial intermediation.[3]

14. **Principles of Islamic Financial System**[4]

a. **Prohibition of Interest (*Riba*).** Prohibition of *riba*, whether in loans or sales, is the key tenet of the system. Any positive, fixed, predetermined rate tied to the maturity and the amount of principal (i.e., guaranteed regardless of the performance of the investment) is considered *riba* and is prohibited.

b. **Risk Sharing.** Because interest is prohibited, supplier of funds becomes investor instead of creditor. The provider of financial capital and the entrepreneur share business risks and profits.

c. **Money as Potential Capital.** Money is treated as potential capital i.e. it becomes actual capital only when it joins hands with other resources to undertake a productive activity. Islam recognizes the time value of money but only when it acts as capital and not when it is potential capital.

d. **Prohibition of Speculative Behaviour.** IFS discourages hoarding and prohibits transactions featuring extreme uncertainties, gambling and risks etcetera.

e. **Sanctity of Contracts.** Islam upholds contractual obligations and the disclosure of information as a sacred duty. This feature is intended to reduce the risk of asymmetric information and moral hazard.

f. **Shariah-Approved Activities.** Only those business activities that do not violate the rules of *shariah* qualify for investment. For example, any investment in businesses dealing with alcohol, gambling and casinos etcetera is prohibited.

15. **Islamic Financial Instruments**[1]. A few quite popular instruments in Islamic financial markets are discussed in ensuing paragraphs.

a. **Trade with Mark-up or Cost-plus Sale (*Murabaha*).** This is the traditional notion of purchase finance. The investor undertakes to supply specific commodities, incorporating a mutually agreed contract

for resale to the client at a mutually negotiated margin. Around 75% of Islamic financial transactions are cost-plus sales.

b. **Leasing (*Ijara*).** Leasing is designed for financing vehicles, machinery, equipment and aircraft etcetera. Different forms of leasing are permissible, including leases where a portion of the installment payment goes toward the final purchase (with the transfer of ownership to the lessee).

c. **Profit-Sharing Agreement (*Mudaraba*).** This is identical to an investment fund in which managers handle a pool of funds. The agent-manager has relatively limited liability while having sufficient incentives to perform. The capital is invested in broadly defined activities, and the terms of profit and risk sharing are customized for each investment. The maturity structure ranges from short to medium term and is more suitable for trade activities.

d. **Equity Participation (*Musharaka*).** This is analogous to a classical joint venture. Both entrepreneur and investor contribute to the capital (assets, technical and managerial expertise and working capital etcetera) of the operation in varying degrees and agree to share risks and returns in proportions agreed to in advance.

e. **Sales Contracts.** Deferred-payment sale (*bay' mu'ajjal*) and deferred-delivery sale (*bay' salam*) contracts, in addition to spot sales, are used for conducting credit sales. In a deferred-payment sale, delivery of the product is taken on spot but delivery of the payment is delayed for an agreed period. Payment can be made in a lump sum or in installments, provided there is no extra charge for the delay. A deferred-delivery

sale is similar to a forward contract where delivery of the product is in the future in exchange for payment on the spot market.

f. **Binding for Islamic Financial Institutions**. Two thigs are very important for the Islamic financial institution. Firstly the Islamic banks are bound to follow the Islamic Shariah principles. Since shariah is the divine will of Allah (s.w.t) NO LAPSES Can be found in any situation Secondly the Shariah supervisory board/ advisors will make sure that all the bank transactions as well as fields of investment remain Islamic and according to Shariah.

COMPARISON OF BOTH THE BANKING SYSTEMS

16. Even though there is some commonness as well, yet there are clear differentiation between two banking systems and glaring values in Islamic Finance , which make Islamic banking system more fruitful to the society.

a. **CONVNETIONAL**

(1) It is based on interest.

(2) It deals in money or papers.

(3) It is based on fixed return on both sides of the balance sheet.

(4) It does not involve itself in trade and business.

(5) Conventional banking prices money

(6) Depositors get a fixed rate regardless of the bank's profitability, thus insulating them from the bank's true performance.

b. **ISLAMIC BANKING**

(1) It is based on profit or rent and loss sharing.

(2) It deals in assets.

(3) It Is based on profit sharing on deposits side, and on profit on assets side.

(4) Islamic Bank actively participates in trade and production.

(5) Islamic banking prices goods and services

(6) Profit is shared with the depositor, higher the bank's profit, higher the depositors income

CONCLUSION

17. From the current financial crisis a significant conclusion can be drawn. That is the centuries old capital based financial system collapsed while the forty year old Islamic financial industry remained steady and unaffected. The reasons for stability of Islamic Banks are following of Divine principles which never allow exploiting, or gambling. Secondly the Shahriah supervisory board / advisors ensure that all the transactions including depositors' money usage remain Islamic and according to Shariah. Major flaws in the Conventional Banking like Paper based financing including forward contracts (credit default swaps) , Paper based derivatives used in Deceiving, Speculative business and gambling, Debt transaction, Compound interest etc which became cause of crisis, are strictly forbidden in Islamic Financing.

18. Islamic banking has been defined as banking in consonance with the ethos and value system of Islam; it is governed, in addition to the conventional good governance and risk management rules,

by the principles laid down by Islamic Shariah Law. Islamic banking system is based on risk-sharing, owing and handling of physical goods, involvement in the process of trading, leasing and construction contracts using various Islamic modes of business and finance. It is an alternate to the interest-based banking, not in the traditional sense of the world. The real aims and objectives of establishing Islamic banks are put the Islamic economic system into practice through banking and financial institutions.

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WATCH DOGS FOR CROSS-BORDER ISLAMIC BANKING: IS THERE A NEED FOR AN INTERNATIONAL SHARI'AH ADVISORY BOARD?

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Abstract

Islamic banking is unique and different from its conventional counterpart. This essentially means that we cannot carry out an apple to apple comparison between the two systems. Islamic banking is a system rooted in Islamic ideology. Overseeing of the whole system, thus naturally rests in the hands of those scholars educated in Islamic Shariah. This is the reason why several of the countries have established domestic Shari'ah advisory bodies, to monitor the administration of Islamic banking and the structuring of its products.

Now, unlike the classical times, Islamic Banking has been spreading as a global phenomenon. Cross-border Islamic banking transactions are not only possible but necessary in today's world. Considerations such as this creates a need globally which calls for the establishment of an International Shari'ah Advisory Council to ensure the Islamicity of these transactions. Without an International Advisory Council, the resulting consequence may be the compromise of the inimitability of the whole Islamic Banking system.

Islamic law lays down firm principles which must be there in a banking instruement. For example, Islamic law requires certainty of the terms of the contract. Given the verity that there are no dependable and internationally accepted ready-reference or Shari'ah texts germane at domestic or global levels on fiqh muamalat or Islamic financial matters, financial institutions and counterparties who go through Shari'ah -based or Shari'ah -compliant contracts. And frequently, they face dilemmas in deciding on the Shari'ah princinples applicable to these contracts.1 And for this, the support from the Islamic law proficient is huge.

Therefore, to inhibit and resolve these disputes which start from the Islamic ideology and to ensure proper Shari'ah governance, the establishment of an International Shari'ah Advisory Council as a watch dog for cross-border Islamic banking transactions is imperative. In this paper the call for an International Shari'ah Advisory Council would be discussed and a viable mechanism to establish an effective Shari'ah governance framework would be recommended. So that the disputes in cross border transactions can be attended properly.

In this paper, the want for an International Shari'ah Advisory Board would be conferred. It is argued here that for the sake of unvarying and standardizing the rules of Islamic Banking across the globe and to resolve the disputes which occur in cross-

[1] Different mazhab or sects have different views regarding the matters, and these lead to confusion and perplex situations.

border Islamic banking transactions, the establishment of International Shari'ah Advisory Board is imperative. The complexity of swapping the "Malaysian" version of Islamic Banking with the "Middle Eastern" way of Islamic banking across the globe can only be harmonized with the intercession of an International Shari'ah Advisory Board. For this indeed there has to be a vigilant watch dog!

Introduction

Islamic banks and banking institutions that offer Islamic banking products and services (IBS banks) are required to establish a Shariah Supervisory Board (SSB) to advise them and to ensure that the operations and activities of the bank comply with Shariah principles. On the other hand, there are also those who believe that no form of banking can ever comply with the Shariah[i]. In Malaysia, the National Shariah Advisory Council, which, additionally set up at Bank Negara Malaysia (BNM), advises BNM on the Shariah aspects of the operations of these institutions and on their products and services. In Indonesia the Ulama Council serves a similar purpose.

A number of Shariah advisory firms (either standalone or subsidiaries of larger financial groups) have now emerged to offer Shariah advisory services to the institutions offering Islamic financial services. Issue of independence, impartiality and conflicts of interest have also been recently voiced. In Islam, there is no generally accepted codification of jurisprudence. Shariah law is open to interpretation and scholars frequently hold varying views on key Shariah issues. Furthermore, Islamic jurisdiction is not bound by precedent, and legal opinions may deviate from previous decisions made by other Shariah scholars. A Shariah board has considerable discretion in the interpretation of Islamic law and may choose any school of thought to inform its decision-making process.

This lack of standardization of Shariah boards' rulings is the Achilles heel in the global acceptance and growth of Islamic finance. A consistent ruling on the religious compliance of certain assets and transaction structures in terms of Shariah law has yet to emerge. In the conventional arena, this can lead to uncertainty and confusion. Broadly speaking, the three key functions of Islamic finance Shariah boards are to provide advice to Islamic financial institutions, to supervise and audit transactional procedures, and to supervise and actively participate in the creation of innovative Shariah-compliant investment and financing products and services.

The absence of a universally accepted central religious authority is largely a result of the lack of uniformity in religious principles applied in different Islamic countries across the world. Shariah boards at individual banks have their own way of defining what is and is not Islamic banking. This results in different transactions being interpreted differently and causes uncertainty about what is the acceptable way to do business in the Islamic banking and finance system. Furthermore, because of this lack of consistency, an accurate assessment of risk for both the financial institution and the customer can be difficult to make.

The differences in interpretation of Shariah laws also means that one Islamic bank may not be able to "copy" another Islamic bank's products, and this can stifle the growth and integration of Islamic finance at both national and international levels.

Lack of standardization is also a contributory factor in the sluggish trading levels on the Sukuk market. It prevents investors from knowing what risks they are assuming when they invest and increases the costs associated with Sukuk issuance.

Conformity or similarity among the Shariah supervisory boards of Islamic financial institutions is urgently required to extend the possibilities of concept and application in the industry. Establishing Shariah boards at a global and central bank level is needed to expedite and develop some standard guidelines on the conduct of Islamic financial transactions. Standardization will help avoid contradictions or inconsistencies between different Fatwa rulings and their application by these institutions. The other important factor is the mutual recognition of financial standards and products across jurisdictions. The progressive harmonization of Shariah, in this respect, needs to be viewed as a step towards greater international financial integration. Moreover, supervision and regulation at the national and regional levels are necessary safeguards against potential improper practices, which can cast doubt on the credibility of all participants. Shariah scholars from around the world should contribute towards greater understanding and international convergence. Such convergence and harmonization can only happen with greater engagement among the regulators, practitioners and scholars in Islamic finance in the international community.

Part One: Practice Around the World

Islamic banking and finance has become a force to be reckoned with in the global economic scenario. It often forms part of the equation in international finance, whether at a government-to-government or the private sector levels. Its significance has grown over the years and is now present in over 60 countries. Islamic finance markets are concentrated in the Middle East and South Asia but spreading rapidly to other developing and developed markets. The Gulf Cooperation Council (GCC) states (Saudi Arabia, Kuwait, the United Arab Emirates, Bahrain, Oman, and Qatar) account for almost 36 percent of the total market of $500 billion as measured by the Banker.4 The non-GCC Middle East and North Africa (MENA) region (35 percent of the total), is dominated by Iran, with Lebanon and Egypt acting at significantly lower levels. Asia represents 24 percent of the total and is dominated by Malaysia, Pakistan and Indonesia.

The Islamic finance market is not confined to developing countries. The United Kingdom, with $10.4 billion in Shariah-compliant Assets (SCA) is the 10th largest country in the Banker's ranking.8 The United Kingdom is actively promoting London as a major center for Islamic finance.9 France, with a large Islamic immigrant community, is also developing its Islamic finance sector. The United States has a proportionately smaller Muslim community, but due to its overall size is also a potentially large market.

In certain jurisdictions, such as Malaysia and Sudan, Shariah Supervisory Boards are at the Central Bank; in Iran they have a Committee within the Council of Guardians, which sets the rules for the Banking and Financial sector. In other jurisdictions, individual Islamic financial institutions and Islamic banking units in conventional financial institutions have appointed their own qualified Shariah Supervisory Boards or Advisors.

Despite their different regulatory structures, the UK, Malaysia and Bahrain provide examples of best practice. In 2006, for example, the UK issued standards on capital adequacy and risk management and its high courts have significantly accommodated the growth in this market. These reforms have made Islamic financial services including mortgages and bonds more competitive with their conventional equivalents. Ultimately, banks and regulators could look toward international standards to harmonize and advance their regulatory frameworks.[ii]

The growth of Shariah-compliant lending extends beyond the financial sector to influence the adaptation of new technologies and access to the financial sector by the unbanked. Banking technology companies are rapidly developing products to meet the growing demand of Shariah compatible products. Banks are working with software companies to adapt their products to provide the documentation and audit capability the banks' Shariah boards require, or to introduce Shariah-compliant products to the market. Technology companies can take advantage of opportunities in this sector if their products encourage more efficient operations, attract and engage customers toward a bank's brand, and meet the specific needs of Islamic commercial ventures.

The Malaysian Islamic financial sector is seen as one of the most progressive and attractive in the world given the numerous incentives planned and further liberation in the coming years. Malaysia is the Largest Islamic Banking and Financial Market with estimated Islamic banking assets valued at RM113.5 billion (US$30.9 billion), Takaful assets: RM6.2 billion (US$1.7 billion), with active Islamic money market channeling about RM30 billion - RM40 billion monthly and a critical mass of diversified players - Islamic banks, investment banks, takaful companies, development financial institutions, savings institution, fund management companies, stock brokers and unit trusts.

The international financial community has taken note of Malaysia's strategic direction in developing and nurturing Islamic banking and finance. With this, they have acknowledged Malaysia as the leading Islamic financial centre. The strategies are being implemented through clear and deliberate policies spelt out in both the Financial Sector Master Plan as well as the Capital Market Master Plan. Its progressive industry developments include:

- Pioneering many Global Islamic Banking and Finance initiatives
- Robust regulatory framework
- Malaysia has a comprehensive regulatory and supervisory framework that caters to the unique characteristics of Islamic finance. Stronger standards have been set for corporate governance, transparency, disclosure, accountability, market discipline, risk management and customer protection.
- Shariah Framework
- Operate in an environment that offers conducive and effective legal and Shariah framework. The Islamic Banking Act 1983 and Takaful Act 1984 were enacted to govern the conduct of Islamic banking institutions and takaful operators respectively.
- Liberal Foreign Exchange Regime

- Resources
- This includes the establishment of the:
- Institute of Islamic Banking and Finance Malaysia (IBFIM)
- International Centre for Leadership in Finance (ICLlF)
- International Centre for Education in Islamic Finance (INCEIF)
- A wide range of tax exemptions across the Islamic finance spectrum

As mentioned earlier, the growth rate of Islamic Finance in Malaysia is impressive by any standards. Malaysia, therefore, has the capacity to retain its leadership in global Islamic finance despite the emergence of competition from centers such as Hong Kong and Dubai. He said despite the stiff competition that Malaysia was facing, it was way ahead of other countries in terms of product offerings and its sophistication, having been developing the market for the last 40 years. The increased popularity and visibility of the sector was especially evident in the 1990s when Islamic finance grew rapidly as Islamic and non-Islamic financial institutions devised new instruments and both Muslims and non-Muslim clients alike began to embrace and utilize Shariah compliant features such al-Muddarabah, al-Muassasah etcetera in their daily banking transactions. Furthermore, Islamic banking expanded as western banks themselves (such as HSBC and Citibank) created a number of financial innovations consistent with Shariah in order to capitalize on the increased demand for Islamic capital investment products. The existence of such Islamic features in the Western banking sector served as a catalyst to draw financing from countries such as Saudi Arabia and Kuwait. Consequently, a number of predominantly Islamic countries such as Iran, Malaysia, Pakistan, Saudi Arabia, and Sudan Islamized their banking systems using highly innovative banking initiatives.

Malaysia has dedicated Shariah Advisory Councils for the Islamic banking and takaful sectors, as well as for the Islamic Capital Market (ICM). The Shariah Advisory Council of Bank Negara Malaysia (BNM) is responsible to advise on matters in relation to Islamic banking and takaful businesses or any other Islamic finance area that is supervised and regulated by BNM.

The Shariah Advisory Council of the Securities Commission Malaysia (SC) is responsible to advise on matters pertaining to the ICM. Consisting of prominent Shariah scholars, jurists and market practitioners, members of the two SAC are qualified individuals who can present Shariah opinions and have vast experience in banking, finance, economics, law and application of Shariah, particularly in the areas of Islamic economics and finance. In executing its duties and responsibilities, both SAC examine and endorse the validity of application of Shariah in Islamic financial products which are submitted by Islamic financial institutions. The SAC would also issue Shariah resolutions and decisions relating to their relevant jurisdictions from time to time. Both SAC have published their resolution, which have been translated into various languages and is being used as a reference point by industry and academia around the world.

The SAC, in their respective capacity as advisory bodies, can make pronouncements; respond to inquiries and proposals from the industry as well as encourage innovation through progressive guideline formulation. The progressive approach of the SAC has allowed the banking and takaful and ICM sectors to flourish by cultivating an environment for product innovation and flexibility while ensuring compliance with

Shariah principles. Growth in Islamic financial services presents significant growth opportunities for U.S. financial service companies and providers of banking technology. At the end of 2006 global Islamic financial services exceeded $530 billion and are growing faster than assets in conventional finance. The Islamic finance market extends beyond its largest markets in the Middle East and Southeast Asia. Islamic banking regulators have prudential and developmental roles. Depository insurance and interbank funding are two significant challenges facing Islamic finance regulators. International qualifications and standards could harmonize the application and development of Islamic financial services.

The coming into force of the Central Bank of Malaysia Act 2009 has granted the authority to the Central Bank of Malaysia for the establishment of the Shari'ah Advisory Council as the highest and sole authority to be referred by the civil courts in dealing with Islamic banking and finance cases in Malaysia. It is settled that the civil courts and not the Shariah courts shall have the jurisdiction to deal with Islamic banking and finance cases in Malaysia. The effect of the legislation is to ensure that any deliberation of the Shariah Advisory Council will bind the courts and should be followed by all Islamic financial institutions in Malaysia. This newly passed legislation is intended to ratify the defunct provision of section 16B of the Central Bank of Malaysia Act 1958 (Amended 2003) which
merely provides that the Shariah rulings given by the Shariah Advisory Council are binding on the arbitrator but not on the civil courts.

Worldwide Islamic Capitals are at well over $1 Trillion and Islamic-held assets are estimated to be worth more than $275 billion much of which is managed by Middle East based advisers to Shariah Compliant Public and Private Establishments.

The Arab Chamber of Commerce & Industry's (ARABCCI) Shariah Committee has endeavored to provide pre-eminent independent value-added Shariah compliance solutions to the Greater China Region Islamic legal, commercial, banking, finance and insurance sectors, thereby contributing to the on-going development of the Islamic system of financial management. Services are commonly customized and/or syndicated in concert with modus operandi, subject to prevailing constraints of market place, jurisdictional architectures, and financial infrastructures.

ARABCCI's services and certifications are accompanied by relevant compliance certificates, duly executed by the Shariah Advisory Council. These certificates, where required, may be further endorsed by a fatwa (Islamic legal opinion). As such, a core component of the Islamic system of financial management is Shariah compliance. There can be no compromise in Shariah compliance, otherwise product(s) or service(s) may be deemed unacceptable.

The relatively recent resurgence of Islamic finance has complicated measuring the size of this market. However, according to the International Financial Services London (IFSL), the global market for Islamic financial services, as measured by Shariah compliant assets, is estimated to have reached $531bn at the end of 2006. This represents over a 10 percent a year growth rate in the last decade.[2]

[2] Islamic commercial banks, investment banks, bond, and insurance account for 75, 13, 9 and 3 percent of total assets, respectively.

A dispute between the Shamil Bank of Bahrain and Beximco Pharmaceuticals of Bangladesh over a failure by the latter to make the agreed payments under a murabahah contract was settled through the English High Court in favor of the Shamil Bank, with the international law firm, Norton Rose, acting on behalf of the bank[3]. Beximco disputed the verdict and lodged an objection to the English Court of Appeal in 2004, but the latter confirmed the judgment made by the English High Court, and in the end Beximco had to make the payments it had agreed in the original contract. Although English law has become the preferred choice for cross-border Islamic financing contracts, this does not mean that the FSA will scrutinize agreements that are entered into offshore. Only banks in the U.K. that are registered onshore are subject to domestic regulation, although this does apply to all Middle Eastern banks operating branches in London even when they are offering services to overseas clients. Ultimately the FSA is concerned with maintaining the financial reputation of the City of London and ensure that scandals such as those resulting from the BCCI collapse over a decade ago are not repeated.

Composition and Context

By appointing a Shariah advisor or a committee of such advisors a bank gives assurance of compliance with Islamic law. Muslim perceptions of the bank will be determined by the reputation of these advisors, and how well respected they are in their local communities. Although there are thousands, if not millions of Shariah scholars with varying degrees of expertise, there are few with knowledge of modern finance. Regulatory authorities do not usually attempt to provide Shariah assurances, as the consensus is that it is beyond their remit and best left in the hands of individual banks. In the U.K., the FSA takes an active interest in Islamic finance, and sends delegates and speakers to many conferences on the subject, but it would not presume to give Shariah assurances.

Shariah supervision may be thought of as the single most important distinction between a conventional and a truly Islamic financial venture. For, while a business may attempt to represent itself as "Islamic," unless it has qualified Shariah supervision, it has no way of certifying that its services, products, and operations are actually Shariah-compliant. In the emerging Islamic financial sector, therefore, Shariah supervision is not a matter to be taken lightly. Public confidence, in any sector, is always an important consideration; and in the financial sector its importance is paramount. Shari`ah supervision signifies a real commitment on the part of management to the principles of transparency and accountability in the matter of Shari`ah compliance. The ideal International Shariah Advisor must have

- an experience of at least 5 years giving religious rulings.
- He should have knowledge of or at-least be familiar with the banking industry. Minimum qualification is Dars-e-Nizami. Higher education like M.A. Islamiat, economics or in the discipline of banking and finance may be an added qualification. Relaxation in number of years of experience may be considered in case of experience as teacher of

[3] Norton Rose, 2005, *"Islamic finance: dispute resolution,"* Islamic Finance News, Kuala Lumpur, 4th April

Islamic Fiqh in a reputable institution other than banking institutions, for a period of not less than three years with a proven track record.

- The Shariah Advisor must have an impeccable track record in the companies he/she has served either in the capacity of an employee or director/chief executive or as chairman. Has not been terminated or dismissed in the capacity of employee, director/chairman of a company.
- Has not been associated with any illegal activity especially relating to banking business. Has not been in default of payment of dues owed to any financial institution and/or default in payment of any taxes individual capacity or as proprietary concern or any partnership firm or in any private unlisted and listed company.
- Has sufficient means to discharge his/her financial obligations.
- Has not been convicted in any criminal offence, involved in any fraud/forgery, financial crime etc.
- Has not been subject to any adverse findings or any settlement in civil/criminal proceedings particularly with regard to investments, financial misconduct, fraud, formation or management of a corporate body etc.

The most obvious and immediate purpose of Shari`ah supervision is to certify for practicing Muslim consumers and clients that the financial product or service being offered to them is acceptable from an Islamic legal perspective and is therefore lawful to them. Such certification, generally documented in a formal fatwa (Shariah position paper), may be thought of as a form of due diligence. In effect, the Shari`ah supervisor, or supervisory board, performs this due diligence on behalf of consumers who are without access to the details of what is offered to them and, likewise, without the experience or qualifications to evaluate those details in light of Shariah teachings. By assuming responsibility for the Shariah compliance of an Islamic financial institution, including its policies and practices, Shari`ah supervision places itself in a position of directly representing the religious interests of the Muslim investor or consumer; and by making every possible effort to ensure that an Islamic financial product is halal, the services performed by Shariah supervisors are directed toward the investor, or the consumer.

Towards an International Watchdog

Shariah compliance requires IFIs to meet lending and investment standards not required by conventional banks. It is this convergence of Islamic principals and finance that attracts Muslims to IFIs. There are private and public models to ensure that financial services labeled 'Islamic' or 'Shariah-compliant' comply with these principals. In some countries, private banks maintain their own Shariah advisers to ensure Shariah compatibility. In others, consultative boards at the supervisory level increase the predictability and conformity of Shariah board decisions[4]. A regulator's adaptation will depend on the relationship between civil and religious law in the country. Countries that maintain a greater separation between civil and religious law might find it more difficult to assign a government role to adjudicate what are

[4] Juan Solé, *"Introducing Islamic Banks into Conventional Banking Systems"* IMF Working Paper WP/07/175 (July 2007).

essentially religious questions. According to some scholars, countries with less separation might more easily enter into or consolidate the supervisorial role of Shariah compliance. Consumers in both types of countries would still have recourse when IFIs fail to comply with promised services.[iii]

A fully Islamic banking system only permits Shariah-compliant financial services. Governments in countries with large Muslim populations, such as Iran and Sudan may find it expedient to abolish interest-based financial services. In other Muslim countries Shariah compliant institutions have existed in a variety of forms. In Malaysia and Bahrain this mix has created a highly competitive banking sector that offers a larger variety of more complex and cost-efficient products.

Standards provide essential guidelines and a frame of reference for performance. Often, they become mandatory after adoption into a country's legal system. In 1990 the Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI) was created. Its main goals included the design and dissemination of accounting and auditing standards for Islamic institutions. These standards are based on the best practices of Shariah supervisory panels and boards. The AAOIFI plays a critical rule in harmonizing the frequently different standards applied at the national and local levels. Universal acceptance of new products is important to convince many Muslim and non-Muslims to participate in the Shariah-compliant market. In 2002, central banks from several Islamic countries created the Islamic Financial Services Board (IFSB) in Kuala Lumpur. The IFSB is the AAOIFI equivalent for the development of capital adequacy, risk management, corporate governance, transparency, disclosure, and supervision standards. The inclusion of many financial regulatory institutions within the AAOIFI and the IFSB promote transparency, soundness, and stability standards for IFIS. These standards, however, have yet to fill the transparency gap between Shariah and conventional banks. There are still gaps in the reporting of Shariah activities on balance and income statements.

Political factors ultimately determine the regulatory environment In some countries, notably in North Africa, Islamic banks are perceived, rightly or wrongly, to be linked to Islamic political parties, and are therefore refused banking licenses, as in Libya or Morocco. Elsewhere, such as Egypt, Algeria, and Tunisia, governments are extremely cautious, and although Islamic banks are tolerated on the fringes, there has been little official help or encouragement. In contrast, in Bahrain and Malaysia there has been much official support and encouragement which has been reflected in a positive regulatory approach, while in Iran and the Sudan, laws have been passed to ensure that all domestic retail and commercial banking is undertaken on an interest free basis[iv].

The position in countries with non-Muslim majorities is generally less favorable, although the regulators in some western countries, notably the Financial Services Authority (FSA) in the U.K., have played a helpful role. In the United States, despite the negative fallout for the Muslim community from the events of September 2001, regulators have also been generally helpful, as there is the desire to not be perceived as discriminating against any group on religious grounds In more monocultural and secularist societies, such as France, however, there is skepticism and even hostility towards Islamic banking, and it is unlikely that any licenses would be granted to permit Islamic banks to operate[v]. Similarly in developing countries, such as Nigeria or

India, with histories of conflict between Muslims and other religious groups, no Islamic banks are allowed.

One important factor to consider in appointment of International Counselors is the degree of their qualifications. The pillar here is human capital and thought leadership. Several important human capital development projects have been implemented to foster Islamic finance thought leadership and to create a supply of talent for the Islamic finance industry. Having a sufficient pool of the talent and expertise has been key to the development of the Islamic financial hub in Malaysia. The International Centre for Education in Islamic Finance (INCEIF) which has an international faculty and students from more than 40 countries is focused on programmes for Islamic finance professionals and specialists to meet the human capital requirements of the global Islamic financial services industry.

Human capital development is crucial, as the current lack of qualified young Islamic scholars looks set to hamper the development of the sector should it not be addressed. In part, this low investment in the industry stems from the fact that the sector lacks a global industry body to oversee standardization of continuous education and training. The lack of human capital in the sector affects all regions, including nascent markets such as the U.K. Training of Islamic bankers has not kept pace with the rapid growth of the sector and, as a result, there are shortages throughout the industry. The two centers for training have been KFH and Bank Islam Malaysia, which between them have been responsible for training many Islamic bankers. In 2006, for example, Bank Negara set up an RM500m endowment fund to support The International Centre for Education in Islamic Finance (INCEIF), with the main objectives of making Malaysia the leading center for Islamic finance education and developing human capital for the global Islamic finance industry. Similarly in 2006, The Central Bank of Bahrain set up a US$4.6m Islamic Finance Education scheme in cooperation with eight IFIs based in Bahrain.

Conclusion

The existence of a unified Shariah board *via* a council representing different Islamic schools of thought, nationally and internationally, would facilitate the conformity of different types of financial services to Islamic law. This would also define cohesive rules to expedite the process of introducing new products. The early engagement of a Shariah supervisory board in the creation of a new Sukuk is of utmost importance so as to build a solid Islamic foundation. It also paves the way for speedier creation of the Sukuk. It is crucial that the Shariah board actively participates in the creation of Sukuk, in addition to its supervisory role. In order to promote a global standard for Islamic finance instruments, there are a couple of key steps that must be taken.

The Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI) has taken the lead by preparing Shariah standards. These have been adopted by a number of government authorities and central banks, which provides an avenue for Shariah compliance as well as product innovation. Collective efforts towards international collaboration among major Islamic financial regulatory bodies such as the Islamic Financial Services Board (IFSB), AAOIFI and the central banks in Islamic countries is important in strengthening the fabric of Islamic finance.

Islamic finance instruments, particularly Sukuk, are becoming an increasingly important consideration – for both Muslims and non-Muslims – from the perspective of investment and product innovation. Shariah boards need to keep up with the growth and sophistication of the industry and make sure they are as effective as possible. Some recommendations:

- More training in economics, investments and legal issues related to investments and product innovation. The lack of knowledge about modern economic and legal issues can weigh down the ability of Shariah scholars to issue well-informed rulings on financial products and investment activities.
- Placing specialized Shariah scholars on separate Shariah boards for different projects to work more efficiently on projects best suited to their particular areas of expertise. This process will ensure that the right scholars in the right numbers develop, certify and supervise the financial products and services endorsed by Islamic financial institutions.
- Shariah boards should be independent from financial institutions in order to ensure transparency and efficiency when giving opinions on proposed contracts and transactions.
- Shariah advisors should work closely with financial institutions and lawyers in developing new Islamic financial instruments.
- There is a nagging concern about the availability of suitably qualified Shariah advisors. Their numbers need to be increased. This will allow more Shariah-compliant transactional procedures and more time for advisors to spend with economists and investment practitioners to develop new Islamic financial products.
- Financial institutions need to develop operating procedures to ensure that no form of investment or business activity is undertaken that has not been approved in advance by the religious board.
- From the outset of structuring a Sukuk, Shariah advisors should scrutinize to ensure that the product concept and its process flow is fully implemented according to Shariah. Shariah advisors and lawyers should work hand in hand to thoroughly review the terms and conditions of the Sukuk contract.

Flexibility is a major strength of Islamic finance, and this implies that a broad variety of products can be tailored to each client's needs. The differences in rulings by different Shariah boards is advantageous in a way, as it brings about more innovation and creates new room for Sukuk structures and Islamic finance instruments. In the process of providing remedies, the principles of Shariah are not to be compromised, as they are essential to a dynamic market.

Regulatory authorities worldwide can seek advice about Shariah issues related to banking from the Islamic Financial Services Board (IFSB), which is based in Kuala Lumpur, the closest thing the world has to an internationally recognized Shariah Advisory Council for Islamic Finance. This is the official organization where the Central Banks of many Muslim countries are represented, and is recognized by the Bank for International Settlements and the International Monetary Fund. The U.K.'s

FSA cooperates with this new Board. Although at present there is much diversity in Islamic finance, some of which is healthy, bodies such as the IFSB and the Bahrain-based Auditing and Accounting Organization for Islamic Financial Services (AAOIFI) are bringing some degree of standardization to the Islamic banking industry, thus making the regulators' task easier.

Notes:

[1] Subhi Y. Labib (1969), *"Capitalism in Medieval Islam"*, The Journal of Economic History 29 (1), pp. 79–96]

[1] Mufti Barkatulla. *"Islamic Report - Sharia Raises Its Profile - Islamic Sharia Law Is Emerging As An Alternative*
Means Of Dispute Resolution For Business And Commerce In The Secular World" The Banker (Apr. 2008).

[1] Islamic commercial banks, investment banks, bond, and insurance account for 75, 13, 9 and 3 percent of total assets, respectively.

[1] Norton Rose, 2005, *"Islamic finance: dispute resolution,"* Islamic Finance News, Kuala Lumpur, 4th April

[1] Juan Solé, *"Introducing Islamic Banks into Conventional Banking Systems"* IMF Working Paper WP/07/175 (July 2007).

[1] Dahlia El-Hawary, Wafik Grais, and Zamir Iqbal. *"Diversity in the Regulation of Islamic Financial Institu tions."* The Quarterly Review of Economics and Finance 46, (2007): 778-800.

[1] Clement H., and R. Wilson, 2004, *"The politics of Islamic Finance,"* (eds.) Edinburgh University Press and Columbia University Press, New York, pp. vi+307 (reprinted by Oxford University Press, Karachi, 2005), pp. 286-295

[1] Rutledge, W., 2005, "Regulation and supervision of Islamic banking in the United States", Speech to the Arab Bankers Association of North America, New York, 19th April

Contract of *al-Muzara'ah*: Concept and Application in Islamic Banking.

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Abstract

The Islamic law (fiqh) concerns all aspects of religious, social and economics life. Besides religious observances (Ibadat), this legal law seeks to regulate the institutions of family, marriage, inheritance, property relations, economic contracts and obligations as well as land tenure system. The problem of land tenure system and land development has been discussed copiously in the early fiqh literary sources. This article tries to analyze one of the contracts of agriculture in Islamic Commercial law namely al-Muzara'ah as well as the application of this contract for the financing arrangement in Islamic banks. The methodology for this research is through document analysis and interviews with relevant officers of Islamic banks as well as observance of various financing products in agriculture offered by Islamic banks in Malaysia.

Keywords: *Al-Muzara'ah, Bay' Bithaman Ajil, Bay' al-Innah*, Islamic Banks.

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Introduction.

The land tenure system and land development method in Islam are considered as one of the many ways to increase food supply and food production for the benefit of Muslim society at large. Yet, the accurate implementation of this method and contract will ensure positive effects to the social aspect in the peasant-landlord relationship as well as in the economic side by increasing *halal* source of earning to the Muslim community through the land development and agriculture attempts. Islam has mandated methods for the working of land in order to ensure that land is fully used rather than remains idle or uncultivated. As such, there are number of questions need to be solved such as what is the precise method or contract that should be used by Muslim in order to develop their land and what are the opportunities given to them by the Islamic banks in order for them to pursue their agro projects? All these questions will be analyzed and answered in this article based on views given by Muslim jurists and *fiqh* scholars from the perspective of Islamic Commercial law as well as data and information given by officers of selected Islamic Banks in Malaysia.

1. Contracts of *al-Muzara'ah.*

1.1 Definition.

Al-Muzara'ah (partnership in agriculture) literally means planting of something, from the root word of "*zara'a*"[1]. From the *fiqh* terminology, *al-Muzara'ah*

[1] Ibn Manzur. 2003. *Lisan al-'Arab*. Riyad: Dar Alim al-Kutub, Vol.5, p.3.

refers to an agricultural compact between land possessor and cultivator[2]. This contract also means cede of land and seed to the cultivator while produce of the orchard is divided for both parties in the contract (landlord and cultivator)[3].

Yet, *'ulama* from Maliki school of Islamic law define *al-Muzara'ah* as contract of sharing in agriculture[4]. Imam al-Shafi'i defines this contract as a compact between landlord others in planting and taking care of crop, whereby the landlord provides the seeds and the fruit produce will be divided between them at agreed ratio[5]. Moreover, jurists from Hanbali school refer *al-Muzara'ah* as a contract of submitting land to the cultivator and both parties are involved in the plantation project[6].

According to *Majallah al-Ahkam al-'Adliyyah*, contract of *al-Muzara'ah* refers to a kind of partnership, where the land comes from one, and the work from the other, *i.e.* a partnership to cultivate, and divide the crops[7].

Some of the *fuqaha* have named *al-Muzara'ah* as *al-Mukhabarah* (loosening soil) or *al-Muhaqalah*. Resident of Iraq has named it as *al-Qard*[8]. In addition, *'ulama*

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[2] Al-Kasani. 1974. *Bada´i' al-Sana´i'*. Beirut: Dar al-Kitab al-'Arabi, Vol.6, p.175; Ibn Abidin. 1979. *Hashiyah Radd al-Muhtar*. Beirut: Dar al-Fikr, Vol.5, p.193; 'Abd al-Rahman al-Jaziri. n.d. *Kitab al-Fiqh 'ala al-Madhahib al-Arba'ah*. Riyad: Dar al-Irshad, Vol.3, p.2.

[3] Ibn Qudamah. 1972. *al-Mughni*. Beirut: Dar al-Kitab al-'Arabi, Vol.5, p.581; Abu al-Naja al-Hajjawi. 1999. *al-Iqna' litalib al-Intifa'*. Riyad: Dar Alim al-Kutub, p.475; Charles Hamilton. 1982. *The Hedaya*. Lahore: Premier Book House, p.579.

[4] Ibn Juzayy. 1976. *al-Qawanin al-Fiqhiyyah*. Beirut: Dar al-Qalam, p.280; 'Abd al-Rahman al-Jaziri. *op.cit*, Vol.3, p.3.

[5] Mustafa al-Khinn *et.al. 1992. al-Fiqh al-Manhaji 'ala Madhhab al-Imam al-Shafi'i*, Damshiq: Dar al-Qalam, Vol.3, p.33; 'Abd al-Rahman al-Jaziri. *op.cit*., Vol.3, p.4; Imran Umrani. 2002. *al-Bayan fi Fiqh al-Imam al-Shafi'i*. Beirut: Dar al-Kutub al-'Ilmiyyah, Vol.7, p.241.

[6] Ibn Qudamah. *op.cit*., Vol.5, p.382; al-Buhuti. 2003. *Kashaf al-Qina'*. Riyad: Dar Alim al-Kutub, Vol.3, p.523; 'Abd al-Rahman al-Jaziri. *op.cit*., Vol.3, p.3.

[7] *The Mejelle. 2001*. C.R.Tyser, B.A.L., trans., Kuala Lumpur: The Other Press, Article: 1431, p.237.

[8] Ibn Abidin. *op.cit*., Vol.6, p.274; Ibn Qudamah. *op.cit*., Vol.5, p.583; Wahbah al-Zuhaili. 2004. *al-Fiqh al-Islami wa Adilatuh*. Damshiq: Dar al-Fikr, Vol.6, p.4684. According to the *fuqaha*, *al-Mukhabarah* or *Khybr* and *al-Muhaqalah* or *Haql* were the pre-Islamic forms of customary tenure, which generally constituted a system of precarious landholdings. The *fuqaha* differ as to the actual

from Shafi'i school have differentiated between the term of *al-Muzara'ah* and *al-Mukhabarah*. The word *al-Muzara'ah* means sharing project between landlord and cultivator whilst seeds are provided by the landlord. Comparatively, *al-Mukhabarah* means sharing of agriculture project while seeds are provided by the cultivator[9].

1.2 The Legality of *al-Muzara'ah* Contract.

Most of the *'ulama* permit the contract of *al-Muzara'ah*[10]. Nonetheless, Abu Hanifah of the opinion that this type of contract is invalid. In other words, the contract of *al-Muzara'ah* with distribution ratio of 30 to 70 or 25 to 75 is unlawful[11]. This view is justified by a *hadith* narrated by Jabir Bin 'Abd Allah. Prophet Muhammad (*s.a.w.*) said[12]:

> *"Prophet Muhammad (s.a.w.) had forbidden al-Muhaqalah, al-Muzabanah and al-Mukhabarah".*

meaning of these terms and the nature of tenancy forms involved. The term *al-Muhaqalah* is used in two different senses. It denotes a deal involving lease of land against corn or buying of a crop still in growth when grain is in the ear, in exchange of corn. See Ziaul Haque. 1977. *Landlord and Peasant in Early Islam*. Pakistan: Islamic Research Institute, pp.14-15.

[9] Mustafa al-Khinn *et.al. op.cit*., Vol.3, p.33; al-Sharbini al-Khatib. 1958. *Mughni al-Muhtaj*. Qahirah: Matba'ah Mustafa al-Babi al-Halabi. Vol.2, p.323; al-Shawkani. 2003. *Nayl al-Awtar*. Riyad: Dar Alim al-Kutub, Vol.3, p.9. Besides, the forbidden type of *al-Mukhabarah* is that the contract stipulates the landlord to cultivate together with the cultivator. See Ibn Taymiyyah. n.d. *Majmu' al-Fatawa*. Maghribi: Maktabah al-Ma'arif, Vol.30, p.116.

[10] Ibn Qudamah. *op.cit*., Vol.5, p.581; 'Abd al-Rahman al-Jaziri, *op.cit*., Vol.3, p.2; Abu Yusuf. *op.cit*., p.96; al-Shawkani. *op.cit*., Vol.3, p.9. The legality of the contract of *al-Muzara'ah* was approved by Umar (*r.a.*), Ali (*r.a.*), Ibn Abas, Ibn Mas'ud and Sa'ad Bin Malik. See Hasan Ayub. 2006. *Fiqh al-Mu'amalat al-Maliyyah fi al-Islam*. Qahirah: Dar al-Salam, p.262.

[11] See for instance 'Abd al-Rahman al-Jaziri. *op.cit*., Vol.3, p.2; Charles Hamilton. *op.cit*., p.579; Hasan Ayub. *op.cit*., p.262.

[12] *Sahih al-Bukhari*. 1999. "Kitab al-Musaqat", Hadith No: 2381, p.383; *Sahih Muslim*. 1999. "Kitab al-Buyu'", Hadith No: 3908, p.681.

The term *al-Mukhabarah* here, which in the dialect of Madinah has the same significant as *al-Muzara'ah*[13]. Nevertheless, Imam Shafi'i has permitted this contract as an outcome of management effort and this type of contract is truly needed. Therefore, the sharing of crop along with management effort and relevant jobs is regarded as valid[14].

The strongest view in this school has stipulated that the contract of *al-Muzara'ah* should not be separated between two contracts (contract of cultivation and contract of management) and, the management effort must always leads the cultivation effort. Besides, jurists from Shafi'i school do not permit *al-Muzara'ah* contract when the seeds are provided by the cultivator since there was no *shari'ah* proof on it[15]. According to Hanbali school, the contract of *al-Muzara'ah* is valid when the seeds are provided by the owner or the cultivator. But, if the seeds are provided by the cultivator, the legality of this contract is much more validated[16].

Yet, Abu Hanifah and Shafi'i have forbidden the contract of *al-Muzara'ah* when seeds are provided by the cultivator based on a *hadith* of Prophet Muhammad (*s.a.w.*) narrated by Jabir Bin 'Abd Allah[17]. He (*s.a.w.*) said to the effect[18]:

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[13] Ibn Abidin. *op.cit*., Vol.6, p.274; Ibn Qudamah. *op.cit*., Vol.5, p.583; Wahbah al-Zuhaili. *op.cit*., Vol.6, p.4684; Charles Hamilton. *op.cit*., p.579.

[14] Imam al-Shafi'i. 1961. *al-Umm*. Qahirah: Maktabah al-Kuliyyat al-Azhariyyat, Vol.4, pp.12-13; Mustafa al-Khinn *et.al., op.cit*., Vol.3, p.33.

[15] Al-Sharbini al-Khatib. *op.cit*., Vol.2, p.324; al-Shirazi. *op.cit*., Vol.1, p.349; Hasan Ayub. *op.cit*., p.263. Al-Shafi'i of the view that when the seeds are provided by the landlord, the contract is called *al-Muzara'ah*. Conversely, when the seeds are provided by the cultivator, the contract is called *al-Mukhabarah*. See 'Abd al-Rahman al-Jaziri. *op.cit*., Vol.3, p.4.

[16] Ibn Taymiyyah. *op.cit*., Vol.30, pp.103-104.

[17] Al-Kasani. *op.cit*., Vol.6, p.175; Imam al-Shafi'i. *op.cit*., Vol.4, p.13; Imran 'Umrani. *op.cit*., Vol.7, p.242. They forbid this kind of contract because the existence of element of uncertainty (*gharar*) and ignorance (*al-Jahalah*). See al-Shawkani. *op.cit*., Vol.3, p.11.

[18] *Sahih al-Bukhari. op.cit*., "Kitab al-Harth wa al-Muzara'ah", Hadith No: 2344, p.376; *Sahih Muslim. op.cit*., "Kitab al-Buyu'", Hadith No: 3915, p.672.

"Prophet Muhammad (s.a.w.) has forbidden rental for sharecropping".

Now that the remuneration for the sharing does not exist when the contract is agreed or the rate of produce is unknown then, it may produce nothing. In short, every matter that is unclear and unknown automatically will revoke the contract of *al-Muzara'ah*[19].

Concerning of dealing (*Mu'amalah*) between Prophet Muhammad (*s.a.w.*) and the resident of Khaybar, the compact is regarded as *Kharaj al-Muqasamah*[20] such as one third or one forth of the land produce is divided between both parties based on the friendship agreement, whereby this kind of contract is permissible[21].

1.3 The Essence of *al-Muzara'ah* Contract.

According to jurists from Hanafi school of Islamic law, the essence for the contract of *al-Muzara'ah* is proposal (*Ijab*) and acceptance (*Qabul*)[22]. Landlord offers to the cultivator by saying "I submit this land to you for sharing project". The cultivator replies by saying "I accept your proposal" or "I like with your offer" or any other words that show an acceptance for the compact. When these two essences exist, the contract is effective[23].

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[19] 'Abd al-Rahman al-Jaziri. *op.cit*., Vol.3, p.4; Charles Hamilton. *op.cit*., p.579.
[20] *Al-Kharaj* can be divided by two kinds. Firstly, working distribution tax (*Kharaj al-Wazifah*) namely the tax distribution is based on the broadness of land. Secondly, produce distribution tax (*Kharaj al-Muqasamah*) whereby the tax distribution is based upon crops produce like 50 to 50. See for instance, al-Mawardi. 1973. *al-Ahkam al-Sultaniyyah wa al-Wilayah al-Diniyyah*. Misr: Mustafa al-Babi al-Halabi, pp.161-171.
[21] Wahbah al-Zuhaili. *op.cit*., Vol.6, p.4683. See also Ibn Hajar al-'Asqalani. 1956. *Fath al-Bari.* Riyad: Maktabah al-Riyad al-Hadithah, Vol.5, p.14.
[22] *The Mejelle. op.cit*., Article: 1432, p.237.
[23] Al-Kasani. *op.cit*., Vol.6, p.176; 'Abd al-Rahman al-Jaziri. *op.cit*., Vol.3, p.5.

Similarly, if the owner of the land, says to the worker, *i.e*., to the cultivator, "I have given you this land by way of *al-Muzara'ah* on the terms that you take such a share of the crops," and the cultivator says "I have accepted" or "I have taken the land" or if he says something evidencing his assent, or the cultivator says to the owner of land "I will work by way of *al-Muzara'ah* in your land", and he assents, the contract of *al-Muzara'ah* is a concluded contract[24].

According to this school, contract of *al-Muzara'ah* is a form of contract that begins with hiring contract and ends with partnership. In the case when the seeds are provided by the cultivator hence, the benefit will be returned to the land and the landlord will pay for the *Kharaj*. Conversely, if seeds are provided by the landlord, the benefit will be returned to the cultivator and he will pay for the *Kharaj*[25].

Yet, *'ulama* from Hanbali school view that the contract of *al-Muzara'ah* does not requires any acceptance in the form of word expression but it is enough by the starting of relevant work by the cultivator as in the case of representative (*al-Wakalah*) contract and, it is valid with the word expression of hiring contract. Besides, this school also pointed out that the contract of *al-Muzara'ah* is not a binding contract as similar to other type of partnership contract[26].

In addition, scholars from Maliki school of *fiqh* view that the contract of *al-Muzara'ah* is a binding contract in terms of seeds availability and other matters that related to the cultivation efforts such as seeding and planting tree for crops which are

[24] *The Mejelle. op.cit*., Article: 1432, p.237.
[25] Al-Kasani. *op.cit*., Vol.6, p.176; 'Abd al-Rahman al-Jaziri. *op.cit.*, Vol.3, p.5.
[26] Al-Buhuti. *op.cit*., Vol.3, p.528; 'Abd al-Rahman al-Jaziri. *op.cit*., Vol.3, p.15; Ibn Taymiyyah. *op.cit*., Vol.30, p.111.

not using seeds for growing like onion. The strongest view among the *'ulama* of Maliki pointed out that all kinds of partnership contracts with respect of property are bound with the contents of the contract[27].

1.4 Conditions for *al-Muzara'ah* Contract.

Abu Yusuf and Muhammad from Hanafi school of Islamic jurisprudence stipulate condition for *al-Muzara'ah* contract as follows:

i) Condition for Parties in the Contract.

There are two general conditions for both parties in the contract. Firstly, person who signs the contract should have sound mind. Hence, contract made by insane or child are regarded as nullify because the state of sound mind is a stipulation for managing property. Nevertheless, the age of puberty is not a condition for this kind of contract therefore, a child who gets permission from his parent or guardian is allowed to participate in this type of contract[28].

Secondly, the person who signs the contract is not an apostate (*Murtad*). However, this view is solely given by Abu Hanifah whereby most of the jurists from Hanafi school permit the participation of apostate in the contract of *al-Muzara'ah*[29].

[27] Al-Dardir. *op.cit.*, Vol.3, p.492. Besides, some of the Maliki's jurists opine that the contract of *al-Muzara'ah* is not a binding contract by the word of expression. See 'Abd al-Rahman al-Jaziri. *op.cit*., Vol.3, p.11.
[28] Al-Kasani. *op.cit*., Vol.6, p.176; Ibn Abidin. *op.cit*., Vol.6, p.282; 'Abd al-Rahman al-Jaziri. *op.cit*., Vol.3, p.5; Charles Hamilton. *op.cit*., p.579; *The Mejelle. op.cit*., Article: 1433, p.237.
[29] Al-Kasani. *op.cit*., Vol.6, p.177; Ibn al-Hummam. *op.cit*., Vol.8, pp.34-35.

ii) Condition for Crop.

The type of crop is well known by both parties since different kind of crop needs different way of treatment and cultivation style. It should specify by whom the seed is to be supplied in the contract in order that the ground of the compact may be known. In other words, in order that it may be known whether it is founded on the use of the labor, or on the use of land, and that no source of dispute may remain[30].

Nevertheless, based on juristic preference (*al-Istihsan*), the determination of crop is not a condition because it is based upon the skills of the cultivator. Thus, the most important condition for the type of crop is that the crop is able to be cultivated[31].

iii) Condition for Crop Produce.

Firstly, type of crop produce should be clarified in the contract since the incoherent of the type of crop will nullify the *al-Muzara'ah* contract. Secondly, the crop produce should be shared between both parties in this contract. If one party only gets the entire crop produce so, the contract will be invalidated. Thirdly, the rate of crop distribution should be cleared such as 50 to 50 or 60 to 40 or 75 to 25 because in the absence of this ratio will cause an argument by both parties in the contract later on[32].

[30] Charles Hamilton. *op.cit.*, p.579; Ibn al-Hummam. *op.cit.*, Vol.8, pp.34-35.
[31] Ibn Abidin. *op.cit*., Vol.6, p.280; al-Kasani. *op.cit*., Vol.6, p.177; Charles Hamilton. *op.cit*., p.579; *The Mejelle*. *op.cit*., Article: 1434, p.237; Ibn al-Hummam. *op.cit*., Vol.8, p.35.
[32] 'Abd al-Rahman al-Jaziri. *op.cit*., Vol.3, pp.5-6; al-Kasani. *op.cit*., Vol.6, p.178; Charles Hamilton. *op.cit*., p.579; *The Mejelle*. *op.cit*., Article: 1435, p.237.

Fourthly, the calculation for the crop produce should be included for the entire project. In the case when one party stipulates extra conditions in the contract such as calculating the produce in terms of seeds with specific measurement, this contract will also be nullified because there is a tendency that the seeds will not producing as planed and hoped[33].

Similarly, the contract is invalid when the crop produce is given on rotation basis because there is likelihood that different rotation will give different crop produce then, the crop distribution will not be equal whereby there is a possibility that one party will receive his portion much lower than the other one[34].

iv) Condition for Land.

Conditions for the land uses in the contract of *al-Muzara'ah* are:

a) The land should be suitable for the plantation purpose, whereby the cultivation on salty and swampy land are not permitted because in this contract, the crop produce becomes the remuneration for one party in the contract and the remuneration cannot be given to him if the tree not producing anything[35].

[33] Ibn Abidin, *op.cit*., Vol.6, pp.280-283; al-Kasani. *op.cit*., Vol.6, p.178; Ibn al-Hummam. *op.cit*., Vol.8, pp.34-35.
[34] *Ibid*.
[35] 'Abd al-Rahman al-Jaziri. *op.cit*., Vol.3, p.6; Ibn Abidin. *op.cit*., Vol.6, pp.279-280; al-Kasani. *op.cit*., Vol.6, p.178; Ibn al-Hummam. *op.cit*., Vol.8, pp.34-35.

b) The land should be well known. In the case when the land is not known in terms of its location, broadness and condition, the contract is regarded as invalid because it may cause of misunderstanding[36].

c) The land should be fully submitted to the cultivator for the plantation purpose. If the landlord stipulates a sort of interference in the agriculture jobs, the contract becomes invalid[37].

v) Condition in the Content of the Contract.

It is stipulated that the content of the contract is based on the normal practices by the society. In other words, the content of the contract must clarify who is going to provide the seed this kind of contract is almost akin to hiring land contract. If both parties are shared in providing seed or in cultivating, the contract is invalid since this contract is no longer *al-Muzara'ah* contract[38].

vi) Condition for Agriculture Tools.

[36] *Ibid.*
[37] *Ibid., Cf.* Charles Hamilton. *op.cit.*, pp.579-580.
[38] 'Abd al-Rahman al-Jaziri. *op.cit*., Vol.3, pp.5-9; al-Kasani. *op.cit*., Vol.6, pp.178-179; Ibn al-Hummam. *op.cit.*, Vol.8, pp.34-35.

The agriculture tools should be stated clearly in the contract either by using animal or machine and these tools couldn't be the main purpose of the contract. If so, the contract will nullify[39].

vii) Condition for Agriculture Period.

The period of the contract should be obvious. The period should be understood and agreed by both parties in the contract. Yet, the period must be reasonable for the cultivator to carry out his duty. Nonetheless, the strongest opinion in Hanafi school permits in making contract without specifying the period and it is considered effective starting from the first time the job is done[40].

Meanwhile, according to jurists from Maliki school of *fiqh*, the conditions for *al-Muzara'ah* contract are as below:

i) The partnership in this contract does not involve with the renting of land contract in order to avoid any payment for seed exchange. Landlord and cultivator have to provide the seed together. If the seed is provided by only one party in this contract and another party provides land, the contract is nullified[41].

ii) Distribution of crop produce should be equal in terms of cost and produce. In other words, the rate of rental is similar to the jobs done by the cultivator and crop

[39] 'Abd al-Rahman al-Jaziri. *op.cit*., Vol.3, p.7; al-Kasani. *op.cit*., Vol.6, p.180; Ibn Abidin. *op.cit*., Vol.6, p.278; Ibn al-Hummam. *op.cit*., Vol.8, pp.34-35.
[40] Ibn Abidin. *op.cit*., Vol.6, p.282; 'Abd al-Rahman al-Jaziri. *op.cit*., Vol.3, p.7; al-Kasani. *op.cit*., Vol.6, p.180.
[41] Al-Dardir. *op.cit*., Vol.3, p.372; Ibn Juzayy. *op.cit*., p.280; 'Abd al-Rahman al-Jaziri. *op.cit*., Vol.3, p.11; Malik Bin Anas. 1991. *al-Muwatta*. Aisha Abdurrahman Bewley. trans. Scotland: Madinah Press Inverness, p.288.

produce is divided equally namely 50 to 50. Nevertheless, any party is permitted to donate a portion of his profit to other party after the partnership is over[42].

iii) Both parties are required to provide seed in the same type and sum such as wheat, barley and nut. In the case when one party provides seeds that are lower quality than the other one, this contract will nullify[43].

In addition, jurists from Shafi'i school of Islamic law do not impose any condition in this contract as they place it in the *al-Musaqat* contract. The distribution of crop produce is not necessarily 50 to 50, it may also be divided as 75 to 25 or 60 to 40 or etc. The jurists of the opinion that as this contract is a work contract related to the land therefore, the seed should be provided by the landlord[44].

Furthermore, scholars from Hanbali school permit the contract of *al-Muzara'ah* with the distribution of crop produce in any portion. They do not stipulate that the distribution of crop produce be limited to only 50 to 50 ratios. Additionally, they impose three extra conditions for *al-Muzara'ah* contract as follows[45]:

i) The seed must inevitably be provided by the landlord. Still, there is a room for the cultivator to provide the seed in some circumstances. In other words, the seeds may be provided by the owner or the cultivator. In this kind of contract, the seeds are not necessarily be

[42] Malik Bin Anas. 1991. *op.cit*., p.289; 'Abd al-Rahman al-Jaziri. *op.cit*., Vol.3, p.11.
[43] 'Abd al-Rahman al-Jaziri. *op.cit*., Vol.3, p.12.
[44] Imam al-Shafi'i. *op.cit*., Vol.4, pp.12-13; al-Sharbini al-Khatib. *op.cit*., Vol.2, pp.323-325; Mustafa al-Khinn *et.al*. *op.cit*., Vol.3, p.34; 'Abd al-Rahman al-Jaziri. *op.cit*., Vol.3, p.16.
[45] Ibn Qudamah. *op.cit*., Vol.5, pp.382-388; al-Buhuti. *op.cit*., Vol.3, p.533; 'Abd al-Rahman al-Jaziri. *op.cit*., Vol.3, p.15.

provided by the owner since there are jurists who view that the seeds must be provided by the owner as they use analogy (*qiyas*) upon *al-Mudarabah* contract namely only one party provides the work and another party provides property. This kind of analogy with regards of *al-Muzara'ah* contract is void (*fasid*) because the property in the *al-Mudarabah* contract will be returned to the owner (*Sahib al-Mal*) and the profit will be divided to the both parties. Conversely, the seeds in the contract of *al-Muzara'ah* will not be returned to the owner as the seeds will be disappeared[46].

ii) The rate of distribution should be determined as early as possible such as 50 to 50, 60 to 40, 75 to 25 or etc.

iii) Type and sum of seed should be determined and agreed by both parties before the cultivation's job is started.

1.5 Form of *al-Muzara'ah* Contract.

According to Abu Yusuf and Muhammad of Hanafi school, the contract of *al-Muzara'ah* has four types or forms, namely three forms are valid and one form is not valid as below[47]:

[46] Ibn Taymiyyah, *op.cit*., Vol.30, p.112.
[47] Al-Kasani. *op.cit*., Vol.6, pp.179-181; Ibn Abidin. *op.cit*., Vol.6, pp.280-283; Charles Hamilton. *op.cit*., p.580.

i) Land and seed are provided by one party, whereas job and tools are provided by another party. This form of *al-Muzara'ah* contract is lawful because this form of contract satisfies the status of landlord and seed provider as an employer and cultivator as a hired person.

ii) Land is provided by one party, whereas tools, seed and work by another party. This form of contract is also lawful since it satisfies the status of cultivator as a person who will receive his remuneration based on the crop produce.

iii) Land, tools and seed are provided by one party, whereas job is provided by the other party. This form of contract is also lawful since the status for landlord here is as an employer and his remuneration is based upon the crop produce.

iv) Land and tools are provided by one party, whereas job and seed are provided by another party. This form of contract is regarded as unlawful. If the contract stipulates that the tools must be provided by the landlord so, this contract will nullify since creating tools for the portion of land.

1.6 Termination of *al-Muzara'ah* Contract.

The contract of *al-Muzara'ah* may be terminated either by the completion of the project or it may be terminated before the completion of the project as below:

i) The Expiry of Period.

Contract of *al-Muzara'ah* will be terminated when the period of the contract ended. The ending of the contract happens when all the crop produce be divided corresponds with the agreement and the agreed conditions by both parties[48].

In the case when the period of the contract ended but the aim of the project still unattained (the tree still green and bears no fruit), the period of the contract should be prolonged until the tree bears fruit and ripe. This attempt tries to celebrate and satisfy both parties in the contract as much as it can be[49].

However, the cultivator should be imposed by the payment of land rental derived from the crop produce of the project, and it is calculated from the expiry date of the contract until the project produces crop. Nevertheless, all costs of plantation, taking care of and renting of the tree after the contract ends is being responsibility of both parties, based on agreed ratio. The reason is that the expiry of the contract not by itself will terminate the joint obligation of both parties since the contract is considered as a sharing property contract[50].

[48] Al-Kasani. *op.cit*., Vol.6, p.184; Ibn Abidin. *op.cit*., Vol.6, p.282; 'Abd al-Rahman al-Jaziri. *op.cit*., Vol.3, p.11; Charles Hamilton. *op.cit.*, p.582.
[49] *Ibid*.; Charles Hamilton. *op.cit*., p.583.
[50] *Ibid*.

ii) One of the Parties in the Contract Has Deceased.

The contract of *al-Muzara'ah* will be terminated when one of the parties in the contract was dead even though the cultivation job has been started or not, or the project has borne fruit or not[51]. In the case when the dead person was the landlord and the project is not yet producing anything thus, the cultivator or his heir still obliged to carry on with the job they has agreed. This is because the contract has placed the responsibility upon the cultivator to complete his duty from the beginning until the end of the contract[52].

The contract of *al-Muzara'ah* will be continued despite the fact that one of them was dead is based on the juristic preference concept. The tree that has been grown should be allowed to be grown since the contract is not yet accomplished and the cultivator is not obliged in this manner to pay for the renting of the land[53].

Yet, if the owner of the land dies, when the crop has appeared, the contract is dissolved at the end of that year. In the case when a man give away a piece of land to another person for a term of three years and in the first year, the crop has begun to grow but still unfit for reaping, the man die, the land in this case remains in the hand

[51] This view has been given by jurists from Hanafi and Hanbali schools. Nonetheless, according to Shafi'i and Maliki schools, the contract of *al-Muzara'ah* will not terminate by the dead of one person in the contract. See al-Kasani. *op.cit*., Vol.6, p.184; Ibn Abidin. *op.cit*., Vol.6, p.282; Ibn Qudamah. *op.cit*., Vol.5, p.568; Charles Hamilton. *op.cit*., p.582.
[52] Al-Kasani. *op.cit*., Vol.6, p.184; Ibn Abidin. *op.cit*., Vol.6, p.282; Ibn Qudamah. *op.cit*., Vol.5, p.568; Charles Hamilton. *op.cit*., p.582; *The Mejelle. op.cit*., Article: 1440, p.238.
[53] *Ibid*.

of the cultivator until the crop be fitted for reaping, and the produce is then divided according to the conditions of the compact[54].

This contract of *al-Muzara'ah* is dissolved with respect to the remaining two years of the term since the analogy would suggest that it will not continue even for the first year as the duration of the compact depends on the duration of the parties. It is continued throughout the first year in order to preserve the rights of both parties because if it were to discontinue, the cultivator would sustain harm. With regards to the second and third years of discontinuity in the contract, no harm is sustained by the cultivator and accordingly, the compact is dissolved for these years, parallel with the analogy[55].

When the owner of the land dies after the cultivator has ploughed the land and dug rivulets for watering it, previous to the crop appearing, the compact is dissolved since in such case the dissolution of it is not injurious to the cultivator's property. Conversely, if the owner of the land dies after the crop has begun to grow and appears like grass, in this case the contract is not dissolved as the cultivator would then be injured in his property by the dissolution of it. In this regards, the cultivator is not entitled to any thing for his labor because the use of a person's service cannot be appreciated when the contract becomes null, whereby the estimation of the service no longer remains[56].

iii) Termination by Proof.

[54] Charles Hamilton. *op.cit*., p.582.
[55] *Ibid.*
[56] *Ibid.*

In the case when there is an annulment of the contract before the project even started hence, the contract will be terminated. *'Ulama* from Hanafi school view that the availability of one party to provide seed does not mean that he will be participated in the joint project[57]. According to Maliki's jurists, the contract of *al-Muzara'ah* is not binding unless the relevant jobs have been started. Therefore, contract that is not yet been started can be cancelled[58].

Yet, *'ulama* from Hanafi school of *fiqh* pointed out that the contract that is being run could be cancelled by the existence of proof either from the cultivator side or from the landlord[59]. Among those proofs that can be accepted are as follows[60]:

i) The landlord is incurred huge amount of debt whereby he must sell the land in order to settle his debt without having other sources of income. In this respect, the landlord is permitted to sell his land and then cancel the contract with this reasonable proof. Otherwise, if this contract is allowed to be continued, it may bring harm to the landlord. The method of canceling the contract is by selling the land and afterwards cancels the contract[61].

The best way for the annulment of this contract is before the project is started, or after the tree bears fruit, or when the harvesting period is due. If the tree still green and bears no fruit or the harvesting period is still not due, this contract cannot be cancelled and the land cannot be sold. In other words, the annulment is only possible to be done after the crop reach at maturity and fully grown. The reason is that the sale

[57] 'Abd al-Rahman al-Jaziri. *op.cit*., Vol.3, p.11.
[58] *Ibid*. p.15.
[59] *Ibid.* p.12.
[60] Al-Kasani. *op.cit*., Vol.6, p.183; Ibn Abidin. *op.cit*., Vol.6, p.284.
[61] Charles Hamilton. *op.cit*., p.583.

of land will terminate cultivator's entitlement and the expecting time until the period of harvesting is an entitlement of the creditor. Thus, the deferment of the sale is for fulfilling both parties' interest[62].

Furthermore, scholars from Hanafi school added to this matter that in order to avoid the cultivator from incurring any further losses by the selling of the land, there are two situations that should be considered by both parties in the contract. Firstly, if the annulment is done after the land has been cleared and cultivated thus, the cultivator is not entitled to get anything as a replacement for it since all jobs done are not meant anything for the landlord. The contract is only significant when the partnership gives something in return that can be expected from the produce[63].

Secondly, if the project has been started in the half way, the landlord should not sell his land until the harvesting period is due. In this case, sale of land means canceling of cultivator's entitlement whereby it is preferable to be adjourned because of the deferment of debt is more lighten in terms of its danger than cancellation of entitlement[64].

ii) The cultivator has specific proof such as bad illness that may hinder him from continuing the project or he is forced to go abroad for some unavoidable reasons or he has to find another job for his survival. For all these reasons, the annulment of the contract is permissible without any interference by the court and in the absent of both parties consent.

[62] *Ibid*.
[63] *Ibid.*
[64] *Ibid*.

2. Application in Islamic Banking.

For the time being, there is no application of the contract of *al-Muzara'ah* in Islamic Banking for financing agro project. Example of the modus operandi for *al-Muzara'ah* contract is showed in Figure 1 below. Nonetheless, this figure has excluded the participation of the Islamic Banks since the bank usually will not manage the land provided by the land provider because they have no expertise in managing them and they are more incline in managing cash term.

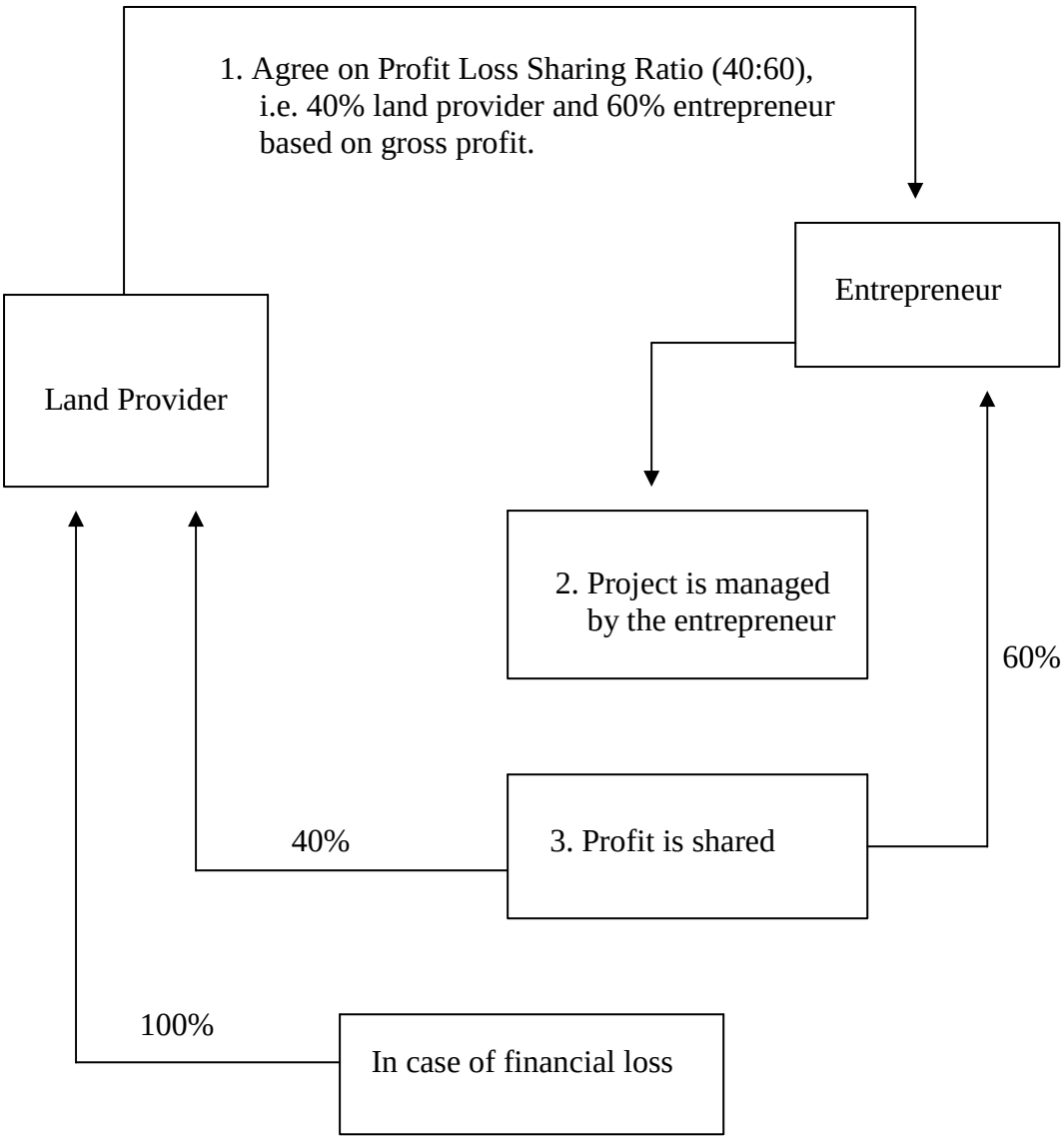
If they are going to participate in the contract of *al-Muzara'ah*, the Islamic banks need to find out third party, who are capable of purchasing and storing the fruits or produces before any profit can be distributed to each party in the contract. Now that the difficulty to find the suitable party who are willing and promise to buy all the produces before they existed make this contract not practically to be applied in the modern Islamic banking arrangement at least for the time being[65].

The contract of *al-Muzara'ah* can only be applied in the modern Islamic banking facility if there is a suitable third party who willing to jointly participate in the contract or else the contract of *al-Muzara'ah* can be applied in parallel with other type of contract in *mu'amalat* such as contract of *Bay' al-Salam*[66].

[65] Interviewed with Associate Professor Datin Dr. Paizah Binti Ismail on 26th March 2009 at 10.10 a.m. to 10.45 a.m. at her office in Gombak. Her expertise is in the field of *fiqh* and *usul* as well as in Islamic transactions. She is also a Shariah Advisor for Agro Bank since 2005.
[66] *Ibid.*

Figure 1

Modus Operandi of *al-MuzÉraÑah* Financing



Source: Based on self interpretation on several *fiqh* literatures such as Mustafa al-Khinn *et.al*. 1992. *al-Fiqh Manhaji 'ala Madhhab al-Imam al-Shafi'i.* Damshiq: Dar al-Qalam, Vol.3, pp.33-35; al-Kasani. 1974. *Bada´i' al-Sana´i'*. Beirut: Dar al-Kitab al-'Arabi, Vol.6, p.175; Ibn Qudamah. 1972. *Al-Mughni.* Beirut: Dar al-Kitab al-'Arabi, Vol.5, p.581; "Islamic Modes of Financing", http://www.islamic-financing.org/, 30th November 2008.

For instance, Agro Bank, where the establishment of this bank is to stimulate and promote the development of agriculture sector in Malaysia, this bank has provided two types of funds for financing agro projects namely commercial funds, where the source of fund comes from the depositors of the bank and secondly, special funds established by Malaysia government that can be regarded as an added incentives to promote expansion activities as well as investments in agriculture sector. Examples of these funds are Agro Cash-i and Fund for Food respectively[67].

All these funds are utilized *shari'ah* contract of *Bay' Bithaman Ajil* (BBA) and *Bay' al-Innah*. The validity of BBA and *Bay' al-Innah* contract is obvious since it uses the sale concept as mentioned in the *fiqh mu'amalat*. Through this kind of contract, the customer will not borrowing any money from the bank, instead the bank will buy the desired asset by the customer and the bank will sell it back to the customer at mark-up sales price. The relationship between customer and bank is similar to the relationship between buyer and seller in the sale contract and not as in loan contract, whereby the connection is between borrower and lender as being practiced by the conventional bank[68].

[67] Interviews carried out with Agro Bank officers: Ismail Tuan Ali, Executive 1, Islamic Banking, Special Projects Department, Agro Bank Head Office, Kuala Lumpur on 14th January 2009 at 3.15 p.m. to 4.00 p.m; Siti Norngaisah Binti Aziz, Executive 11, Financing Department, Agro Bank, Shah Alam Branch on 12th February 2009 at 4.00 p.m. to 4.35 p.m.; Suhaimi Bin Yacob, Executive 2, Financing Department, Agro Bank, Kota Bharu Branch on 14th December 2008 at 11.15 a.m. to 11.50 a.m.; *Agro Bank Pamphlet*. 2008. "Financing Facilities"; Agro Bank, http://www.agrobank.com.my, 15th December 2008.

[68] Mustafa al-Khinn *et.al. op.cit*., Vol.3, pp.37-38; Mohammad Hashim Kamali. 2002. *Islamic Commercial Law: An Analysis of Futures and Options*. Petaling Jaya: Ilmiah Publishers, pp.132-133; Norazlina Abd. Wahab. 2005. "Al-Bay' Bithaman Ajil: Suatu Alternatif Kepada Pinjaman Berasaskan Riba", in Abdullah Alwi Hj. Hassan *et.al*. (eds.), *Teori dan Aplikasi Kontemporari Sistem Ekonomi Islam di Malaysia*. Kuala Lumpur: Utusan Publications & Distributors Sdn. Bhd., pp.90-91.

Conclusion.

Although the contract of *al-Muzara'ah* cannot fully be utilized for the purpose of financing agro projects, but the advantages of this contract can be used by the *Shari'ah* scholars and Islamic banks in order to find out the most accurate method that can be used to finance and assist agro entrepreneur with their projects that eventually bring a lot of other benefits not only for themselves, but also to the Muslim *ummah* as a whole. The combination of different contracts in *mu'amalat* is seemed to be a good method for implementing the contract of *al-Muzara'ah* for financing agriculture sector that finally will benefit all parties, entrepreneur and Islamic banks, and the most important thing is the suitability of the arrangement with the *shari'ah* requirements and rules.

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Critical comparison on investment of Takaful Funds in Family Takaful;

A case study of PT. Asuransi Takaful Keluarga, and Takaful Ikhlas Sdn. Bhd.

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Abstract

The increasing awareness of people to transfer and share risk through takaful has made takaful to become an important element of Islamic financial institution. As we know, insurance is a conventional financial system that is free to invest their funds in any financial instrument, without any halal and haram restrictions. In the context of conventional insurance, the insurance company normally invests its funds into conventional investment instruments that generate interest (riba) income.

Takaful serves as an alternative islamically accepted mode of mitigating risk. Takaful has becoms one of the wealth management instrument in Indonesia and Malaysia that is based on shariah injunction. To fulfill this concept, Takaful is required to give priority to the practices and activities that does not contradict the concept of Takaful itself that is based on the injunction of Al-Quran and Sunnah.

In participant point of view, Takaful operator is expected to be more cooperative (ta'awuniyah) oriented rather than profit maker. However, Takaful operator is expected to generate income by investing some proportion of the fund based on Shariah compliant investment instruments. Therefore, the purpose of this study is to investigate the investment activities of Takaful funds in Indonesia and Malaysia with critical comparison of investment and operational process of two Family Takaful Companies, namely PT. Asuransi Takaful Keluarga in Indonesia and Takaful Ikhlas Sdn. Bhd In Malaysia. The significance of this study is to know the activities of Takaful Companies in Indonesia and Malaysia in terms of contract they use, process of investing the funds, and distribution of surplus underwriting.

1.0. Background of Study

The increasing awareness and enlightment of the people to transfer and share risk through takaful has made takaful to become an important element of Islamic financial institutuion. Takaful also acts as a vital agent in the mobilization of funds thereby making it an important component for domestic and international financial system nowadays[1].

Actually insurance is already in existence in the economic system many years ago. As we know, insurance is a conventional financial system that is free to invest funds in any financial instrument, regardless of halal and haram restrictions. Indonesia is a country with the largest Muslims population in the world (plus minus 206 Millions Indonesia citizen's are Muslim), and the neighboring Malaysia is also an Islamic country. As a Muslim, we have to follow the regulation regarding halal and haram in accordance with Qur'an. As we know Allah Swt has mentioned in the Al-Qur'an that He conclusively prohibits all forms of riba.

Those who devour usury will not stand except as stand one whom the Evil one by his touch hath driven to madness. That is because they say: "Trade is like usury," but Allah hath permitted trade and forbidden usury … (QS.275).

And *"o you who believe! Observe your duty to Allah, and give up what remains riba if you are true believers. And if you do not, then are warned of war from Allah and his Messenger …" (Qur'an, 2:278-279)*

Because Insurance has contains some elements of riba, gharar and maysir, thus based on "Resolution No. 9 on Insurance and reinsurance, takaful remains an alternative contract, which conforms to the principles of Islamic dealings on the basis of charity and co-operation. Similarly with re-Takaful based on the principles of co-operative insurance.

Now, we could see there is an alternative form of contract that was proposed and Takaful can be seen as the Islamic alternative to conventional insurance. [2]Takaful not the same as insurance but rather an alternative to insurance. It operates on cooperative principles and incorporates with the concept of tabarru (donation or gift). Instead of paying insurance premium, Takaful holders donate their Takaful contribution to a pool of fund and use it as mutually assistance to the members against a defined loss or damage.

When we look at the meaning of donation as a voluntary gift, as it is used in Takaful where there is a binding contract between the insured and the Takaful operator. More so, in Takaful, all participants mutually share the risk. As we know it is so heavy to face the risk alone. The knowledge to manage, and mitigate the risk is important to transfer the risk to another party[3]. In insurance company, the uncertainty is transferred from individual or business enterprise to the shoulders of others. There is an example in insurance company where the insurance company

[1] *www.islamicfinancetraining.com/tpmo08.php*
[2] Frenz (2009). Takaful and Retakaful. Munic RE Retakaful
[3] Suma (2006). Asuransi Syariah & Asuransi Konvensional. *Teori, Sistem, Aplikasi & Pemasaran*. Kholam. Tangerang

will cover the loss of whole family over the entire life. The problem is that, we do not know when we will die. As we know, the concept in conventional insurance is that participant buys a policy to cover the loss whereby we do not know when it will happen. It is same with buying something that is uncertainty to happen. And also gharar and gambling that are imposed in the conventional insurance make it non-compliant to the Islamic principle.

In one hand, we known that Islam prohibit riba, gharar and maysir in every economy transaction, including Takaful. Based on that concept, we criticize the system used in *Takaful*, whether it free from riba, gharar and maysir or fulfill the compliance of shariah instrument or not. Legal and contractual aspects should become subject should be given more attention. Thus, this research needs to examine how Takaful Company maintains the investment of Takaful funds, with special focus on legal and contractual aspect in which comparism is made between two Takaful companies, one Takaful company in Indonesia (PT. Asuransi Takaful Keluarga), and one Takaful company in Malaysia (Takaful Ikhlas Sdn. Bhd). This study also uses critical comparison of investment and operational systems in these two Takaful companies. The limitation of this study is that, only Family Takaful in each company is investigated.

1.1. The needs for Takaful in Indonesia

The indicator of desirability to use Takaful to mitigate risks comes from need of the large number of Muslim populations in Indonesia. More emphasize is placed on shariah compliance in operational activities. The readiness of people to use Takaful instrument is also an indicator that necessitate in the using of Takaful, and it is supported by education, seminars, and articles and other form of campaign. The increasing earning level of people, supported by Micro Takaful program for small income group, those widening the object of Takaful in Indonesia also contribute to the awareness.

When we look at the purpose of developing the Takaful itself, which is to indemnify the risk of a group of people who co-operate amongst themselves to establish common resources for the purpose of mutual indemnity. It is added by using Alqur'an and hadith as a basic principle in handling its activities. Takaful is operated based halal, amanah and comfortable point of view, and still has a purpose to maximize the profit. Therefore, Takaful needs to have a good strategy in maintaining the investment and marketing the product. In addition, a strong and pragmatic regulatory framework would have to exist to ensure a smooth and efficient operation for new entrants into this untapped market in Indonesia.

1.2. The needs for Takaful in Malaysia

The development of the Takaful industry in Malaysia since the early 1980s was inspired by the prevailing needs of the Muslim public for a Shariah-compliant alternative to conventional insurance, as well as to complement the operation of Islamic Bank that was established since 1983.
It was, to a large extent, triggered by the decree issued by the Malaysian National Fatwa Committee which ruled that life insurance in its present form as a void contract due to the presence of the elements of gharar (uncertainty), Riba' (usury) And maisir (gambling). A special

task force was established by the Government in 1982 to study the viability of setting up of an Islamic insurance company. Following the recommendations of the Task Force, the Takaful Act was enacted in 1984 and the first Takaful operator was incorporated in Malaysia in November 1984.

1.3. Problem Statements

Takaful that becomes one of wealth management instrument in Indonesia and Malaysia that is expected to be based on Islamic faith and complied with the principle of Islamic Law in all its actions and deeds. To fulfill this concept, Takaful is required to give priority to the practices and activities that do not contradict with the concept of Takaful itself in relation with Al-Quran and Sunnah.

From participant point of view, Takaful operator is expected to be more cooperative (ta'awuniyah) rather than profit maker. However, Takaful operator will still capable to generate income by investing certain portion of the fund based on Shariah investment instruments. This is why in this paper we need to examine the process of investing the fund and the reason why Takaful invests the funds in those instruments.

1.4. Objective of the study

As we know, in the context of conventional insurance, the insurance company normally invests their funds in conventional investment instruments that generate interest (riba) income. On the other hand, investment portfolio and operation activities in Takaful should not involved any riba-based activities. Thus, the purpose of this study is to investigate the investment activities of Takaful funds in Indonesia and Malaysia in which critical comparison of investment and operational process between two Family Takaful Companies, which are PT. Asuransi Takaful Keluarga in Indonesia and Takaful Ikhlas Sdn. Bhd in Malaysia.

Significance of this study is to know the activities of Takaful Companies in Indonesia and Malaysia in terms of contract that is used, process of investing the funds, sharing the profits, and welfare of participants or policy holders.

More specifically, this study is aimed accomplishes the following objectives:

(i) to study the model used in the companies

(ii) to examine the method of investing the funds in these companies

(iii) to criticize the distribution of profit and agreement of distribution of profit between Takaful companies and policy holders.

2.0. Development of PT. Asuransi Takaful Keluarga (Indonesia) and Takaful Ikhlas Sdn. Bhd.

2.1. Company's profile of PT. Asuransi Takaful Keluarga

PT. Asuransi Takaful Keluarga is a subsidiary of PT. Syarikat Takaful Indonesia. It is a shariah compliance life insurance that was established on 4th august 1994. PT. Asuransi Takaful Keluarga was officiated by the Minister of Finance, Mr. Mar'ie Muhammad, and successfully awarded two certificates of ISO 9001:2000 for the highly professional and quality services. One of the award is from Det Norske Veritas (DNV), Dutch and the second from SGS JAS-ANZ, New Zealand. 99.94% of PT. Asuransi Takaful Keluarga is owned by PT. Syarikat Takaful Indonesia share, and 0.06% belong to Koperasi Karyawan Takaful. This composition brings the superior shareholder ownership composition, whereby 56% of the shares of PT. Syarikat Takaful Indonesia is owned by Syarikat Takaful Malaysia, Sdn. Bhd. This gives the opportunity to this company to make the awesome management, and clutched certain appreciation as a result for company's best performance[4].

2.1.a. products offered in PT. Asuransi Takaful Keluarga

To attract the potential customers to use shariah insurance services in that company, PT. Asuransi Takaful Keluarga gives some services that is needed by the people. The main focus in offering the services is to offer an alternative to some people that need to have insurance protection that is in line with Muamalah and shariah[5]. In addition to that concept, some products that are offered in PT. Asuransi Takaful Keluarga will be elaborated in below:

Individual Services:

There is an individual service that offers optimal investment result. In this investment we can choose the type of investment based on our preferences.

Individual Services	Group Services		
	Takaful Ordinary	Banca Assurance	Health Takaful
- Takafulink - Investment Takaful Fund - Self Accident Takaful - Fulnadi - Takafulink Alia - Takaful Ukhuwah	Takaful Alkhairat Takaful Self Accident Takaful Student Accident Travel Takaful	- Takaful Defrayal	Full Medical Takaful Family Care

Group Services:

In addition to that, there is Group Services offered in PT. Asuransi Takaful Keluarga, in which the participant comes from a group of people that work or do activities in the same group, and willing to protect the group members through using Takaful services. So, in the diagram we can see some of products are available Group Services.

[4] PT. Syarikat Takaful Indonesia Annual Report 2008
[5] http://takaful.com/index.php/produk/list/

2.2. Company's profile of Takaful IKHLAS Sdn. Bhd.

Takaful Ikhlas Sdn Bhd was incorporated since September 2002, and is a wholly-owned subsidiary of MNRB Holdings Berhad, or Malaysian National Reinsurance Berhad[6]. It is a Malaysia National Reinsurance company that was established in 1965 in order to curtail the ever increasing outflow of reinsurance premium overseas[7].

Takaful IKHLAS has, within the seven years of its operations, established a strong presence in the provision of Islamic financial protection services based on the Takaful System, which is stresses on the spirit of cooperation and joint responsibility among participants. Today, the Company is widely known in the market as a dynamic "brand".

There is an ISO recognition for shariah compliance issue, which describes the shariah checklist that talks about some requirement for any company that need to get indemnification from Takaful IKHLAS Company. It is stated that Takaful IKHLAS does not willing to accept the potential participant if there is non permissible activities conducted in the potential company. As we know, the activities that are not shariah compliance are:

- Related to riba ie commercial conventional or insurance

- Related to maysir i.e. magnum, 4D

- Related to liquor i.e. Carlsberg, Jack Daniels etc

- Related to element of syirik, things related to worshipping other than Allah

- Related to production of impermissible things or things that can be harmful/perilous to the society e.g. tobacco, cigars, drugs

- Related to non-permissible activities i.e. disco, karaoke

-Related to things that can bring bad image or reputation to Takaful Ikhlas Sdn. Bhd.

If there is still a percentage of non permissible activities, the non shariah compliant portions for these activities must not exceed 30% of total income. Actually this percentage follows the shariah screening process that is regulated by Security Commission Malaysia.

Takaful IKHLAS Company is very strict in implementing this concept. For some cases where the company get potential group participant where the owner is Non Muslim, and if the activity of the group with the Non Shariah Compliant activity is more than 30%, the Takaful IKHLAS Company will not hesitate to reject this potential participant.

We can see how that Takaful IKHLAS is following Alquran and Hadits in all its dealing, and how Allah Swt gives the best thing to the company. The fact from this concept is that, the participant number is increasing from time to times.

[6] http://www.takaful-ikhlas.com.my/corporateProfile/aboutUs.
[7] http://www.mnrb.com.my/aboutUs/corp_bg.asp

2.2.a. Product Offers in Family Takaful IKHLAS Sdn. Bhd.

For individual participant, the Family Takaful IKHLAS services comprised of Rider and Basic, where underwriting process is different from one product to the other products. Products offer in Basic and Rider FamilyTakaful in Takaful IKHLAS, are:

Family Takaful IKHLAS Sdn. Bhd.	
Basic	Rider
- IKHLAS Savings Takaful - IKHLAS Education Takaful - IKHLAS Education Takaful Classic - IKHLAS Lifestyle Takaful - IKHLAS Capital Investment Linked Takaful - IKHLAS Premier Investment-Linked takaful - IKHLAS Wanita Takaful	IKHLAS critical illness Takaful Rider IKHLAS Accidentaal Death & Dissability Takaful Rider IKHLAS Waver of contribution Takaful Rider IKHLAS Payor Savings Takaful Rider IKHLAS Term Takaful Rider IKHLAS Hospital Benefit Takaful Rider IKHLAS Immediate Death Takaful Rider IKHLAS Family Income Takaful Rider

The Takaful IKHLAS Model allows the Company to optimize the investment returns to the participants. It gives us and our family a safety net, in case we are totally and permanently disabled, or diagnosed with a critical illness within the plan period[8]

2.3. Operational System in PT. Asuransi Takaful Keluarga

2.3.a. Contract that is used in PT. Asuransi Takaful Indonesia

It is stated in the policy that there is an agreement between participant and PT. Asuransi Takaful Keluarga as a Takaful Operator to use Mudharabah Muystarakah and Tabarru' as a contract. In this contract, half of the participant money will put in the special account or tabarru' account, and the remaining will put in saving account. The fund in tabarru' account will be added to the tabarru' account from other participants and later used to cover indemnification for all participant. The money in saving account will be used for investment purposes, and the outcome from the investment will be shared between Takaful operator (PT. Asuransi Takaful Indonesia) and participant based on percentage that has been agreed upfront.

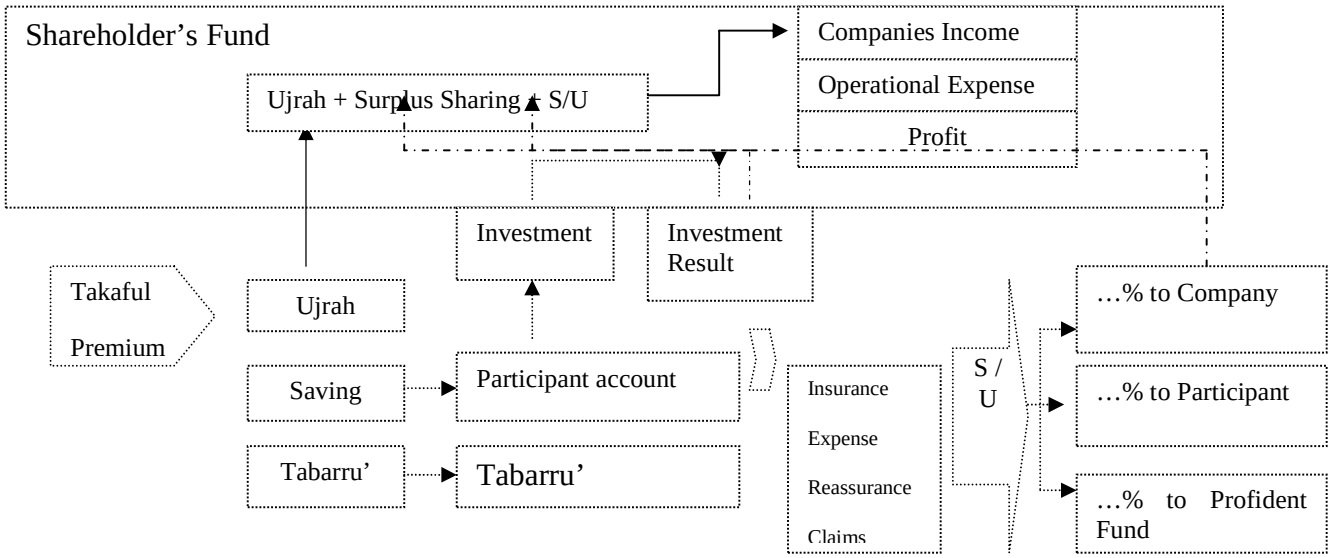
Mudharabah Musytarakah is a contract that gives authority of Takaful operator to become a fund manager and also an entrepreneur of the fund. In Mudharabah Musytarakah contract, besides being an entrepreneur (mudharib), Takaful operator also serve as a fund provider (Shahibul Maal). The purpose of this contract is to create a strong fund for investment, and to make Takaful Operator to be able to increase their percentage in profit sharing. In addition to that, at the end of the year, if there is a profit, it will be distributed based on percentage of capital portion. After distributing the profit, Mudharib (PT. Asuransi Takaful Keluarga) also takes its

[8]http://www.takaful-ikhlas.com.my/downloads/productBrochures_family.asp

portion as a fund manager. In addition, there are three parties involve in the system, namely participants that become the first sahibul maal, mudharib that becomes an entrepreneur, and the hybrid function of mudharib that also becomes the second sahibul maal.

Based on Fatwa Dewan Shariah National (National Shariah Board) DSN – MUI No. 50/DSN-MUI/III/2006 regarding Mudharabah Musytarakah, it is defined as: Mudharabah Musytarakah is a mudharabah contract whereby Takaful operator encloses some capital in infestation.

Below is Mudharabah Musytarakah diagram that is used in PT. Asuransi Takaful Keluarga:



From this diagram we can see that after participant pays the premium, it will be directly divided by three, and put in the three separate account, which are ujrah fee for Takaful Operator (PT. Asuransi Takaful Keluarga), Saving account, and the last is Tabarru' Account. Saving account will be mixed with other participants account, and will be invested in shariah compliant instrument. The result from investment will be distributed to participants and Takaful operator based on percentage that is agreed upfront. Profit that is going to participant will be retained in the saving account.

In addition to that, if participant still does not have any claim, there is underwriting process whereby at the end of the year, the accumulation of saving and tabarru' accounts will be deducted for insurance expense, reassurance, and tax. The remaining of it is called surplus underwriting, and will be distributed to Takaful Operator, participant, and provident fund based on the percentage that is stated in the policy.

2.3.b Investment Activities in PT. Asuransi Takaful Keluarga

To know the investment activities in PT. Asuransi Takaful Keluarga, we have to study the financial statement of that company, and it will be explained over the period of 2005 until 2009.

	Financing	2005	2006	2007	2008	2009
	Mandatory Deposit	10,500	11,000	-	-	-
	Voluntary Deposit	94,991	83,817	-	-	-
	Mudharabah Time Deposit and Certified Deposit	-	-	109,832	114,715	153,447
	Marketable Securities	25,428	58,189	61,379	-	-
	Shariah Bond	17,650	21,250	37,926	70,300	135,610
	Mutual Fund	-	-	-	49,558	77,821
	Direct Investment	15,681	24,284	-	27,067	49,558
	Land and Building	26,308	28,497	22,932	25,216	26,162
	Murabahah Financing	7,353	8,208	6,716	11,012	-
	Mudharabah Financing	5,180	-	-	-	-
	Total of Investment	203,091	235,227	239,842	297,868	442,598

* in millions rupiah

On the other hand, there is a regulation guiding the Takaful Company in Indonesia regarding the percentage of investment in some financial instruments that are available in Indonesia. The regulation explains the percentage of Government limit for each type of instrument. The regulation is described below:

No	Financial Instrument	Government Limit
1	Deposit & Shariah Deposit Certificate	10%
2	Certificate and Certificate of Deposit in BPRS	10%
3	Certificate of Wa'diah in Central Bank	20%
4	Islamic Stock Listed in BEJ (20%)	20%
5	Sukuk listed in BEJ	20%
6	Islamic Stock Listed in Foreign Index	10%
7	Sukuk listed in the foreign trading	10%
8	Direct investment	10%

[9]

[9] SK Dijen No. Kep. 4499/LK/2000 at 11 September 2000.

Of course when the government made this regulation, the government aim is to make sure that Takaful Company perform effectively. To know whether the PT. Asuransi Takaful Indonesia is following the regulation or not, now we check the percentage of participant funds that is put in each financial instrument one by one. The method is that, we divide the value of each financial instrument with the total of investment each year. After that we will get the percentage of investment in every financial instrument.

No	Financing	2005	2006	2007	2008	2009	Gov. Limit
1	Mandatory Deposit	5.2%	4.7%	-	-	-	10%
2	Voluntary Deposit	46.77%	35.63%	-	-	-	10%
3	Mudharabah Time	-	-	45.91%	38.51%	34.67%	10%
	Deposit&Certified	-	-	-	-	-	-
4	Marketable Securities	12.52%	24.74%	25.59%	-	-	20%
5	Shariah Bond	8.69%	9.03%	15.81%	23.60%	30.64%	20%
6	Mutual Fund	-	-	-	16.64%	17.58%	20%
7	Direct Investment	7.72%	10.32%	-	9.09%	11.20%	10%
8	Land and Building	12.95%	12.11%	9.56%	8.47%	5.91%	10%
9	Murabahah Fin	3.62%	3.49%	2.8%	3.70%	-	10%
10	Mudharabah Fin	2.55%	-	-	-	-	10%

We can see from the table, in 2005, only voluntary deposit (46.77% over 20%) land and building investment (12.95% over 10%) follows the regulation. The company put 5.2% in Mandatory deposit, 7.72% in direct investment, 3.62% in Murabahah Financing and 2.55% in Mudharabah Financing, wherein the government limit for these instruments were 10%. In addition to that, the company also invests 12.52% in Mandatory Deposit, 8.69% in Shariah Bond, whereas the government limit for these instruments is 20%. Based previous explanation, it is understandable that in 2005, most of the funds were invested in deposit, considering many calamities that happened at that time. It gave rise to higher risk the Takaful Company have to cover at that time.

In 2006, the company still invested 4.7% of the fund in Mandatory Deposit out of 10%. , In spite of this, the company complied with the regulation, because most of the percentage of investments that were put in each financial instrument was above the government limit. For example, the fund put in voluntary deposit was 35.63%, and the government limit is 10%. In addition to that, the fund invested in Marketable Securities was 24.74%, and the government limit for this instrument is 20%.

The next was Direct Investment, were in 2006, the company invested 10.32% of the fund in it, and also for land and building where the company invested 12.11% of fund in these instruments, with the government limit is 10%. However, there were still some instruments, such as Shariah Bond, where the company only invested 9.03% of fund, with the government limit is 20%. More so, murabahah Financing where the company only invested 3.49% of funds, with the government limit is 10%, that still did not follow the regulation.

If we look at shariah bond, where in 2006 there were not many bonds were traded in the market. So it is understandable that the company only put 9.03% in this instrument. In addition to that, the government limit for Shariah Bond instrument is quite high, which is 20%. In our opinion

that there are some reasons why the government ordered the Takaful Company to put at least 20% of their funds in Shariah Bond. However, because of Indonesia financial condition in 2006, so we have to therefore give the reasons for the company performance. When we look at the development of shariah bond, we can see that the percentage of funds invested in Shariah Bonds increased in the year after.

In 2007, the funds that was invested in Mudharabah Time Deposit and Certified Deposit was so high. It was 45.91%, whereas the government limit is only 10%. The company also put 25.59% of its funds in Marketable Securities, and the government limit is only 20%. Actually, at that time, only these two instruments followed the regulation, and the funds invested in other financial instruments were under the government limit. Such as Shariah Bond, where the fund put in it was 15. 81% only while government limit was 20%, Land and Building investment was 9.56% out of 10%, and Murabahah Financing was 2.8% out of 10%. So, at those time, not many investments were followed the government regulation.

In 2008, most of the big investment followed the government limit, to the extent that the investment in Mudharabah Time Deposit and Certified Deposit was 38.51%. There was an increasing percentage of investment in Shariah Bond, where the percentage was 23.60% that described the seriousness of the company to maintain its asset liability matching for long run.

Year 2008 was the first year for the company to invest the fund in Mutual Fund. So, at that time, the company began the investment with 16.64% of the fund put in those instruments. Whereas, the government limit for this instrument is 20%. However, because it was a first experience, so invest money within the government limit was quite understandable.

In addition to that, the percentage of investment in direct investment was still not good. The company only put 9.09% of its funds in that instrument. The investment in land and building was only 9.09%, and Murabahah financing was 3.70%, whereby the government limit for these instruments is 10%. As an overall assumption, for investment in the big scale, the company has followed the regulation. But, for small scale investment, the company was still not successful in following the regulation.

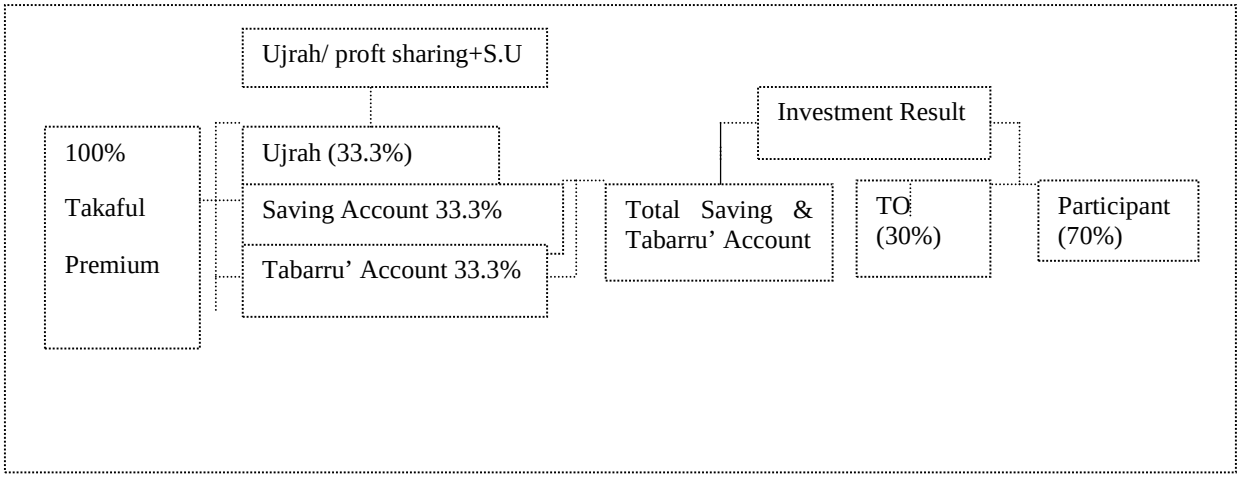
On 2009, the company put 34.67% of funds in Mudharabah Time Deposit and Certified Deposit, whereby the government limit for this investment is 10%. The company also put 30.64% of its

investment in Shariah Bond with government limit of 20%. In addition to that, there was an increasing performance in the company, whereby at that time the company was success to follow the regulation in Direct Investment financing. The company invested 11.20% of its fund in that instrument while the government limit was 10%.

In addition, there were some investments that still did not follow the regulation until 2009, among which were Mutual Fund that constitute investment of 17.58% out of 20%, and also Land and Building has investment of 5.91% out of 10%. On overall, there was a significant success in the company's performance in terms of company's ability in following the government limit. The increasing percentage of money invested in Mudharabah Time Deposit and Certified Deposit, gave some indicator that the company tries to enhance its performance from time to time. Besides that, the study suggests that the company have to give attention to the instruments do not following the regulation.

2.3.c. Sharing the profit and Underwriting Surplus in PT. Asuransi Takaful Indonesia

After the participants fund are invested, based on an agreement stated in the policy, the profit (if any) from the investment activities will be shared between Takaful Operator and participant based on the percentage that is agreed upfront. This is usually done at the end of the year for each year. The percentage of profit sharing in PT. Asuransi Takaful Keluarga that is stated in the policy is 70:30. It means if there is a profit from investment, participants will get 70%, and Takaful operator will take 30% of the profit.



As we know in underwriting process, the tabarru' account will be deducted for insurance expence, retakaful expense, claim and tax. All of them are called underwriting process. The result of underwriting process will be divided in to three elements, which are; the Company shares the participant share while the remaining is put in provident funds.

Actually based on Taqi Utsmany and some other shariah scholar opinions, surplus underwriting ought to be distributed to the participants only, because participants are the real owner of the

fund, and not the company[10]. However, based on the umum balwa or public interest, Dewan Syariah Nasional (DSN or National Syariah Council in Indonesia) have made fatwa about it. This fatwa is supported by the Ministry of Finance, and now it has becomes a regulation (PMK No. 18/PMK.010/2010). It means that, based on the interest of the people in Indonesia, the company still needs to get the distribution of underwriting surplus to cover the expenses. Beside that, the surplus are also distributed to the shareholders. Until now the ujrah and profit sharing from mudharabah mustarakah is still not enough to support the company's performance.

In addition to the above explanation, the ulama in Indonesia exhibited moderation and flexibility unlike those moderate ulama in UAE in giving the fatwa. Because of that, most of Takaful Companies in Indonesia are using third option. Nevertheless, the company gives 0% surplus to Takaful Operator and tabarru' fund, and a full 100% is given to provident fund.

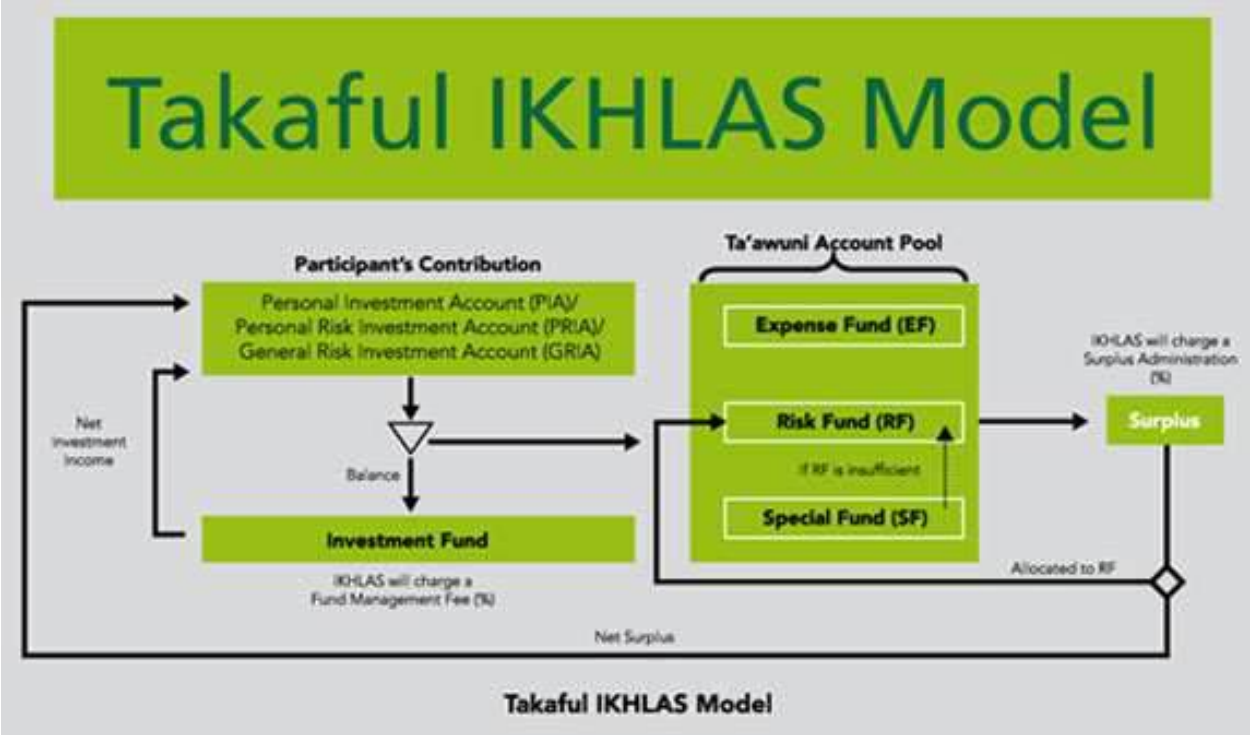
2.4. Operational System in Takaful IKHLAS Sdn. Bhd.

2.4.a. Contract or Akad that is used in Takaful IKHLAS Sdn. Bhd.

In line with the international and local developments in the practice of Islamic financial protection services, Takaful IKHLAS has adopted the Wakalah contract as their system and have modeled their operations accordingly. Wakalah is a form of representative relationship between Takaful IKHLAS and a participant (Principal/Customer). Thus the company, employ the following contracts to govern the business.

When we look at the diagrammatically illustration about the model or contract used in the company that will describe in the diagram in below:

[10] *www.takaful.coop/.../Models%20in%20Takaful%20October%202007.pdf*



[11]

We can see from the model, that the contract between the participant and Takaful IKHLAS is Wakalah model. It means participant appoints Takaful IKHLAS to become a wakil or participant representative in managing the fund.

There is an Expense Fund (EF) in the form of Ujrah or fee that is given to the Takaful IKHLAS as a Takaful Operator (TO) that is willing to manage the participant fund. Based on Takaful operator efforts, participant pays the Expense Fund (EF) according to the mood of payment. It can be monthly, quarterly, semi annually or yearly basis.

In addition to that, participant also authorizes the Takaful IKHLAS to conduct the affairs of Takaful business in such that provide protection, investment etc. on his/her behalf. After signing the contract, the contribution funds will be put in to participant contribution pool. In this pool, the fund will be divided in to three specific accounts, which are Personal Investment Account (PIA), Personal Risk Investment Account (PRIA), and General Risk Investment Account (GRIA).

For GRIA, a portion of the contribution in the investment account is set aside for Tabarru' at the onset which will be directed to the Risk Fund (RF). Any investment income derived from this amount shall be allocated to the Risk Fund (RF). In this instance, Takaful IKHLAS will not charge a fund management fee (%). Net surplus distribution will be allocated and administered on an annual basis.

[11] http://www.takaful-ikhlas.com.my/

2.4.b. Investment activities in Takaful IKHLAS Sdn. Bhd.

Knowing the investment activities in Family Takaful IKHLAS Sdn. Bhd, first we have to look at financial statement in the company. This paper will explain the financial statement from 2005 until 2009.

	2005	2006	2007	2008	2009
Investment	25,255,336	72,418,278	153,296,287	303,227,620	475,161,178
Investment Properties	-	-	-	-	69,965,742
Trade Receivable	2,187,173	9,036,763	17,447,996	30,486,229	28,829,012
Other Receivable	115,795	468,419	2,286,908	4,531,583	7,999,697
Cash & Bank balance	1,873,370	1,779,681	4,908,670	12,170,103	8,559,134
Investment Link Business Asset	-	-	5,947,406	6,554,182	6,662,967
	29,431,674	83,703,141	183,887,267	356,969,717	597,177,730

Actually there is an asset allocation limit, in view of the current market conditions, and the current portfolio holdings, so the tactical limit since financial year 2010/2011 would be as follow:

	Family PRIA Fund	Family PIA Fund	BNM Limit
Low Risk Asset	15%	15%	15%
Equities	5%	20%	30%
Unit Trust Funds	5%	5%	10%
Properties	20%	-	20%
Fix Income Securities	50%	50%	50%
Money Market Instruments	No Limit	No Limit	No Limit

The fund that is coming to Family Takaful IKHLAS will be divided into two specific funds, which are Family PIA (Profit Investment Account) and Family PRIA (Profit Risk Investment Account). Family PRIA is also called tabarru' fund. Commonly Family PRIA is for short term investment purposes, and family PIA is for long term investment basis.

Investment in low risk asset means investment in low risk instrument such as government securities. Based on Takaful Act in Malaysia, low risk asset that must be included in every fund, is at least 15% over the total of the fund. The BNM limit for investment in low risk assets is 15%. As a result, Family Takaful IKHLAS invests 15% of the participant funds in low risk instruments, for Family PRIA fund and also for Family PIA.

In addition to that, the company also invests in equities, which involve investment in shares that are listed in the Security Commission. There is a reason why the company only invests money in Security Commission listed. It is to ensure that, all investment activities that are done by the company are shariah compliance. In spite of this statement, actually the company still has some strategy to invest the funds in equity.

When we look at the composition of equities, the company puts 5% of the participants fund in family PRIA fund, and 20% of funds in family PIA fund. Based on BNM limit, the tactical limit for equities should be 30%. In addition, the sum of equities that put in Family PRIA and Family PIA fund is only 25%. The study believes that the company has a reason for it. We still remember that, the characteristic for family PIA is for long term investment. Maybe because of the current fluctuation in the market, and also because of some specific reason, the company only puts 20% of participant funds in it. For Family PRIA whereby this account is known as tabarru' account, all indemnification expense is taken from this fund, so the company have to secure the liquidity and only capable to invest 5% of PRIA funds to equities investment.

BNM limit for investment in unit trust is 10%. In addition, the company also puts 10% of participant's fund in unit trust. It comprises of 5% from Family PRIA funds and 5% from Family PIA funds. Even though unit trust is unmanaged portfolio of income-producing securities, but it is consider a low risk investment, whereas it is low return also. Because unit trust is considered as fix investment trust, it means the unit trust holders get a fix dividend periodically. In addition to that, investment in unit trust will give more benefit to participant.

BNM limit for investment in properties is 20%. In addition, the company invests 20% in properties investment whereas all of investment is derived from family PRIA fund. We should remember that family PRIA fund is fund for short term period. But, the family PRIA funds that are used to invest in properties are used to buy the two towers. These towers are used as the Takaful IKHLAS offices today. Because the participants are the owners of the tower, so the shareholders as a representative of the company are giving rental income to participants every month for using the towers.

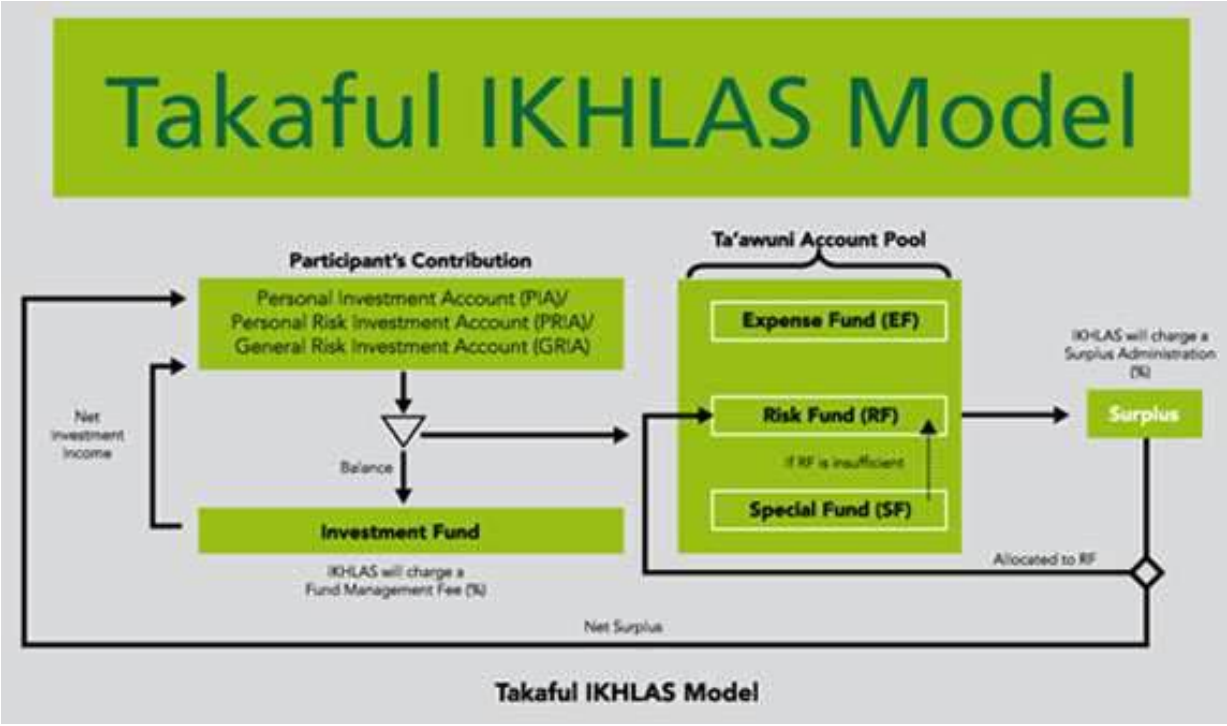
Fix income securities are known as sukuk. BMN limit for fix income securities is 50%. In addition, the Takaful IKHLAS Company puts 50% of Family PRIA fund and 50% of Family PIA fund in it. Fix income securities are excellent financial instrument for Family Takaful. Since Family Takaful has long liability, so the company should make an asset liability matching with investment in long term investment like sukuk. There are retails sukuk in the market. However, the company mostly prefers to invest in long term maturity sukuk (for 15 years) compares to retail sukuk.

Lastly is money market instrument. The BNM limit for money market instrument has no limit. It means the percentage of money market instrument is the balancing amount over the percentage of other financial instrument. When we calculate, the remaining percentage is 5%. It means the

participants fund either from Family PRIA Fund or Family PIA Fund that will be invested in money market instrument is 5% each. Investment in money market instrument is for the liquidity purposes only. MGIA and MSIA are an example of instrument in money market. MGIA is for investment in long term period (3 months, 6 months, 9 months or 1 year), and MSIA is for short term period (1 month, less than one month or 1 day). The MSIA look like overnight market for Takaful investment financing.

2.4.c. Surplus Underwriting in Family Takaful IKHLAS.

When we look at a diagrammatical illustration for the model that is used in Family Takaful IKHLAS, it can be described as below:



We can see from the model that, there is a surplus underwriting process in the system. We have previously discussed that; the participant's contribution will be divided and put in to Ta'awuni Account Pool and investment fund. The investment outcome from the fund will go back to Personal Investment Account (PIA). In addition, Ta'awuni Account Pool is also divided into three funds, which are Expense Fund (EF), Risk Fund (RF), and Special Fund (SF). Each of the type of the fund (except Expense Fund) will be invested in shariah compliance instruments and the outcome from investment will go back to the source of the fund, whether it is from Risk Fund (RF) or Special Fund (SF).

In addition to that, especially for Risk Fund (RF), where Risk Fund contribution will be added by investment income and after that deducted by claim, retakaful contribution and reserve. After the process is done, the company will get gross Surplus. And next, the gross Surplus will be

deducted by Surplus Administration Charge (SAC) as 10% of the Risk Fund contribution. Surplus Administration Charge is like a reward to the company for successfully managed the risk fund. The remaining of Gross Surplus after deduction of SAC is called Net Surplus. At the end, Net Surplus will be distributed to Risk Fund (RF) and Participant Investment Account on annual basis.

There is an issue in Surplus Underwriting that is used in Takaful IKHLAS, which is based on AAOIFI Standard, the surplus underwriting cannot be charged as revenue to Takaful Operator, because the participants are the real owner of the fund, and not the Takaful Operator. It means AAOIFI disallowed the Takaful Operator to take the surplus. On the other hand, there is a different resolution made by Shariah Committee in Takaful IKHLAS where the Shariah committee is allowing the Takaful Operator to take surplus based on the following arguments:

1. Surplus here is not like sharing of surplus in Mudharabah, but charging of surplus based on Al-Ju'alah principle.

2. Surplus here is a reward for the company for successfully managing the risk fund.

3. The company mentions in the contract where the company will obtain Surplus Administration charge from the Net Surplus (if any)

4. Surplus Administration Charge is taken based on risks that have been successfully managed by the company.

Based on that explanation, the contract is binding because the company disclosed about the charging of the surplus administration fee in the contract agreement. It means, the participant knows and agrees with this contract. In addition to that, from that explanation, actually the Takaful Operator will get three revenues from following this model, which are:

1. Revenue from the expense fund

2. Revenue or profit from investment

3. Revenue from Surplus Administration charge.

However, we should remember that charging for Investment Performance Fee is only 10%, and charging for Surplus Administration Charge is also 10%. It means that, the company gives more benefit (the remaining 90%) to participants in term of taking profit or revenue for the company itself. It is like the company prefers to expend welfare to participants compares to the company.

When we compare the Takaful IKHLAS and the Takaful companies in Middle East, where surplus underwriting is disallowed for distribution to the Takaful Operator, we should remember that the expense funds in Takaful Company in Middle East is between 80% and 90%. It is different from Takaful Company in Malaysia or Indonesia where the Takaful Company only takes 10% as an expense fund or investment performance fee. In addition to that, charging the Surplus Administration Expense motivates the company gives better performance in managing the risk in the system.

3.0. Critical comparison on investment of Takaful Funds in Family Takaful

A case study of PT. Asuransi Takaful Keluarga, and Takaful IKHLAS Sdn. Bhd.

In this chapter, the study will do some critical comparison on investment of Takaful Funds in Family Takaful, between PT. Asuransi Takaful Keluarga (Indonesia) and Takaful IKHLAS Sdn. Bhd. After doing the critical comparison, the study hopes that, there will be a feedback from the study that can be used to develop the Takaful Companies in the future. In addition to that, the study will also do comparison in several categories, that will be explained one by one;

3.1. Critical Comparison on Operational Systems that are used in the two companies.

3.1.a. Model or contract is used in two Family Takaful Companies

As we know, the model or contract used in PT. Asuransi Takaful Keluarga is Mudharabah Musytarakah. Based on previous explanation, Mudharabah Musytarakah is a contract that gives authority to Takaful Operator to become a fund manager and also an entrepreneur of the fund. In Mudharabah Musytarakah contract, besides being an entrepreneur (mudharib), Takaful Operator also function as a fund provider (Shahibul Maal).

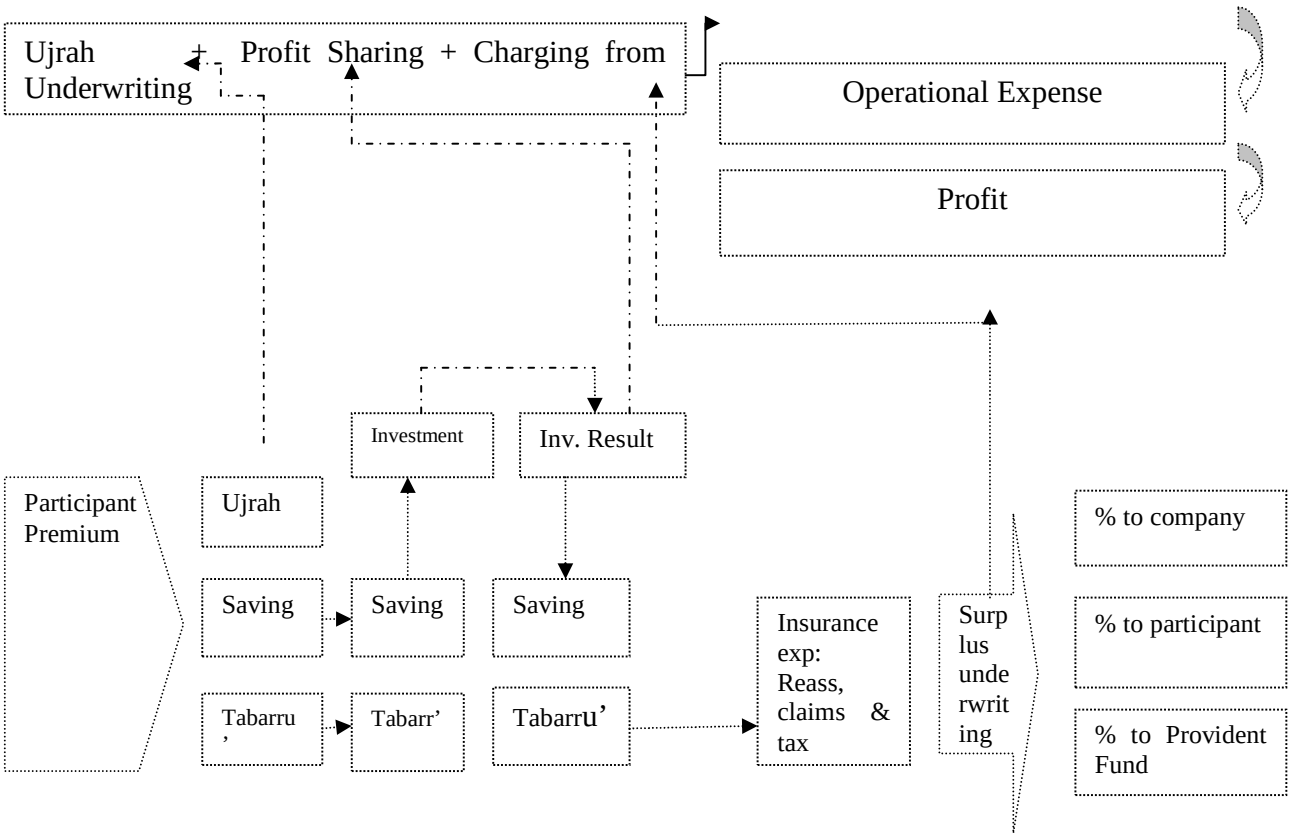
The purpose of this contract is to create a strong fund for investment, and to make Takaful Operator to be able to increase their percentage in profit sharing. In addition to that, at the end of the year, if there is a profit, profit will be distributed based on capital contribution. In the time of distributing the profit, Mudharib (PT. Asuransi Takaful Keluarga or Enterpreneur) also takes its portion as a Sahibul Mall or Capital Provider.

To be added, there are three parties involve in the system, which are participants that become the first Sahibul Maal, Mudharib that becomes an entrepreneur, and the hybrid function of Mudharib that also becomes the second Sahibul Maal.

The good thing in using Mudharabah Musytarakah contract is that, Mudharib fund or shareholder fund (capital or equity in Takaful) can be mixed together with participant's fund. In addition, if there is a deficit, it will be burned together, between participants and Takaful Operator (shareholder).

Shareholder's Fund

Company Revenue



When we look at the diagrammatical illustration once again, where Mudharabah Musytarakah contract is applied, based on the diagram, the study found that the wakalah contract is applied. We could see that after the participant pays the premium, some percentage of this premium will be put in Ujrah account. As we know, Ujrah is a fee given by the participant to Takaful Operator for the successfully managing the funds. In addition, Ujrah is given in Wakalah contract only. It is like participant gives salary to Takaful Operator. On the other hand, Ujrah is not given in Mudharabah contract, since in Mudharabah contract, the revenue for the Takaful Operator come from profit sharing from investment activities. Based on that explanation, the study does not agree if PT. Asuransi Takaful Keluarga defines the model that the company used is Mudharabah model. For that reason, the study proposes PT. Asuransi Takaful Keluarga to change the name of the model to become hybrid model. In hybrid model, the company is allows to take an Ujrah fee as a reward in managing the risk.

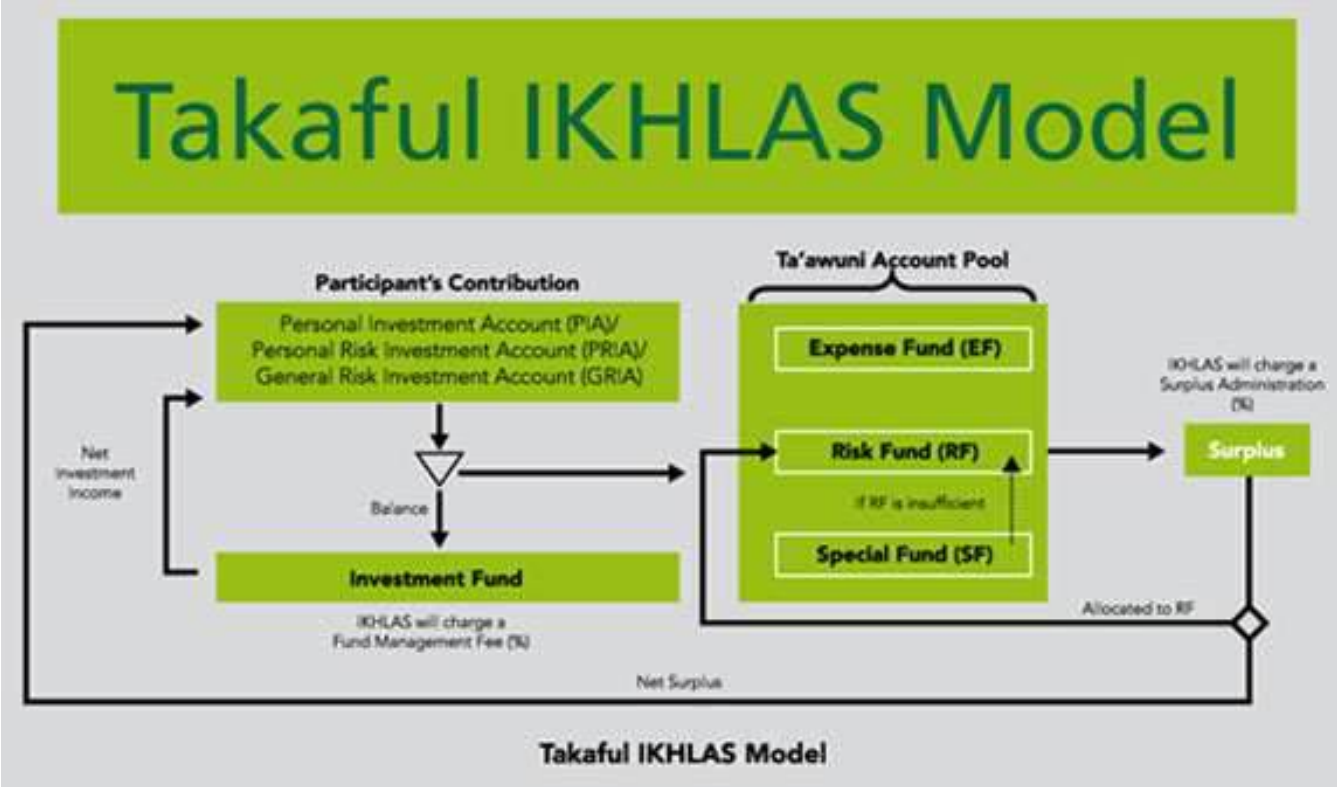
In addition to that, the study also does not agree if PT. Asuransi Takaful Keluarga uses "participant premium" as a term for participant fund. As we know, in Takaful, participants agree to donate or contribute to a pool of fund, to cover the indemnification that occurs for every participant's in the Takaful Company. Based on this statement, the study suggests that, the company to use the world "participant contribution" in place of "participant premium".

Participant premium or in conventional system called insurance premium is the periodic payment for insurance policy. In addition to that, basically the term "participant premium" is a term that is used in insurance policy. In insurance policy; the policy holders has to pay periodically to cover the risk in the future, whereby the ownership of the fund will be transferred from policy holders to Insurance Company. However, in Takaful, we use concept of mutual indemnification, or taawuni, whereby all participants donate or contribute some of the funds with the purpose of helping one another in the case of peril or hazard. After the fund is collected, participant still owns the fund and Takaful Operator just becomes a manager of the fund only. Because of that, the term participant contribution is preferred be used compares to participant premium.

The next issue is regarding using Mudharabah Musytarakah contract in the company. Based on the study explains in previous chapter, where PT. Asuransi Takaful Keluarga uses Mudharabah contract with profit sharing 70:30, which means that profit that comes from investment activities will be distributed based on 70% for participants and 30% for Takaful Operator. So, the study does not see the capital contribution as an evident for using Musytarakah contract. The study argument is based on the illustration that is used in the company.

This is the illustration that must be explained to participants before entering the contract. And also there are some informations about capital contribution in Akad Mudharabah Musytarakah that also has to be clearly explained to participant before entering the contract. It means that it must be stated clearly in the contract how many percentage of capital contribution is in the contract, and also it must state the percentage of profit sharing between the participant as a capital contribution (1st Rabbul Mal) and Takaful Operator as a Mudharib and also as a second capital contribution (2nd Rabbul Mal). If it is clear, participant will get better picture about the contract that is used in the company. Participant will know how much is the actual company's capital contribution in the contract. In addition, the participants will be more aware about the percentage of profit sharing that will be distributed to participant and to the company. In addition to that, the study also does not see how much PT. Asuransi Takaful Keluarga charges as ujrah fees, which actually are supposed to be declared in the contract.

If we look at the model that is used in Family Takaful IKHLAS Sdn. Bhd. that is called Wakalah model, whereby it is clearly stated that, after the participants give contribution, some part of contribution will be put in the expense fund as an ujrah for Takaful Operator. This operational system is in line with the characteristic of Wakalah model itself.



In addition to the contribution goings to the Ta'awuni Account Pool, some parts of the contribution also go to investment fund. Regarding the name of the fund, the company uses Mudharabah contract for investing the fund. It means that, participants become a capital provider (Rabbul Mal) and family Takaful IKHLAS becomes an entrepreneur (mudharib) for this fund. It is also stated in the contract that Takaful IKHLAS will charge 10% as an Investment Performance Fee. It is likes Takaful IKHLAS where the entrepreneur gets 10% from the profit of the investment.

If we go back to the name of the contract that is used in Takaful IKHLAS, which is Wakalah contract, actually it is not 100% correct, due to the occurrence of investment fund that is invested by Family Takaful IKHLAS. In addition to that, the company also charges 10% as investment performance fee. It means that, in the contract is in form only this concept is contrary to the meaning of Wakalah contract itself. As we know in Wakalah contract, Takaful Operator only gets revenue or Ujrah, as a result for managing the fund. In addition to that, because Takaful Operator also takes ujrah, so the study suggests that Family Takaful IKHLAS to use hybrid model in its operational system.

On the other hand, the study still accepts the usage of Wakalah model termed as Takaful IKHLAS even though Mudharabah contract is also used for the investment fund. It happens may be because of the level of people understanding about Takaful model in Malaysia nowadays. If Takaful IKHLAS said that they use hybrid model, people will be confused, and ironically it will make them not interested to give contribution in Takaful IKHLAS, and make them run away to conventional insurance.

3.2. Critical Comparison on Investment activities in PT. Asuransi Takaful Keluarga and Takaful IKHLAS Sdn. Bhd.

If we look at the investment activities in PT. Asuransi Takaful Keluarga, where most of the funds are invested in Deposit. Engage investment of deposit is a kind of proposed instrument that is used to secure the liquidity of funds in Takaful companies. Mandatory Deposit, Voluntary Deposit, Mudharabah Time Deposit and Certified Deposit are the kind of MGIA, which allows the participant to enjoy the dividend or profit sharing every month. MGIA or Mudharabah General Investment Account is a kind of deposit that is invested in short term period (3, 6, 9 or 12 months).

From time to time, PT. Asuransi Takaful Keluarga invests most participant's fund in shariah deposit, or later we called money market instrument. When we compare with Takaful IKHLAS, the percentage the company invests in money market instrument is just the remaining percentage after the funds that is put in other financial instrument over hundred. When we look at the regulation by Bank Negara Malaysia (or later on we called BNM Limit), the BNM is also doing the same thing. Why there is a different things happen in Indonesia?

When we look at the concept of Family Takaful itself, where the protection for indemnification is given for long term period, supposedly the fund should be invested in long term investment, such as Sukuk. However, most of the sukuk that are available in Indonesia nowadays is retail Sukuk with maturity 3 years until 5 years. Usually the risk happens after three years of participant contribution of fund to the company. The issue remained how to cover the risk after the next five or three years if Sukuk that is available in Indonesia is only retail Sukuk? The point is that, doing investment in Sukuk in Indonesia currently is still not in line with the concept of Family Takaful itself. It means, the Family Takaful gives protection for long period, and expected that the Takaful Company in Indonesia also have to invest in Sukuk with long term maturity.

Of course until today, only retail Sukuk and government sukuk with maturity of short term is available in the system. However, participants need Sukuk that can give dividend for long period and appropriate with the concept of Family Takaful itself. In addition to that, it is the duty for Indonesian Government to encourage the local companies to disburse long term Sukuk, in order to help Takaful Company to reduce the problem asset liability-mismatch.

Regarding the deposit instrument, there is an issue whereby the bank that the Takaful Company used to invest the participant's fund is considered as windows banking. In window banking, there is a financial consolidation report at the end of the period that indicates that the revenue derives from activities in conventional and shariah unit are mixed in consolidation statement. Although after consolidation, the revenue is distributed back to the shariah unit based on the percentage of working capital that is injected in shariah unit, but, the issue is that, the revenue derives from conventional and shariah unit is mixed in short period, and made us hesitant to the purely shariah compliance of the investment. In addition, there is a new regulation in Indonesia, called PSAK Number 101 regarding the arrangement for Islamic Financial report. After shariah unit successfully implements PSAK Number 101, now we can become confident that money that is invested in shariah unit (such as shariah unit in public/conventional) is truly shariah compliance.

To make conclusion about the phenomena that happened in Indonesia, even though investing in deposit instrument is just for short period, but the study shows that this is the best thing the Takaful Company can do now to secure the liquidity of the fund, due to lack of Islamic financial instruments in Indonesia.

Invest in marketable securities means invest in shariah financial instrument other than bank. The examples for marketable securities are Islamic stock exchange, Islamic option, Islamic hedging, Islamic hearing purchase, Islamic pawn broking, Sukuk, Islamic cooperation (BMT) and so on. Islamic stock exchange is stock that is traded in shariah market. In Indonesia we called JII or Jakarta Islamic Index. JII has its shariah screening process that becomes a requirement for the stocks to list in JII. In Malaysia, there is FTSE Bursa Malaysia KLCI with his its own shariah screening process.

Islamic option is one of Islamic derivative instrument that protect users against market price volatility that can happen in the future. Islamic option is like bay as salam without asset backed. Actually in shares we sell the value of the company. The issue remained how to measure the value of the company in the future. To measure the value, we have to use time value of money to get estimation value for company's performance in the future. Getting the value, we have to use interest as a benchmark to measure the growth of investment. As we know using interest is prohibited in Islam. In addition to that, to Islamic option more shariah compliant, we estimate the growth based on the estimation revenue which could be taken from the actual goods that we are invested are today. And also Islamic option cannot be traded in secondary market according to international shariah standard[12]. In addition to this issues, Dewan Shariah Nasional (Shariah National Council) has to make clear regulation regarding the using of Islamic option in Indonesia to make this instrument truly shariah compliance. May be because of those matters, since 2008 PT. Asuransi Takaful Keluarga did not invest in marketable securities anymore.

In Malaysia, marketable securities we consider are equities. There is a BNM limit for equities, which is 30%. Based on that limit, Takaful IKHLAS Sdn. BHd. puts 25% of the fund in equities. Like the name, marketable securities are security that are easily tradable. In addition, put a 25% in equities can make participant's more confident about the liquidity of asset in Family Takaful IKHLAS, and such a guarantee to participant that the company can pay the indemnification in whatever condition.

Even though PT. Asuransi Takaful Keluarga is not using marketable securities anymore, but Indonesia still has a regulation to regulate the government limit to invest in marketable securities, which is 20%. If we compare the percentage limit between Indonesia and Malaysia, the study discover that Malaysia government is more ready serious to develop Takaful industries. The 30% BNM limit for equities instrument is quite a lot to prevent all risk that could be coming every time in Takaful Company.

And next is comparing how PT. Asuransi Takaful Keluarga is doing investment in Mutual fund, and how Takaful IKHLAS is doing investment in Unit Trust. Since 2008, PT. Asuransi Takaful Keluarga invests money in mutual fund, and stops investment in marketable securities.

[12] http://www.bnm.gov.my/microsites/giff2007/pdf/iif/Session4_c3.pdf

If we look at the strategy that is used by PT. Asuransi Takaful Keluarga, the company prefers to use shares rather than marketable securities except shares and sukuk. It seems that the company needs to generate more profit instead of securing the liquidity of the fund specifically in shares. Actually it was a good decision, that made participants become more confidence with the performance of the company. However, the difference between the two companies is that, Takaful IKHLAS is following the BNM Limit of 10% in investing in Unit Trust Fund every time. It is likes the company is trying hard to protect the performance of Takaful Companies. Since 2008, PT. Asuransi Takaful Keluarga that was trying to invest in Mutual Fund with a good performance. It invested 16.64% of fund in 2008 and 17.58% of fund in 2009 out of 10%. We hope that the performance would become better in the future.

In properties investment, PT. Asuransi Takaful Indonesia invests participant fund in house that is located in Bogor. The house is used as a storage that is used to store the company's documents or files. On the other hand, for properties investment, Takaful IKHLAS invested the fund to buy two towers in Kerinchi area in Kuala Lumpur that the towers become the main office of the company. If we compare the company's decision, of course both of them invested the fund to buy the offices. But the different is that, Takaful IKHLAS bought the two towers that would be used for their daily activities, meanwhile PT. Asuransi Takaful Keluarga just invested in it, and use as a storage. Now the study is comparing the effectiveness of using participant's fund in the properties investment. The study discovered that properties investment that done by Takaful IKHLAS are more preferable and giving more benefit (or profit) compares to properties investment in PT. Asuransi Takaful Keluarga. The reason is that, first; BNM has already given the limit of 20% of fund that has to be invested in investment properties, and the Takaful IKHLAS also invest it at 20%. It means every year participant's get revenue from 20% of the funds that invested in investment properties. On the other hand, in 2009, PT. Asuransi Takaful Keluarga, only put 5.91% of participant contribution in properties. It means that, participants only get revenue from 5% fund that put in that instrument.

Actually there is a government limit for land and buiding which is 10%. But, at 2009, the company was not following it. When we look at the government regulation itself, that only regulate 10% for land and building investment, the government also not look at the land and building could become a solution in the liquidity problem.

From participant's point of view, Takaful IKHLAS decision in property investment is much better than PT. Asuransi Takaful Keluarga. Regarding to the price of the building that would be increase from time to time, so, if there is a liquidity problem, participant's right will be secured with value of the building in the future. And for criticizing the regulation, BNM has been regulated well to support the performance of Takaful Company in Malaysia, compares to Indonesian Government in properties investment.

The next is fixed income securities that we call Sukuk. In 2009, PT. Asuransi Takaful Keluarga invests 23.60% of participant contribution in Sukuk. In addition to that, the Indonesian Government Limit for investing in Sukuk is 20%. However, BNM limit for Fixed Income Securities is 50%. Based on that percentage, Family Takaful IKHLAS invests 50% of Family PRIA Fund and 50% of Family PIA Fund in Fixed Income Securities.

Based on the above explanation and due the characteristic of family takaful, Family Takaful should prefer to invest more in Sukuk. In participant point of view, of course they need to get

dividend for long term period. 50% investments in sukuk are able to protect a half of participant right if the liquidity problem occurs in the Takaful Company. In addition to that, the study gives suggestion to PT. Asuransi Takaful Keluarga to increase the percentage of investing in Sukuk, even though in 2009 the company invested 23.60%. The study also suggests that Indonesian Government should encourage market players to disburse the long term sukuk in order to help Takaful Company to engage in manage liquidity.

After a critical comparison between investment activities in PT. Asuransi Takaful Keluarga and Family Takaful IKHLAS Sdn. Bhd., this study conclude that, even PT. Asuransi Takaful Keluarga was eight years older than Family Takaful IKHLAS Sdn. Bhd., but PT. Asuransi Takaful Keluarga have to learn more from Family Takaful IKHLAS Sdn. Bhd regarding the operational system in Takaful Company. Even though based on Earns and Young, the growth for Takaful Company in Indonesia is 37% per year or the highest growth in Asia, but in term of protection for participants welfare, PT. Asuransi Takaful Keluarga have to learnt more from Family Takaful IKHLAS Sdn. Bhd. The highest growth of Takaful Company in Indonesia, the study suggest that, it is just because of big populations of Indonesia that already and awareness for using shariah insurance.

The study suggests to the Indonesia Government to make proper regulation, such as increasing the percentage of Government limit for several financial instruments. It is due to management of the liquidity of the company, and to make sure the Takaful Company is able to mitigate all risks in the system. The study also suggests to the government to impose more control to the Takaful Company, to make sure that the Takaful Companies follow the regulation, in order to help them to stay longer in the market.

The study also need to gives opinion to Indonesian Government, to add to the financial institutions that control the development of Takaful in Indonesia. If we do study in Takaful Company in Malaysia, there are six bodies (inside or outside the Takaful Company) that control the activities of Takaful Company, which are:

1. Shariah Committee

2. Shariah Compliance Department

3. Internal Audit

4. Third Party or External Audit

5. Bank Negara Malaysia

6. Security Commission

Especially with Bank Negara Malaysia and Security Commission, every Takaful Company has to give report to those bodies every month. Since there are six bodies all together control the activities and the systems in the Takaful Company, participants become more confident to use the Takaful services, even though the Takaful Company never talk about the types of instrument they used for investing the funds. If Indonesian Government does the same thing, the study believes that Takaful Companies in Indonesia will grow rapidly in the future.

3.3. Critical Comparison on Surplus Underwriting in PT. Asuransi Takaful Indonesia and Takaful IKHLAS Sdn. Bhd.

When we look at surplus underwriting in PT. Asuransi Takaful Indonesia where the Company divided surplus underwriting in to three segments, in which are some percentage goes to the company itself, some percentage goes to participant and another percentage goes to the provident fund. The problem is that, when the study went to the company and saw the contract agreement, which stated that surplus underwriting distributed 100% to provident fund. It is likes the company is not strong enough in handling the business. After 16 years of the company establishment, the company still need 100% surplus underwriting to put in provident fund.

From participant point of view, this sound not so efficient. As we know, in Takaful or in Islamic insurance, surplus underwriting is the participant right, because the participant itself has becomes the owner of the fund. It is good if some of them are put in provident fund, but it cannot for 100%.

In addition to that, the study thinks that, the company decision to put 100% surplus underwriting in provident fund is impose the participant itself. It is not logic for company that after existing for 16 years, they still needs to put 100% of surplus underwriting in provident fund.

Now we can see that, for a whole operational process in PT. Asuransi Takaful Keluarga, participants only take profit resulted from investment activities only, and no surplus is shared to participant. From investment point of view, actually participants need to take more benefit from Takaful activities instead of getting indemnification when hazard comes. It is participant right to get surplus sharing from underwriting process as a true owner of the fund. The study thinks that this issue must be resolved to improve the welfare of public interest. If it is not resolved, there is no different between Insurance and Takaful in Indonesia.

The study also found that, Takaful Participants in Indonesia still does not recognize this issue. The percentage of surplus sharing is stated in the policy. Of course before signing the contract, participant's at least read the document. However, the study thinks participants have no enough knowledge regarding surplus underwriting yet. Even though stated in the policy, participants still cannot defend their right regarding the percentage of surplus underwriting itself.

In addition to that, the study needs to encourage academia in Indonesia to do more study, more writing and seminars about Takaful and operational system in Takaful, to increase the people awareness about Takaful Company. We can start by giving information regarding participant's right and benefit from Takaful, because actually the basic principle of Takaful itself is so good. At the end, lets people confident to use the Takaful services. If another study found another weaknesses in operational system in Takaful, let us give time to Takaful Company in Indonesia to make spick and span in the Company's performance.

When we look at the diagrammatical illustration regarding the operational system in Family Takaful IKHLAS, whereby 10% of surplus underwriting would become a Surplus Administration Charge (SAC) to the company, and the remaining will be distributed to

Participant Investment Account (PIA) and Risk Fund(RF). In this matter, from the remaining surplus underwriting after deducted by SAC, 50% of it will go to PIA and another 50% will go to RF. For example if Net Surplus is RM 100, RM 10 would be charged as a Surplus Administration Charged (SAC), and the remaining will be distributed RM 45 to PIA, and RM 45 to RF.

There is an issue where some scholars said that, the Takaful fund and any profit or surplus sharing arising there from it do not, in principle, belong to the Takaful Operator. They belong to the Takaful Participants collectively. The Takaful Operator cannot take any portion of the contribution monies from the fund. And this concept serves as a fundamental difference between commercial insurance operational model and takaful operational model[13]. When the study do research in Family Takaful IKHLAS, company said that the reason why Takaful Operator take some portion of underwriting surplus is supported by shariah committee in that company. Why Shariah committee supports it? Because in Arab country, Takaful Operator charges expense fund until 80% or 90% from contribution fund. But the Takaful Companies in south East Asia only gets around 10% until 20%of revenue. The problem remains how the company can survive in handling the big claims or risks, at the same time, they only get small return. In addition to that, the company considers that surplus is not like sharing the profit, but as a charging for surplus itself, and achievement in handling the risk fund. Besides that, the company mentions in the contract that the company will charge a Surplus Administration Charge as 10%. And then, profit is derived based on the risks taken by the company (Al-Ghunmu Bil Ghunmi).

When we analyze the operational system in Family Takaful IKHLAS more deeply, risk fund is owned by participant. When there is a deficit imposed, supposedly participant has to bear the risk. However, the company cannot do that. It is not possible for the company to go to the market and meets participants one by one to get the top up. If it is practiced in the Takaful, participants may run away and go to conventional insurance. In addition to that, in the practice, the company or the shareholders themselves bears the deficit with giving Qardhul Hasan to participants. So, in the case of deficit, shareholders will top up. In the case of surplus, why not shareholder gets 10% of it as a Surplus Administration Charge.

On the other hand, there is no deficit occurrence in Takaful IKHLAS yet. So, to be in line with AAOIFI standard that generally disallowed to share surplus sharing with Takaful Operator, why not a whole surplus is given back to participant, but the percentage of expense fund could be higher than today. In addition to that, regarding the deficit that has to be borne by the Takaful Operator when it occurred, actually the study thinks that, it becomes a motivation for the Takaful Company to perform well, so the deficit problem will never occur. However, because Takaful IKHLAS is still an average Takaful Company, so until today the company is not ready to use this concept.

4.0. Conclusion and Recommendation

The study was doing critical comparison in operational systems that comprise of contract or model that is used in the companies, investment activities, and also distribution of surplus

[13] Ali, Engku Rabiah Adawiah (2008). Essential Guide To Takaful (Islamic Insurance). CERT. Page 42.

underwriting in the two Takaful Companies, which are PT. Asuransi Takaful Keluarga and Takaful IKHLAS Sdn. Bhd.

The study began with giving introduction about Takaful, the difference between conventional insurance and Takaful, the reason why as a Muslim we have to prefer to choose shariah insurance (Takaful) compares to conventional insurance. The study also explained the reason why needed to conduct this research. At the end of introduction, the study explains the three variables that would be discuss in this paper.

The next chapter, the study was explained and discuss about the companies profile, comprises of product offered and operational systems, that also divided in to three part, which are the contract is used, investment activities, and mechanism to sharing the profit and surplus underwriting.

In Chapter three, the study was doing critical comparison on operational system in the two companies. And at chapter four, the study is doing Concussion and Recommendation.

To conclude, the study thinks that there are many things that need to be done to increase the performance in the two Takaful Companies. Especially for PT. Asuransi Takaful Keluarga, the study recommends the company learns how to have good investment strategy from Takaful IKHLAS Sdn. Bhd.

In addition to that, the study suggests to Indonesian Government to do significant controlling development to Takaful Company. Based on Regulation number 21 at 2008, The Central Bank does not have authorization to control the Insurance or Takaful systems in Indonesia. However, Insurance and Takaful are controlled by BAPEPAM (Money Market Superintended Body). There is a new regulation that officially used since 2010, that the new body called “Otoritas Jasa Keuangan” or Financial Services Authority that will supervised the financial services (including Insurance and Takaful) and money market instrument. It means that there will be new financial regulation that more tighten to supervise the performance of Takaful Company. After it is implemented, there will be three body that supervise the development of Takaful Company in Indonesia, which are Dewan Shariah Nasional (DSN or Shariah National Council), BAPEPAM (Money Market Superintended Body, and Otoritas Jasa Keuangan (OJK or Financial Service Authority).

We hope that, the three bodies will apply its functions accordingly. Especially for OJK, we advise to this body to make good superintended system to control the operational activities in Takaful instruments, and doing reinforcement in controlling risk management systems. In addition to that, the regulation describes about the percentage of Government limit for each type of instrument based on SK Dijen No. Kep. 4499/LK/2000 at 11 September 2000. Actually it likes Capital Adequacy Ratio for Takaful Company that have to fulfill by the Takaful Company itself to secure the risks in the system. According to this explanation, the strengthened supervision needs to apply.

For Takaful IKHLAS Sdn. Bhd. the study hopes that the company will improve their performance to be more effective and efficient, to make them able to compete with the best player in the market today. The study also hopes that the company will do intensify research and development efforts to create the range of Takaful products that meets the customer requirement.

At the end, the study suggests to further study to conduct research in General Takaful, and makes critical comparison between General Takaful Companies in South East Asia and Uni Emirat Arab. The study estimates that there will be more knowledge acquired from further study, which can be used to develop Takaful industry in worldwide.

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HUBUNGAN PULANGAN SAHAM DENGAN DASAR MONETARI: SAHAM GENERIK DAN ISLAM

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ABSTRAK

Kajian ini menguji hubungan antara pemboleh ubah dasar monetari dengan pasaran saham di Malaysia yang boleh dibahagikan kepada dua segmen iaitu pasaran saham generik (indeks komposit Kuala Lumpur, KLCI) dan pasaran saham Islam (indeks Syariah Kuala Lumpur, KLSI). Instrumen dasar monetari yang dikaji adalah penawaran wang (M1 dan M2) serta kadar faedah (MM dan TB). Kajian ini menggunakan data bulanan dari Januari 2000 hingga Julai 2009 yang diuji menggunakan kaedah autoregresif lat teragih (ARDL). Konsisten dengan jangkaan teori ekonomi, keputusan analisis ARDL membuktikan wujud hubungan jangka panjang yang positif secara signifikan antara penawaran wang (M1 dan M2) dengan nilai saham KLCI dan KLSI. Begitu juga, kadar faedah (MM) didapati mempunyai hubungan jangka panjang yang negatif dengan KLCI. Bagaimanapun, hubungan tersebut tidak signifikan. Apabila diaplikasikan kepada KLSI, hubungan tersebut menjadi positif walaupun masih tidak signifikan. Hasil ujian ECM yang diperoleh dari analisis ARDL menyarankan hubungan yang sama dalam jangka pendek kecuali terdapat hubungan yang negatif antara MM dengan KLSI apabila M2 dimasukkan dalam persamaan. Satu perbezaan yang ketara adalah hubungan positif yang signifikan antara MM dengan KLSI. Keadaan ini kemungkinan berlaku kerana

pelabur-pelabur saham-saham patuh Syariah menganggap peningkatan dalam kadar faedah menyebabkan elemen *riba*' dan dengan itu mendorong mereka untuk mengalihkan perhatian dan pelaburan kepada saham-saham Syariah, yang kesan akhirnya adalah peningkatan nilai saham-saham tersebut. Penemuan kajian ini mempunyai implikasi dasar yang penting kerana suatu dasar yang sama cenderung menghasilkan impak yang bertentangan ke atas dua segmen pasaran saham.

ABSTRACT

This study examines the relationship between financial variables which are associated with monetary policy and stock market in Malaysia which can be segregated into two segments namely the generic stock market (Kuala Lumpur Composite Index, KLCI) and the Islamic stock market (Kuala Lumpur Syariah Index, KLSI). The monetary policy instruments studied here are money supply (M1 and M2) and interest rate (MM and TB). This study employs monthly data from January 2000 to July 2009 which are tested using an autoregressive distributed lags (ARDL) method. Consistent with theoretical prediction, the results from the ARDL analyses provide evidence that there exist positive long-term relationships between money supply and value of generic and Syariah stocks. Similarly, interest rate (MM) is found to have a long-term negative relationship with KLCI. However, the relationship is not significant. When applied on KLSI, the relationship turns positive even if it is still insignificant. The results from the error correction model (ECM) which is provided from the ARDL analysis suggest such relationships are persistent in short-term except there are negative short run relationships between MM and KLSI when M2 is included in the equations. One obvious exception is the significantly positive relationship between MM and KLSI. Such condition is probably due to perception of investors of Syariah-compliant stocks

that increases in interest rates create an elemen of *riba*' and that accordingly encourages them to switch their attention and investment to Syariah stocks, the final impact of which is increases in the value of Syariah stocks. The findings of this study has an important policy implication in that the same policy tends to produce an impact which is contradicting on the two stock market segments.

PENDAHULUAN

Model penilaian saham yang standard seperti model pertumbuhan dividen Gordon (1959) mengatakan bahawa nilai intrinsik saham biasa ditentukan oleh kadar pulangan dan aliran-aliran tunai dijangka. Begitu juga teori penetapan harga arbitraj (Ross 1976) mengatakan pemboleh ubah makroekonomi seperti kadar faedah, inflasi dan output menentukan perubahan dalam harga saham. Kepentingan dasar monetari dalam menentukan perubahan dalam pasaran saham terus menjadi satu titik fokus dalam kajian-kajian mutakhir ini khususnya kerana kedudukan pasaran saham dewasa ini sering diancam oleh kejutan-kejutan makroekonomi yang mempunyai kesan yang dramatik. Oleh yang demikian, ia menimbulkan satu persoalan sama ada dasar monetari yang dilaksanakan sekarang mampu melindungi pasaran saham dan seterusnya ekonomi sesebuah negara daripada sebarang kejutan yang tidak diingini. Hal ini kerana sejajar dengan jangkaan ekonomi, kebanyakan kajian empirikal (misalnya Choudhry 1996; Rigobon dan Sack 2001; Humpe dan Macmillan 2007; Mukherjee dan Naka 1995; Najand dan Noronha 1998) membuktikan bahawa dasar monetari mempunyai hubungan dengan pasaran saham. Bukti empirikal yang sama diperoleh di Malaysia (misalnya Habibullah dan Baharumshah 1996; Ibrahim dan Aziz 2003; Rosylin dan Mohd Yahya 2005; Abu Hassan Shaari, Ugur dan Siti Hamizah 2008; Aisyah, Noor Zahiran dan Fauziah Hanim 2009) yang turut menyarankan bahawa dasar monetari mempunyai hubungan tertentu dengan harga saham.

Berdasarkan alasan bahawa instrumen dasar monetari mampu memberi impak tertentu untuk mengawal kestabilan pasaran saham, kajian ini berhasrat untuk menguji semula hipotesis tersebut dalam tempoh yang lebih terkini. Hasil kajian ini diharap

dapat menyediakan bukti terkini kepada penggubal dasar sama ada instrumen dasar monetari yang digunakan masih berkesan untuk digunakan untuk melindungi pasaran saham daripada sebarang kejutan di masa depan. Begitu juga, walaupun terdapat kajian-kajian sebelum ini (Rosylin dan M. Shabri 2008; M. Shabri dan Rosylin 2009) yang telah mengambilkira pasaran saham Islam, bukti yang sedia ada masih amat terhad. Oleh itu, selari dengan matlamat negara untuk menjadi hub kewangan Islam, kajian ini berhasrat untuk mendapatkan bukti sama ada instrumen dasar monetari yang sama mampu memberikan kesan yang sama ke atas pasaran saham Islam. Kajian ke atas indeks Syariah (KLSI) juga mempunyai kepentingan sendiri kerana perbezaan ciri saham-saham Syariah berbanding saham-saham generik yang menjadi komponen indeks KLCI. Justeru itu, tujuan utama kajian ini adalah untuk menguji wujudnya hubungan antara dasar monetari dengan pasaran saham generik dan Islam di Malaysia. Di samping itu, ia bertujuan mengenalpasti pemboleh ubah kewangan yang paling mempengaruhi pasaran saham Malaysia dan mengkaji hubungan jangka pendek dan jangka panjang antara pembolehubah kewangan dengan pasaran saham di Malaysia serta untuk mengetahui sama ada dasar monetari yang dijalankan berjaya dan stabil dalam mengawal kekukuhan pasaran saham di Malaysia.

Susunan perbincangan dalam kajian ini adalah seperti berikut: Bahagian 1 menjelaskan latar belakang kajian, objektif, permasalahan dan kepentingan kajian ini dan Bahagian 2 membincangkan kajian-kajian terdahulu. Bahagian 3 menerangkan metodologi yang digunakan dalam kajian ini. Bahagian 4 melaporkan keputusan empirikal dan Bahagian 5 adalah kesimpulan kajian.

KAJIAN LEPAS

Kajian mengenai kesan atau hubungan antara dasar monetari dengan pasaran saham mula mendapat tumpuan setelah penemuan seumpamanya diperoleh di negara-negara maju. Antaranya adalah Rigobon dan Sack (2001) yang menggunakan pendekatan VAR di pasaran saham Amerika Syarikat, Najand dan Noronha (1998) yang menggunakan kaedah Engle Granger di pasaran saham Jepun, dan Humpe dan Macmillan(2007) menggunakan kaedah VECM di Amerika Syarikat dan Jepun. Kajian-kajian di pasaran lain turut menggunakan metodologi yang berbeza misalnya Ahmad Zubaidi, Siti Hamizah dan A. Mansur (2009) yang menggunakan ARDL di pasaran saham China. Di Malaysia**,** antara kajian awal dilakukan oleh Habibullah dan Baharumshah(1996). Dengan objektif utama mengkaji tahap kecekapan pasaran saham di Malaysia menggunakan analisis kointegrasi, mereka mendapati wujud hubungan kointegrasi antara penawaran wang dengan harga saham. Penemuan ini melibatkan tempoh kajian dari Januari 1978 hingga September 1992 dan pemboleh ubah output sebenar dan penawaran wang (M1 dan M2) di samping proksi harga saham di tahap pasaran dan juga sektor. Manakala Ibrahim and Aziz (2003) pula menggunakan kaedah kointegrasi dan VECM untuk menganalisis interaksi dinamik antara empat pemboleh ubah makroekonomi (output sebenar, tahap harga, penawaran wang dan kadar tukaran) dengan harga saham. Hasil kajian mereka yang meliputi tempoh dari Januari 1977 hingga Ogos 1998 menunjukkan penawaran wang memberikan kesan positif (negatif) ke atas harga saham dalam jangka pendek (jangka panjang).

Sebagaimana kajian yang dijalankan terhadap pasaran saham generik, mutakhir ini perhatian turut diberikan kepada segmen baru pasaran saham yakni

saham Syariah atau Islam. Misalnya, Rosylin dan Mohd Yahya (2005) telah membuat analisis terhadap hubungan jangka panjang antara dasar kewangan dan pasaran saham di Malaysia dengan menggunakan data dari Januari 1992 hingga Disember 2000. Pemboleh ubah-pemboleh ubah yang digunakan adalah penawaran wang (M1 dan M2), kadar bil perbendaharaan, kadar pertukaran, Indeks Komposit Kuala Lumpur (KLCI) dan Indeks Islam RHB. Hasil analisis mereka menunjukkan wujud hubungan jangka panjang antara M1, kadar pertukaran, Indeks Komposit Kuala Lumpur dan Indeks Islam RHB. Manakala pemboleh ubah M2 dan bil perbendaharaan menunjukkan terdapat hubungan jangka pendek antara dasar monetari dengan kedua-dua pasaran saham Islam dan generik. Selain itu, hasil analisis jangka panjang mereka juga menunjukkan terdapat pergerakan selari bagi kedua-dua indeks saham Islam dan generik di Malaysia. Turut mengkaji pasaran saham Syariah adalah Rosylin dan M. Shabri (2008), M. Shabri dan Rosylin (2009) dan Hairunnizam, Mohd Afandi dan Nurul Sahriza (2009).

Sama ada melibatkan nilai saham generik mahupun Syariah, penemuan kajian-kajian ini penting kerana pasaran saham merupakan elemen utama dalam sesebuah ekonomi. Oleh itu kestabilan sesebuah ekonomi tersebut lebih mudah dipelihara daripada sebarang ancaman sistematik jika wujud suatu mekanisme yang efektif untuk mengawal pergerakannya. Dalam konteks kajian sekarang, mekanisme tersebut adalah instrumen-instrumen dasar monetari.

DATA DAN METODOLOGI

Data siri masa pemboleh ubah-pemboleh ubah dalam kajian ini diambil secara bulanan bermula Januari 2000 sehingga Julai 2009. Data yang digunakan untuk

mengkaji pergerakan harga saham adalah indeks komposit (KLCI) dan indeks syariah (KLSI) masing-masing mewakili pasaran saham generik dan Syariah. Data kedua-dua indeks diambil dari Datastream Thompson Reuters. Untuk memastikan kedua-dua segmen pasaran meliputi tempoh yang sama, data indeks KLSI diselaraskan (indeks KLSI hanya disediakan sehingga Oktober 2007) dengan data indeks FTBM EMAS Syariah (indeks ini bermula pada Februari 2007) dengan menggunakan satu nilai pembahagi (*divisor*) yang menjadikan nilai indeks tersebut standard dengan KLSI. Data bulanan pemboleh ubah kewangan adalah ukuran penawaran wang iaitu M1 dan M2 dan dua kadar faedah asas iaitu kadar faedah wang semalaman antara bank (MM) dan kadar faedah bil perbendaharaan 3 bulan (TB). Kesemua data yang digunakan dalam kajian ini ditukarkan kepada bentuk log untuk tujuan analisis.

Spesifikasi Model

Secara umumnya kajian ini menentukan hubungan jangka pendek dan jangka panjang antara pasaran saham iaitu indeks Syariah (KLSI) dan indeks Komposit (KLCI) dengan pemboleh ubah kewangan di Malaysia berdasarkan persamaan-persamaan berikut:

$$\ln KLCI_t = \alpha + b \ln MM_t + c \ln M1_t + d \ln M2_t + e \ln TB_t + \varepsilon_t \quad (1)$$

$$\ln KLSI_t = \alpha + b \ln MM_t + c \ln M1_t + d \ln M2_t + e \ln TB_t + v_t \quad (2)$$

iaitu KLCI ialah indeks komposit Kuala Lumpur, KLSI ialah indeks Syariah Kuala Lumpur, M1 dan M2 adalah penawaran wang manakala TB dan MM masing-masing ialah kadar faedah bil perbendaharaan 3 bulan dan kadar faedah wang semalaman antara bank. Dalam perbincangan seterusnya persamaan 1 dirujuk sebagai Model 1 manakala persamaan 2 dirujuk sebagai Model 2.

Teknik Penganggaran

Kaedah ARDL Pesaran et al. (1996) yang digunakan dalam kajian ini mempunyai beberapa kelebihan. Antaranya ia boleh digunakan tanpa mengambilkira darjah kepegunan sesuatu siri masa sebelum ujian selanjutnya dapat dijalankan, yakni tanpa mengira sama ada sesuatu siri berintegrasi *I*(0), *I*(1) atau berintegrasi sebahagiannya (Pesaran 1997; Bahmani-Oskooee & Ng 2002). Di samping itu, kaedah kointegrasi ARDL juga mempunyai sifat yang tidak bias, cekap serta sangat sesuai untuk siri masa yang agak terhad. Hubungan kointegrasi antara pemboleh ubah tak bersandar dengan KLCI dan KLSI, dianganggarkan dengan persamaan-persamaan berikut:

$$\Delta \ln KLCI_t = \alpha_0 + \sum_{j=1}^{k1} b_j \Delta \ln KLCI_{t-j} + \sum_{j=0}^{k2} c_j \Delta \ln MM_{t-j} + \sum_{j=0}^{k3} d_j \Delta \ln M1_{t-j} + \sum_{j=0}^{k4} e_j \Delta \ln M2_{t-j} + \sum_{j=0}^{k5} f_j \Delta \ln TB_{t-j} + n_1 \ln KLCI_{t-1} + n_2 \ln MM_{t-1} + n_3 \ln M1_{t-1} + n_4 \ln M2_{t-1} + n_5 \ln TB_{t-1} + \varepsilon_t \quad (3)$$

$$\Delta \ln KLSI_t = \alpha_0 + \sum_{j=1}^{k1} b_j \Delta \ln KLSI_{t-j} + \sum_{j=0}^{k2} c_j \Delta \ln MM_{t-j} + \sum_{j=0}^{k3} d_j \Delta \ln M1_{t-j} + \sum_{j=0}^{k4} e_j \Delta \ln M2_{t-j} + \sum_{j=0}^{k5} f_j \Delta \ln TB_{t-j} + n_1 \ln KLSI_{t-1} + n_2 \ln MM_{t-1} + n_3 \ln M1_{t-1} + n_4 \ln M2_{t-1} + n_5 \ln TB_{t-1} + \varepsilon_t \quad (4)$$

Sebelum proses ujian kointegrasi dilakukan adalah penting untuk menentukan lat yang signifikan kerana ia menunjukkan wujudnya kointegrasi antara pemboleh ubah. Dalam kajian ini, lat yang digunakan adalah lat 1 sehingga 12. Setelah lat ditentukan, nilai F diperoleh dengan menggunakan kaedah kuasa dua terkecil (*ordinary least squares*) untuk menentukan kointegrasi berdasarkan hipotesis nol $(H_0: n_1 = n_2 = n_3 = n_4 = n_5 = 0)$ yang menunjukkan tidak wujud hubungan

jangka panjang. Jika nilai F yang dikira berada melebihi nilai batasan atas nilai kritikal yakni yang diperkenalkan oleh Narayan (2004), hipotesis nol bagi tiada kointegrasi akan ditolak. Jika nilai statistik F berada di bawah nilai batasan bawah, maka hipotesis nol gagal ditolak. Seterusnya, jika nilai statistik F berada di antara nilai kritikal, keputusan tidak dapat dibuat. Sekiranya kointegrasi wujud, langkah seterusnya adalah membuat penganggaran OLS dengan menggunakan lat yang signifikan sebelum melakukan penganggaran model ARDL (m, n, p) dalam jangka panjang dengan menggunakan persamaan-persamaan berikut:

$$lnKLCI_t = \alpha_0 + \sum_{j=1}^{m} \alpha_1 ln\, KLCI_{t-j} + \sum_{j=0}^{n} \alpha_2 lnMM_{t-j} + \sum_{j=0}^{p} \alpha_3\, lnM1_{t-j} + \varepsilon_t \quad (5)$$

$$lnKLCI_t = \alpha_0 + \sum_{j=1}^{m} \alpha_1\, lnKLCI_{t-j} + \sum_{j=0}^{n} \alpha_2 lnMM_{t-j} + \sum_{j=0}^{p} \alpha_3\, lnM2_{t-j} + \varepsilon_t \quad (6)$$

$$lnKLSI_t = \alpha_0 + \sum_{j=1}^{m} \alpha_1\, lnKLSI_{t-j} + \sum_{j=0}^{n} \alpha_2 lnMM_{t-j} + \sum_{j=0}^{p} \alpha_3\, lnM1_{t-j} + \varepsilon_t \quad (7)$$

$$lnKLSI_t = \alpha_0 + \sum_{j=1}^{m} \alpha_1\, lnKLSI_{t-j} + \sum_{j=0}^{n} \alpha_2 lnMM_{t-j} + \sum_{j=0}^{p} \alpha_3\, lnM2_{t-j} + \varepsilon_t \quad (8)$$

Penganggaran dan pemilihan model seterusnya dibuat berdasarkan kepada tiga kriteria utama iaitu R^2 terlaras, kriteria maklumat *Akaike* (AIC) dan kriteria *Schwartz-Bayesian* (SBC). SBC dikenali sebagai model *parsimonious* (memilih panjang lat

yang terkecil) manakala AIC dan R^2 terlaras pula digunakan untuk memilih panjang lat yang maksimum. Seterusnya adalah melakukan penganggaran model pembetulan ralat (ECM) yang juga berdasarkan ketiga-tiga kriteria yang sama. ECM dapat diperoleh daripada persamaan ARDL melalui transformasi linear yang ringkas (Banerjee et al. 1993). ECM berintegrasi secara dinamik jangka pendek dan keseimbangan jangka panjang tanpa menghilangkan maklumat jangka panjang. Model pembetulan ralat bagi ARDL dinyatakan seperti persamaan (9) hingga (12) yang menunjukkan bahawa apabila berlaku kejutan ekonomi, nilai koefisien pembetulan ralat (Ψ) yang tinggi menunjukkan ekonomi akan dapat mencapai keseimbangan dalam jangka panjang dengan cepat dan sebaliknya.

$$\Delta \ln KLCI_t = \beta_0 + \sum_{j=1}^{k1} \beta_1 \Delta \ln KLCI_{t-j} + \sum_{j=0}^{k2} \beta_2 \Delta \ln MM_{t-j} + \sum_{j=0}^{k3} \beta_3 \Delta \ln M1_{t-j} + \psi ECM_{t-1} + \varepsilon_{1t} \quad (9)$$

$$\Delta \ln KLCI_t = \beta_0 + \sum_{j=1}^{k1} \beta_1 \Delta \ln KLCI_{t-j} + \sum_{j=0}^{k2} \beta_2 \Delta \ln MM_{t-j} + \sum_{j=0}^{k3} \beta_3 \Delta \ln M2_{t-j} + \psi ECM_{t-1} + \varepsilon_{1t} \quad (10)$$

$$\Delta \ln KLSI_t = \beta_0 + \sum_{j=1}^{k1} \beta_1 \Delta \ln KLSI_{t-j} + \sum_{j=0}^{k2} \beta_2 \Delta \ln MM_{t-j} + \sum_{j=0}^{k3} \beta_3 \Delta \ln M1_{t-j} + \psi ECM_{t-1} + \varepsilon_{3t} \quad (11)$$

$$\Delta \ln KLSI_t = \beta_0 + \sum_{j=1}^{k1} \beta_1 \Delta \ln KLSI_{t-j} + \sum_{j=0}^{k2} \beta_2 \Delta \ln MM_{t-j} + \sum_{j=0}^{k3} \beta_3 \Delta \ln M2_{t-j} + \psi ECM_{t-1} + \varepsilon_{4t} \quad (12)$$

Untuk memastikan ketepatan padanan model yang dipilih, beberapa ujian diagnostik dijalankan. Ini merangkumi ujian pengganda Langrange (LM) untuk menguji korelasi bersiri, ujian Jarque-Bera untuk menguji kenormalan taburan siri ralat, ujian heteroskedastisiti untuk menguji kewujudan heteroskedastisiti dalam siri ralat dan ujian Ramsey untuk menguji ketepatan spesifikasi.

PENEMUAN KAJIAN

Hasil Preliminari

Dalam kajian ini ujian *Augmented Dickey-Fuller* (ADF) digunakan dalam menguji kepegunan setiap data siri masa. Dalam ujian ADF ini, pemilihan lat optima untuk setiap pemboleh ubah adalah berdasarkan kriteria informasi *Akaike* (AIC). Keputusan ujian kepegunan yang menggunakan spesifikasi ADF yang mengandungi intersep (Panel A) dan intersep dan tren (Panel B) ditunjukkan dalam Jadual 2. Didapati semua log data siri adalah tidak pegun pada tahap aras iaitu *I*(0) kecuali data siri KLCI dan KLSI yang pegun pada aras apabila dianggarkan dengan mengambilkira intersep dan trend. Kesemua siri adalah pegun pada pembezaan pertama iaitu *I*(1) di aras keertian 1 peratus. Satu pengecualian adalah log data siri M1 yang tidak pegun pada tahap aras mahupun pembezaan pertama.

Jadual 3 melaporkan hasil analisis statistik deskriptif untuk kesemua pemboleh ubah dalam kajian. Didapati kesemua pemboleh ubah mempunyai nilai kurtosis yang kurang daripada tiga kecuali MM dan TB. Ini bermakna taburan siri adalah leper dan tebal dengan ekor yang pendek berbanding dengan siri yang bertaburan normal atau dikenali sebagai *platykurtik*. Manakala nilai kurtosis MM dan TB yang melebihi tiga bermakna taburan siri mempunyai puncak yang agak tinggi dan mempunyai ekor

yang panjang berbanding dengan siri yang bertaburan normal atau lebih dikenali sebagai *leptokurtik.*

JADUAL 2 Keputusan ujian punca unit berdasarkan *Augmented Dickey-Fuller*

Data siri masa	Aras	Pembezaan pertama
Panel A. ADF dengan Intersep		
KLCI	-1.106152	-8.888750***
KLSI	-1.431525	-8.874350***
MM	-1.579212	-6.254259***
M1	0.319997	-2.178024
M2	0.848323	-12.85715***
TB	-2.416287	-5.562766***
Panel B. ADF dengan intersep dan tren		
KLCI	-3.958701**	-8.931572***
KLSI	-3.615203**	-8.937188***
MM	-0.968425	-6.448651***
M1	-3.086903	-1.992889
M2	-2.418293	-12.96376***
TB	-2.130962	-5.664984***

Nota : Tanda *, ** dan *** menunjukkan signifikan pada aras keertian 10%, 5% dan 1%. Semua data dalam bentuk log.

JADUAL 3 Analisis deskriptif bagi setiap pemboleh ubah

	KLCI	KLSI	M1	M2	MM	TB
Purata	6.7727	4.8836	11.6114	13.1690	1.0624	1.0367
Median	6.7762	4.8649	11.6019	13.1289	1.0152	1.0296
Maksimum	7.2759	5.4686	12.1346	13.8233	1.2585	1.2809
Minimum	6.3478	4.4956	11.1281	12.7228	0.6931	0.5878
Sisihan Piawai	0.2304	0.2239	0.3183	0.35582	0.1389	0.1587
Kepencongan	0.3754	0.5941	0.1358	0.2492	-0.2200	-0.6638
Kurtosis	2.4895	2.8226	1.7412	1.5445	3.2669	3.4801
Jarque-Bera	3.9491	6.9160**	7.9465**	11.3417***	1.2693	9.5491***
Kebarangkalian	0.1388	0.0315	0.0188	0.0034	0.5301	0.0084
Cerapan	115	115	115	115	115	115

Nota : Tanda *, ** dan *** menunjukkan signifikan pada aras keertian 10%, 5% dan 1%. Semua data dalam bentuk log.

Ujian Jarque Bera mendapati pemboleh ubah KLSI dan M1 adalah signifikan pada aras keertian 5 peratus manakala pemboleh ubah M2 dan TB adalah signifikan pada semua aras keertian 1 peratus yang bermakna siri-siri tersebut tidak mempunyai

taburan normal. Manakala ujian Jarque-Bera bagi MM dan KLCI pula mempunyai nilai *p* melebihi 0.05, yang bermakna data siri tersebut bertaburan normal.

Hasil Ujian Kointegrasi

Hasil ujian kointegrasi bagi Model 1 dan 2 dilaporkan dalam Jadual 4 yang hanya melaporkan nilai tertinggi statistik F yang dipilih dari lat 1 hingga lat 12. Di Panel A, nilai tertinggi ujian F bagi Model 1a adalah pada lat 10 dan signifikan di aras keertian 5 peratus untuk kedua-dua kes. Nilai ujian F bagi Model 1b dan 1c adalah tidak signifikan pada semua lat untuk kedua-dua kes dan dengan itu tidak dilaporkan. Berdasarkan model 1d dan 1f untuk kes II, didapati hipotesis nol ditolak apabila nilai tertinggi ujian F pada lat 10 melebihi nilai batasan F statistik di aras keertian 10 peratus. Seterusnya Model 1e dan 1g didapati melaporkan nilai tertinggi ujian F pada lat 10 dan lat 7 yang masing-masing signifikan pada aras keertian 5 peratus untuk kes II dan 10 peratus untuk kes III. Kesimpulannya, nilai ujian F yang signifikan ini menjelaskan wujud kointegrasi antara pemboleh ubah kewangan dengan nilai saham generik dalam lima variasi Model 1. Untuk tujuan penganggaran ARDL, daripada lima variasi model tersebut, yang dipilih adalah Model 1d dan 1e yang diuji pada lat 10.

Panel B di Jadual 4 menunjukkan nilai statistik tertinggi ujian F untuk menentukan kointegrasi antara pemboleh ubah bagi tujuh variasi Model 2. Analisis kointegrasi mendapati Model 2a dan 2b signifikan pada lat 9 dengan nilai ujian F tertinggi di aras keertian 5 peratus untuk kes II. Begitu juga Model 2d dan 2e yang signifikan masing-masing pada lat 6 dan lat 9 di aras keertian 5 peratus untuk kedua-dua kes. Selain itu, Model 2f signifikan pada lat 6 di aras keertian 5 peratus untuk kes II dan 10 peratus untuk kes III manakala Model 2g signifikan di aras keertian 1

peratus untuk kes II dan 5 peratus untuk kes II pada lat 9. Secara kesimpulannya, seperti Model 1, enam variasi Model 2 juga menunjukkan wujud kointegrasi antara pembolehubah kewangan dengan nilai saham bagi lat yang signifikan dan untuk tujuan penganggaran ARDL, dua dipilih iaitu Model 2d dan 2e masing-masing pada lat 6 dan 9.

JADUAL 4 Nilai ujian F bagi KLCI dan KLSI

Model dan Pemboleh Ubah	F-test				Lag (p)	
Panel A. Nilai ujian F bagi KLCI						
(1a) (KLCI,MM,M1,M2,TB)	4.2363^{ab**}				10	
(1b) (KLCI, MM, M1, TB)	-				-	
(1b) (KLCI, MM, M2,TB)	-				-	
(1d) (KLCI, M1, MM)	3.8889 ^{a*}				10	
(1e) (KLCI, M2, MM)	4.9581 $^{a**, b*}$				10	
(1f) (KLCI, M1, TB)	3.7961^{a*}				5	
(1g) (KLCI, M2, TB)	4.3479 $^{a**, b*}$				7	
Panel B. Nilai ujian F bagi KLSI						
(2a) (KLSI, MM,M1,M2,TB)	3.6516 ^{a*}				9	
(2b) (KLSI, MM, M1,TB)	3.6059 ^{a*}				6	
(2c) (KLSI, MM, M2,TB)	-				-	
(2d) (KLSI, M1, MM)	5.0870 ^{ab**}				6	
(2e) (KLSI, M2, MM)	5.3185 ^{ab**}				9	
(2f) (KLSI, M1, TB)	4.6714 $^{a**, b*}$				6	
(2g) (KLSI, M2, TB)	5.4312 $^{a***, b**}$				9	
Bilangan Pemboleh ubah	Ujian F (1%)		Ujian F (5%)		Ujian F (10%)	
	I(0)	I(1)	I(0)	I(1)	I(0)	I(1)
K=4	3.602^{a}	4.787^{a}	2.688^{a}	3.698^{a}	2.303^{a}	3.220^{a}
	4.096^{b}	5.512^{b}	3.010^{b}	4.216^{b}	2.548^{b}	3.644^{b}
K=3	3.908^{a}	5.004^{a}	2.920^{a}	3.838^{a}	2.474^{a}	3.312^{a}
	4.568^{b}	5.960^{b}	3.363^{b}	4.515^{b}	2.823^{b}	3.885^{b}
K=2	4.358^{a}	5.393^{a}	3.235^{a}	4.053^{a}	2.713^{a}	3.453^{a}
	5.407^{b}	6.783^{b}	3.940^{b}	5.043^{b}	3.260^{b}	4.247^{b}

Nota: Nilai kritikal sempadan adalah daripada Narayan (2004). Tanda *a* menunjukkan kes II dengan intersep dan tanpa tren, tanda *b* menunjukkan kes III tanpa intersep dan tanpa tren. Tanda *, ** dan *** menunjukkan signifikan pada aras keertian 10%, 5% dan 1%.

Keputusan Ujian Hubungan Jangka Panjang

Keputusan empirikal ARDL bagi Model 1d dan 1e dipilih berdasarkan kriteria AIC. Jadual 5 menunjukkan koefisien pemboleh ubah tak bersandar iaitu MM mempunyai tanda koefisyen yang konsisten dengan teori ekonomi iaitu negatif bagi Model 1d.

Penemuan ini menyarankan tidak wujud hubungan jangka panjang antara MM dengan KLCI. Manakala koefisien MM dalam pasaran Islam (KLSI) adalah positif, yakni bertentangan dengan teori ekonomi. Bagaimanapun, hipotesis kajian ini menjangkakan bahawa dalam pasaran Islam (KLSI) hubungan sedemikian adalah dijangkakan kerana kadar faedah yang dianggap menjadi asas kepada unsur *riba'* tidak seharusnya mempunyai pengaruh ke atas nilai saham-saham tersebut. Berbanding dengan kadar faedah tersebut, penawaran wang iaitu M1 mempunyai tanda yang konsisten dengan teori ekonomi kerana ia didapati positif secara signifikan (aras keertian 1 peratus) dalam mempengaruhi KLCI dan KLSI dalam jangka panjang. Nilai koefisien M1 menyarankan apabila terdapat peningkatan 1 peratus dalam penawaran wang iaitu M1, hasilnya akan meningkatkan KLCI sebanyak 0.68006 peratus dan KLSI juga meningkat 61.83 peratus dalam jangka panjang.

JADUAL 5 Koefisien jangka panjang untuk model 1d dan 2d

Indeks	KLCI(Model 1d)		KLSI(Model 2d)	
Pembolehubah	Koefisien	Nilai-*t*	Koefisien	Nilai-*t*
MM	-0.037347	-0.15313	0.073046	0.27333
M1	0.68006	8.0110***	0.61834	5.8522***
C	-1.2399	-1.3545	-2.4367	-2.1013**
Ujian Diagnostik				
Korelasi bersiri	15.6854(0.206)		14.0317(0.299)	
Kenormalan taburan	0.959671(0.619)		4.1866(0.123)	
Heteroskedastisiti	1.2304(0.267)		9.2759(0.002)	

Nota : Tanda *, ** dan *** menunjukkan signifikan pada pada aras keertian 10%, 5% dan 1%.
Nilai dalam kurungan ujian diagnostik merujuk kepada nilai-*p*.

Kesemua ujian diagnostik yang dijalankan ke atas Model 1d dan 2d adalah tidak signifikan, yakni hipotesis nol ditolak pada aras keertian 1 peratus. Secara terperinci, ujian diagnostik menunjukkan yang tidak wujud korelasi bersiri dalam model serta taburan siri adalah normal untuk kedua-dua model. Selain itu, tidak wujud masalah heteroskedastisiti dalam model 1d (ujian heteroskedastisiti tidak signifikan) namun masalah ini wujud dalam Model 2d. Ujian Ramsey yang tidak

signifikan gagal menolak hipotesis nol dan sekaligus bermakna ralat dalam model 1d dan 2d adalah dapat dispesifikasikan. Manakala nilai *p* dari ujian F adalah melebihi nilai α yang menunjukkan bahawa secara keseluruhannya kesemua pemboleh ubah tak bersandar iaitu MM dan M1yang digunakan dalam analisis model 1d dan model 2d adalah signifikan ataupun bererti dalam menerangkan KLCI dan KLSI pada aras keertian 1 peratus.

Hasil ujian yang dilaporkan dalam Jadual 6 yang dipilih berdasarkan kriteria AIC menunjukkan keputusan yang tidak jauh berbeza dengan yang diperoleh dari Model 1d sebelum ini. Yakni, koefisien MM mempunyai hubungan negatif yang tidak signifikan dalam mempengaruhi pemboleh ubah bersandar iaitu KLCI dalam jangka panjang. Seperti keputusan yang diperoleh dari Model 2d, MM mempunyai tanda koefisien yang positif. Bagaimanapun, hubungan positif MM adalah signifikan dan dengan itu menyarankan bukti yang bertentangan dengan teori ekonomi tetapi selari dengan hipotesis kajian ini apabila melibatkan pasaran saham Islam. Malah, nilai koefisien MM juga agak besar sehingga peningkatan 1 peratus dalam MM dijangka menyebabkan KLSI meningkat sebanyak 0.70 peratus. Penemuan ini adalah kritikal dalam menentukan dasar monetari yang sesuai untuk mengawal pasaran saham Islam. Hasil kajian ini adalah konsisten dengan penemuan oleh M.Shabri dan Rosylin (2009) yang menjelaskan bahawa apabila kadar faedah meningkat, perhatian pelabur-pelabur akan beralih kepada saham-saham Syariah sehingga menyebabkan harga saham-saham (dan dengan itu indeksnya) meningkatnya. Sementara itu, tanda koefisyen M2 menunjukkan positif dan signifikan yakni dari segi magnitud nilai koefisyennya yang menunjukkan peningkatan 1 peratus dalam penawaran wang iaitu M2 akan meningkatkan KLCI sebanyak 0.65 peratus dalam jangka panjang. Bagaimanapun, kesannya ke atas nilai KLSI agak kecil yakni peningkatan 1 peratus dalam penawaran

wang iaitu M2 hanya meningkatkan KLSI sebanyak 0.32 peratus, yakni separuh daripada kesan yang ditunjukkan dalam model-model yang lain.

JADUAL 6 Koefisien Jangka Panjang Untuk Model 1e Dan 2e

Indeks	KLCI(Model 1e)		KLSI(Model 2e)	
Pembolehubah	Koefisien	Nilai-*t*	Koefisien	Nilai-*t*
lnMM	-0.11281	-0.46873	0.70118	2.6908***
lnM2	0.64729	7.9558***	0.31972	3.5091***
C	-1.6558	-1.7308*	-0.15440	-0.15513
Ujian Diagnostik				
Korelasi bersiri	25.9837(0.011)		27.1776(0.007)	
Kenormalan taburan	5.2638(0.072)		2.0071(0.367)	
Heteroskedastisiti	0.221561(0.638)		8.5661(0.003)	

Nota : Tanda *, ** dan *** menunjukkan signifikan pada aras keertian 10%, 5% dan 1%.

Bagaimanapun, hasil ujian diagnostik ke atas Model 1e dan 2e menunjukkan model tersebut mempunyai sedikit masalah. Misalnya, ujian LM bagi korelasi bersiri yang signifikan pada aras keertian 5 peratus menunjukkan terdapat korelasi bersiri dalam kedua-dua model. Begitu juga ujian kenormalan adalah signifikan yang bermakna hipotesis nol bagi taburan normal ditolak bagi Model 1e berbanding Model 2e yang bertaburan normal. Bagaimanapun, model 1e adalah bebas daripada masalah heteroskedastisiti apabila nilai p melebihi nilai α pada semua aras keertian iaitu 1 peratus manakala didapati wujud masalah heteroskedastisiti dalam model 2e. Ujian Ramsey untuk kedua-dua model adalah signifikan yakni hipotesis nol ditolak yang bermakna ralat adalah tidak dapat dispesifikasikan. Keyakinan terhadap hasil model 1e agak baik kerana ujian F statistik menunjukkan bahawa secara keseluruhan kesemua pembolehubah tak bersandar iaitu MM dan lM2 yang digunakan dalam analisis model 1e adalah signifikan ataupun bererti dalam menerangkan lnKLCI pada aras keertian 1 peratus. Begitu juga dengan model 2e iaitu MM dan M2 adalah signifikan dalam mempengaruhi KLSI di Malaysia kerana nilai ujian F adalah 125.96 dan signifikan pada aras keertian 1 peratus.

JADUAL 7 Penganggaran Model Pembetulan Ralat (ECM)

Pembolehubah	Model 1d	Model 1e	Model 2d	Model 2e
dKLCI(-1)	0.24024**	0.26929***	-	-
	(2.4097)	(2.7229)		
dKLCI(-2)	0.048280	0.081980	-	-
	(.46358)	(0.79525)		
dKLCI(-3)	0.12804	0.082169	-	-
	(1.3191)	(0.82849)		
dKLCI(-4)	0.16726*	0.30086***	-	-
	(1.6911)	(2.9999)		
dKLCI(-5)	0.17359*	0.19683*	-	-
	(1.6903)	(1.9522)		
dKLCI(-6)	-	0.21222**	-	-
		(2.2186)		
dKLSI(-1)	-	-	0.20242**	0.20696**
			(2.0234)	(2.1541)
dKLSI(-2)	-	-	-0.050072	-0.0508
			(-0.49399)	(-0.51367)
dKLSI(-3)	-	-	0.23864**	0.23572**
			(2.4235)	(2.4246)
dKLSI(-4)	-	-	0.15645	0.14572
			(1.5367)	(1.4146)
dKLSI(-5)	-	-	0.16128	0.26324**
			(1.5873)	(2.5586)
dKLSI(-6)	-	-	-	0.21361**
				(2.0083)
dKLSI(-7)	-	-	-	0.24563**
				(2.3453)
dKLSI(-8)	-	-	-	0.054603
				(0.50872)
dKLSI(-9)	-	-	-	0.20024*
				(1.9001)
dKLSI(-10)	-	-	-	-0.13665
				(-1.2767)
dMM	-0.0071607	-0.021811	0.011768	0.22224
	(-0.15792)	(-0.50932)	(0.25974)	(1.2815)
dMM(-1)	-	-	-	-0.44049**
				(-2.2467)
dMM(-2)	-	-	-	-0.29182
				(-1.5800)
dMM(-3)	-	-	-	-0.40559**
				(-2.1356)
dMM(-4)	-	-	-	-0.29478
				(-1.4472)
dM1	0.71638***	-	0.59311***	-
	(3.2391)		(2.8131)	
dM1(-1)	0.28306	-	0.32943	-
	(1.4066)		(1.6140)	
dM1(-2)	0.40465*	-		-
	(1.9399)			

dM1(-3)	0.20744 (1.0220)	-	-	-
dM1(-4)	0.42415** (2.0339)	-	-	-
dM1(-5)	0.049836 (0.24269)	-	-	-
dM1(-6)	-0.041845 (-0.20360)	-	-	-
dM1(-7)	0.34736* (1.7365)	-	-	-
dM1(-8)	0.63430*** (3.1284)	-	-	-
dM2	-	0.51295** (2.2486)	-	0.35033 (1.4341)
dM2(-1)	-	0.17365 (0.73702)	-	0.48864* (1.8872)
dM2(-2)	-	0.38912 (1.6564)	-	0.64061** (2.4485)
dM2(-3)	-	-0.23167 (-0.97093)	-	-
dM2(-4)	-	0.30269 (1.2648)	-	-
dM2(-5)	-	-0.25448 (-1.0620)	-	-
dM2(-6)	-	-0.58312** (-2.4805)	-	-
dC	-0.23773 (-1.3045)	-0.32012* (-1.7584)	-0.39256* (-1.7277)	-0.039580 (-0.15344)
ECM(-1)	-0.19173*** (-3.3460)	-0.19333*** (-3.5300)	-0.16110*** (-2.9819)	-0.25635*** (-4.1097)
Adjusted R^2	0.24673	0.24028	0.17663	0.23839
F statistic	3.1506*** (0.000)	3.2174*** (0.000)	3.5423*** (0.001)	2.7856*** (0.001)
DW statistic	2.0323	2.0579	2.0447	1.9759

Note : Tanda *, ** dan *** menunjukkan signifikan pada pada aras keertian 10%, 5% dan 1%.

Keputusan ujian hubungan jangka pendek

Hasil analisis seterusnya diperoleh dengan membuat penganggaran terhadap model pembetulan ralat (ECM) untuk mencari bukti wujudnya hubungan jangka pendek antara pembolehubah berdasarkan kriteria dipilih iaitu AIC. Jadual 7 menunjukkan ECM dari Model 1d, Model 1e, Model 2d dan Model 2e. Keputusan ECM bagi kesemua model mendapati koefisien bagi pemboleh ubah tak bersandar MM adalah tidak signifikan dalam mempengaruhi KLCI dan KLSI kecuali Model 2e yang

menunjukkan pemboleh ubah MM signifikan dan mempunyai hubungan dengan KLSI dalam jangka pendek hanya apabila pemboleh ubah M2 dimasukkan dalam persamaan. Manakala pembolehubah tak bersandar iaitu M1 dan M2 adalah signifikan dalam jangka pendek untuk semua model dalam kajian ini. Penemuan ini menunjukkan wujud hubungan jangka pendek yang positif antara KLCI dan KLSI dengan M1 dan M2. Kadar pelarasan (*speed of adjustment*) yang ditunjukkan oleh nilai koefisien ECM(-1) adalah sebanyak 19.17 peratus bagi Model 1d, 19.33 peratus bagi Model 1e diikuti 16.11 peratus bagi Model 2d dan kadar pelarasan tertinggi adalah diperoleh dari Model 2e iaitu sebanyak 25.64 peratus. Ini bermakna kadar pelarasan bagi mencapai keseimbangan dalam jangka panjang adalah perlahan jika berlaku sebarang kejutan yang menyebabkan berlaku perubahan dalam KLCI mahupun KLSI.

KESIMPULAN

Hasil ujian ARDL secara umum membuktikan wujud hubungan jangka panjang antara pemboleh ubah tak bersandar penawaran wang iaitu M1 dan M2 dengan nilai saham generik (KLCI) dan Islam (KLSI). Keputusan ini juga selari dengan jangkaan teori ekonomi yang menyarankan penawaran wang mempunyai hubungan positif dengan nilai saham. Hasil ujian ARDL mengenai hubungan antara kadar faedah dengan nilai saham pula kurang memuaskan dan tidak sentiasa selari dengan jangkaan teori ekonomi.

Keputusan analisis mendapati terdapat hubungan jangka panjang antara MM dengan nilai saham KLCI adalah selari dengan teori (yakni negatif) tetapi tidak signifikan. Manakala, hubungannya dengan nilai saham KLSI positif dan juga

signifikan apabila digabungkan dengan pemboleh ubah M2 serta wujud hubungan negatif dengan KLSI dalam jangka pendek. Walaupun hubungan positif pemboleh ubah MM dan KLSI dalam jangka panjang bertentangan dengan teori ekonomi, namun penemuan ini konsisten dengan hipotesis kajian mengenai pengaruh kadar faedah (MM) yang menjadi asas unsur *riba'* dalam suatu pelaburan. Ia juga selari dengan penemuan kajian lepas oleh M.Shabri dan Rosylin (2009) yang menjelaskan keadaan tersebut berlaku kerana pelabur-pelabur dalam saham-saham patuh Syariah menganggap peningkatan dalam kadar faedah sebagai elemen *riba*' dan dengan itu harus dijauhi. Tanggapan ini mendorong para pelabur untuk mengalihkan perhatian dan pelaburan mereka kepada saham-saham Syariah dan akibatnya memberikan tekanan ke atas harga saham-saham tersebut (kesannya peningkatan nilai indeks KLSI). Hasil ujian ECM yang diperoleh daripada ujian ARDL menunjukkan hubungan yang sama antara pemboleh ubah dalam jangka pendek. Yakni, hasil ujian ECM menunjukkan penawaran wang (M1 dan M2) secara konsisten mempunyai hubungan jangka pendek dengan nilai saham dalam kedua-dua segmen pasaran generik (KLCI) dan juga Islam (KLSI). Bagaimanapun, tidak seperti M1, hubungan jangka pendek antara M2 dengan nilai saham Islam (KLSI) adalah berlat.

Begitu juga, seperti yang ditemui mengenai hubungan jangka panjang, hubungan jangka pendek antara kadar faedah (MM) dengan nilai saham generik (KLCI) juga adalah negatif yakni konsisten dengan jangkaan teori, tetapi tidak signifikan. Manakala hubungannya dengan nilai saham Islam adalah positif dan signifikan hanya dalam Model 2e. Akhirnya, secara keseluruhan, ujian diagnostik bagi menentukan ketepatan padanan model penganggaran yang dijalankan ke atas bagi Model 1 dan 2 menunjukkan tidak wujud masalah besar dalam model-model yang digunakan dalam kajian ini. Begitu juga, ujian diagnostik kestabilan model

menunjukkan tidak wujud perubahan struktur yang signifikan dalam model-model yang digunakan.

Secara keseluruhan, hasil kajian ini telah menyediakan bukti baru mengenai wujudnya hubungan jangka panjang dan jangka pendek antara pemboleh ubah kewangan yang melibatkan dasar monetari dengan nilai saham dalam kedua-dua segmen pasaran di Malaysia. Hubungan positif dalam jangka panjang antara penawaran wang dengan nilai saham adalah konsisten dengan penemuan Choudry (1996), Rosylin dan M. Shabri (2008), dan Hairunnizam, Mohd Afandi dan Nurul Shahriza (2009) sebelum ini.

Bagaimanapun, perbandingan pengaruh antara kedua-dua jenis pemboleh ubah menunjukkan bahawa penawaran wang merupakan pemboleh ubah atau instrumen dasar monetari yang lebih berkesan untuk mengawal keadaan pasaran saham di Malaysia. Sebaliknya kadar faedah yang lebih menjadi tumpuan dasar monetari menunjukkan kesan seperti yang dijangka, tetapi pada tahap yang terhad. Bagaimanapun kesan positifnya yang signifikan dalam mempengaruhi nilai saham Islam (KLSI) perlu diambil perhatian kerana ia menyarankan otoriti monetari perlu mengambil pendekatan yang berbeza dalam usahanya mengawal nilai pasaran Islam.

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Malaysian Islamic Banks Ethical Disclosure Level

By:

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ABSTRACT

The main objective of this paper is to examine the ethical disclosure level of Islamic banks (IBs) in Malaysian context through their 2008 annual reports. This study in Malaysia is motivated by the common beliefs that Malaysian IBs are different from those practiced in other parts of the world in which prior studies have addressed. The study developed an ideal ethical disclosure index from two prior studies (Haniffa and Hudaib, 2007; Maali et al., 2006) by examining the actual disclosure level of Islamic Banks in Malaysia. The examination involves a comparison of the actual disclosures of 10 local Islamic Banks in their 2008 annual reports against the ideal ethical disclosure index. The findings consistency with prior studies reveals that IBs operating in Malaysia fall short in comparison with the ideal benchmark of the study. Areas they appear to fall very short include among others such as *qard hasan* and *zakah* related disclosures. The findings of the study give an important implication for the stakeholders of Islamic banks. It demands for better annual report disclosures. Despite that the study empirically extends the area of Islamic banking literature in Malaysia, yet it is subjected to several limitations. One of the main limitations is due to a relatively small sample size, thus, extra attention should be exercised in drawing conclusions to the wider population.

Key Words: Islamic Banks; Ideal Disclosure Index Benchmark; *Qard Hassan; Zakah*

1.0 Introduction

The Islamic Banking as it appears today originated in the modern global financial sector in the 1963 in Eygpt, Mit-Ghamr (Mokhtar, Abdullah and Alhabshi, 2008). Islamic banks have been through political, economical and social blows. Since then, the new industry has gained momentum from Europe to America and from Asia to Africa where Islamic banking system has been growing very fast at a double digit average annual rate of growth in serving the community (Iqbal and Molyneux, 2006). In other words, Islamic banking services have operated their business outside the Muslim world too. "Islamic banking assets are currently estimated at US$750 billion in value and will top the US$1-trillion mark by the year 2010 (Islamic Finance News, 2008).

Islamic banks can be defined as "a financial and social institution whose objectives and operations as well as principles and practices must conform to the principles of Islamic Shari'ah (Jurisprudence) and must avoid the interest charge in any of its operations" (Ali and Ahmed, 2007). The key point here is that there should be no interest (*riba*) paid or charged for any transaction or service to ensure justice, welfare and non-exploitation (ibid). Islamic banking system is seen as an alternative for the conventional banking (CV) system to the Muslims.

In fulfilling this banking image and Muslims' expectations, every IB may need to follow *shariah* principles in all activities since it is the distinguishing characteristics of IBs from their counterparts (CV). For instance, this could be done in the form of transparency by providing full disclosure to users as suggested by Baydoun and Willet (2000). However, prior studies in some parts of the world have shown that IBs failed to

provide full disclosure and adhere the ideal Islamic ethical identities in their annual report disclosures (e.g., Haniffa and Hudaib, 2007; Maali et al., 2003; Adnan and Arifin, 2010).

In line with the above studies, this study focuses on the Islamic banks in Malaysia which experienced its first Islamic bank in the year of 1983 with the establishment of Bank Islam (Mokhtar et al., 2008). Currently, Malaysia hosts seventeen (17) fully-fledged Islamic banks (as listed in Bank Negara Malaysia). Malaysia is a Muslim country and with the growing of economy, the demand for Islamic banking has been increasing rapidly (Dusuki and Abdullah, 2007). Several past studies examined the disclosure level of IBs in comparison with an ideal Islamic benchmark index (Haniffa and Hudaib, 2007; Maali et al., 2003).

This study extends this line of research and compares an ideal benchmark of ethical disclosures through the annual reports of 10 Islamic Banks in Malaysia and their actual disclosure practices. The study of Islamic banking ethical disclosure practices in Malaysia is motivated by two factors. First, Islamic banking practices used by Malaysian IBs appear to be different from those practiced in other parts of the world (Gulf) in which prior studies have focused. While the empirical results of prior studies provided evidence from a poor level of ethical disclosure of Banks in the Gulf (Haniffa and Hudaib, 2007) and also cross country study (Maali et al., 2006); only a small number of research has been undertaken in Malaysia (e.g., Hassan and Christopher, 2005; Adnan and Arifin, 2010) where conventional banks appear to dominate and research on IBs is slightly less. In addition, institutional differences may exist between Malaysia, and other countries which prior studies have mainly addressed (Gulf region). These institutional differences

may arguably affect the disclosure practices of IBs. Therefore, this study addresses the scarcity of researches in this field and its true nature in the Malaysian context.

Second, the Malaysian environment offers identifiable differences in religious segments that are divided by the ethnic lines. These religious differences may influence IBs in Malaysia to employ a high ranked top manager from other religious beliefs other than Muslims as it principally operates in Islam which may in turn cause the IBs to function in a different worldview. Given this unique Islamic banking environment, this study extends the Islamic banking literature by examining the ethical disclosure level of IBs in Malaysia in opposition to a benchmark. To the best of my knowledge, no prior research in terms of sample size and context in this area has been undertaken in Malaysia.

The analysis based on 10 local IBs annual reports in comparison with the ideal benchmark developed from two prior studies (Haniffa and Hudaib, 2007; Maali et al., 2006), reveal that IBs operating in Malaysia disclose a slightly lower level of actual disclosure against the ideal benchmark of the study. Areas they appear to fall very short include *qard hassan*, and statement of sources and uses of *zakah*. Thus, these findings are consistent with the results of (Haniffa and Hudaib, 2007; Maali et al., 2006; Adnan and Arifin, 2010).

The structure of this paper is organized as follows. In the next section which is section II, provides literature reviews that are related to Islamic banking. Section III discusses the methodology of the study, the sample selection and sources of data. The results of the study are reported in the fourth section while in the final section, conclusions are drawn and implications of the study are discussed. Limitations of the study as well as suggestion for future research areas are also provided in the final section.

2.0 Literature Review

Similar to conventional banks, Islamic banks too can be regarded as an intermediary and trustee of other people's money with the difference being that it shares profit and loss with its depositors (Dusuki, 2008; Ghayad, 2008). In addition to that, Islamic banks ideally do not charge or receive interest from their customers in all aspects of their financial dealings. However, Dar and Presley (2000) argued that most of the Islamic banks have an organizational set-up that is similar to their conventional counterparts. Therefore, there might be a relatively small numbers of Islamic banks that solely involve with the Islamic operations. The reason could be the multi religion environment that they operate in.

Not withstanding, the last three decades has witnessed the appearance and rapid expansion of Islamic banks both in Islamic countries and non-Islamic countries (Maali et al., 2006). Countries such as Sudan and Pakistan have taken steps to change the whole banking system in order to comply with *sharia* (ibid). Following this, there have been calls for IBs to provide better disclosures in the annual reports (Haniffa, 2004; Baydoun and Willet, 2000), they are not required only to comply and meet minimum requirements of standards and rules but also they should disclose voluntary information which facilitates socio-economic decisions of their stakeholders. Similarly, Chapra and Ahmed (2002) suggest that to sustain the growth and development and international recognition, IB should enhance their corporate governance and voluntary disclosure practices.

As a result, Islamic banking as a new industry lures many researchers to publish articles in the form of both quantitative and qualitative study approaches (e.g., Satkunasingam and Shanmugam, 2004; Hassan and Christopher, 2005; Dusuki and Abdulah, 2007; Chapra and Ahmed, 2002, to mention but few). Reason for this could be

not the new industry joined the financial sector, but rather, Islamic banks are new wave of corporations whose social goals are at least as important as making profit (Haniffa and Hudaib, 2007). Hence, this new wave with the already existed objectives appears to have attracted the interest from academic scholars to embark empirical and non-empirical studies.

The study conducted by Maali et al., (2006) was aimed to investigate the social reporting of 29 IBs located in 16 countries. The authors developed a benchmark set of social disclosures appropriate to such banks and then compared the actual social disclosures published in the annual reports. They used disclosure index to measure the extent to which each bank's social disclosures met the benchmark. The results showed that the social reporting of Islamic Banks fails to meet the researchers' expectations. However, Islamic banks tended to disclose matters related to *zakat* and charity. The reason could be these two items are more positive to enhance the Islamic bank's image compared to other non disclosed items which have negative implications to the IBs, e.g., disclosure of *haram* or inappropriate activities that the Islamic bank may involve.

Similarly, the study conducted by Haniffa and Hudaib (2007) explored whether any discrepancy exists between the communication based on information disclosed in the annual reports and the ideal disclosure of information deemed for vital based on the Islamic ethical business framework. Ethical identities that are measured by the authors are on what they have termed as the "Ethical Identity Index (EII)". Seven Islamic Banks in the Gulf region have been used as the sample for the study. Results show that the overall mean of EII is that there is only one Islamic bank out of seven to be above the

average. This highlights that there is a huge difference between the ideal communication required and the actual ethical identities.

As supported by Sulaiman (2005), there is a huge difference between the ideal theoretical framework and what actually is in practice. The academic discussion of the ideal Islamic concepts that has been published in many journals, like the concept of full disclosure, offers that IBs are prone to failure. A similar gap was also found even though in a different context by a recent paper of (Kasim, Hameed, and Sulaiman, 2009).

On the other hand, Dusuki and Abdullah (2007) studied the main factors that motivate customers to deal with Islamic banks particularly in a dual banking environment, like in the situation in Malaysia. The study used questionnaires involving a sample of 750 respondents from four different regions in Malaysia. The study revealed that the selection of Islamic banks appears to be predominantly a combination of Islamic and financial reputation and quality service offered. Other factors perceived to be important include good social responsibility practices, convenience and product price. The empirical evidence of this paper focuses on two aspects; (1) Islamic banks must offer quality services while maintaining its Islamic credential and reputation; (2) Islamic banks should also embrace good customer services policies to obtain its potential as a strategic tool to achieve competitive advantage, enhance reputation and secure customers allegiance.

Sufian and Abdul Majid (2008) investigated the performance of Malaysian Islamic banking sector during the period of 2001-2005. The findings suggested that during the period of study, scale inefficiency dominated pure technical inefficiency in the Malaysian

Islamic banking sector. The researchers also found that foreign banks have exhibited higher technical efficiency as compared to its domestic peers.

In a more recent study conducted by Adnan and Arifin (2010) entitled as "Local Shariah banks wary of offering *qard*", examined the *qard alhasn* practices by the Malaysian IBs. The study found that even though local Islamic bankers are in favour of offering *qard hassan*, or benevolent loan, yet they are reluctant to proceed aggressively. This might be because they fear that they may not be able to generate profit or recover their financing cost. In supporting this, a survey study conducted by the two scholars from IIUM Accounting Department also noted that total outstanding *qard hassan* value was very much less than any other products or services rendered by the local Malaysian Islamic banks.

The survey by Adnan and Arifin (2010) also found that majority of its respondents (90.2%) agreed that *qard* "enhances a corporate social responsibility" with 85% of respondents agreed that IBs should offer the *qardh*. When asked what the problems to launch *qard* were, the survey gathered six main reasons. In its order of frequency, they were: not able to generate any profit, not able to cover the financing, high administrative and transaction costs, high risk, no support from top management, and no demand from customers. The reasons given could be a shameful for Islamic banks to argue because such institutions may not expect to generate profit from every transaction they involve as their main objective was supposed to be 'socio economic' rather than the profit maximization objective like conventional banks. However, it appears that most transactions of Islamic banks are profit driven. It is hard to find a transaction in general that involves zero profit transactions as implied in the study.

In explaining under what circumstances Islamic banks should offer *qard*, Adnan cited that "In Islamic point of view, profit is not the only thing to be targeted by a commercial company. This view has also been shared now even by capitalistic or conventional companies. It is why the CSR is becoming popular recently among them. The offer of *qard* might be one of forms of CSR."

Islamic organizations in general and Islamic Banks in particular arguably appear to use conventional accounting. This could be the main reason why Islamic Banks failed to meet the society's expectations. Hameed (2000) argued that there could be real world dangers to IBs with the objective to achieve *falah* that use conventional accounting in evaluating their results. Hameed, among others, proposed an "Islamic Accounting" for Islamic Organizations (IBs) that could suit better their operational activities. This is because Islamic accounting holds *shariah* compliant principles unlike conventional accounting that currently dominate the Islamic banking industry and other Islamic industries as well. In another more recent study, Hameed (2009) concerned about the recent calls from International Accounting Standards Board (IFRS) to adopt completely its standards, this may pose problems to Islamic Banks.

Islamic banks also undergo political pressures from the country that they operate in since most of the countries are secular states. Islamic banks face many regulatory, operational and accounting problems which prevent the further realization of its *Shari'a* oriented ethical and social goals (Hameed, 2009). These are among a couple of reasons provided in the literature as to why the IBs may fall short to the society's expectations.

The current study however, tries to extend the Islamic banking literature by examining the ethical disclosure level of IBs in Malaysia. Prior empirical studies relating

to IBs are conducted majorly in other parts of the world. This paper addresses such scarcity of research in this area and attempts to fill this gap in the literature.

3.0 Research Method

3.1 Sample and Data Selection

The initial population of the study consisted of all Islamic banks in Malaysia. There are currently 17 Islamic banks listed in Bank Negara Malaysia (BNM) alone of which eleven (11) of them are locally owned while the remaining six (6) are owned by foreigners. As foreign owned Islamic banks might be influenced by other factors from their home country in terms of the way they report. Thus, the study addresses only the 11 local Islamic banks in Malaysia. The annual reports of the Islamic banks are retrieved from their websites. However, there are only 10 annual reports that are available. AmIslamic bank provides its annual report in a group, not in separate report like other Islamic banks. In order to ensure high objectivity in examining the annual reports; the researcher has to drop AmIslamic bank from the study sample. Therefore, the final sample of the study is 10 local IBs in Malaysia. The sample can be regarded as a representative of 59% of Islamic banks operating in Malaysia.

The study involves analysis of bank's annual reports for one year period which is 2008. In exploring the ethical behavior of the sample banks, it is adopted content analysis as prior studies in the area of Islamic Banking did previously (Maali et al., 2006; Haniffa and Hudaib 2007). Content analysis is defined as "a research technique for making replicable and valid inferences from data according to their context" (Krippendorf, 1980). Un-weighted disclosure index is used in the study where if the item in the index is

disclosed in the annual report is regarded as 1 and 0 otherwise. Meanwhile, Yes and No are used to represent 1 and 0 respectively later in the findings presentations.

This study, as a similar to prior studies in the context of Islamic banks, limits its analysis on company annual reports. As Haniffa and Hudaib (2007) pointed out, one of the most important things in dealing with content analysis is the selection and development of categories into which content units can be classified. Following that, a self constructed ethical identity disclosure index is constructed based on the extensive literature review. There are 15 items in the index which fall under five broad dimensions. The appendix of the study can be referred to see the detailed list of the disclosure index.

3.2 Brief Description on the Disclosure Index

In line with prior studies, the study develops fifteen (15) disclosure index elements under five broad dimensions that should be disclosed in the Islamic banks' annual reports. The items in the index are derived from two main prior studies which are Maali et al. (2006) and Haniffa and Hudaib (2007). These studies suggest that this benchmark is based on the broader concept of accountability that Islamic banks should follow. As IBs claim to follow Islamic principles, it is ideally expected that these banks to consider ethical issues differently from conventional banks.

3.2.1 Vision and Mission

a) Commitments in operating within Shari'ah Principles

Islamic banks need to differentiate themselves from conventional banks by stating their commitment in operating within the *Shariah* principles and guidelines in their mission and vision statements. Not just to claim that they are committed but more importantly,

they may need to involve islamically acceptable deals and transactions in all their business operations. Provided that the IBs were entrusted with the safekeeping of depositors' savings and shareholders' capital and putting these funds to good use Haniffa and Hudaib (2007), it for that reason could be expected that they will disclose their commitment in operating within the Shari'ah principles in the annual reports.

b) Profile of Shari'ah Supervisory Board (SSB)

Stakeholders of the IBs may ideally need to know further information about those who conduct the *shariah* review or as it is called "the shariah supervisory board, to judge and evaluate their credentials. The users of Islamic banks' annual reports might be interested in the report of the Sharia'h Supervisory Board because it shows whether the bank has complied with Islamic principles or not, and whether it has dealt justly with different parties (Maali et al., 2006). The opinion of this board could be seen as the uniqueness of IBs because conventional banks do not seek this type of opinion. Therefore, ideally, the researcher expects that the IBs in Malaysia will disclose the names, positions, and pictures of the Shariah Supervisory Board. More importantly, it is assumed that they will also disclose the profile of shariah supervisory board members as indicators of their knowledge of *fiqh muamalat* and competence in banking and *Shari'ah*.

3.2.2 SSB Opinion: No involvement in non-permissible activities

As noted above, the opinion of Shariah Supervisory Board regarding the Islamic banks' involvement in non-permissible transactions or activities could be seen as an important element in the Islamic banks' annual reports, and hence, its disclosure may add value to

the company's credibility. Prior studies found that almost all IBs have a Shari'ah Supervisory Board (SSB) whose responsibility is to ensure that any new formulations and modalities are in line with *Shari'ah* principles and within the domain of Islamic norms (Haniffa and Hudaib, 2007). The main issue that SSB provides opinion on appears to be the activities the IB involved. Oftentimes, similar to conventional auditors, they provide reasonable assurance rather than absolute assurance about how the activities of the financial Institution (IB) were permissible according to *shariah* principles (Hameed, 2009). Therefore, I expect that Malaysian IBs also have SSB and that they disclose their annual reports the opinion of the SSB on the subject of non-permissible activities.

Equally important could be the requirement of *ex ante* approval of any new products, investments and financing decisions by the *Shariah* Board. Islamic banks should not enter into any transaction that violates Islamic principles both *ex ante* and *ex post*. As a result, it could be deemed vital whether IBs principally require the existence of such *Shariah* Board *ex ante* approval. The study, however, explores whether IBs in Malaysia disclose such *ex ante* approval in their annual reports.

3.2.3 *Qard Hassan*

Qard Hassan is an Arabic phrase which literally means benevolent loan. In other words, it could be seen as a non-interest bearing loan provided particularly to help the stakeholders at large who are in need of help that IBs may provide to individuals for socially beneficial purposes. (Adnan and Arifin, 2010; Maali et al., 2006). It could be imperative for users of annual reports to know about the bank's performance in that

particular part, to help them to assess whether the bank is undertaking its social duties and following Islamic principles.

As a result, it might be ideally expected that the IBs operating in Malaysia will have such loans or contributions in their annual reports. Hence, the IBs may better involve such social contributions and disclose to satisfy the full disclosure concept in their annual reports the following elements:

a) Funds allocated to *qard hassan* in the Balance sheet
b) The policy of the bank in providing *qard hassan* loans
c) The policy of dealing with insolvent beneficiaries and clients
d) The amount charged as late penalty if any

3.2.4 Employee Benefits

Islam puts more emphasis on dealing justly with all sorts of people, be Muslim or non Muslim. Dealings with employees is not an exception but more importantly, the way organizations deal with their employees in terms of remuneration or other matters, might determine the organization's failure or success. Haniffa and Hudaib, (2007) argue that an organization's ethical stand from an Islamic perspective are the ways it treats its employees and debtors as well as its commitments to society because employees arguably are the greatest asset of a firm and their welfare should be given due attention.

The argument asserted above is emphasized by our prophet (s.a.w). The companions of prophet Muhammad (s.a.w) was narrated by Abu Huraira in Hadith as saying: The Prophet said, "Allah said, 'I will be an opponent to three types of people on the Day of Resurrection: one who makes a covenant in my name, but proves treacherous;

2. One who sells a free person and eats his price; and 3. **One who employs a labourer and takes full work from him but does not pay him for his labour**" (Bukhari cited by Haniffa and Hudaib, 2007).

Therefore, it is vital for every organization to deal with its employees rightly and justly. Islamic banks may better double their employee benefits as they claim that they follow the *shariah* principles. Hence, it is ideally expected that the Malaysian IBs will disclose in their annual reports the following employee benefits:

a) Employees' welfare;

b) Training and development (especially on Shari'ah awareness),

c) Amounts spent on training,

3.2.5 Zakah

Zakah is a religious duty and type of worship levied on only Muslim individuals. In other words, *zakah* is one of the five pillars of Islam, the third pillar of Islam to be precise. The holy Qur'an explicitly mentioned the beneficiaries of *zakah*. When one verse is mentioned more than one time in the holy Qur'an, it shows more emphasis, and *zakah* is repeatedly mentioned in the holy Qur'an. The eight beneficiaries of *zakah* are the poor (*faqir*), the needy (*miskin*), the *zakah* collectors (*amil*), those who reconciled to Islam (*al-mua'lafah gulubahum*), the captives and slaves (*riqab*), debtors (*gharim*), those serving the cause of God (*fi-sabilillah*) and the travelers (*ibn-al-sabil*). The rate is dependent on the type of economic activities (see El-Ashker, 1987).

There is hot debate in the literature regarding who is liable for the zakah payment, whether the organization or the owners of the firm pay it. Gambling and Karim (1991)

are of the view that *zakah* is obligatory to individuals who are Muslims, and therefore, organizations are not liable to pay it. Others argue that not only shareholders should pay the *zakah*, but also entities ought to also pay it. Despite these opposing ideas, Shihaddeh (1987) as cited in (Maali et al., 2006) remarks that the Islamic Fiqh Academy, at its first *Zakah* conference held in Kuwait in 1984, reached the conclusion that businesses are not required to pay *Zakah*, unless such a requirement is imposed by law or agreed by their shareholders.

Regardless of who is liable, what is more important is for the IB to disclose the following details in their annual reports:

a) Which party is liable for *zakah*;

b) Statement of sources and uses of *Zakah*

c) Shariah Board Attestation Regarding the Computation and distribution of *Zakah*

4.0 EMPIRICAL RESULTS

The disclosure percentages and the results of the content analysis are set out in Table 4.1. the results reveal that some areas (commitments in operating within shariah) are disclosed fully while some other areas are not disclosed entirely. This shows clearly that the overall extent of the ethical disclosure benchmark by the 10 IBs in Malaysia falls short. The overall mean level of disclosure compared to the study's benchmark was 47.33 per cent. The bank coming closest to meeting the benchmark is Bank Islam, the first Islamic Bank in Malaysia. However, bank Islam did not disclose any of the items of *Qard Hassan.* Banks such as Muamalat and Allaince disclosed slightly *Qard Hassan* related disclosures. None of the Banks reviewed disclosed in their annual reports the 'Statement

of sources and uses of *Zakah'*. However, Bank Islam explicitly disclosed SSB Attestation Regarding the Computation and distribution of *Zakah.* Five detailed tables on each dimension in the ethical disclosure benchmark are provided in the appendix of the study.

Table 4.1 Main Results of the Study

#	Dimensions	Disclosed (%)	Not Disclosed (%)
1	**Vision and Mission**		
	Commitment in operating within sharia law	100%	0
	SSB profile	60%	40%
2	**SSB Opinion: Involvement of Non Permissible Activities**		
	No involvement in non-permissible financing activities	100%	0
	No involvement in non-permissible Investment activities	100%	0
	Approval ex ante by SSB for new product	90%	10%
3	**Qard Hassan**		
	Funds allocated to qard Hassan in the Balance sheet	20%	80%
	The policy of the bank in providing qard Hassan loans	0%	100%
	The policy of dealing with insolvent CB	0%	100%
	The amount charged as late penalty if any	0%	100%
4	**Employee Benefits**		
	Employee Welfare	100%	0
	training and development (especially on Shari'ah awareness),	20%	80%
	Amount Spent on Training	10%	90%
5	**Zakat**		
	Which party is liable for zakah;	100%	0
	Statement of sources and uses of Zakah	0	100%
	SSB Attestation: Computation and distribution of Zakah	10%	90%
	Overall Mean	**47.33**	**52.67**

4.1 Vision and Mission Dimension

This dimension focuses specifically on two elements namely, 'Islamic banks' commitment in operating within the *Shariah'* and the disclosure of '*Shariah* Supervisory Board profile (SSB)'**.** The argument behind as to why these two elements were included in the index is that IBs commitment towards the principles of *shariah* could be seen what differentiates them from their counterparts (conventional banks). The disclosure of *shariah* supervisory board profile could be vital as mentioned by the prior studies that the users of IBs are interested in the report of the *Sharia* Supervisory Board because it shows whether the bank has complied with the Islamic principles or not.

The content analysis shows that 6 of the sample Islamic banks operating in Malaysia disclosed these two items fully while the other 4 banks the study reviewed only disclosed one item. In other words, they all disclosed 'their commitment in operating within *shariah* principles' but only 6 banks disclosed the profile of SSB. This could be due to little importance given to the disclosure of SSB profile by the IBs. Further illustration is provided in Table I in the appendix.

Following is an example of the annual report from Affin Islamic Bank with regards to its commitment in operating within *shariah* principles:

> *The Bank's business activities are subject to Shariah compliance and conformation by the Shariah Committee…..As for Affin Islamic future plans, the Bank will continue to grow beyond the traditional role of Islamic banks by providing more innovative Shariah-based products and services, in particular equity-based financing structures encompassing Musharakah and Mudharabah contracts…. As a full fledged Islamic bank, customers are assured that all banking transactions are free from the elements of interests (riba), uncertainty (gharar), gambling (maisir) and other un-Islamic fundamentals as these are monitored by the Bank's Shariah Department and supervised by the Shariah Committee.*

4.2 SSB Opinion: Involvement of Non Permissible Activities

Islamic banks are arguably involving with unique products, services, and activities that are expected ideally to be entirely different from those of conventional banks. The investors and the general stakeholders of Islamic banks might not have full information on what is happening inside the organization. Thus, the opinion of *Shariah* Supervisory Board (SSB) is needed to issue a reasonable opinion regarding the Islamic banks' business activities in general and in particular to those that relate to the involvement of non-permissible financing/investing activities. It is also important that the disclosure of SSB can help in approving new products before it is introduced to the IB (ex ante approval of SSB).

The study reviews specifically the IBs disclosure regarding to the involvement of 'non permissible investing activities', 'involvement of non permissible financing activities', and 'approval ex ante by SSB for new products'.

The results indicate that all the IBs reviewed provide the report of *Shariah* Supervisory Board. The results further show that all the IBs the study reviewed have a clean *Shariah* Supervisory Opinion in their annual reports as for the year of 2008. It states that the IBs do not involve in any non-permissible activities according to the *Shariah* principles. However, *Shariah* Supervisory Council as Bank Islam calls it, disclosed that Bank Islam during the financial year has tracked non-*halal* income from various sources amounting to **RM10, 466** to be disposed off to the charity with the approval of the Council is obtained.

On the other side, only one bank, Bank Islam, is subjected to ex ante approval by SSB as revealed by the content analysis. Bank Islam disclosed in its 2008 annual report

that one of the primary duties of *Shariah* Council is *"endorsing and validating relevant documentations in the proposal of new products and services including contracts, agreements or other legal documentations used in executing banking transactions*".

Following is a short summary of the CIMB Islamic Bank's report on the *Shariah* Supervisory Board:

We, Professor Dr Mohammad Hashim Kamali and Associate Professor Dr. Shafaai bin Musa, being two of the members of the Shariah Committee of CIMB Islamic Bank Berhad, do hereby confirm on behalf of the Shariah Committee, that in our opinion, the operations of the Islamic banking and finance business of the Bank and the Group for the financial year ended 31 December 2008 have been conducted in conformity with the Shariah principles.

4.3 Qard Hassan

Qard Hassan as described above is an interest free loan that Islamic banks particularly and Islamic organizations at large may give to their stakeholders. It could be largely argued that *qard hassan* is a kind of community involvement of Islamic banks. In the contrary, Western banks that do not operate within the boundaries of *shariah Islamiyah* give their customers' interest free loans but it is within the specific maximum threshold (say $500). Banks that operate in UK can be regarded as a graphical example where banks in Western country allow their customers to loan 500 pounds of interest free. As a result, it might be expected that Islamic banks have a large portion of such loans in their balance sheet. It might also be anticipated that Islamic banks have specific policy in dealing with *Qard Hassan*. For example, customers that cannot pay back on time or cannot pay back at all.

It could be easy to expect positive behaviors from Islamic banks usually than to confirm such positive anticipations. Contrary to what one might expect from IBs, and

similar to prior studies conclusions, the results of the current study reveal that there is low level of disclosure of *qard Hassan* of the selected IBs operating in Malaysia. Only two (e.g., Alliance and Muamalat) IBs in Malaysia relatively disclosed *qard Hassan* in their annual reports. It is important to note that only these two IBs have disclosed amounts in their balance sheet. However, it appears that even these two banks are lacking in the policy dealings with insolvent clients/beneficiaries. The other eight IBs did not even have small amounts in their balance sheet nor disclosed any policy of *qard Hassan's* dealing. These findings are consistent with prior studies that found a low level of *qard Hassan* both in Malaysian IBs Adnan and Arifin (2010) and outside Malaysia (Maali et al., 2006). Prior studies also found that *qard hasan* appears to be lower compared to other assets. This remarks that Islamic banks in Malaysia forgot *qard Hassan* as a product.

The result might imply that IBs in Malaysia fear that they may not generate profit from *qard Hassan* since their main objective is to generate profit Adnan and Arifin, 2010). It is surprising that the majority of the IBs reviewed in this study did not mention such benevolent loans at all in their annual reports. Adnan and Arifin (2010) explained the reason why IBs do not involve in *qard hasan* is due to six main reasons such as for instance 'not able to generate any profit'.

4.4 Employee Benefits

Employee welfare could be regarded as a crucial aspect in which IBs have to maintain and improve better. On Contrary, the results of the study show that selected IBs in Malaysia disclosed only primary items such as employee wages, and pension plans. However, as Haniffa and Hudaib (2007) found from the Gulf, IBs in Malaysia have low levels of disclosure on items related to training and development (e.g. especially on

Shari'ah awareness). Table 4 in the appendix shows that only two banks (e.g. Bank Islam and RHB) which constitute 20% of those IBs reviewed, disclosed that they provide their staff training on *shariah* awareness. In addition, only one bank (e.g. Bank Islam) constitutes 1% of the sample of IBs disclose the exact amount spent on employee's training. Bank Islam stated clearly in the annual report that:

> *During the financial year, more than 25 Shariah training sessions and courses were organized which mainly aimed at enhancing the level of understanding of Shariah application in the banking business among the staff…..* "In *FY2008, over* ***RM6.5 million*** *was spent on training as part of our commitment towards human resource optimization".*

Bank Islam scores 100% of disclosure level with regard to employee benefits benchmark that the study has developed. In this dimension, the other IB which is next to Bank Islam is the RHB Islamic bank which discloses up to 67% against the study's employee disclosure benchmark. The other eight IBs relatively have low disclosure level of 33%. As noted above, items that these banks disclosed appeare to be primary in nature. This low level of employees training on *shariah* matters is also found in IBs operating in other countries as in the study of (Haniffa and Hudaib, 2007). It could be argued that IBs give little attention to the employee training in general and especially Shariah related trainings.

4.5 Zakah

All the matters discussed so far in the study might be insignificant compared to *zakah*. It is the third pillar of Islam. Since it is such an important pillar, IBs should better involve its payment as well as its full disclosure. The first item included in the benchmark of the study is whether the IB is liable to pay *zakah* or the owners of the IB have to pay it.

Secondly, if the IB pays the *zakah*, it is ideal to anticipate that the IB may provide statement of sources and the uses of *zakah*. Finally, it could be expected that IBs rely on SSB attestation regarding the computation and distribution of *Zakah*.

The result as is indicated in table 5 shows all IBs the study reviewed in Malaysia disclosing their liability to pay the *zakah*. Further analysis shows that 9 IBs are liable to pay the *zakah* while the remaining banks do not pay the *zakah* as an entity, but it is the shareholders who are paying the *zakah* on behalf of their shareholding. The IB mentioned is RHB Islamic Bank. In the annual report, the bank states that "*The Bank is not required to pay Zakat. This should be paid by shareholders on their shareholding"*.

As regarded to the statement of sources and uses of *zakah*, table 5 in the appendix shows that none of the IBs in Malaysia surveyed in this study disclosed in their annual reports statement of sources and uses of *zakah*. As indicated above, one Islamic bank is not liable to pay *zakah*. Therefore, this bank does not necessarily have to provide such statement. However, the remaining nine IBs did not provide the statement. Surprisingly, those banks combine the *zakah* and tax together. This could be implied that the IBs involved regard *zakah* as similar to tax, rather than recognizing it as a religious levy. It is arguably that IBs appear to use *zakah* as a public relation strategy instead of trying to reduce the level of poverty in most Muslim countries through this religious obligation.

Only Bank Islam disclosed SSB attestation regarding the computation and distribution of *Zakah* in its annual report. Other nine IBs do not explicitly or implicitly communicate such SSB role in computing and distributing the amount of *zakah*. Bank Islam has clearly mentioned in the 2008's annual report of this particular element

specifically in the report of *Shariah* Supervisory Council as Banks Islam called it the SSB:

> *The Council reviewed the financial statements of the Bank and confirmed that the financial statements and calculation of Zakat is in compliance with the Shariah requirements.*

The result of this study appears to be consistent with prior studies in this area. It reveals that IBs have failed to disclose how *zakah* funds are distributed. More importantly, it seems that they also failed to disclose of how *zakah* is computed.

5.0 Conclusion, Discussion, and Limitation of the Study

The study reviews the annual reports of 10 local Islamic banks in Malaysia to explore their ethical identity in terms of disclosure and aims to extend the literature of Islamic banking. The paper develops disclosure benchmark from two prior works of (Maali et al., 2006; Haniffa and Hudaib, 2007). This benchmark consists of what Islamic banks ought to disclose according to the percepts of *Shariah* principles and it is compared with their actual disclosures in the annual reports of 2008. Islamic banks ideally are expected to possess a high ethical identity because as Haniffa and Hudaib (2007) remarked, IBs have social goals which is equally important to their financial goals.

Contrary with the researchers' expectations, the empirical findings show that the reviewed IBs in Malaysia have low level of disclosure practices especially for banks that claimed to be operating within the *Shariah* principles. This is startling but it may be due to the fact that many managers of IBs are trained with the Western-type banks administration, thus, not fully aware of the social implications of Islamic banking (Maali et al., 2006). A second reason might be the fact that IBs (especially Malaysian IBs) operate in an environment where the economy is under the domination of conventional

banks. Such a situation might influence the IBs reporting. A third reason could be the accounting standards in which they comply, because Malaysia adopts International Financial Reporting Standards (IFRS), which may also equally influence the IBs reporting practices.

There are 15 elements that are comprised for the benchmark of the study. The 15 elements are further grouped into five main dimensions. The first dimension is "vision and mission" which contains two elements namely, 'IBs commitments in operating within the *shariah* law' and the 'SSB profile'. Results indicate that only 6 IBs had disclosed the profile of SSB. The reason might be SSB is not regarded as vital as the board of directors because all the IBs disclosed their profile and also their pictures. However, all the IBs in the study disclosed their commitment in operating accordingly to the *shariah* law. This differentiates IBs from their conventional counterparts.

The second dimension is "SSB Opinion: Involvement of Non Permissible Activities" with 3 constructs. SSB opinion is very crucial to this report. It relies to the IBs stakeholders on issues related to whether the IB operated within the *shariah* principles or not. The findings show that all of the IBs had SSB and they all received a clean opinion from their *Shariah* supervisors. This result indicates that the role of SSB is restricted to give only ex post opinion rather than ex ante. Only Bank Islam disclosed SSB's role of ex ante approval of the banks' products. It is important to mention here the unqualified report all the banks received from their SSB did not contain detailed information as to how such conclusion was reached. Concerns surface and resurface regarding the independence of the shariah supervisory members.

The third dimension of the study is *"Qard Hassan"* and it contains 4 constructs. The study reveals that those IBs reviewed in Malaysia had a very poor low level of *qard hasan* disclosure. Only two banks have had slight amounts of qard Hassan in the balance sheet. Meanwhile, the other banks do not disclose any construct as compared to the benchmark of the study nor had amounts in the annual reports. The results of this study are consistent with a recent study conducted by Adnan and Arifin (2010) which concluded that IBs in Malaysia forgot the *qard hasan* at all.

The fourth dimension is the 'employee benefits'. This dimension has 3 constructs which one of them could be regarded as a primary employee benefit. This particular construct which relates to employee wages are disclosed by all of the 10 IBs in the study. However, training on *shariah* awareness and the amount spent are only disclosed by one IB which is Bank Islam. These low levels of employee benefit disclosure are observed similarly by prior studies of (Haniffa and Hudaib, 2007).

Last but not least, '*zakah*' has 3 constructs. The analysis indicates that 9 IBs in Malaysia are liable to pay the *zakah* while the remaining banks do not pay it as an entity but rather the owners who are paying the zakah. Even though the IBs disclosed the amount of *zakah* they had paid, they failed to disclose the sources and uses of such amount. Only one IB manages to disclose whether attestation is received from SSB or not. This particular bank disclosed such attestation regarding the computation by the SSC is Bank Islam. Bank Islam is the only one bank that has the most score in the benchmark of the study.

5.1 Limitation of the study and suggestion for future research

Despite the fact that the study may contribute to the existing literature in the IBs area, yet the study is subject to several limitations. Firstly, the use of content analysis could raise more questions than answers. There is lots of subjectivity involved in such analysis especially in terms of the determination of the quality of the information disclosed. Secondly, the study used only annual reports in exploring the disclosures of IBs. This could also be a problem as the study did not explore other means of information disclosure such as press releases and bank websites. Finally, the relatively small sample of the study could make generalazability to the wider population more difficulty.

Future research may employ larger sample size by including all the IBs in Malaysia or cross country study which may involve comparing the IBs in different countries. In addition, future studies may also employ a different methodology other than reviewing just the annual reports. For example, using questionnaire and interview with both management of IBs and the stakeholders may come up with a different findings.

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Appendix

Vision and mission **(Table I)**

Banks	Commitment in operating within sharia law	SSB profile	Disclosure level
Affin IB	Yes	Yes	100%
Alliance	Yes	No	50%
CIMB IB	Yes	Yes	100%
ECONCAP	Yes	No	50%
HL IB	Yes	Yes	100%
BankIslam	Yes	Yes	100%
MayBank	Yes	No	50%
Muamalat	Yes	Yes	100%
Public IB	Yes	No	50%
RHB IB	Yes	Yes	100%

SSB Opinion: Involvement of Non Permissible Activities (Table II)

Banks	No involvement in non-permissible financing activities	No involvement in non-permissible Investment activities	Approval ex ante by SSB for new product	Disclosure level
Affin IB	Yes	Yes	No	67%
Alliance	Yes	Yes	No	67%
CIMB IB	Yes	Yes	No	67%
ECONCAP	Yes	Yes	No	67%
HL IB	Yes	Yes	No	67%
BankIslam	Yes	Yes	Yes	100%
MayBank	Yes	Yes	No	67%
Muamalat	Yes	Yes	No	67%
Public IB	Yes	Yes	No	67%
RHB IB	Yes	Yes	No	67%

Qard Hassan (Table III)

Banks	Funds allocated to qard Hassan in the Balance sheet	The policy of the bank in providing qard Hassan loans	The policy of dealing with insolvent CB	The amount charged as late penalty if any	Disclosure level

Affin IB	No	No	No	No	0%
Alliance	Yes	No	No	No	25%
CIMB IB	No	No	No	No	0%
ECONCAP	No	No	No	No	0%
HL IB	No	No	No	No	0%
BankIslam	No	No	No	No	0%
MayBank	No	No	No	No	0%
Muamalat	Yes	No	No	No	25%
Public IB	No	No	No	No	0%
RHB IB	No	No	No	No	0%

Employee Benefits (Table IV)

Banks	Employee Welfare	Training and development (especially on Shari'ah	Amount spent on training,	Disclosure level
Affin IB	Yes	No	No	33%
Alliance	Yes	No	No	33%
CIMB IB	Yes	No	No	33%
ECONCAP	Yes	No	No	33%
HL IB	Yes	No	No	33%
BankIslam	Yes	Yes	Yes	100%
MayBank	Yes	No	No	33%
Muamalat	Yes	No	No	33%
Public IB	Yes	No	No	33%
RHB IB	Yes	Yes	No	67%

Zakah (Table V)

Banks	Which party is liable for zakah;	Statement of sources and uses of Zakah	SSB Attestation Regarding the Computation and distribution of Zakah,	Disclosure level
Affin IB	Yes	No	No	33%
Alliance	Yes	No	No	33%
CIMB IB	Yes	No	No	33%
ECONCAP	Yes	No	No	33%
HL IB	Yes	No	No	33%
BankIslam	Yes	N0	Yes	67%
MayBank	Yes	No	No	33%
Muamalat	Yes	No	No	33%

Public IB	Yes	No	No	33%
RHB IB	Yes	NA	No	33%

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Note: we landed the pages because of the graphs that we have.

بيع الدين في التجربة الماليزية

رؤية إسلامية

ملخص البحث

تهدف هذه الدراسة إلى تقييم بيع الدين في التجربة الماليزية سلباً وإيجاباً، ومدى التزامها بالضوابط الشرعية، والدوافع الحقيقية لنجاح التجربة الماليزية، وتصكيكه طلباً للسيولة، وذلك في مختلف حالاته وصوره، نقداً أو بثمن مؤجل، وسواء أكان للمدين نفسه، أو لغيره، بمقداره أو بأقل منه، ولكل أحكامه الفقهية. ولعل من أهم الأمور المخالفة للقواعد الشرعية في الإسلام اشتمال العقد على الربا أو الغرر أو بيع الكالئ بالكالئ كما قرر الفقهاء بذلك، ولا سيما أننا نعيش هذه الأيام آثار أزمة عقارات الديون الأمريكية، وأن مسألة الديون تعدّ من أهم وأخطر القضايا الاقتصادية العالمية التي كشفت سوءات النظام الرأسمالي الربوي، هذا ما ستحاول الدراسة مناقشته وترجيح ما يمكن ترجيحه وفق منهج الفقه المقارن.

وقد توصلت الدراسة على أنه يجب على المسلم التحلي بالقناعة، فيشتري من السلع ما يستطيعه ويطيقه، والحد من التوسع الائتماني، ومنح الديون، والقروض، حتى لا يدخل في مزالق الديون، وأن الإسلام حرّم التجارة في الديون، إلا إذا كانت بأعيان وسلع مع الالتزام فيها بالشروط والضوابط الشرعية التي ذكرها الفقهاء، حرمة بيع الدين المؤخر بالدين المؤخر، لأنه شغل الذمة بدون فائدة لأحد طرفي العقد، ويترجح بيعه للمدين، ولغير المدين، وأنه يجب إعادة النظر من ذوي الشأن في بيوع الدين المطبق في ماليزيا.

Abstract

This study aims at evaluating the sale of debt in the Malaysian experience positively and negatively. It also focuses on the extent to which this sale abides by the Islamic law and the real commitment involved for the success of Malaysian experience. This includes their securitizations which demands liquidity in its different aspects and manifestations either in cash or deferred price, be it for the debtor himself or for others, either by its original amount or less, all have Jurisprudence provisions. Perhaps the most important things which are contrary to the *Hukum* of legitimacy in Islam is the accumulation of *Riba* or ambiguity or sell Alkali' Bi Alkali' in the contract as endorsed by the scholars (Fuqaha). Especially these days whereby we are living and experiencing, the effects of the U.S debt crises. Yet, the issue of debt is considered as one of the most significant and most serious global economic issues which were made evident by the concerned authorities i.e. the Riba system based capitalism. This is what the study will make an attempt to discuss and reach preponderant point in accordance with the method of comparative jurisprudence.

The study concluded that it is the duty of the Muslim to exercise satisfaction, he should buy goods that he is able to and could manage and must observe reduction of credit expansion. Including the granting of debt and loans, so as to keep him away from falling into the pitfalls of debts. Islam certainly bans transaction in debts and is only acceptable in terms of materials and goods in accordance with the conditions and legal rules and regulations mentioned by the (Fuqaha) scholars. Prohibition of the debt defer price sale by debt defer price sale, is due to possession without the benefit of one party of the contract. Debt sale to the debtor or others is preponderant and that should be reconsidered with regard to sales of debt applicable in Malaysia.

المقدمة

خلق الله الإنسان، وجعل له احتياجات، ورغبات، وفضل بعضهم على بعض في الرزق، فجعل هذا غنياً صاحب مال، وهذا فقير لا يملك مالاً، أو ممن هم من ذوي الدخل المحدود، وجعل الله حاجة بعضهم إلى بعض ضرورية، فالتاجر محتاج لمن يعمل معه، أو يستهلك منتجاته، والفقير محتاج لمن يبيع له بالآجل لسد احتياجاته الضرورية، ويقرضه إن احتاج إليه، فالإنسان يعيش وقد دائناً أو مديناً، فإن كان الأمر كذلك فيجب أن يتحلى كل واحد منهما بالآداب الإسلامية، في حسن المطالبة، وحسن الأداء، لتحقيق العدالة بينهما، وقد يحتاج صاحب المال للسيولة السريعة، فيضطر لبيع دينه على المدين، أوغيره، سواءً أكان حالاً أو آجلاً، نقداً أو سلعة، فيجب عليهما الالتزام فيه بالضوابط والشروط الشرعية.

والدين: هو حق ثابت في الذمة سواء أكان نقداً أو غيره، وهو ما يكون بدلاً عن مال أتلفه أو قرض اقترضه، أو مبيع في عقد بيع، أو منفعة عقد عليها، وهذا البحث سيلقي الضوء على مدى شرعية التجربة الماليزية في بيع الدين، هذا وقد اعتمد الباحث في بحثه المنهج الاستقرائي، والوصفي، والتحليلي النقدي، وكذلك المنهج.

وقد تم تقسيم هذه الدراسة إلى مبحثين واحتوى كل مبحث ثلاثة مطالب: فالمبحث الأول: أضواء على التجربة الماليزية في بيع الدين، وفيه: مدى شرعية بيع الدين في التجربة الماليزية، والأسباب والدوافع الحقيقية لنجاحها، وتصكيك الديون، وأما المبحث الثاني: فهو بعنوان: التقييم الشرعي للتجربة الماليزية في بيع الدين، وفيه: بيع الدين بين المانعين والمجيزين، وحالات بيع الدين، وصور بيع الدين لغير المدين، ثم الخاتمة التي تضمنت نتائج البحث، وأخيراً المصادر والمراجع التي اعتمد عليها البحث في الدراسة، نسأل الله أن يجعل سعينا خالصاً لوجهه الكريم.

المبحث الأول

أضواء على التجربة الماليزية في بيع الدين

المطلب الأول: مدى شرعية بيع الدين في التجربة الماليزية

التجربة الماليزية في بيع الدين نابعة من الاهتمام المتزايد والبحث التوسعي الماليزي عن صيغ أدوات التمويل الإسلامي، رغم أن هذه المسألة محل خلاف ونزاع بين الفقهاء المسلمين قديماً وحديثاً.

ويقصد ببيع الدين: تصرف الدائن بالدين بتمليكه لغيره مقابل عوض، سواء أكان ذلك لمن هو عليه الدين أو لغيره، في أجله أو قبل أجله، بمقداره أو بأقل منه نقداً أو بثمن مؤجل، ولكل أحكامه الفقهية[1].

ومهما يكن الأمر فإن التجربة الماليزية في بيع الدين ما زالت بحاجة إلى أن تكون أكثر استقراراً، لأن مخاطره كبيرة لاعتماده أحياناً على بيع المعدوم، فهي بحاجة إلى أكثر للالتزام بالضوابط والشروط الشرعية، التي وضعها الفقهاء للمصارف الإسلامية، أن هذه المصارف تعتمد لشراء الصكوك على الرهن العقاري المحسوس الذي غالباً ما يكون بحوزة البنك المركزي الماليزي، كما بين لي ذلك مدير قسم الشريعة في المصرف الإسلامي الماليزي[2]، وما الأزمة العالمية التي نعيش أحداثها إلا نتاج بيع الدين غير المنضبط، إلا أن تجربة المؤسسات المالية الإسلامية في ماليزيا، وغيرها، تختلف عن أزمة العقارات الأمريكية التي أودت بالاقتصاد العالمي إلى الهاوية دعك عن الأمريكي ذاته، وذلك لأن المؤسسات المالية الإسلامية عموماً تتعامل وفق ضوابط الشريعة الإسلامية.

ولزيادة الضمان والاستيثاق فإن أغلب المصارف الإسلامية في ماليزيا تشتري صكوكاً لبيع الدين من البنك المركزي الوطني الماليزي (Bank Negara Malaysia). ومن المؤسسات المالية الأخرى التي تقوم بإصدار الصكوك، ومن هذه المؤسسات الشركة الوطنية للرهن العقاري المشهورة بـ(Cagamas) التي تعدّ ثاني أنشط مؤسسة في إصدار صكوك الدين لبيع المنازل، بعد البنك المركزي الماليزي، حيث توقعت دراسة جدوى الشركة انخفاض مبيعاتها بنسبة 30% لعام 2009 تمشياً مع بطء حركة الاقتصاد نتيجة للأزمة المالية العالمية، بينما الطلب على السندات الحكومية سيشهد ازدياداً لحالتها الصحية ولإقبال المستثمرين عليها لأن الثقة بها أكثر من الشركات الخاصة.

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[1] أبو مليح، رجب، **قضايا فقهية في الأزمة الاقتصادية العالمية**، مقال منشور بموقع: إسلام أون لاين. نت، الأربعاء 15 أكتوبر عام 2008م. ص 2.

[2] وذلك في لقائي به في مكتبه الكائن بالطابق الثالث، بمنارة تكافل ماليزيا، التي بها المبنى الرئيسي لبنك إسلام ماليزيا، وذلك بتاريخ 20/4/ 2009م.

وستحاول الشركة إصدار صكوك رهن عقارية بقيمة 14,12 مليار رينجيت ماليزي والذي يعادل (3,3 3,9 مليار دولار) من الديون من عام 2009م هبوطاً عن عام 2008م الذي حققت فيه الشركة 18مليار رينجيت ماليزي على حسب قول رئيس الشركة التنفيذي استيفن تشوي[3].

المطلب الثاني: الأسباب والدوافع الحقيقية لنجاح التجربة الماليزية

قد يتساءل المرء كيف حققت ماليزيا هذه الطفرة التنموية في جميع مجالاتها؟ مع ما بها من تناقضات عرقية ودينية، وأيضاً تناقضات في تطبيقاتها الشرعية للمعاملات الإسلامية، كما يرى البعض، مما اعتبره آخرون إيجابيات تصبّ في مصلحة الحكومة الماليزية، واعتبره غيرهم من السلبيات، وعلى الرغم مما يثار حول التجربة الماليزية، من تساؤل فإن هذا ليس بدعاً ولا عيباً فإنه شيء طبيعي أن تحمل أي تجربة بشرية في طياتها النجاحات والاخفاقات، ويمكن تلخيص أسباب نجاح تجربة التنمية الماليزية في النقاط التالية:

1- النظام الدستوري الذي يضمن حقوق الفرد والجماعة[4].

2- النظام السياسي المبني على المؤسساتية لانتقال السلطات من جهة إلى أخرى بسلاسةبناءة غير هدامة.

3- الديمقراطية في ممارسة الحكم بدءاً من السلاطين الذين يتبادلون نظام الملك كل خمس سنوات، ومروراً برئيس الوزراء.

4- النضج السياسي في قبول نتائج الانتخابات سواءً أكانت سلباً أو إيجاباً على أي طرف، من حكومة، أو معارضة، وذلك لتقديم مصلحة الوطن الواحد على المصالح الحزبية الضيقة.

5- الاستقرار الاقتصادي الذي يدفع بعجلة تنميته إلى الأمام[5] والذي يعدونه علماء الاقتصاد أسّ الرخاء والازدهار الاقتصادي.

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[3] http://uk.reuters.com/article/idUKKLR41673920090216?sp=true

[4] http://0503samira.maktoobblog.com/ سميرة ناصري، النظام السياسي في ماليزيا:

[5] محمد شريف بشير، 26 ديسمبر 1999م، **الجياد الماليزية من مضمار التنمية إلى النهوض من الكبوة**، منشور في موقع إسلام أون لاين.نت، انظر الآتي: http://www.islamonline.net/servlet/Satellite

6- الاستراتيجية الموضوعة وفق دراسات الجدوى المتأنية، كما هو الشأن في مشروع رؤية عام 2020 التي بموجبها ستلتحق ماليزيا بالدول المتقدمة مولية خلفها العالم الثالث، وآهاته التي لا تنتهي.

7- إعطاء الأولوية للتنمية البشرية تعليماً والبناء الثقافي المراعي للتعددية الإثنية والدينية، عكس حكام بعض دول العالم الثالث، الذين يعطون الأولوية للشئون العسكرية، وبناء العرقية الضيقة على مصالح الأمة العامة.

لقد تم تحقيق نقلة نوعية متميزة في المجالات الصناعية والسياحية والتكنولوجية والطبية والتعليمية حتى وصلت إلى المرتبة الـ 18 على خريطة العالم الاقتصادية فيما بلغت نسبة المتعلمين فيها 93% بعد أن كانت الأمية والجهل والتخلف قبل 35 عاماً إحدى سمات شعب الملايو. وكنتيجة لذلك اعتبرت مثالاً ناجحاً وتجربة رائدة تنافس مثيلاتها من الدول الصناعية المتقدمة[6].

8- محاربة الفقر بكل أشكاله سواء أكان بتوعية الجماهير بأهمية استثمار المال في المصارف الإسلامية، أو بإقراض ذوي الدخل المحدود لبدأ عجلة الحياة.

9- تأمين الحياة وذلك بتوفير العمل ومحاربة البطالة، إضافة لبناء منازل وبيعها لذوي الدخل المحدود، عن طريق الإجارة المنتهية بالتمليك.

10- تشجيع الشركات الخاصة على الاستثمار في المشاريع الوطنية الكبيرة، كبناء الجسور والطرق السريعة.

11- الاتجاه للاستفادة من نموذج الجار الشرقي (اليابان) بدل الهرولة إلى النموذج الغربي (الأمريكي) لكن في تنزيله في أرض الواقع روعيت فيه الخصوصية الماليزية، ذات الأعراق والاعتقادات المتباينة، وهو ما كتب لها النجاح المشهود[7].

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[6] عبد الرحمن عبد الواحد، الدكتور محاضر محمد، بعيون عربية وإسلامية، للمزيد انظر الموقع الآتي:
http://pulpit.alwatanvoice.com/content-277.html

[7] انظر للمزيد إلى الموقع التالي: http://imadelhaj.maktoobblog.com

فمهما اختلف الباحثون والمحللون في نقد التجربة الماليزية، إيجاباً أو سلباً، فإن رؤاهم في نهاية المطاف تكاد تكون مجمعة على تأكيد نجاح التجربة الماليزية في التنمية البشرية والاقتصادية وفقاً لرؤية التقدم والتطور المرسومة من قبل الحكومة، التي أشرنا إليها آنفاً، فأيّ تجربة بشرية يراد لها النجاح لابد وأن تكون القيادة القائمة عليها في غاية من الوعي والفهم، والإدراك لمتطلبات الواقع المحلي وخصوصياته المتنوعة التي تدفع بعملية التنمية إلى الأمام إذا أحسن استغلالها، ولا يمكن تحقيق ذلك ما لم يكن هناك قانون واضح وصريح يكفل لكل ذي حق حقه، حيث يبين له حقوقه وواجباته، سواء أكان مواطناً أو أجنبياً فيقف كل أحد عند حده القانوني، وهو ما يشجع الاستثمارات المحلية، والأجنبية للمشاركة الفعالة في التنمية الاقتصادية، فوضوح القوانين وفعاليتها، هو الذي يدفع بعجلة النضج السياسي والنجاح الاقتصادي.

ومع ذلك لا يكفي أن تكون مواد القانون جميلة وواضحة وعادلة، إذا لم يتم تفعيلها بالتطبيق في أرض الواقع، فإنها ستكون حتماً سلباً ووبالاً على العمل التنموي، والتفكك الاجتماعي، كما أنه لا يكفي لننجح داخلياً مع إغفالنا للواقع الإقليمي من حولنا، فيجب على قيادة البلد أن تكون ملمة بقراءة الواقع الداخلي والخارجي، لتضع خططها واستراتيجياتها وفق رؤية واضحة المعالم، منطقية التحقيق، واقعية التطبيق.

المطب الثالث: تصكيك الديون أو توريقها (Securitization)

التعريف: أصل مصطلح التصكيك أو التوريق (Securitization) مصطلح اقتصادي حديث وهو الذي يعني: جعل الدين المؤجل في ذمة الغير–في الفترة ما بين ثبوته في الذمة وحلول أجله– صكوكاً قابلة للتداول في سوق ثانوية، وبذلك يمكن أن تجرى عليه عمليات التبادل والتداول المختلفة، وينقلب إلى نقود ناضة بعد أن كان مجرد التزام في ذمة المدين[8].

والصك يشار له عادة بـ"سند إسلامي" والصكوك هي شهادات، ويمثل كل صك حق ملكية نسبة مئوية شائعة في موجودات عينية، أو مجموعة مختلطة من الموجودات، أو في موجودات مشروع محدد أو نشاط استثماري، وتختلف الصكوك عن الأوراق المالية الربوية القائمة على الفائدة أو السندات[9]، وهنا يحسن بنا أن نعرج قليلاً للتعرف على غاياته

[8] حماد، نزيه، **قضايا فقهية معاصرة في المال والاقتصاد**، (دمشق: دار القلم، ط1، 1421هـ- 2001م) ص214.

[9] مسودة مشروع متطلبات **كفاية رأس المال لتصكيك الصكوك والاستثمارات العقارية**، ديسمبر 2007م.

وأهدافه، فغايات وأهداف التصكيك تلتقي جملة مع غايات التوريق المصرفي، إلا أن هناك قدراً من الاختلاف يرجع إلى خصائص كل واحد منهما، فإن عمليات تصكيك الأصول المختلفة التي تتمتع بها المؤسسات المالية الإسلامية تمثل أحد أدوات السيولة المالية المهمة، وقد لخصها الدكتور النشمي[10] في النقاط التالية:

1- زيادة السيولة؛ حيث إن موجودا غير قابل نسبيا للتسييل يتحول بسرعة إلى سيولة كالموجود الذي يملكه مؤجر في عقد الإجارة أو عقد الإجارة المنتهية بالتمليك إذ يتم تحويله إلى نقد يدفعه المستثمرون في صكوك.

2- تنويع مصادر التمويل وتوسيع قاعدة المستثمرين وتجميع رؤوس الأموال اللازمة لتمويل التوسع في النشاط والحصول على أصول جديدة تعمل على المواءمة بين آجال الأصول والالتزامات للحد من المخاطر.

3- تخفيض متطلبات رأس المال، فإن عملية التصكيك يمكن أن تسمح لمؤسسة المالية الإسلامية استبعاد موجودات الصكوك [(11)] .

4- التعزيز الائتماني في التصكيك وهو ترتيب تعاقدي حيث تحتفظ المؤسسة المالية الإسلامية أو تتحمل جزءاً من التعرض لمخاطر التصكيك، وبالتالي توفر درجة معينة من الحماية الإضافية للأطراف الأخرى . ويجب إعطاء عناية خاصة للتأكد من أن أي تعزيز ائتماني يكون متفقاً مع أحكام الشريعة الإسلامية ومبادئها.

كما أن فضيلته يرى [12] إمكانية بيع صكوك الديون بسلع عينية بدلاً من بيعها بالديون فيمكن للبنك الإسلامي أن يشتري ألف سيارة مثلاً بثمن معجل، ثم يبيعها للعملاء بثمن مؤجل، ولا حرج بعد ذلك أن يعمد البنك إلى توريق تلك الديون على عملائه، والشراء بصكوكها كمية أخرى من السيارات الحاضرة من المصنع، ثم يبيعها بثمن مؤجل، ثم يورق ثمنها، ويشتري بها سلعاً حاضرة أخرى غيرها ويبيعها.

الملاحظ في هذا المقترح على الرغم من وجاهته ومنطقيته في توفير السيولة للمؤسسات المالية الإسلامية، إلا أن الأمر يحتاج إلى نوع من التأني والتركيز، ومزيد من البحث والتنقيب.

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[10] النشمي، عجيل جاسم، **التوريق والتصكيك وتطبيقاتهما**، مجمع الفقه الإسلامي، الدورة التاسعة عشرة، إمارة الشارقة، الإمارات العربية المتحدة، وذلك من 1 إلى 5 جمادى الأولى 1430هـ الموافق 26 – 30 إبريل 2009م، ص 7 وما بعدها.

11 مسودة مشروع متطلبات كفاية لرأس المال لتصكيك الصكوك والاستثمارات العقارية مجلس الخدمات المالية، وأساليب التوريق الاستثماري د سعيد عبد الخالق 34.

[12] النشمي، مصدر سابق، ص 9.

المبحث الثاني

التقييم الشرعي لبيع الدين

المطب الأول: بيع الدين بين المانعين والمجيزين

1- تعريف بيع الدين

إن هذا المصطلح هو مصطلح فقهيّ مركّب من جزءين تركيب إضافة، وهما بيع ودين، ولا يمكن البلوغ إلى حقيقة مفهوم هذا المصطلح المركّب ما لم نعرف كل جزء منهما على حدة.

وقد عرف ابن قدامة (ت 620هـ) صاحب المغني البيع بأنه : "مبادلة المال بالمال، تمليكاً، وتملكاً . واشتقاقه : من الباع، لأن كل واحد من المتبايعين يمدّ باعه للأخذ والإعطاء"[13].

والدَّين يكون نظير معاوضة أو إتلاف أو قرض أو أرش جناية أو حق لله تعالى كالزكاة. ولا يثبت في الذمة إلا المثليات وهي الأموال التي تتماثل آحادها وتتساوى في القيمة كالمكيل والموزون والنقود ونحو ذلك .

أما القيميات فلا تثبت في الذمة بل تثبت قيمتها كثمن البيع وغرامة الإتلاف، وكل قرض دين ، ولكن الدين ربما كان من قرض وربما كان من أمور أخرى كالبيع الآجل والسلم والمهر المؤخر وأرش الجناية وعوض الخلع ...الخ . والدين حال إذا كان يجب أداءه عند طلب الدائن أو مؤجل إذا كان للوفاء به مدة مضروبة.

وأما الفقهاء فيستعملون كلمة الدين بمعنيين عام وخاص: فالعام يريدون به مطلق: الحق اللازم في الذمة، بحيث تشمل كل ما يثبت في الذمة من أموال، أياً كان سبب وجوبه، سواء كان لله تعالى أم للآدميين.

[13] ابن قدامة، أبو عبد الله بن أحمد بن محمد، **المغني**، تحقيق: محمد شرف الدين ، والسيد محمد، وسيد إبراهيم، (القاهرة: دار الحديث، د.ط، 1425هـ- 2004م) ج5، ص 218.

وأما بالمعنى الخاص فالمال فيه قولان: قول للحنفية بأنه عبارة عن: ما يثبت في الذمة من مال في معاوضة أو إتلاف أو قرض، وهذا التعريف لا تدخل فيه الزكاة والدية وأرش الجناية. والقول الثاني للشافعية والحنابلة: وهو ما يثبت في الذمة من مال بسبب يقتضي ثبوته، وهذا التعريف أشمل وأجمع وأمنع، لأنه يدخل فيه كل ما لزم في الذمة من أموال، سواء ثبت في نظير عين مالية أو منفعة أو ثبتت حقاً لله تعالى من غير مقابل كالزكاة[14].

والباحث يرى أن يكون التعريف المختار لهذا الاسم المركب كالآتي:

بيع الدين هو مبادلة ما ثبت في الذمة بمال، ويفهم من هذا التعريف بأن عقد بيع الدين، هو من عقود المعاوضة، ويخرج بهذا القيد عقود التبرع كالهبة والصدقة، وعقود الإرفاق، كالقرض إذ لا مبادلة فيه، وفيه ضمان المتلف بالتعدي، وهكذا غيره كمهر زوجة ونفقتها والأولاد، وهو يشمل كل ما يطلق عليه مال سواء أكان عيناً أم ديناً أم منفعةً، وذلك خلافاً للحنفية الذين يرون أن المنفعة ليست مالاً، وإنما هي ملك وإليك ما قاله ابن عابدين في ذلك: "والتحقيق أن المنفعة ملك لا مال، لأن الملك ما من شأنه أن يتصرف فيه بوصف الاختصاص، والمال من شأنه أن يدخر للانتفاع به وقت الحاجة" [15].

2- بيع الدين الآجل بالدين الآجل

ويتمثل الدين في الثمن والمثمن، وما ليس بثمن ولا مثمن، كدين القرض والاتلاف، وهو إما يكون لمن عليه الدين، أو لغير من عليه الدين، سواء أكان بعوض أو بغير عوض، وفي كلا الحالين إما أن يتاع الدين نقداً، أو نسيئة مؤجلا[16].

فبيع الدين نسيئة: وهو ما يعرف ببيع الكالئ بالكالئ، أي الدين بالدين، وهو بيع ممنوع شرعاً، لما ورد النهي النبوي فيه، حيث نهى النبي صلى الله عليه وسلم عن:"بيع الكالئ بالكالئ"[17]، وعلى الرغم مما في الحديث من الضعف إلا أن الأمة تلقته بالقبول، وعليه الاجماع فيجب قبوله، ولكن يرى شيخ الإسلام ابن تيمية وتلميذه ابن القيم، صرف

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[14] المصدر نفسه، ص 130.

[15] ابن عابدين، محمد أمين بن عمر، **حاشية ابن عابدين**، تحقيق: حسام الدين بن محمد صالح، (دمشق: دار الثقافة، ط1، 1421هـ - 2000م) ج 7، ص 8.

[16] الزحيلي، وهبة، **موسوعة الفقه الإسلامي المعاصر**، (دمشق: دار المكتبي، ط 1، 1427هـ- 2007م) ج 3، ص 14 وما بعدها.

[17] الدار قطني، علي بن عمر، **سنن الدارقطني**،ى تحقيق: شعيب الأرنؤوط، (بيروت: مؤسسة الرسالة، ط1، 1424هـ 2004م) ج4، ص 40. والحاكم، محمد بن عبد الله، **المستدرك على الصحيحين**، تحقيق: عبد القادر عطا، (بيروت: دار الكتب العلمية، ط1، 1411هـ - 1990م) ج 2، ص 65. البيهقي، أحمد بن الحسين بن علي، **السنن الكبرى**، (بيروت: دار الفكر، د.ط،

مفهوم الحديث على بيع الدين المؤجل بالدين المؤجل، وهذا لا يجوز بإجماع أهل العلم، لأنه لا تحصل به فائدة لأي من طرفي العقد، حيث قال: "لا يجوز باتفاقهم، لأن كلاً منهما شغل ذمته بما للآخر من غير منفعة حصلت لأحدهما، والمقصود بالبيع النفع، فهذا يكون أحدهما قد أكل مال الآخر بالباطل إذا قال أسلمت إليك مائة درهم إلى سنة في وسق حنطة، ولم يعطه شيئًا، فإن هذه المعاملة ليس فيها منفعة، بل فيها مضرة، فهذا يطلب هذا بالدراهم، ولم ينتفع واحد منهما، بل أكل مال الآخر بالباطل من غير نفع نفعه به[18].

وقال رحمه الله: "إنه عقد وإيجاب على النفوس بلا حصول مقصود لأحد الطرفين، ولا لهما[19]"

وقال ابن القيم –رحمه الله–: "إنه اشتغلت فيه الذمتان بغير فائدة، فإنه لم يتعجل أحدهما ما يأخذه فينتفع بتعجيله، وينتفع صاحب المؤخر بربحه، بل كلاهما اشتغلت ذمته بلا فائدة[20]".

وقال : في إغاثة اللهفان:"وفيه ذريعة إلى تضاعف الدين في ذمة كل واحد منهما في مقابلة تأجيله، وهذه مفسدة ربا النساء بعينها[21]".

ومن هذا يمكن القول بأن ابتداء الدين بالدين يختلف عن البيع المضاف لأنه واقع على عين موجودة، كما أنه يختلف عن بيع الموصوفات الغائبة[22].

وقد ساق الشيخ الزحيلي إجماع الناس على عدم جواز بيع دين بدين، وذلك سواء أكان البيع للمدين أم لغير المدين، إذا كان التقابض من الطرفين مؤجلاً [23].

د، ت) ج 5، ص 290. الألباني: محمد ناصر الدين، **إرواء الغليل**، (بيروت: المكتب الإسلام، ط1، ص 220، وقد ضعفه، لأنه قد تفرد به موسى بن عبيدة الربذي، وقال الإمام أحمد: لا تحل الرواية عنه، ولا أعرف هذا عن غيره، وقال أيضًا ليس في هذا حديث يصح. وقال الشافعي: أهل الحديث يوهنون هذا الحديث. وأخرجه ابن حجر في بلوغ المرام 25/2، حيث قال فيه: رواه إسحاق والبزار بإسناد ضعيف.

[18] ابن تيمية، أبو العباس أحمد عبد الحليم، **مجموع الفتاوى**، تحقيق: عبد الرحمن بن محمد بن قاسم، (د.م، د.ط، 1418هـ- 1997م) ج 29، ص 472 بتصرف. وكذا في **تفسير آيات أشكلت** 665/2 بتصرف.

[19] ابن تيمية، الفتاوى، مصدر سابق، ج 30، ص 264 بتصرف.

[20] ابن قيم الجوزية، محمد بن أبي بكر، **إعلام الموقعين عن رب العالمين**، تحقيق: طه عبد الرؤوف سعد (بيروت: دار الجيل، د.ط، 1973م) ج2، ص 9.

[21] ابن القيم، **إغاثة اللهفان من مصايد الشيطان**، (بيروت: دار بن زيدون، د.ط، د. ت،) ج 2، ص 382 بتصرف.

[22] القري، محمد علي، **بيع الدين وسندات القرض وبدائلها الشرعية**، مجلة مجمع الفقه الإسلامي بجدة، العدد الحادي عشر، ج 1، عام 1419هـ - 1998م، ص 242.

وقد ذكر أبو جيب في موسوعته أيضاً أن بيع الدين بالدين: قد أجمع المسلمون على منعه، وصورته أن يكون للرجل على الرجل دين، فيجعله عليه دين آخر مخالف له في الصفة، أو القدر، وهو في الحقيقة بيع دين بما يصير ديناً[24]. وهو ما يعرف في عصرنا الحاضر بجدولة الديون الربوية.

إلا أن ابن حزم الظاهري يرى أنه: "لا يحل بيع دين يكون لإنسان على غيره لا بنقد، ولا بدين، ولا بعين، ولا بعرض، سواء أكان ببينة أو مقراً به، أو لم يكن، كل ذلك باطل، ووجه العمل في ذلك لمن أراد الحلال أن يبتاع في ذمته ممن شاء ما شاء مما يجوز بيعه، ثم إذا تم البيع بالتفرق أو التخير، ثم يحيله بالثمن على الذي له عنده الدين فهذا حسن"[25].

ويفهم من كلام ابن حزم عدم جواز بيع الدين، لغير المدين، إلا بالحوالة. لكنه قد أخرج أثراً آخر في كتابه يفهم منه جواز بيع الدين بالسلعة، وذلك لما روي عن أبي الزبير أنه سمع جابر بن عبد الله يسأل عمن له دين فابتاع به غلاماً؟ قال: لا بأس به[26].

يلاحظ مما تقدم أن بيع الدين بالدين نقداً مؤجلاً من الطرفين لا يجوز، وأما عموم النفي الذي قال به ابن حزم الظاهري، فقد تراجع عنه هو بنفسه، عندما لم ير بأساً ببيع الدين بالسلعة، وهذا محل اتفاق بين الفقهاء قديماً وحديثاً، ومن ضمن شروط الجواز التي قال بها المالكية وكذا مجمع الفقه الإسلامي، فلا حاجة للاعتراض عليه.

ويجري الحكم نفسه في بيع الدين الحال سواء أكان للمدين وغير المدين بثمن مؤجل، إذ إنها لا تختلف عما سبقتها في صورها، لأنها مظنة ذريعة ربا النساءالجاهلي الذي نزل القرآن الكريم بتحريمه، أو هو ما يعرف في المصرفية المعاصرة بجدولة الديون، وهي الطريقة الجاهلية تماماً إما أن تقضي أو تربي.

المطلب الثاني: حالات بيع الدين

إن لبيع الدين حالتان أو صورتان: تتضمن كل حالة بدورها حالتان أيضاً، والرسمان البيانيان التاليان، يلخصان لنا حالات وصور بيع الدين، ومن ثم سنقوم بمناقشة كل حالة أو صورة على حدة تباعاً:

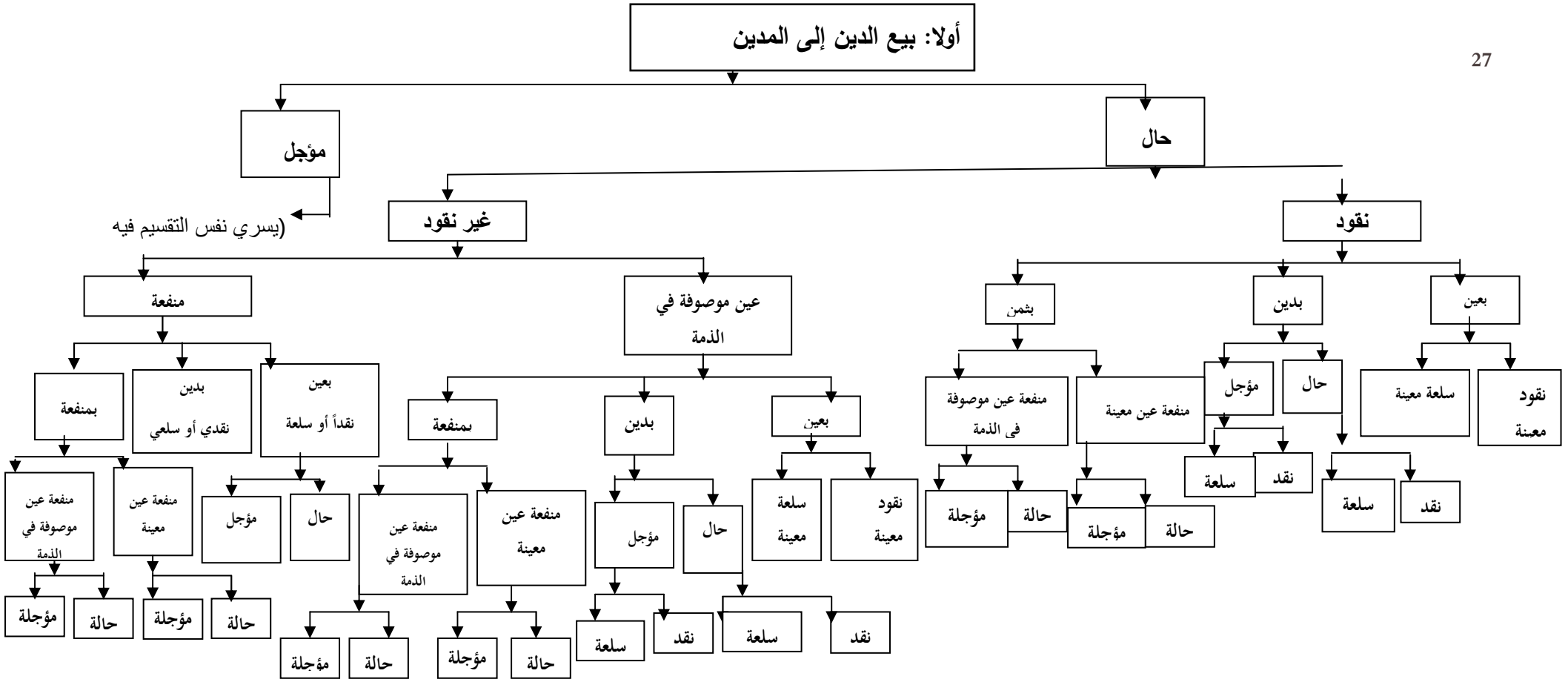
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[23] المصدر نفسه، ج 3، ص 24.

[24] أبو جيب، سعدي، **موسوعة الإجماع في الفقه الإسلامي**، (بيروت: دار الفكر، ط3، 1419هـ - 1999م) ج1، ص426.

[25] ابن حزم، علي بن أحمد بن سعيد، **المحلى**، تحقيق: أحمد شاكر، (بيروت: دار الآفاق الجديدة، د.ط، د. ت) ج9، ص 6.

[26] ابن حزم، المصدر نفسه، ج 9، ص 6.



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[27] تكرم بتزويدي بهذا الرسم البياني مكتب الدكتور الشيخ عبد الرحمن بن صالح الأطرم، عضو كبار هيئة العلماء في المملكة العربية السعودية، ومستشار لعدد من المؤسسات المالية الإسلامية، وذلك في سنة 2007م.

الحالة الأولى: بيع الدين لمن عليه الدين بثمن حال

وصورتها أن يكون لشخص على آخر دين قدره عشرة آلاف رينجت ماليزي، فيتفق الطرفان على أن يأخذ الدائن مثله مما يقابله ويساويه، فقد أخذ الفقهاء بشأنها إلى مذهبين: الجواز والمنع:

فالقائلون بالجواز هم جمهور الفقهاء حيث استدلوا بحديث ابن عمر أنه قال: "يا رسول الله إني أبيع الإبل بالبقيع فأبيع بالدنانير وآخذ بالدراهم، وأبيع بالدراهم وآخذ بالدنانير، آخذ هذا من هذه وأعطي هذه من هذه، فقال رسول الله صلى الله عليه وسلم: "لا بأس أن تأخذها بسعر يومها، ولم تفترقا وبينكما شيء"[28].

وجه الدلالة من الحديث أنه لما جاز بيع النقدين بالآخر، جاز غيرهما مما ثبت في الذمة من باب أولى. وقد أجاز الفقهاء بيع ما في الذمة بأحد النقدين إذا كان المشتري هو المدين نفسه. ويستدل فيها بما قاله شيخ الإسلام ابن تيمية: "إن ما في ذمة الشخص بمثابة المقبوض، فإنه يعدّ بيع مقبوض بمقبوض، وليس فيها مانع شرعاً، لكن إن باعه بما لا يباع به إلا نسيئة اشترط فيه الحلول والقبض لئلاّ يكون رباً"[29].

القائلون بعدم الجواز، وهم الظاهرية ومن وافقهم، حيث رأوا أن النبي صلى الله عليه وسلم، نهى عن بيع الغائب بالحاضر، وأن الدين يعتبر من الغوائب فلا يجوز بيعه، واستدلوا على ما ذهبوا إليه بحديث أبي سعيد الخدري– رضي الله عنه– أن رسول الله صلى الله عليه وسلم قال: "لا تبيعوا الذهب بالذهب إلا مثلاً بمثل، ولا تشفوا بعضها على بعض، ولا تبيعوا الورق بالورق إلا مثلاً بمثل، ولا تشفوا بعضها على بعض، ولا تبيعوا منها غائباً بناجز"[30].

ووجه الاستدلال من الحديث هو مفهوم الجملة الأخيرة، وهو لفظ النهي عن بيع الدين غير الحاضر وعليه فإنه لا يجوز بيعه، لكن يميل الباحث إلى أن المقصود بالمنع منها ما إذا كانت من المثليات الربوية.

وتتضمن تلك الحالة حالتان ثانويتان: وهما دين مستقر ودين غير مستقر[31]:

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[28] أخرجه أبو داود في سننه كتاب البيوع، باب اقتضاء الذهب من الورق، حديث رقم 3354، ج3، ص 250.

[29] ابن تيمية، مجموع الفتاوى، تحقيق: عبد الرحمن بن محمد قاسم العاصمي، ج 29 ، ص 512.

[30] أخرجه البخاري في جامعه الصحيح، كتاب البيوع، باب بيع الفضة بالفضة، حديث رقم 2067، ج 2، ص 761.

[31] الزحيلي، وهبة، **المعاملات المالية المعاصرة**، (دمشق: دار الفكر، ط3، 1427هـ - 2006م) ص 202.

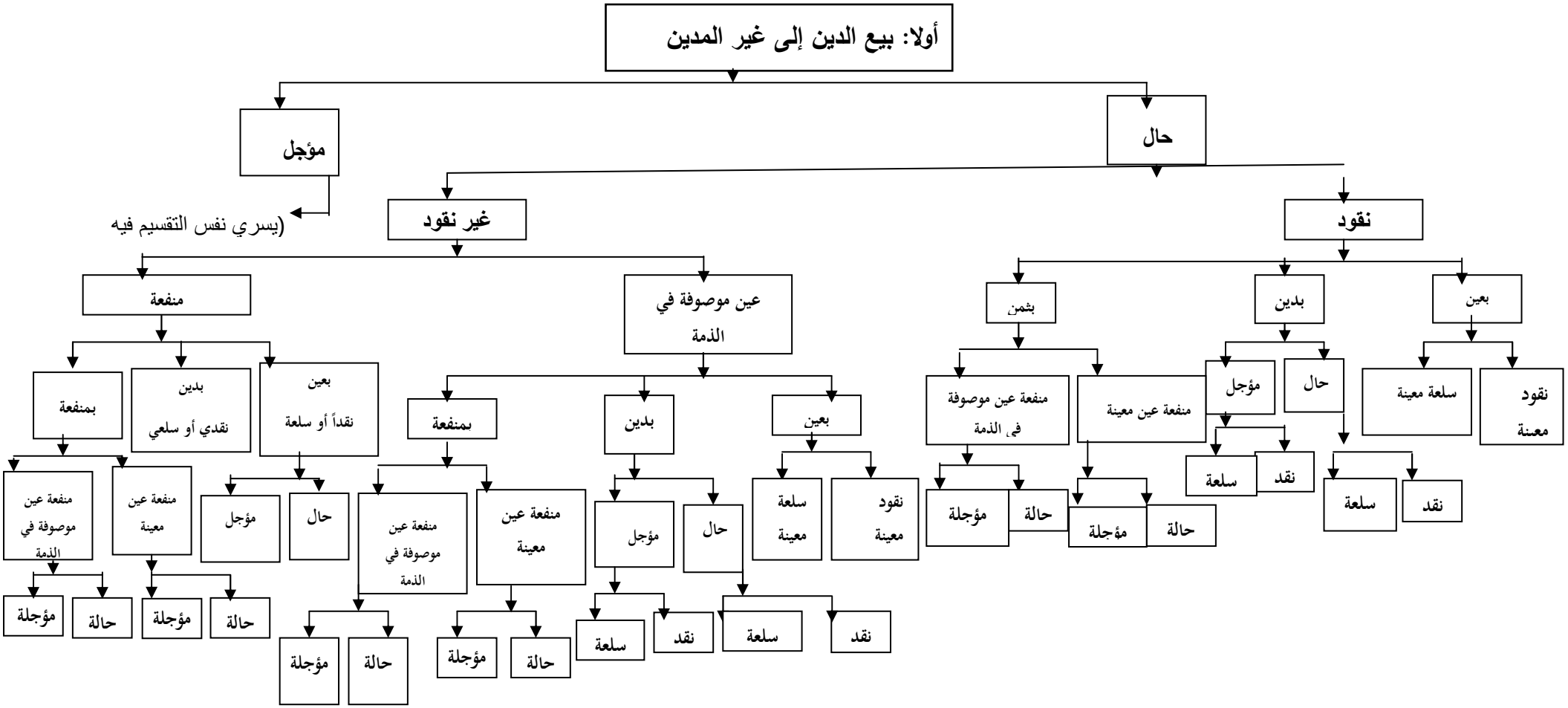
1- فالدين المستقر المقصود به: هو مالزم استيفاؤه وثبت تملكه، مستحقاً لصاحبه، دون أن يكون أي احتمال آخر لسقوطه، وذلك كغرامة المتلف، وبدل القرض، وقيمة المغصوب، وعوض الخلع، وثمن المبيع، والأجرة بعد استيفاء المنفعة، والمهر بعد الدخول ونحو ذلك.

2- أما الدين غير المستقر: هو مالم يثبت استيفاؤه، ولم يكن ملكه لازماً لمستحقه لاحتمال سقوطه... لعدم قبض المدين العوض المقابل له، كالمسلم فيه، والأجرة قبل استيفاء المنفعة أو مضى زمانها، والمهر قبل الدخول أو القبض، والجعل قبل العمل، ونحو ذلك.

ويبدو للباحث أن أدلة المانعين لا ترقى للاحتجاج، فإن الحديث الذي استدلوا به لا يحتوي على مفهوم بيع الدين لمن عليه، ولا سيما أنه بثمن حال معلوم القدر والصفة، حيث إنه ثابت في ذمة المدين، وأنه لا يترتب عليه أي ضرر من الأضرار، وعليه فإن رأي المجيزين أولى بالاتباع لقوة أدلتهم ومنطقية براهينهم التي بنوا عليها الحكم.

الحالة الثانية: بيع الدين لغير المدين

وسنذكر أولاً هذه الصورة البيانية لتقريب صورة بيع الدين بوجوهها وصورها وحالاتها المختلفة لأن الحكم على الشيء فرع عن تصوره، وسنلحق بها شرحاً ونقاشاً لبيان الصورة الصحيحة منها.


أولا: بيع الدين إلى غير المدين
حال
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(يسري نفس التقسيم فيه
نقود
غير نقود
بعين
بدين
بثمن
سلعة معينة
نقود معنة
حال
مؤجل
منفعة عين معينة
منفعة عين موصوفة في الذمة
نقد
سلعة
حالة
مؤجلة
عين موصوفة في الذمة
بعين
بدين
بمنفعة
نقود معينة
سلعة معينة
حال
مؤجل
منفعة عين معينة
منفعة عين موصوفة في الذمة
بعين نقداً أو سلعة
بدين نقدي أو سلعي
بمنفعة
منفعة
حالة
مؤجلة
منفعة عين معينة
منفعة عين موصوفة في الذمة
حال
مؤجل
منفعة عين معينة
منفعة عين موصوفة في الذمة
بمنفعة

المطلب الثالث: صور بيع الدين لغير المدين

هو أن يكون لشخص دين على آخر، زيت النخيل مقداره مائة كيلو مثلاً، فيقوم ببيعها على شخص آخر بثلاثمائة رينجت ماليزي نقداً، أو يكون للدائن على المدين مبلغاً من المال، فيشتري به من شخص آخر سيارة أو منزلاً، بذلك المبلغ الموجود في ذمة المدين، وقد انقسم الفقهاء بشأنها إلى فريقين:

1- المانعين: وهم السادة الأحناف، والشافعية في إحدى الوجوه، والحنابلة والظاهرية[32]، قالوا بعدم جواز هذا البيع محتجين بأنه من قبيل معجوز التسليم المنهي عنه شرعاً، إلا إذا كان للمدين نفسه، لأن الدين مال حكمي في الذمة، لأنه يعدّ عبارة عن فعل تمليك المال، وهذا ليس مقدور عليه.

ويرى ابن عابدين في حاشيته أنه: "لا يجوز تمليك الدين لغير من عليه، واستثنى صاحب الأشباه منها ثلاث صور هي: 1- إذا سلطه على قبضه، فيكون وكيلاً قابضاً للموكل ثم لنفسه، 2- الحوالة، 3- الوصية[33].

2- المجيزين: وهم السادة المالكية والشافعية في وجه آخر، أن بيع الدين لغير المدين جائز، بالشروط والضوابط الشرعية التي تقدم سردها مفصلة[34]. وكذا ابن رجب الحنبلي يرى جوازه كما جاء ذلك في قواعده الفقهية حيث "نقل حرب عن أحمد في بيع الزيادة في العطاء لا بأس به بعرض، قال: وسألته عن بيع الصّكّ بعرض، قال: لا بأس به"[35]. ثم أضاف ابن رجب قائلاً: حاصل هذا يرجع إلى جواز بيع الدين من غير الغريم[36].

وقد لخص بعضهم تلك الشروط الثمانية في خمسة شروط[37]، ويمكن تلخيصها في شرطين[38]:

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[32] أبو البركات، عبد السلام بن عبد الله، **المحرر في الفقه على مذهب الإمام أحمد بن حنبل**، (السعودية: وزارة الشؤون الإسلامية، د.ط، 1424هـ) ج 1، ص 287. وابن حزم، **المحلى**، ج9، ص7. والزحيلي، **الفقه الإسلامي وأدلته**، ج4، 433.

[33] ابن عابدين، محمد أمين بن عمر، **ردّ المحتار على الدّر المختار**، (بيروت: دار إحياء التراث العربي، ط1، 1419هـ - 1998م) ج 7، ص 283.

[34] عليش، محمد بن أحمد بن محمد، **منح الجليل شرح مختصر العلامة خليل**، (بيروت: دار الكتب العلمية، 1424هـ - 2003م) ج 5، ص 29 وما بعدها.

[35] ابن رجب، عبد الرحمن بن أحمد، **القواعد الفقهية**، تحقيق: محمد علي البنا، (بيروت: دار الكتب العلمية، ط1، 1429هـ - 2008م) ص 106.

[36] ابن رجب المصدر نفسه، ص 107.

1- ألا يؤدي البيع إلى محظور شرعي كالربا والغرر ونحوهما، فلابد من أن يكون الدين مما يجوز بيعه قبل قبضه، كأن يكون من قرض ونحوه، ويكون الدين المبيع غير طعام، وأن يباع بثمن مقبوض أي معجل لئلاّ يكون ديناً بدين، وأن يكون الثمن من غير جنس الدين المبيع أو من جنسه مع التساوي بينهما حذراً من الوقوع في الربا، وألاّ يكون الثمن ذهباً إذا كان الدين فضة، حتى لا يؤدي ذلك إلى بيع النقد بالنقد نسيئة من غير مناجزة فهذه أربعة شروط في شرط.

2- أن يغلب على الظن الحصول على الدين بأن يكون المدين حاضراً في بلد العقد، ليعلم حاله من عسر أو يسر، وأن يكون مقراً بالدين، حتى لا ينكره بعدئذٍ، فلا يجوز بيع حق متنازع فيه، وأن يكون أهلاً للالتزام بالدين وذلك بألا يكون قاصراً ولا محجوراً عليه مثلاً ليكون الدين مقدور التسليم، وألا يكون بين المشتري وبين المدين عداوة حتى لا يتضرر المشتري أو حتى لا يكون في البيع إعنات للمدين بتمكين خصمه منه.

وأما مجمع الفقه الإسلامي فقد تناول هذه المسألة في دورته السابعة عشرة المنعقدة بعمان (المملكة الأردنية الهاشمية) من 28 جمادى الأولى إلى 2 جمادى الآخرة 1427هـ، الموافق 24 – 28 حزيران (يونيو) 2006م[39].

وبعد اطلاعه على البحوث الواردة إليه بخصوص بيع الدين، واستماعه إلى المناقشات التي دارت حوله، ووقوفه على القرارات السابقة بشأنه، قرر ما يلي:

أولاً: صور بيع الدين الممنوعة:

إن بيع الدين يعدّ من فسخ الدين بالدين الممنوع شرعاً كل ما يُفضي إلى زيادة الدين على المدين مقابل الزيادة في الأجل أو يكون ذريعة إليه، ومن ذلك فسخ الدين بالدين عن طريق معاملة بين الدائن والمدين تنشأ بموجبها مديونية جديدة على المدين من أجل سداد المديونية الأولى كلها أو بعضها، سواء أكان المدين موسراً أم معسراً، وذلك كشراء المدين سلعة من الدائن بثمن مؤجل ثم بيعها بثمن حال من أجل سداد الدين الأول كله أو بعضه.

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[37] البيت الكويتي، يونيو 2009/6/1م، **حقيقة بيع الدين بالدين**، http://albait alkuwaiti.wordpress.com

[38] انظر منتديات رحاب المدينة المنورة: http://www.rehab-m.com

[39] للمزيد انظر موقع مجمع الفقه الآتي: http://www.fiqhacademy.org.sa/qrarat/17-7.htm

ثانياً: من صور بيع الدين الجائزة[40]

1- بيع الدائن دينه لغير المدين في إحدى الصور التالية:

أ) بيع الدين الذي في الذمة بعملة أخرى حالة، تختلف عن عملة الدين، بسعر يومها.

ب) بيع الدين بسلعة معينة.

ج) بيع الدين بمنفعة عين معينة.

2- بيع الدين ضمن خلطة أغلبها أعيان ومنافع هي المقصودة من البيع.

إن المجيزين بالثمن الحال لغير المدين، سواء أكان بالنقد أو العرض في ضوء شروط بيع الدين يرون أنه بعيد عن الغرر والربا، لأن بيع الدين داخل في عموم نصوص إباحة البيع، ومنها قول الله تعالى: ﴿وَأَحَلَّ اللهُ الْبَيْعَ وَحَرَّمَ الرِّبَا﴾ (البقرة: 275).

إذ الأصل في المعاملات الإباحة، وما احتج به المانعون بأنه غير مقدور التسليم، فإنه ليس مسلم به، ولا سيما في العصر الحاضر الذي تطورت فيه وسائل الاستيثاق والإثبات، وأصبحت حركة الإنسان مرصودة تحت المجهر، بفضل التقدم التقني، الذي وصلت إليه البشرية.

ولو أمعنا النظر إلى بيع الدين المطبق في المصارف والمؤسسات المالية الماليزية، كأحد أدوات التمويل الشرعية المستخدمة في عملية المصرفية الإسلامية، ولا سيما بصفتها أدوات مالية مستحدثة، والتي يتم تداولها تحت مسمى الكمبيالات الإسلامية، وشهادات الديون (IPDS) ، وهي بلا ريب تخدم أهداف السيولة المالية المرجوة، وهي تنصب على صورة بيع الدين بثمن حال، وليس بثمن مؤجل، فلو كانت الصورة المطبقة لبيع الدين على غرار بيع الدين للمدين نفسه فإنه محل اجماع، ولا اعتراض عليه لما تبين لنا مما تقدم آنفاً رجحانه وإباحته، ولم يشذ عن ذلك إلا الظاهرية، ومن سار على نهجهم.

[40] موقع مجمع الفقه الإسلامي: http://www.fiqhacademy.org.sa/qrarat/17-7.htm

وإن كانت الصورة المطبقة لبيع الدين في المصارف الإسلامية لغير المدين، فإنه يشترط لجوازها توفر ضوابطها وشروطها الشرعية، التي تحميها من الوقوع في براثن الربا، والالتزام فيها بقرارات مجمع الفقه الإسلامي، فقد تكرر مناقشتها لأكثر من مرة، ويوصى بشأنها دائماً بمزيد الدراسة والبحث والتدقيق، لكن يا ترى هل أن تلك الشروط متوفرة في تطبيقات المؤسسات المالية الإسلامية؟

فمن خلال متابعاتي وملاحظاتي للصور المطبقة في عمل المؤسسات الإسلامية الماليزية، فإنني أشك في توفر تلك الشروط، وإنما نجد أن الدين يباع لغير المدين بثمن حال بأقل من قيمته الأصلية، وذلك لغياب شرط التساوي بين البدلين، وإن لم يكن الأمر كذلك لما أقدمت أي مؤسسة مالية على شرائه، لأنها في المقام الأول مؤسسات استثمارية تجارية، وليس من أولوياتها خدمة المجتمع، فإن أحسن الظن بها فتعدّ من اهتماماتها الثانوية[41].

ومن الذين اعترضوا على التجربة الماليزية في بيع الدين، الباحث السعودي[42] لاحم حمد الناصر، الذي أشار إلى أن بيع الدين في ماليزيا تم استخدامه في إصدار الصكوك، وفي التمويل البنكي، عبر خصم الكمبيالات والفواتير، وتمويل إعادة التصدير، وتمويل التجارة عبر تمويل قبول المستندات والتحصيل، وشراء الديون المعروف بالفاكتورينق، وتوريق ديون المرابحات، وبيع سندات الرهن، وقد أشار إلى أن الأخوة أعضاء الهيئات الشرعية في ماليزيا، قد استدلوا بجواز بيع الديون على هذه الصورة، إذ فرقوا بين الدين إن كان أصله بيعاً ناتجاً عن سلعة فيختلف عن الدين الذي يكون أصله قرضاً، ووصف هذا التعليل بالغرابة حيث لم يسبقهم إليه أحد من الفقهاء المتقدمين والمتأخرين، ومع ذلك أشاد بجهود الحكومة الماليزية في تطوير نظام الصيرفة الإسلامية[43].

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[41] وليس أدل على ذلك من جلسة نقاش علمية جمعتني بأحد الأخوة العاملين بقسم الشريعة في إحدى المؤسسات المالية الإسلامية، وناقشته في بعض المواضيع الخلافية، التي تتعامل بها المصارف الإسلامية، وذلك بعد أن أشدت بجهود المؤسسات المالية الإسلامية، قلت له: من الواجب على المؤسسات المالية الإسلامية أن تزيد من نسبة القرض الحسن، لأن هذه المؤسسات صاحبة رسالة اجتماعية في المقام الأول، فكان رده أن المؤسسات المالية الإسلامية، هي مؤسسات تجارية، وأن أصحاب رؤوس الأموال المساهمين يرجون من ورائها أرباحاً، وليست مؤسسات خيرية كما يتصور البعض، فقلت له: ومع ذلك يجب أن يكون هناك نوع من التوازن، إذ إن نسبة القرض الحسن ضئيلة جداً، ولا ترقى إلى المستوى الذي يليق بهذه المؤسسات المالية الإسلامية، التي نتشرف بمواقفها الجليلة ورسالتها العظيمة، ونتباهى بها أمام المصارف الربوية، ولا سيما في ظل الأزمة المالية العالمية، التي نتجت عن الديون العقارية.

[42] لاحم حمد الناصر، انظر: http://www.uaeec.com/articles-action-show-id-16.htm وكتبها بتاريخ 27 فبراير 2007م.

[43] انظر: لاحم، http://almuteb.com/vb/showthread.php?t=82

قد نتفق مع الأستاذ لاحم في بعض ما ذهب إليه من اعتراضات، ولكن ليس مسلماً بها على إطلاقها، لأن تبريرات وتعليلات الأخوة في مجالس الرقابة الشرعية، فيها أيضاً وجه من الصواب، فقد سبقهم إلى هذا الرأي صاحب موسوعة الاجماع في الفقه الإسلامي، حيث قال: "من اشترى سلعة بعرض نسيئة، ثم باعها بنقد، أو كان بيعها الأول بعرض، فاشتراها بنقد، جاز بلا خلاف يعلم[44]، لكن تجربتهم مع ذلك فهي بحاجة إلى توجيه وترشيد وفق ضوابط بيع الدين آنفة الذكر التي وضعها مجمع الفقه الإسلامي.

فلو قال الأخوة في المجالس الشرعية بجواز بيع الصك بالعين، لما وصل الأمر إلى هذه الحدة من النقد، وفي هذا يكون لهم سند وحجة، كحجة من سبقهم من الفقهاء، وإلى هذا أشار الدكتور الكردي[45]: إذا أعطى المشتري الصك نظير العين المباعة، فهذا النوع من التعامل يجوز عند المالكية والمعتمد عند الشافعية، وابن تيمية وابن القيم وهو الراجح عنده في هذه المسألة، لكن نقول: إن المسألة تحتاج لدراسة دقيقة متأنية أكثر مما هي عليه بالتعاون مع الأخوة في المجالس الشرعية، تحقيقاً للمقاصد الشرعية.

وقد لخص الباحث محمد صبري[46] حجة العلماء الماليزيين المسؤولين عن عملية الصيرفة الإسلامية، حيث بينوا أن الربا منتف عما يتعاملون به لأمرين:

1- إن الديون التي يتم توريقها في صورة شهادات الديون تختلف عن النقود، فلا تأخذ أحكام الصرف من حيث وجوب التماثل والقبض في الحال، لذا فإن بيع شهادات الديون بالنقد يختلف عن بيع النقد بالنقد، لأن تلك الشهادات تمثل حق الدين وهي مختلفة في أوصافها عن النقود.

2- إن الديون التي يتم توريقها في صورة شهادات الدين، هي من الديون الناتجة عن المعاوضات المالية المطبقة في المصارف الإسلامية من بيع المرابحة، والبيع بالثمن الآجل، والإجارة، والاستصناع، وغيرها.

وبناءً عليه فإن تلك الديون الموثقة بالشهادات تمثل في حقيقتها السلع المباعة في تلك المعاوضات المالية، فيجوز بيعها مواضعة أو تولية كما يجوز بيع السلع كذلك، كما أن هذا ليس ضد مقاصد الشريعة الإسلامية، وأنها لا تسبب ضرراً لأي طرف من أطراف العقد، أو غيرهم، وأنهم يشترون الصك من البنك المركزي استيثاقاً له، ويقومون

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[44] أبو جيب، مصدر سابق، ج1، ص 180.

[45] الكردي، محمد نجم الدين، **أحكام عقد بيع الدين في الفقه الإسلامي والقانون المدني وبعض المعاملات المصرفية**، (القاهرة: مطبعة الجبلاوي، ط 1، 1412هـ - 1992م) ص 257.

[46] زكريا، محمد صبري، **إدارة السيولة في المصارف الإسلامية ماليزيا نموذجاً**، (بحث مقدم لنيل درجة الدكتوراه، من قسم الفقه وأصوله بالجامعة الإسلامية العالمية الماليزية، عام 2007م) ص 283 وما بعدها.

ببيعه مرة واحدة إلى الجهة الراغبة في الشراء[47]، ويتم اللجوء إليه غالباً عند الاضطرار للسيولة، وغالباً ما تتم عملية التصكيك للديون الناشئة عن بيع العقارات أو السيارات، أو غيرها من الأصول الثابتة وفق الضوابط الشرعية، وذلك للحصول على السيولة السريعة سواء أكان للمشاركة بها في مشروع استثماري جديد، أو الوفاء بالتزامات على المصارف أو المؤسسات المالية الإسلامية، وجب موعد تسليمها.

ويبدو من حججهم وبراهينهم فيما يخص الأمر الأول، أنهم لم يصيبوا في إضفاء الشرعية عليه لأن شهادات الديون في حقيقتها ليست إلا أداة توثيق الديون، إذ ليست المقصود لذاتها بالبيع والشراء، –فهي تصلح لأن تكون أداة رهن، بإمكانه أن يرهنها لدى من يريد الاستقراض عنه نقداً، أو شراءً إلى أجل، لأن المقصود بها هو الدين الحامل لقيمة النقود، وإذا بيعت النقود الموجودة في ذمة المدين لشخص آخر بنقود أقل منها، فإنه إخلال بالتزام شروط وضوابط أحكام الصرف المؤدي عدم وجود ه إلى الربا. وكذا لم يحالفهم الحظ بالتوفيق فيما ذهبوا إليه كذلك في الأمر الثاني: بقولهم بأن تلك الديون الموثقة بالشهادات تمثل السلع المباعة، وذلك أن الدين شيء والسلع شيء آخر، يتضح ذلك جلياً من ظاهرة المعاملات، فالذي يقوم بشراء الشهادات لا يقصد شراء تلك السلع، وأنه لا يشتريها إلا رغبة في الفارق السعري بين قيمتها الحقيقية، وما تباع به في سوق الأوراق المالية، فالفرق بينهما واضح، والانفصام جليّ، فالدين هنا ثمن السلع المؤجلة في ذمة المدين، وما هي في حقيقتها الواقعية إلا نقوداً، لا يجوز العمل بها، وإلى ذلك أشار المجمع في قراره رقم (101/ 11/4، بقوله: ولا فرق بين كون الدين ناشئاً عن قرض أو بيع آجل[48].

لكن لو احتج أعضاء مجالس الرقابة الشرعية للمصارف الإسلامية الماليزية، بطلب الدائن أن يستعجل دينه قبل أجله فيحق له أن يشتري به عرضاً من بائع (غير المدين) بالأجل ثم يحيل الدائن بالثمن على المدين له، والإحالة لا خلاف فيها بين جميع المذاهب الإسلامية، أو ببيع سهمه إن كان مساهماً في الشركة فإنه جائز شرعاً، لأنه حصة شائعة في رأس المال، وقد قال به بعض العلماء المعاصرين، منهم الشيخ الصديق الضرير: فإنه يرى جواز بيع الدين في الأوراق المالية قبل حلول أجل الدين

[47] مدير قسم الشريعة في البنك الإسلامي الماليزي، في مقابلتي معه في يوم 20 /2009/4م.

[48] أحمد بدلة، **2008/11/06م**، **فقه الدين والقرض الحسن والرهن**، للمزيد انظر: http://www.badlah.com/page- html.83

بالسلعة أو المنفعة، كما يرى في الوقت ذاته عدم صحة بيعها بنقود أقل من قيمتها الحقيقية[49]. ولكن مع ذلك يجب وضع شروط بيع الدين[50] نصب أعيننا، كلما دعتنا الظروف للاقدام على هذه المعاملة، والالتزام بالضوابط الشرعية، التي تراعي مصلحة الطرفين، دون إفراط أو تفريط.

وكذا يرى الشيخ القره داغي حرمة التجارة في الديون، إلا إذا كانت بأعيان وسلع، أو في مقابل منافع وخدمات، وبذلك نسدّ أبواب التصرف في الديون إلا بشروط وضوابط محددة[51].

ونظراً إلى ما تقدم فيمكننا القول: بأن كل ما احتج به أعضاء الرقابة الشرعية الماليزية قابل للمناقشة وفيه نظر، فلابد من التوازن في إصدار الأحكام بشأنه أوتبنيها، وللخروج من الشبه التي تدورحولها إذ لابد من اللجوء إلى ما قال به السادة الشافعية والمالكية وشيخ الإسلام ابن تيمية وتلميذه ابن القيم، وهو أن نشتري بتلك الصكوك أعياناً ومنافعاً، وهو ما أدرجه مجمع الفقه الإسلامي ضمن بيعات الدين الجائزة، فنرجو من الأخوة الرجوع إليها.

وما زالت الحاجة ماسة وملحة لإعادة النظر من ذوي الشأن والاختصاص الماليزيين في بيع الدين المطبق في المؤسسات والمصارف الإسلامية الماليزية، لإزالة الشوائب التي غدت تعتريه، والتي أضحت مثار الشك في مصداقية المصارف الإسلامية الماليزية الرائدة، وهذا ليس بعسير على الأخوة القائمين على إدارة ورقابة المؤسسات المالية الإسلامية، كما نلمسه ذلك من تصريحات محافظة البنك المركزي الماليزي الأستاذة الدكتورة زيتي أختر، وغيرها من المسؤولين الماليزيين، وهذا إن دلّ فإنما يدلّ على الرغبة الخالصة من الجهات المتنفذة في الحكومة الماليزية، فالمسألة بحاجة إلى قرار إداري يأمر بتوجيهها نحو الأفضل.

ثالثاً: خاتمة البحث ونتائجه

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[49] الضرير، الصديق محمد الأمين، **الغرر وأثره في العقود**، (الخرطوم: الدار السودانية، ط 2، 1410هـ - 1990م) ص 318.

[50] تقدم ذكرها في صفحة 22 من هذا البحث، فليرجع إليها.

[51] القره داغي، علي محيي الدين، **الأزمة المالية العالمية**، (بيروت: شركة دار البشائر الإسلامية، ط1، 1430هـ - 2009م) ص 131.

نخلص مما تقدم في بيع الدين إلى المحطات الأساسية التالية:

- إن الإلمام بمعرفة دقائق بيوع الآجال بجميع صورها وأشكالها يُعدّ من أهم علوم الشريعة في المصرفية الإسلامية لقربها من البيوع الربوية، فالإخلال بضوابطه الشرعية قد تجعل المعاملة ربوية.

- إن الإسلام حرّم التجارة في الديون، إلا إذا كانت بأعيان وسلع مع الالتزام فيها بالشروط والضوابط الشرعية التي ذكرها الفقهاء.
- حرمة بيع الدين المؤخر بالدين المؤخر، لأنه شغل الذمة بدون فائدة لأحد طرفي العقد.

- بيع الدين للمدين جائز شرعاً لأنه لا يشترط فيه قبض الثمن، حيث يوجد الثمن في ذمة المدين نفسه، وإن خالف فيه الظاهرية، فإنه لا يعتدّ فيه برأيهم لعمومية استدلالاتهم وضعف بعضها.

- إنه ينبغي إعادة النظر من ذوي الشأن والاختصاص الماليزيين في بيع الدين المطبق في المؤسسات والمصارف الإسلامية الماليزية، لإزالة الشوائب التي غدت تعتريه.
- الحد من التوسع الائتماني، ومنح الديون، والقروض، وعموم الالتزامات الآجلة، وذلك بالتثقيف الإسلامي حول مخاطر الديون في الدنيا والآخرة، وأن تربط تسهيلات الاستدانة بمستوى دخل الأفراد، حتى لا يصيبنا ما أصاب غيرنا من الأزمات المالية.

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OPERATIONAL RISK IN ISLAMIC BANKS: EXAMINATION OF ISSUES

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ABSTRACT

Operational risk in Islamic banks is significant and become more complicated compared to conventional banks because of their unique contractual features and general legal environment. Specific aspects and diversity of contract could raise the operational risk of Islamic banks. Thus operational risk in financial institution has attracted more attention from the regulators, practitioners and also academics over the last decade. Another reason is due to the huge losses incurred by a number of financial institutions such as Barings, Daiwa and Merril Lynch as a result of the malfunctioning of their operational risk management. Therefore, this paper will assess key issues in measurement and management of operational risk in Malaysian Islamic banks. Descriptive, analytical, and comparative analyses are used in this paper to discuss the issues of operational risk in Islamic bank through the implications associated with the Islamic banks' operational risk as well as the implications on risk measurement, risk management and capital adequacy. This paper reveals that although basic Basel II core principles of effective banking supervision apply equally well and ideally suit the Islamic banking institutions, risk measurement and risk management practices still need specific adaptations to Islamic banks' operational characteristics. These particularities highlight the unique characteristics of Islamic banks and raise serious concerns regarding the applicability of the Basel II methodology for Islamic banks. Then this paper will fill the gap to the existing literature of operational risk in banking institution especially Islamic banks by showing the needs of specific adaption of operational risk measurement and risk management practices due to the nature of Islamic banks.

Keywords: Capital adequacy standard, Islamic banking, operational risk, risk management

INTRODUCTION

In many countries where Islamic banks coexist with conventional banks, there is a pressure to apply the same regulation for both types of banks and a common legal framework is generally developed. No separate regulatory laws have yet been set to govern the operations of Islamic banks, which have been trying to benefit from the support that the conventional framework can provide. It is common for Islamic banks to operate under the laws governing commercial banks, which in many instances do not support specific or tailored issues that are inherent only to Islamic banking. Iqbal

et al. (1998) suggest a 'functional approach' to regulate financial institutions, where the functions performed by Islamic banks are analyzed and attempts are made to modify regulation in a way to provide them with better support.

In a global world economy, Islamic banks have to face key challenges in order to compete with conventional banks effectively. This implies that Islamic banks will need to follow up quickly and abide international standards as well. For instance, Basel II that set standards for capital adequacy and sound banking practices has become a key stone for safety that reflects supervisory concerns. Therefore, the adoption of international standards by Islamic banks will help enhance their credibility and fuel their growth worldwide.

In line with the developments in the conventional banking system worldwide, the Islamic financial institutions with special reference to Islamic banking institutions are also required to implement the New Basel Capital Accord (Basel II). By adopting Basel II, Sundararajan and Errico (2002) believe that this accord can reflect the Islamic banks' true risk; and Islamic banks can adapt the supervisory regime and enhance market discipline by encouraging sound disclosure of policies. Furthermore, Basel II is a welcome development for Islamic banking since it offers a timely and important opportunity for the IFSB to play its part in the ongoing efforts to strengthen the international financial architecture as well as to promote financial stability and market development of Islamic banking.

The issues of risk measurement are central to adapting the Basel II for both conventional and Islamic banks. Risk measurement is also crucial to an effective disclosure regime that can harness market forces to reinforce official supervision. Among the financial risks faced by a bank is operational risk. Operational risks are related to a bank's organization and functioning, including computer-related and

other technologies, compliance with bank policies and procedures, and measures against mismanagement and fraud (Van Greuning & Iqbal, 2008). Unlike market and credit risk, which tend to be isolated in specific areas of our business, operational risk are inherent in all business processes.

In Basel II, operational risk is given particular emphasis, i.e. it should be measured using statistical models. While basic Basel II core principles of effective banking supervision apply equally well to Islamic banks, risk measurement and risk management practices still need specific adaptations. Then it could recognize the characteristics of Islamic banks, disclosure of risk profile, and risk management. This will set the stage for adopting more advanced capital measurement of Basel's approaches but tailored to the specific Islamic banks' operational characteristics.

Therefore, this paper will assess key issues in measurement and monitoring of operational risk in Malaysian Islamic banks. The aim of this paper is to give a unified knowledge on operational risk. In particular, this paper will identified the behavioral implications associated with the Islamic banks' operational risk as well as the implications on risk measurement, risk management, capital adequacy and supervision.

The rest of the study is structured as follows. Section two appraises the conceptual framework of banking risk. Section three reviews the nature of operating risk in greater detail. Section four discusses the operational risk exposure of Islamic banking institutions that arises from the different nature of the financing and investment activities of the banks. This section also provides a sample calculation of operational risk of Islamic banks. Section five will examines specific issues of the Islamic banks' operational risk, and section five concludes.

CONCEPTUAL FRAMEWORK

Risks in Islamic banks

The concept of risk in Islamic banking and finance could be best understood when viewed from two dimensions: (a) prohibition of *gharar* and (b) freedom of contract. According to *shariah* (*shariah* law), *gharar* is any elements of chance involving asymmetric information, uncertainty, risk or even speculation leading to illicit profits, such as is excluded by the religious and consequently by the mortal percepts of Islam. Islam offers full freedom of contracts to economic agents as long as the resulting contract is within the boundaries defined by *shariah* which mainly exclude *riba* and *gharar*. Given the freedom of contracts and the understanding of *gharar*, Islam fully recognizes risk generated by financial and commercial factors and elements extrinsic to the formation of the business. Among the Islamic financing methods and financial products which involve risks are *murabahah* (cost-plus sale),[1] *bay' muajjal* (deferred-payment sale), *bay' as-salam* (advance purchase), *bay' istijrar* (supply sale), *ijarah* (leasing), *istisna'* (purchase order), *mudharabah* (profit-sharing), and *musharakah* (profit and loss- sharing).[2]

In conventional banks, depositors have a fixed claim upon the bank's assets, according to predetermined interest rates together with a return of their capital. The conventional bank must therefore service its obligations to depositors irrespective of its actual profitability (realized profit). Consequently, any uncertainty in the income streams generated by and change in the value of the bank's assets is borne by the shareholders alone. Islamic banks, in contrast, are structured on the principle of risk sharing. This applies to the sources of fund and may also apply to the uses of fund.

[1] See Securities Commission (2010) for detail definition on s*hariah* principles and concepts.
[2] See Huq and Parveen (2006) for detail discussion on Islamic financial products and risk associated with them.

With respect to *mudharabah*, holders of profit sharing investment accounts (which take the place of conventional interest bearing bank deposit accounts) are essentially stakeholders with a type of limited term equity investment. The return on their investment in the bank is uncertain, since they share in the profit generated by the bank alongside the shareholders. This also exposes the investment account holders to the risk of losing any or all of their initial investment.

Risk management

Risk management is now recognized as a key activity for all corporations; banks, financial institutions, and others. Many of the disastrous losses of the 1990s would have been avoided if good risk management practices had been in place. There are two general approaches to risk management strategies for bank as well as other organization, i.e. risk decomposition and risk aggregation. The former involves managing or identifying risks one by one and handle each one separately. The latter involves reducing risks through risk diversification. In practice, banks used both approaches when they manage market and credit risks.

The ability of a bank to absorb unexpected losses, i.e. risks is critically dependent on the amount of equity and other forms of capital held. Capital is a cushion to protect the bank from an extremely unfavorable outcome. Banks are often subject to banking regulations, which are mainly designed to protect depositors and ensure a stable banking and financial system by setting capital requirements for banking institutions based on international standards, for instance the Basel II capital requirements.

Basel II is based on three "pillars". In Pillar 1, the minimum capital requirement for credit risk in the banking book is calculated in a new way that reflects the credit ratings of counterparties. The general requirement in Basel I that banks hold a total capital equal to 8% of risk-weighted assets remain unchanged. The capital requirement for market risk is also remains unchanged from the 1996 Amendment.[3] However, there is a new capital charge for operational risk. A risk-weighted asset for operational risk is defined as 12.5 times the calculated operational risk capital.

[3] In 1995, the Basel Committee issued a consultative proposal to amend the 1988 Accord. This became known as the "1996 Amendment" which requires financial institutions to hold capital to cover their exposure to market risks as well as credit risks. It was implemented in 1998.

Pillar 2, which is concerned with the supervisory review process allows regulators some discretion in how rules are applied but seeks to achieve overall consistency in the application of the rules. It places more emphasize on early intervention when problem arise. Supervisors are required to do far more than just ensure that the minimum capital required under Basel II is held. Part of their role is to encourage banks to develop and use better risk management techniques and to evaluate these techniques.

Pillar 3, which is concerned with market discipline, requires banks to increase disclosure to the market of their risk assessment procedures and capital adequacy. In addition, in some instances, banks will have to increase their disclosure in order to be allowed to use particular methodologies for calculating capital. The banks will be subjected to added pressure to make sound risk management decisions if shareholders and potential shareholders have more information about those decisions.

OPERATIONAL RISK

The concept

Operational risk is often considered as a residual risk given the fact that any risk faced by a bank that is not market risk or credit risk falls under this category. To produce an estimate of operational risk, we could then look at the bank's financial statements and remove from the income statement (a) the impact of credit losses and (b) the profits or losses from market risk exposure. The variation in the resulting income would then be attributed to operational risk. Operational risk is the risk of loss resulting from inadequate or failed internal processes, people, and systems or from external events (Basel Committee on Banking Supervision, 2001). This definition

includes legal risk,[4] but does not include reputational risk[5] or the risk resulting from strategic decisions. Some operational risks result in increases in the bank's operating cost or decreases in its revenue. Other operational risks interact with credit and market risk.

The Basel Committee on Bank Supervision (2001) has identified seven categories of operational risk associated with:

i. Internal fraud: an act of a type intended to defraud, misappropriate property or circumvent regulations, the law or company policy, excluding diversify/ discrimination events which involve at least one internal party.

ii. External fraud: an act of a type intended to defraud, misappropriate property or circumvent the law by a third party.

iii. Employment practices and workplace safety: an act inconsistent with employment, health or safety laws or agreements from payment of personal injury claims or from diversity/ discrimination events.

iv. Client, products and business practices: an unintentional or negligent failure to meet a professional obligation to specific client (including fiduciary and suitability requirement) or from the nature or design of a product.

v. Damage to physical assets: the loss or damage to physical assets from natural disaster or other events.

vi. Business disruption and system failures: disruption of business or system failures.

vii. Execution, delivery and process management: failed transaction processing or process management from relations with trade counterparties and vendors.

[4] Legal risk is the risk of loss resulting from failure to comply with laws as well as prudent ethical standards and contractual obligations. It includes the exposure to litigation from all aspects of an institution's activities.

[5] Basel II, paragraph 644. Working Paper on the Regulatory Treatment of Operational Risk (2001).

The financial impact associated with an operational event that is recorded in the institution's financial statements consistent with "Generally Accepted Accounting Principles". Financial impact includes all out of pocket expenses associated with an operational event but does not include opportunity costs, foregone revenue, or cost related to investment programs implemented to prevent subsequent operational risk losses. Most banks have always had some framework in place for managing operational risk. However, the prospect of new capital requirements has led them to increase greatly the resources they devote to measuring and monitoring operational risk.

Basel II requires banks to keep capital for operational risk in addition to improving the way banks calculate credit risk capital. The regulators are introducing a capital charge for operational risk for three reasons. First, in an increasingly complex environment banks face many risks arising from the possibilities of human and computer error (failure). Second, regulators want banks to pay more attention to their internal systems to avoid catastrophes like that at Barings Bank. Third, the effect of the Basel II credit risk calculation will be to reduce the capital requirements for most banks and regulators want another capital charge to bring the total capital back to roughly where it was before.

The accord asks a minimum capital requirement which has to be detected against credit risk, market risk and operational risk, as well as other type of risks. In particular, it has stated a figure of 12% of minimum capital requirement that would produce a capital amount in line with the operational risk actually faced by large and complex banking institutions. In the same time, it allows different calculation approaches for the regulatory capital, rising in complexity and decreasing in capital requirements. Banks have three alternatives or approaches for determining

operational risk regulatory capital. They are the basic indicator approach (BIA); the standardized approach (STA); and the advanced measurement approach (AMA). The use of these approaches depends on the sophistication of the bank.

Operational risk in Islamic banking institutions

Following Basel II, operational risk is defined as the risk of losses resulting from inadequate or failed internal processes, people and systems or from external events. This includes but unlimited to legal and *shariah* compliance risk, but excludes strategic and reputational risks. Such risks are likely to be significant in institutions offering only Islamic financial services (IIFS) due to specific contractual features and the general legal environment. In addition, the increasing use of structured finance transactions, for instance, securitization of loans originated by banks as way of risk management of bank's asset could expose banks to additional legal risks. Additionally, failure to comply with *shariah* is also a form of operational risk and if IIFS fail to do so, they will betray the trust of investors and therefore should be responsible for the lost income (El-Hawary et al., 2004) Archer and Abdullah Haron (2007) identify operational risks faced by Islamic banks could be divided into three categories:

i. Operational risks that are consequential upon various kinds of banking activites, and which are somewhat similar for all financial intermediaries, whether *shariah* compliant or not. However, the asset based nature of financing products in Islamic banking such as *murabahah, salam, istisna'* and *ijarah* may give rise to forms of operational risk in contract drafting and execution that are specific to such product.

ii. *Shariah* compliance risk – that is (a) risk relating to potential non-compliance with *shariah* rules and principles in the bank's operations (b) the further risk associated with the Islamic bank's fiduciary responsibilities as *mudarib* (entrepreneur) toward fund providers under the *mudarabah* form of contract according to which in case of misconduct or negligence by *mudarib.* Then, the fund invested by the fund providers become a liability of *mudarib.*

iii. Legal risks arising either from (a) the Islamic bank's operations or (b) problems of legal uncertainty in interpreting and enforcing *shariah* contracts.

According to Sundararajan (2005), there are specific aspects that could raise operational risks in Islamic banks as follows:

i. the cancellation risks in non-binding *murabahah* and *istisna'* contracts; (*shariah* non-compliance risk);

ii. problems in internal control systems to detect and manage potential problems in operational process and back office functions;

iii. technical risks of various sorts;

iv. the potential difficulties in enforcing Islamic finance contracts in a broader legal environment; (*shariah* non-compliance risk);

v. the risk of non-compliance with *shariah* requirements that may impact on permissible income; (*shariah* non-compliance risk);

vi. the need to maintain and manage commodity inventories often in illiquid markets;

vii. the potential costs and risks in monitoring equity type contracts and the associated legal risks; and

viii. increasing use structured finance transactions – specifically, securitization of loans originated by banks to manage risks on the asset side could expose banks to additional legal risks.

Islamic Financial Services Board's (IFSB's) Published Standard No. 2 recommends that the proposed measurement of capital to cater for operational risk in IIFS may be based on either the BIA or STA. Under the BIA, a fixed percentage of 15% of annual average gross income, averaged over the previous three years, is set side. Under the STA, this percentage varies according to the business lines from 12% to 18%.[6] It is further recommended that due to different structure of business lines for IIFS, at the present stage, the former to be used by IIFS.

METHODOLOGY: BASEL II APPROACH FOR CALCULATION OF OPERATIONAL RISK CAPITAL CHARGE

Given the complexity of operational risk, it is difficult to quantify it. Most of the operational risk measurement techniques are simple and experimental. The banks, however, can gather information of different risks from reports and plans that are published within the institution (like audit reports, regulatory reports, management reports, business plans, operation plans, error rates, etc.) A careful review of these documents can reveal gaps that can represent potential risks. The data from the reports could be categorized into internal and external factors and converted into likelihood of potential loss to the institution.

Accurate determinations of banks' risks are highly recommended by Basle II. This concerns, in particular, operational risks**,** which are all those management events that may determine unexpected losses. It is necessary to develop valid model or

[6] 12% for retail banking, asset management and retail brokerage, 15% for commercial banking and agency services, and 18% for corporate finance, trading and sales, and payment and settlement.

approach to measure, and consequently, predict such operational risks. Table 1 demonstrates Basel II approaches for operational risk measurement.

Table 1: Basel II Approach for Calculation of Operational Risk Capital Charge

Approaches	Measurement	Formula
Basic Indicator Approach (BIA)	Percentage of gross income (GI) for the whole bank	$K_{BIA} = [\Sigma (GI_{1..n} \times \alpha)] / n \quad \alpha = 15\%$
Standardized Approach (STA)	Percentage of gross income (GI) per business line	$K_{STA} = \{\Sigma_{year\ 1l\text{-}3} \ max [\Sigma (GI_{1\text{-}8} \times \beta_{1\text{-}8}] / 3$
Advance Measurement Approach (AMA)	model-like approach on framework of business lines and risk event types	$K_{AMA} = \sum_{i,j} \gamma_{i.j} * PE_{i.j} * LGE_{i.j} * EI_{i.j}$ (example AMA : parameters to be determined by the bank)

(Source: Basel II, 2006)

Bank using the **Basic Indicator Approach** have to hold capital for operational risk equal to a fixed percentage (denoted *alpha* (α)) of a single indicator. The current proposal for this indicator is gross income. The charge may be expressed as follows:

$$K_{BIA} = [\Sigma (GI_{1..n} \times \alpha)] / n$$

where,

K_{BIA} = the capital charge under the Basic Indicator Approach

GI = annual gross income, where positive, over the previous three years

n = number of the previous three years for which gross income is positive

α = 15% which is set by the Committee, relating the industry wide level of required capital to the industry wide level of the indicator.

In the **Standardized Approach**, bank's activities are divided into eight business lines. Within each business line, there is a broad indicator specified that

reflects the size or volume of banks' activities in that area. The indicator serves as proxy for the scale of business operations and thus the likely scale of operational risk exposure within of these business lines.

Table 2: *Beta* Factors in Standardized Approach

Business Lines	Indicator	*Beta* Factors (%)
Corporate Finance	Gross income	$\beta_1 = 18\%$
Trading and Sales	Gross income	$\beta_2 = 18\%$
Retail Banking	Gross income	$\beta_3 = 12\%$
Commercial Banking	Gross income	$\beta_4 = 15\%$
Payment and Settlement	Gross income	$\beta_5 = 18\%$
Agency Services and Custody	Gross income	$\beta_6 = 15\%$
Asset Management	Gross income	$\beta_7 = 12\%$
Retail Brokerage	Gross income	$\beta_8 = 12\%$

(Source: Basel II, 2006)

Within each business line, the capital charge is calculated by multiplying the indicator by a factor (denoted *beta* (β)) assigned to that business line. β set by Basel II's Committee and serves as a rough proxy for the industry-wide relationship between the operational risk loss experience for a given business line and the aggregate level of the indicator for that business line. It should noted that the indicator relates to the data reported to the business line, not the whole institution, e.g. in corporate finance, the indicator is the gross income generated in the corporate finance business line. If a bank is unable to allocate an activity to a particular business line, it is proposed that income related to that activity should be subject to the highest β factor for which the bank reports activity. One of the main weaknesses of this approach is the issue of negative income. As mentioned by Archer and Abdullah Haron (2007), a negative capital charge in any one year for one business line is offset against the positive capital charges for the other business lines in that year, unless the total for the year is negative, in which case the input of the year to the three-year calculation is zero.

The total capital charge is calculated as the simple summation of the regulatory capital charges across each of the business lines. The total capital charge may be expressed as follows:

$$K_{STA} = \{\Sigma_{year\ 1-3}\ max\ [\Sigma\ (GI_{1-8} \times \beta_{1-8}] / 3$$

where:

K_{STA} = the capital charge under the Standardized Approach

GI_{1-8} = annual gross income in a given year, as defined above in the Basic Indicator Approach, for each of the eight business lines

β_{1-8} = a fixed percentage, set by the Committee, relating the level of required capital to the level of the gross income for each the 8 business lines.

The **Advance Measurement Approach** (AMA) is the most risk sensitive of the approaches currently being developed for regulatory capital purpose (Basel II, 2001). The regulatory capital requirement for the operational risk under AMA would be based on operational risk derived from the bank's internal risk measurement system. This risk estimate would be subject to a floor based on the Standardized Approach capital charge for operational risk. Thus, under the AMA bank would be allowed to use the output of their internal operational risk measurement system, subject to qualitative and quantitative standards set by Basel II's Committee. While the institution may use multiple tools in an AMA framework, they must all have the same objective of identifying key risks. The three broad types of AMA approach currently under development, which comprises of three different approaches, namely Internal Measurement Approach (IMA),[7] Loss Distribution Approach (LDA) [8] and Scorecard Approaches.[9]

[7] In this type of approach, banks generate estimates of operational risk capital based on measures of expected operational risk losses. The approach assumes a fixed and stable relationship between expected losses (the mean of the loss distribution) and unexpected losses (the tail of the loss distribution). The IMA

OPERATIONAL RISK IN ISLAMIC BANKS: EXAMINATION OF ISSUES

Category of operational risk

Islamic banks' activities differ in substance and in form from conventional banks' operations. The implication arise is a different risk profile faced by the former. Basel II identified three types of risk exposures for conventional banks: credit risk, market risk and operational risk. Early attempts by Islamic scholars to cater for the specificities and characteristics of *shariah* compliant products and services identified at least four different types of risks that are not accounted for under Basel II (Chapra & Khan, 2000). The additional risks identified include rate of return risk, price risk, fiduciary risk and displaced commercial risk. The IFSB further released a standard for the "Guiding Principles of Risk management for Institutions Offering Only Islamic Financial Services (2005b)" which documented six risk categories in Islamic financial institutions: credit risk, equity investment risk, market risk, liquidity risk, rate of return risk and operational risk.

Operational risk refers to the loss potential resulting from inadequate or failed internal processes, people, systems or from external events. In capital adequacy standard (CAS) framework, operational risks specifically address losses resulting from *shariah* non-compliance and the failure in fiduciary responsibilities. Fiduciary risk is the risk that arises from the Islamic banks' failure to perform in accordance with explicit and implicit standards applicable to their fiduciary responsibilities

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calculations are generally based on a framework that divides a bank's operational risk exposures into a series of business lines and operational risk event types (Basel II, 2001).

[8] This approach involves estimating two distributions: one for frequency and one for event severity. The LDA follows an actuarial methodology where the distributions are constructed based on historical internal and external loss data. This method differs from IMA approach in one important respect: it aims to assess unexpected losses directly rather than via an assumption about the relationship between expected loss and unexpected loss (Basel II, 2001).

[9] In this approach, bank determine an initial level of operational risk capital at the firm or business line level, and then modify over time on the basis of risk indicator. The scorecard approach combines loss data with risk indicators and performs a self-assessment of the potential operational risk on the business lines (Akkizidis & Bouchereau, 2005). This approach relies less exclusively on historical loss data in determining capital amounts (Basel II, 2001).

(IFSB, 2005b). As a result of losses in investments, Islamic banks may become insolvent and therefore unable to meet the demands of current holder for repayment of their funds and safeguard the interest of their investment account holder (IAH). Islamic banks may fail to act with due care when managing investment, resulting in the risk of possible forgone profit to IAH. Here again, new operational risks are identified for the specificities of Islamic banks and which are not catered for under Basel II.

Iqbal and Mirakhor (2007) point out that fiduciary risk leads to the risk of facing legal recourse action in a situation where the Islamic banks breach their fiduciary responsibility toward depositors and shareholders. As fiduciary agents, Islamic banks are expected to act in the best interest of investors/depositors and shareholder. If there is divergence in the objectives of investors and the shareholders, the banks then are exposed to fiduciary risk. For instance, in the case of a partnership-based investment in the form of *mudharabah* and *musharakah* on the assets side, the banks are expected to perform adequate screening and monitoring of projects. For any deliberate or even non-deliberate negligence in evaluating and monitoring the projects can lead to fiduciary risk. It becomes incumbent upon management to perform due diligence before committing the investors'/depositors' funds.

Compliance to *shariah* is one of the prerequisite of Islamic banking operation. Failure to adhere to *shariah* can expose financial institutions to further reputational risks. Both the management of IIFS and the supervisory authorities need to ensure that proper measurement and management of such risks are in place. The risk of non-compliance with *shariah* requirements that may result in non-recognition of income

and resultant losses will also lead to operational risk[10]. According to Archer and Abdullah (2007) *shariah* compliance is critical to an Islamic bank's operation, and such compliance requirements must permeate throughout the organization as well as its products and activities. As majority of fund providers use *shariah*-compliant banking services as a matter of principle, their perception regarding the Islamic bank's compliance with *shariah* rules and principle is likely to be of great importance in maintaining their customer loyalty. In this regard, *shariah* compliance fall within a higher-priority category compared to other identified risks. However, it should be noted that reputational risk which is closely related to *shariah* compliance (Archer & Abdullah, 2007), falls outside the Basel II definition of operational risk.

Besides of *shariah* non-compliance risk and fiduciary risk, Islamic banks are also exposed to unique and high risks, in particular legal and reputational risks (Fiennes, 2007). According to Iqbal and Mirakhor (2007), legal risks due to non-standard practices come into view because of different contracts in different jurisdictions. Different adoption of *shariah* rules sometimes will results in difference financial reporting, auditing and accounting treatments by Islamic banks. For instance, while some *shariah* scholar consider the terms of a *murabahah* or *istisna'* contract to be binding on the buyer, other argue that the buyer has the option to decline even after placing the order and paying the commitment fee. While each practice is acceptable by different school of thoughts, the bank's risk is higher in non-binding cases and it may lead to potential problems in cases of unsettled transaction. For instance in Malaysia, there were thirteen (13) cases on a*l- bay' bithamanan ajil* (BBA) known as deferred-payment sale property financings except one that were decided in the High Court of Malaya on 18 July 2008 that not in favour of the Islamic

[10] Inadequately trained staff in *shariah* aspect also will expose the Islamic bank unnecessarily to such operational risk

Banking Institutions (IBIs).[11] The judgments were made by High Court may effect the whole IBIs because it consider the Islamic banks may only claim the principal sum and not the profit portion. The judgment that made by Judge Datuk Abdul Wahab bin Patail in this cases are closely related to different interpretation of any recognized *mazhabs*.[12]

In many western countries, the fact that the documentation is new and not well-tested in the courts adds to the legal risk (Fiennes, 2007). There is also the question of the interaction of commercial law with *shariah*. If they conflict, there is at least the possibility that the defaulting party can try to evade his responsibility by claiming non-compliance with *shariah*. For example in the UK, the courts were not impressed with the enforceability of the *shariah* law on top of English Law.[13]

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[11] Please refer cases of *Arab-Malaysian Finance Bhd v Taman Ihsan Jaya Sdn Bhd & Ors* (Suit No D4-22A-067 of 2003), *Bank Islam Malaysia Bhd v Ghazali bin Shamsuddin & Ors* (Suit No D4-22A-215 of 2004), *Bank Islam Malaysia Bhd v Nordin bin Suboh* (Suit No D4-22A-1 of 2004), *Bank Islam Malaysia Bhd v Peringkat Raya (M) Sdn Bhd & Ors* (Suit No D4-22A-185 of 2005), *Bank Islam Malaysia Bhd v Ramli bin Shuhaimi & Ors* (Suit No D4-22A-399 of 2005), *Bank Islam Malaysia Bhd v Mohammad Rizal bin Othman & Ors* (Suit No D4-22A-192 of 2006), *Banks Islam Malaysia Bhd v Azhar bin Osman* (Originating Summons No D4-22A-395 of 2005), *Banks Islam Malaysia Bhd v Mohd Razmi bin A. Rahman & Ors* (Writ No D4-22A-166 of 2006), *Banks Islam Malaysia Bhd v Nadiah Chai binti Abdullah & Ors* (Writ No D4-22A-204 of 2006), *Banks Islam Malaysia Bhd v Nor Azlina binti Baharom* (Writ No D4-22A-167 of 2006), *Banks Islam Malaysia Bhd v Zawawi bin Osman & Ors* (Writ No D4-22A-178 of 2006), *Banks Islam Malaysia Bhd v Baharom bin Harun & Ors* (Writ No D4-22A-203 of 2006). Refer also [2008] 5 MLJ 631 and Islamic Banking: Perspectives
on Recent Case Development, Fakihah Azahari [2009] 1 MLJA 91.

[12] This Court holds that neither the Federal Constitution nor Islamic Banking Act (IBA) 1983 and the Banking and Financial Institution Act (BAFIA) 1989 in using terms "Islam" and "religion of Islam" provide as the interpretation of which mazhab of Islam is to prevail. The BBA facilities are offered as Islamic to all Muslim and not exclusively to followers of any particular mazhab. It follows, therefore that the test is that there must be no element involved that is not approved by the religion of Islam under the interpretation of any recognized *mazhabs.* Thus, the fact that the reading of the Property Purchase Agreement (PPA) and Property Sale Agreement (PSA) independently is not accepted under other mazhabs eventhough it accepted under mazhab Syafie means that PPA and PSa cannot be read independently for the purpose of IBA 1983 and the BAFIA 1989. On 31 March 2009, the Court of Appeal has made the judgment that in favaur of IBIs which mean contrary to earlier High Court judgment. The Court of Appeal also reiterated that BBA contract is a sale transaction and therefore must not be compared to a loan transaction. The decision reaffirmed that Bank Islam's practices in relation to BBA contracts are shariah-compliant and valid.

[13] This case, *Shamil Bank of Bahrain E.C. (Islamic Bankers) v Beximco Pharmaceuticals Ltd and Others*, 2004. The governing law of the agreements was stated to be *" subject to the principles of Glorious shariah, this agreement shall be governed by and construed in accordance with laws of England"*. The High Court Judge granted summary judgment according to English law and held that the court was not concerned with the principles of the *shariah* at all, and "*there could not be two*

Besides *shariah* non-compliance risk and legal risk, Islamic banks are exposed to reputational risk even though Basel II and IFSB not include this risk in their definition of operational risk.[14] Reputational risk is closely interrelated with fiduciary and *shariah* non-compliance risk. In the case of heavy losses on the investment financed by current account holders' funds due to negligence and non-compliance with *shariah* principle, the depositors may lose confidence towards the Islamic bank and therefore this will affect depositors' confidence on the banks' credibility. This situation can lead to dire consequences, including withdrawal depositors' fund and insolvency risk.

Reputational risk therefore can be defined as the risk of deteriorating trust of Islamic banks' clients due to irresponsible actions or mismanagement behaviour. Although the fiduciary and *shariah* non-compliance risks also stem from the negligence and non-compliance, reputational risk arises due to irresponsible behavior by a single institution can taint the reputation of overall Islamic banking industry. Negative publicity can have a significant impact on institutions' market share, profitability and liquidity. Nevertheless, close collaboration among financial institutions, standardization of contracts and practices, self-examination and establishment of industry association are some of the steps to mitigate reputational risk.

Regulatory capital for operational risk

a. The Basel capital adequacy framework (Basel I and Basel II)

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separate systems of law governing the contract (i.e. Shariah law and English law)" (DeLorenzo & McMillen, 2007).

[14] Fiennes (2007) includes reputational risk as a part of operational risk , Archer and Abdullah (2007) remark that reputational risk relating to *shariah* non-compliance risk

Under the Basel I, the Committee recognizes that the capital buffer related to credit risk implicitly covers other risk. The broad brush approach in Basel I delivered an overall cushion of capital for both the measured risk (credit and market) and other (unmeasured) banking risk. However, the New Basel Capital Accord (Basel II) is focusing on sensitive risk other than credit and market risk. Further, developing banking practices such as securitization, outsourcing, specialized processing operations and reliance on rapidly evolving technology and complex financial products and strategies suggest that these other risks are increasingly important factors to be reflected in credible capital assessments by both supervisors and banks. Therefore, in Basel II includes the operational risk as residual risks.

Basel II departs from the Basel I in several important aspects. In the Basel II, a risk that has not previously been measured is added; operational risk. Additionally, if the national supervisor approves a bank's models to measure operational and other risks, the bank will be allowed to use them to determine its own amount of regulatory capital. In Basel II, the incentives to reward banks that posses such models are built in the form of reductions in levels of regulatory capital, which can lead to more capital at work and hence a higher yield. Therefore, Basel II introduces approaches for operational risk that have not been measured before.

The rising interest of supervisor and banking industry in the recent years for operational risk is due to the growth of e-commerce, large-scale mergers and acquisitions and the use of more highly automated technology which test integrated system and provoke a number of situations increasing operational risks.

Basel II uses a three pillars concept (i) minimum capital requirement (addressing risk), (ii) supervisory review and (iii) market discipline – to promote

greater stability in the financial system.[15] The three pillars of the Basel II play an important role in the capital framework for operational risk. The **Pillar I** presents the calculation of the total minimum capital requirement for credit, market and operational risk. The capital ratio is calculated using the definition of regulatory capital and risk weighted assets.[16] The capital ratio must be no lower than 8%. It deals with maintenance of regulatory capital calculated for three major components of risk that a bank faces: credit risk, operational risk and market risk. The capital adequacy ratio (CAR) as stipulated by Pillar 1 of Basel II is as follows:

$$CAR = \frac{Tier\ 1 + Tier\ 2}{Risk\text{-}Weighted\ Assets_{(Credit\ Risk + Market\ Risk + Operational\ Risk)}}$$

The **Pillar II** deals with the regulatory response to the first pillar, giving regulators much improved 'tools' over those available to them under Basel I. It also provides a framework for dealing with all the other risks a bank face, such as systemic risk, pension risk, concentration risk, strategic risk, reputation risk, liquidity risk and legal risk, which the accord combines under the title of residual risk. The Pillar II of the Basel II recognizes the supervisory review process as an integral and critical component of the capital framework. Pillar II sets out a framework in which banks are required to assess the economic capital they need to support their risk. Then, this process of assessment is reviewed by supervisors. Where the capital

[15] The Basel I accord dealt with only parts of each of these pillars. For example: with respect to the first Basel II pillar, only one risk, credit risk was dealt with in a simple manner while market risk was an afterthought; operational risk was not dealt with at all.

[16] Risk weighted assets are determined by multiplying the capital requirement for market risk and operational risk by 12.5% (i.e. the reciprocal of the minimum capital ratio of 8%) and adding to resulting figures of the sum of risk- weighted assets for credit risk.

assessment process is inadequate and/or the allocation insufficient, supervisors will expect a bank to take prompt action to correct the situation.

Supervisor will review the inputs and assumptions of internal methodologies for operational risk in the context of the firm wide capital allocation framework. The failure to manage properly operational risk can result in a misstatement of an institution's risk- return profile and expose the institution to significant losses. A bank should develop a framework for managing operational risk and evaluate the adequacy of capital given in the framework. The framework should cover the bank's appetite and tolerance for the operational risk, as specified through policies for managing this risk, including the extent and manner in which operational risk is transferred outside the bank. It should also include policies outlining the bank approach to identifying, assessing, monitoring and controlling/mitigating the risk.

Then the **Pillar III** greatly increases the disclosures that the bank must make. This is designed to allow the market to have a better picture of the overall risk position of the bank, allow the counterparties of the bank to price and deal appropriately. It has the potential to reinforce capital regulation and other supervisory efforts to promote safety and soundness in bank and financial system. Market discipline imposes strong incentive on bank to conduct their business in a safe, sound and efficient manner. It can also provide a bank with an incentive to maintain a strong capital base as a cushion against potential future losses arising from its risk exposures. To promote market discipline, bank should publicly and in a timely fashion, disclose detailed information about the process used to manage and control their operational risk and the regulatory capital allocation technique they use.

Under the standardized framework, Basel II sets clear guidelines for the calculation of adequate bank capital for operational risk. The balance sheet

underlying the rules of the accord, however, belongs to a conventional bank whose structure as well as nature completely differs from that of an Islamic bank, both in terms of assets and liabilities. No specific requirements addressing the particularity of Islamic banks' balance sheet structure were introduced under Basel II.

Recent studies on risk issues in Islamic banking and finance stress that features of Islamic banking institutions and the intermediation models that they follow require recognition of special risks to help make risk management in Islamic banking truly effective. As a result of the particular nature of Islamic banking activities, the risks borne by these institutions differ to a greater or lesser extent from those outlined in Basel I and II. Chapra and Khan (2000), and Khan and Ahmed (2001) acknowledge Basel II for providing scope for proper recognition of risks in Islamic banking products through a more risk sensitive system for risk weighting assets and stronger incentives for effective risk management. In similar vein, El-Hawary et al. (2004) recognize the appropriate balance of prudential supervision (Pillar II) and market disciplines (Pillar III) of Basel II for Islamic banking institutions. Based on both of the pillars, risk measurement and management becomes a crucial element to produce an effective disclosure regime that can connect market forces to reinforce official supervision.

Given the importance of adaptation of more advanced capital measurement approaches as envisaged in Basel II, serious attempts are made by the Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI) and the IFSB to develop a better capital adequacy standard/framework that addresses the risk profile of Islamic banks.

b. AAOIFI proposal

In 1999, AAOIFI issued the '*Statements on the Purpose and Calculation of the Capital Adequacy Ratio for Islamic Banks'* due to risks that arise from Islamic banks' operations differ from the conventional risks faced by their peers and are not accounted for in Basel II the (AAOIFI, 1999). This was the first initiative towards developing a tangible framework that properly addresses the risks faced by Islamic banks. The document proposed a method for calculating the capital adequacy ratio for Islamic banks. Much of the suggested methodology is based on Basel II standards with the key difference relating to the liability side of Islamic banks' balance sheet (Turk & Sarieddine, 2007).

Islamic banks fund their financing and investment activities through three types of accounts in addition to shareholders' equity: current, saving and unrestricted investment accounts. The current and saving accounts are very much similar to conventional banks but the investment account requires less protection as their held on a profit and loss sharing basis. Investment accounts of Islamic banking institutions are of two types, namely restricted and unrestricted. The former cannot be considered as part of banks' source of funds since this type of funds are invested according to clients' directives and not at the discretion of the banks. Therefore, AAOIFI recommends that restricted investments accounts be included as off-balance sheet items. The implication is that such investment funds will not be included in the calculation of CAR. On the contrary, the latter should be included on the balance sheet of Islamic banks and have to be considered in the calculation of CAR.

Another difference or particularity of Islamic banks' activities is that the unrestricted investment account holders agree to share in the profit and loss with the bank. This implies that such funds could not be guaranteed by assigning them 100%

weight in calculating the CAR. This is the reason why AAOIFI proposed this capital adequacy framework which is to address this issue and to determine appropriate risk weights to unrestricted investment.

In addition, although unrestricted investment account holders share risks with shareholders, their fund cannot be considered as equity. The rationale is that investment depositors can withdraw their funds upon maturity and reduce the sources of funds available to the bank, but the equity base remains unchanged if shareholders withdraw their funds by selling their shares to other investors. Furthermore, unrestricted investment accounts also cannot be classified under equity or Tier 1 capital is that such account bearers have no voting rights (Turk & Sarieddine, 2007). In conclusion, unrestricted investment accounts lie in between deposits and equity, and they should properly acknowledge for capital adequacy purposes. Therefore, AAOIFI proposed a risk-sharing scheme between the investment account holders and the shareholders in the calculation of CAR of Islamic bank (Source: AAOIFI, 1999):

$$CAR = \frac{Total\ Capital}{RWA_{(Capital\ and\ Current\ Accounts)} + 50\%(RWA_{(Unrestricted\ Investment\ Accounts)}}$$

The limitation of the approach developed by AAOIFI is that it has basic similarities with Basel II and it simply focuses on the sources of funds of the Islamic banks, thus, ignoring the importance of detailing the calculation of risk weighted assets.

c. IFSB capital adequacy standard and operational risk management

IFSB released an Exposure Draft Number 2 in 2005 focusing the suggestion for introducing the CAS for IIFS.[17] This proposal recommended a capital adequacy standard based on the Basel II with the necessary modifications and adaptations to cater for the specifications and characteristics of the *shariah* compliant products and services. The document encompasses the minimum capital adequacy requirements based predominantly on the standardized approach with respect to credit risk and the basic indicator approach with regard to operational risks of the Islamic financial services (Pillar I) and the various applicable measurement methods for market risk set out in the 1996 Market Risk Amendment. This document does not address the requirements covered by Pillar II (supervisory review) and Pillar III (market discipline) of Basel II as these two issues will be covered by separate standards.

Like the AAOFI proposal, the IFSB capital adequacy framework serves to complement the Basel II in order to cater for the specificities of Islamic banking institutions. However, while the AAOIFI focuses on the sources of funds of an Islamic bank, IFSB goes a step further by considering the uses of funds and assigning appropriate risk weights to each asset item. The major contribution of the IFSB is to acknowledge that the uses of funds for Islamic banks, which are by nature *shariah* compliant, differ from the typical asset side of the balance sheet of a conventional bank. Additionally, the provisions for operational risk and the treatment of profit sharing investment account (PSIA) are also justified.[18]

For instance, the assets funded by either unrestricted or restricted investment accounts should be excluded from the calculation of CAR since the capital is not

[17] The term "IIFS" as used in the Exposure Draft Number 2 refers to such financial institutions that mobilize funds as deposits and investment accounts in accordance with *shariah* rules and principles.
[18] The PSIA (commonly referred to as investment accounts and special investment accounts) is a pool of investment funds placed with an IIFS on the basis of *mudharabah* and can be categorized on unrestricted PSIA or restricted PSIA.

guaranteed by bank and any losses are to be borne by the investment account holders, and thus do not command a regulatory capital requirement. The calculation of CAR is as follows (Source: IFSB, 2005a):

$$CAR = \frac{Tier\ 1 + Tier\ 2}{RWA_{(Credit\ Risk + Market\ Risk + Operational\ Risk)} - RWA\ funded\ by\ PSIA_{(Credit\ Risk + Market\ Risk)}}$$

Thus, under the CAS framework, the IIFS's minimum capital requirement is assessed according to their exposure to credit risk, market risk and operational risk. Within this context, the IFSB has proposed two different methods to fine-tune the IIFS capital charges to better reflect financial risk diversities among individual credit exposures: a standardized and an internal ratings-based approach to credit risk. The standardized approach to credit risk is based on externally provided risk assessments such as the rating assignments by external credit assessment institutions. IIFS is also encouraged to utilize the internal model of risk assessments (self-assessments). Value-at-risk approach is used to measure market risk, whilst BIA, STA as well as AMA approach are used to measure operational risk.

The introduction of CAS attracts the interest of many researchers. The interest focuses on two aspects. First, the introduction of capital adequacy standard should address the supervisory review and market discipline, (see, Kahf (2005) and Hassan and Dicle (2005), El-Hawary et al. (2004), and Sundararajan and Errico (2002)). It is due to the different nature of risks and limited capacity for risk mitigation in IIFS. The second aspect is the specific characteristics of Islamic banks. As argued by Khaf (2005), there are qualitative similarities of treatment of credit risks between conventional and Islamic banks in Basel II, yet highlights issues that need special

attention with regard to Islamic banks. Concerning unrestricted deposits, they should be related as equity, and the capital requirement for operational risk should be lower as these will be shared between equity holders and owners of unrestricted deposits.

Appropriateness of gross income as proxy for calculation of operational risk capital charge

Due to the fact that Islamic banking institution' shareholders should be liable for any losses due to operational risk and the bank capital charged for it, therefore this type of risk should be measured carefully. The three methods of measuring operational risks proposed in Basel II (Section 4) would need considerable adaptations in Islamic banks owing to the specificities noted earlier.

Allocating capital based on simple aggregate activity measures such as BIA and STA, fails to distinguish between well-run and poorly run units. However, these approaches are not out of line with the practice in many internal efforts to allocate economic, as opposed to regulatory capital (Harmantzis, 2003).

BIA approach uses a gross income as a proxy measure of exposure to operational risk. According to Archer and Abdullah Haron (2007) it requires banks to hold capital for operational risk equal to the average over the previous three years of a fixed percentage of positive gross income.[19] Years in which gross income is negative are ignored. The proposed percentage is 15%. However, the use of gross income as

[19] Gross income is defined (for conventional banks) as net interest income plus net non-interest income (comprising (i) fess and commissions receivable less fess and commissions payable, (ii) the net result on financial operations and (iii) other gross income. This excludes extraordinary or irregular items) (Basel, 2001)
Gross income is defined (for Islamic banks) as the sum of : (a) net income from financing activities (b) net income from investment activities and (c) other income (gross of: (i). any provisions (e.g. for unpaid income, for profit equalization reserve) (ii). any operating expenses, including fees paid to outsourcing service provider and depreciation of ijarah assets. But does not include (i) any realized or unrealized profit/losses from sales or impairment of securities in banking book (ii) any income or expense from extraordinary or irregular items and (iii) any income derived from takaful recoveries) LESS : Income attributable to the investment account holders and depositors (BNM, 2008)

the basic indicator for operational risk measurement could be misleading in Islamic banks, insofar as large volume of transactions in commodities, and the use of structured finance raise operational exposures that will not be captured by gross income (Sundararajan, 2005).

In contrast, the STA that allows for different business lines would be better suited, but would still need adaptation to the needs of Islamic banks. In particular, agency services under *murabahah*, the associated risks due to potential misconduct and negligence, and operational risks in commodity inventory management, all need to be explicitly considered for operational risk measurement (Sundararajan, 2004 & 2005).

Sundmacher (2007) finds that using gross income as a proxy or risk indicator in BIA does not reflect the actual operational risk exposures. In contrast to BIA, using the STA with the same proxy for measuring operational risk capital charge has indicated the different result. The STA's result shows the build-up operational risk exposures in the National Australia Bank during the period 2001-2004 of fraudulent activities by cohort traders, which resulted $360 million losses of foreign exchange trading.

With regards to BIA, Sundmacher (2007) also employs the total revenue[20], total revenue - Australia[21] and trading income as the alternative proxies for gross income and distinguish their capability to predict the build-up in operational risk exposures. The result shows that using the bank's gross income as the proxy indicated the lowest operational risk exposures when the losses were detected in 2004. The decreasing bank's operational risk exposures over the time provide a false 'sense of security'. In contrast to gross income, the alternative proxies indicated the different

[20] Refers to consolidated entity.
[21] Refers to the proportion of total revenue generated in Australia

way, increasing operational risk exposures over the time. Particularly interesting is continuous increasing in the total revenue-Australia.

Operational risk is considered high on the list of exposures of Islamic banks. In a recent study, survey and interview was conducted by Nor Hayati et. al (2009) show the supportive finding which operational risk has been ranked as the second highest risk after credit risk in the operation of Islamic banks. This may due to the classification of shariah compliant risk as one of independent major risks faced by Islamic banks while the IFSB included the shariah compliant risk as part of operational risk. A survey conducted by Khan and Ahmed (2001) shows that the managers of Islamic banks perceived operational risk as the most critical risk after mark-up risk. The survey finds that operational risk is lower in fixed income assets of *murabahah* and *ijarah* and the highest one in *diminishing musharakah*. The relatively higher ranking of the instruments indicate that banks find these contract complex and difficult to implement.

With regard to different business lines as in STA, Islamic banks may choose contract-based instruments in addition to the business lines because each contract or financing mode inherent certain risk at the different level of scale. Hence, Islamic bank also need complementary guidance in managing risks, particularly relating to the specificities of financing mode or contract-based instruments. Each contract should be assigned different β factors, e.g the more complicated structure and difficult to implement, the higher operational risk it perceives, hence higher β factors were assigned.

An estimate of the potential operational losses that the banking institution faces, i.e. operational risk exposure, at the soundness standard is consistent with a 99.9 per cent confidence level over a one-year period. The institution will multiply

the exposure by 12.5 (which is the reciprocal of the minimum CAR of 8%) obtain risk-weighted assets for operational risk; this is added to the risk-weighted assets for credit and market risk to arrive at the denominator of the regulatory capital ratio. Table 3 below illustrates the calculation of operational risk for an Islamic bank following the new IFSB's proposal for CAS (2005). The operational risk capital charge is obtained by multiplying the average gross income for three years by 15% weight. If the annual gross income in any of given years is negative or zero, this figure is excluded from both the numerator and denominator when calculating the three years average such as year 2004 and 2005. Newly established Islamic banks that do not have a complete three years data shall only take into account the actual gross income earned to date for purposes of deriving the average gross income, while leaving the gross income for any remaining years as zero (BNM, 2008). The RWA for operational risks is then obtained by multiplying the capital requirements for operational risk by 12.5 to convert into risk-weighted equivalent assets. The amount RM233 125, RM221 813, RM336 263 and RM456 263 for year 2003, 2004, 2005 and 2006 together with the sum of RWA for credit and market risks will produce the total risk-weighted assets (TRWA) for that year.

Table 3: Sample calculation for Islamic bank's operational risk based on BIA

Item of Islamic Bank's Income Statements	2003	2004	2005	2006	2007	2008
	(RM '000)	(RM '000)	(RM '000)	(RM '000)	(RM '000)	(RM '000)
Income derived from investment of depositors' funds	571 711	611 655	753 777	810 545	841 659	919 496
Income derived from investment of shareholder's funds	88 596	75 593	131 222	150 088	168 834	232 545
Allowance for losses on financing	(63 880)	(103 376)	(648 030)	(1325 478)	4 816	7 547
Profit equalization reserve	(7 433)	(25 832)	(7 148)	(9 308)	(47 921)	8 317
Operating expenses	(200 011)	(222 636)	(377 499)	(375 523)	(380 519)	(439 384)
Total distributable income	388 983	335 404	-147 678	-749 676	586 869	728 521
Income attributable to depositors	(258 617)	(237 106)	(28 217)	(371 011)	(407 527)	(421 186)
Total net income (gross income)	130 366	118 298	-175 895	-1120 687	179 342	307 337
Average Gross Income for 3 Years	124 332	118 298	179 342	243 340		
Operational Risks Capital Charge (Weight = 15%)	18 650	17 745	26 901	36 501		
RWA for Operational Risks (12.5)	233 125	221 813	336 263	456 263		

CONCLUSION

The discussion on operational risk in Islamic banks is still in its infancy. This paper suggests that several issues around the risk still need to be clarified and addressed further. The fact that there exist a variety and unique nature of financing and investment activities of Islamic banks, each one having its own risk characteristics affecting both sides of the bank's balance sheet. While basic Basel core principles of effective banking supervision apply equally well and ideally suit the Islamic banking institutions, risk measurement and risk management practices still need specific adaptations to Islamic banks' operational characteristics. These particularities highlight the unique characteristics of Islamic banks and raise serious concerns regarding the applicability of the Basel II methodology to Islamic banks. This will set the stage for adopting more advanced capital measurement approaches as envisaged in Basel II, but tailored to the specific operational characteristics of Islamic banks.

The limitation of this study was focusing only on calculation operational risk capital charge based on BIA only for one Islamic bank. For further research, it is so meaningful to include all the Islamic banks in order to examine the behavior of operational risk. The researchers could consider expanding the discussion on key issues in measuring operational risk in Islamic banks. Further research could also be proceeding by exclusively focusing on operational risk capital charge measurement using STA, which employed gross income as a proxy. They could also use alternative proxies for gross income and distinguish their capability to predict the build-up in operational risk exposures. By doing so, the best proxy to reflect bank's actual risk profile will be determined.

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ISLAMIC BANKS: STABILITY AND SURVIVAL DURING FINANCIAL CRISIS

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Abstract

Islamic banks are deemed to be less likely affected by the financial crisis. Islamic banks with their unique characteristics may react differently than their conventional counterparts during banking and financial crisis. Inflexibility of Islamic banks in fund raising through financial markets promotes conservatives decision in term of risk management and thus provides greater stability. The creation of Islamic liquidity instruments and Islamic deposit insurance appears to be necessary for Islamic banks. This paper discusses relevant policy issues pertaining to Islamic banking survival during the financial crisis. It includes the requirement of proper regulatory and Basel II application in line with existing Islamic regulatory bodies such as AAOIFI and IFSB.
JEL Classifications: G01, G21, G28

Keywords: Islamic banks, Financial Crisis, Liquidity

1. Introduction

Banks are different with other institutions in term of their nature of operations and thus lead to the requirements of special regulation. Financial institutions and banks particularly receive special treatment by the government in avoiding systemic impacts of financial instability. This is partly true in some countries. For instance, in developed countries, the government provides drastic action to aid insolvent financial institutions. This decision without careful examination on the real needs of such rescue may burden the taxpayers in supporting hollow financial institutions. Therefore one of the best ways in securing financial stability while ensuring meaningful value of the taxpayers' money is to promote soundness and stability of the banks. The needs become vital during the financial crisis when banks' financial activities are more fragile and sensitive.

Islamic banks are created under Shari'ah principles following Quran and Sunnah with the main objectives in protecting human being from any misconduct. Thus Islamic banks are committed to the stake of equitable and fair distributions of fund and resources. Islamic economy believes in the capability of generating economic growth while being fair to their customers. The principles later build up customers' confidence in term of banks investment and fund management. This kind of relief is very important predominantly during banking and financial crisis, where loss of confidence may contribute to panics phenomenon, bank runs and followed by systemic risks.

Financial crisis associated with banking panics and it contributes to the bank runs and followed by bank closure. Bank runs source from sudden withdrawals of bank deposits and the systemic effects may cause to banking panics and pressure on banks liquidity. Due to insufficient liquidity these banks become insolvent and are forced to closure. The most recent major financial crises are the Asian Financial Crisis occurred in 1997 and the Global Finance Crisis occurred in 2007.

The risks involved in banking activities include operational risk, credit risk, market risk and liquidity risk. Indeed, managing of these risks is becoming complicated when they are mutually linked to or between each other. Thus, in managing these risks, regulations and standard of banking firms is outlined with the essence of financial stability in banking sector. Two ways in promoting this idea, are through the creation of deposit insurance and central bank as lender of last resort. Other than that, money market and stock market are also used as means to protect bank liquidity shortage.

In order to avoid further disruption in banking industry, government may come out with rescue plan and bail-out policy. This decision, however, is very costly to the taxpayers as central banks provide funds to selected banks and yet it is not necessarily ensures banks and economics recovery. On the other hand, many other banks are forced to liquidation during the financial crisis due to financial instability. This paper aims to explore the financial stability and survival level of Islamic banks in dealing with their unique operation and risks.

2. Literature Review

2.1 The Financial Crisis

Financial crisis causes deterioration of banks' assets and thus leads banks to financial distress. It may be resulted from varying factors such as stock market crush, currency crisis and sovereign defaults. With its significant impact towards economy, there are flood of studies in identifying and mitigating banking and financial crisis but there is no consensus on the issue.

Non-performing loan (NPL) as a source to bank failure is one major agenda in banking literature. Less prudent and diligent assessment adds the amount of NPLs and become costly for the banks. Consistent phenomenon of growing NPLs may cause financial distress for banks and leads to bank closure. Lauridsen (1998) figures out that increase of current account and careless lending are the sources of NPLs. Other than that, 'relationship banking' (between bank and preference customer) as highlight by Hanazaki and Horiuchi (2003) also contributes to the accumulation of NPLs and produces more fragile banking sector. The amount of NPLs continuously ascends with the effort of hidden loss. Niinimaki (2009) identifies roll over method (extended the maturity period of default loan) and refinancing method (granting new loan to repay original loan) as two ways for hidden loan losses.

Capital requirement is another important insolvency issue where insufficient capital may cause financial instability and bank failure. Bank's capital requirement is very different with other business as it relies more on deposits and thus considered to be relatively highly-leveraged. Regulators address the stability problem by increasing the capital requirements but it is not the most effective ways to mitigate the problem in banking sector (Wagner, 2007). Indeed, liquidity management endows with greater impact in ensuring banking stability.

Banks are vulnerable to the financial crisis and very sensitive to the systemic impact. Bank closure may occur as a result of systemic impact which cause to bank runs and financial distress due to insufficient liquidity. Other than insolvency problem, poor liquidity management becomes another contributing factor of bank liquidation. Conversely, Wagner (2007) argues that bank instability is caused by increased liquidity due to additional new risk in exploiting the incentive of liquidity risk reduction.

A unique criterion of banking institutions is in term of their assets and liabilities structure where the compositions often end up with asset-liability mismatch. In order to manage cost, banks are willing to accept more risk in having larger amount of cheaper short-term deposits than long-term fund. Banks will intentionally choose illiquid asset-liability and eager to acknowledge the risk if the probability of bank run is sufficiently small (R. Chang & Velasco, 2000).

Apart from cash, banks hold certain amount of securities as liquid assets. These liquid securities are mean to be readily convertible to known value of cash. During liquidity shock, banks actively trade in financial market and choose to sell these securities to facilitate higher cash position in their account (Sawada, 2010). Franck and Krausz (2007) in examining the sources of liquidity find out bank prefer to exploit securities market rather than lender of last resort.

Concentration and competition are among popular discussion among researchers in finding the sources of bank failure and financial crisis. However there are contradicting findings regarding this issue. There are many alternative market power model in measuring concentration and competition such as Bresnahan model, Panzar-Rosse model, Structure-Conduct-Performance model and Cournot model[1].

The classical thought on concentration hypothesis on banking stability resulted from greater market power that enhances profits and lower monitoring costs. Among others studies, (Beck, Demirgüç-Kunt, & Levine, 2006; E. J. Chang, Guerra, Lima, & Tabak, 2008) researchers find evidence of banks are financially more stable in a more concentrated market. Evrensel (2008)'s findings conform the hypothesis where higher concentration in banking sector increases the survival time especially in developed countries. However, the author finds although with higher concentration, banks in developing countries faces higher hazard rate and more fragile to the banking crisis.

The other thought documents more concentration and less competition encouraging larger loans and excessive risk taking activities, then leads to possibility of bank failure. The scenario creates moral hazards problem in banking and less prudent in loan and risk assessment. Furthermore, the issue of 'Too Big to Fail' associates with highly concentrated financial institutions provides implicit guarantee and safeguard for these banks to involve in risky investment (Panageas, 2010). Due to this reason, highly concentrated banking sector endorses risk taking activities and may induce financial instability and bank failure.

Other than that, deposit insurance policy may also cause moral hazard problem in the banking industry. Although the initial motivation of deposit insurance is to promote financial stability and development, its existence comes out with mixed effects. Ng, Lim, and Tan (2010) find there is no excessive risk taking of Malaysian banks after the introduction of deposit insurance scheme. In addition, Sawada (2010) in his study documents Japanese banking sector is potentially exposed to financial instability and bank runs when depositors are insufficiently protected. On the other hand, Önder and Özyildirim (2008) affirm that deposit insurance may not be an effective tool to improve market confidence in Turkish banking sector. Besides it is not capable in eliminating banking crisis as market reacts with the moral hazard behavior of banks.

2.2 Liquidity Risk

As the financial intermediaries, banks differ from other firms in that the balance sheet account does not present similar maturity for its assets and liabilities. Deposits account represents as major funding for banks and it is in a form of short-term funding but the lending is generally long-term in nature. The mismatching in banks' accounts cause liquidity problem during bank run and may cause bank insolvency more than ever during the financial crisis. Liquidity mismatch is not supposed to be the main problem which directly caused by the financial crisis, instead the problem is triggered with the contagion effect of the market panic in the banking sector. This implies the situations that banks with high liquidity risks may face bank run followed by becoming insolvent. Due to this reason, optimal liquidity management is essential in banking industry and possible resolutions for liquidity risk are necessary.

Major parts of banks' assets consist of bank loans, cash and securities. Cash is the most liquid assets but it does not contribute to earnings assets. Securities assets can also be categorised as very liquid with the market availability and flexibility to transform the assets into cash without further varying amount of the assets value. This is especially true with the government securities or bonds with very active market that leads to highly liquid securities. On the other hand, loans are considered to be relatively illiquid with difficulties to generate cash in short-term period. Sawada (2010) finds banks chooses to be more active in buying and selling securities in order to be flexible in their cash holding and liquidity.

The bottom line of lender of last resort is providing funds to illiquid but solvent banks. Nevertheless banks cannot fully rely on the last resort as they should have early precaution against liquidity shortage. The traditional ways is through extra liquidity in the assets side to cater any unexpected withdrawal. Though this measure does provide comfort to banks liquidity position, it does not indicate the optimum liquidity level. It is true when banks hold many idle cash with zero return on investment. Thus in modern conventional banking, securities markets and money market become an alternative in liquidity management. Franck and Krausz (2007) determine that securities market play more important role in banks liquidity management rather than the lender of last resort.

Stock market and money market instruments facilitate the transfer of risk from banks and offer certain amount of returns. This allows banks to maintain high liquidity level contains other than cash as an asset. The motivation of improving liquidity leads to the financial innovation and financial engineering. The creation of these derivative instruments carries certain level of risk. Although the liquidity level had improved, banks are prone to the financial crisis as they are sharing risks with other banks. Furthermore these instruments encourage excessive risk-taking activities and banks have fewer cautions on the potential risks. The situation differs in Islamic banking perspective as the Shari'ah principles prohibit these kinds of risks and activities.

The remaining of the paper will discuss on the case and lesson of Islamic banks failure and evidence of success story of Islamic banks, particularly during the financial and banking crisis. Major issues on risk controls mechanism in Islamic banking is highlighted in the following sections.

3. Islamic Bank Failure: A Case of Ihlas Finans in Turkey

By principles, mainly the profit and loss sharing (PLS), Islamic bank are expected to be less likely affected by the banking and financial crisis. Based on Shari'ah law, banks' conduct and decision must be of the customers' interest and thus it should be prudent and diligence. The situation is on the other way round for Ihlas Finans in Turkey that failed during financial crisis in 2001.

As Islamic banks in Turkey are categorized by the name of special finance house (SFH), Ihlas Finans was established in 1994 under the Ihlas Holdings to operate based on interest-free and PLS principle. Many factors contribute to the bank closure that includes macro and micro factors. While other SFHs in Turkey survive the financial crisis, the issue should focus more on the internal predicament of Ihlas Finans.

The closure of Ihlas Finans resulted from the domino effect of banking panics and bank run as the main problem is unlikely because of insolvency but more on the liquidity problems. Referring to Figure 1[1], liquidity ratios for Ihlas Finans fluctuate since it began operation and dropped dramatically in 1999. Comparing to other SFHs in Turkey, liquidity position of Ihlas Finans is far behind its competitors Kuwait Turkish Participation Bank Inc-Kuveyt Turk Katilim Bankasi A.S. (refer to Figure 2a and 2b). This means Ihlas Finans are exposed to the liquidity risk and asset-liability mismatch which may direct them to the difficulties in fulfilling bank runs and become insolvent. It also explains the main factors of Ihlas Finans failure while other SFHs survive during the crisis.

Figure 1
Liquidity ratios of Ihlas Finans

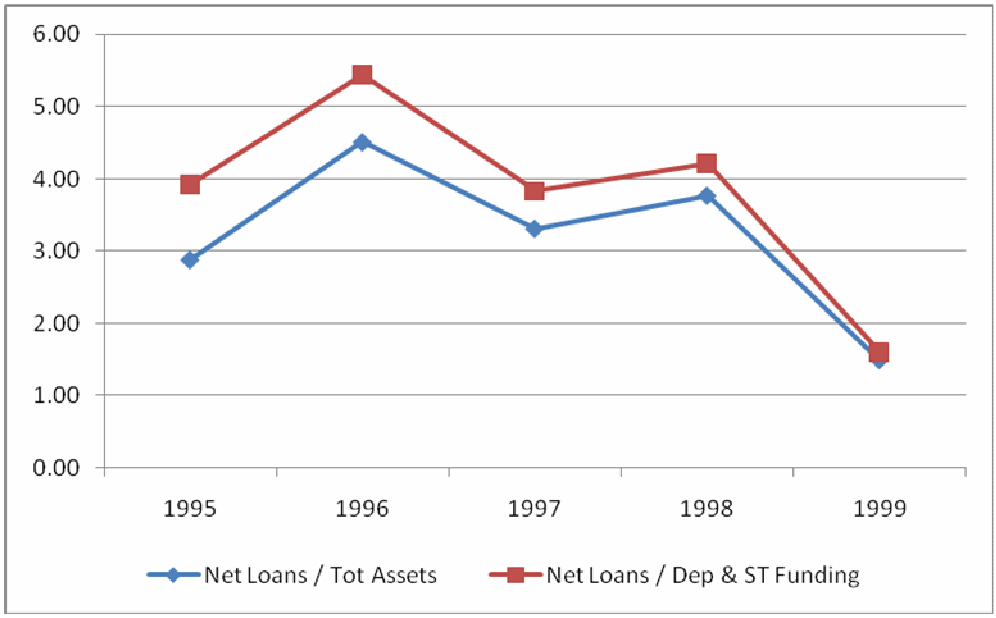


Figure 2a
Net loans to total assets

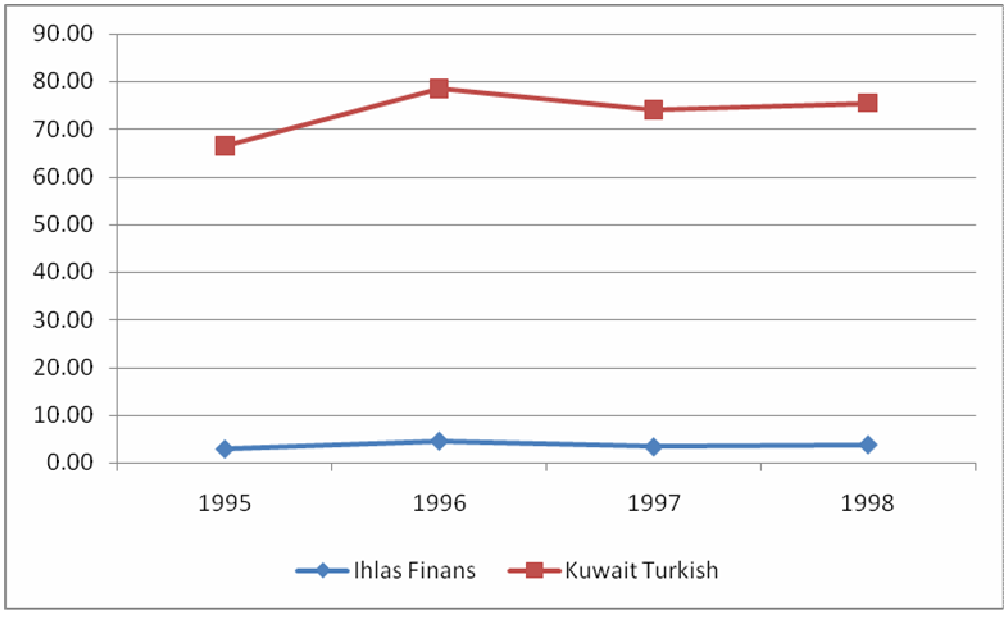
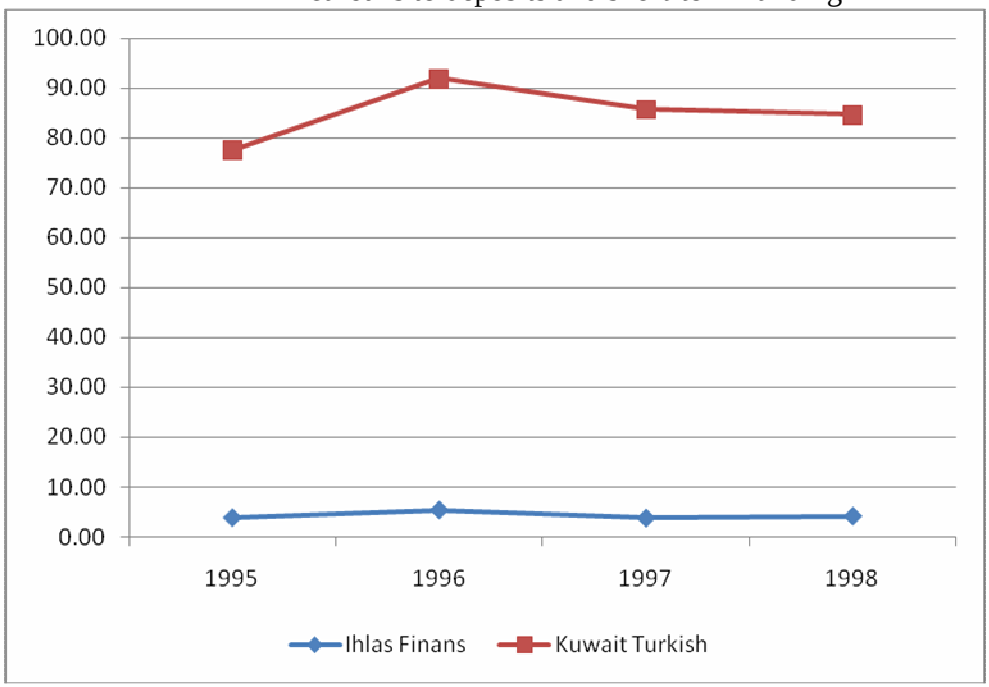


Figure 2b
Net loans to deposits and short-term funding



The lack of proper action by Bank Regulation and Supervision Agency (BRSA) to come out with resolution also contribute to the bank closure. Among other factors, internal issue such as weak management team, reckless financing decision and poor crisis management strategy are also part of integral explanation of financial distress and Ihlas Finans closure. Furthermore, growing Islamic banks are normally more exposed to macro-level shock and banks should be ready with comprehensive crisis management and contingency plan which the evidence was not found in Ihlas Finans[1].

4. Success Story of Islamic Bank: Bank Islam Malaysia Berhad (BIMB)

With many similarities between Islamic and conventional banks, there are still major icon that differentiates Islamic and conventional banking operation and management. The statement reflects Islamic banks in term of risk associates with their operation and management decision. Ahmad and Luo (2010) emphasise on the excessive risk taking activities by banks that contributes to the banking crisis and the effects towards Islamic banks could be less severe with the prohibition of speculation and highly risky investments.

Malaysia is the best example that comes out with excellent operation in Islamic banking and finance. The success story of Malaysian Islamic finance began with the establishment of Pilgrims Fund Board in 1963 followed by the first Islamic Banks, Bank Islam Malaysia Berhad (BIMB) in 1983. To date, BIMB remains loyal to the Shari'ah principles and it is capable to operate alongside with the long existence conventional counterparts. BIMB shows remarkable growth in its loan, assets and deposits since it began with average growth of 16 percent, 17 percent and 17.5 percent respectively.

Figure 3a, 3b, 4a, 4b, 5a and 5b illustrate total loans, total assets, total deposits and its growth of BIMB for the period of 1995 to 2008.

As it operates under PLS principle, profitability performance of BIMB becomes major concerns to their customers. Apart from financial year 2005 and 2006, BIMB generates sustainable level of return (refer to Figure 6 and Figure 7). The highest profit before/after zakat and taxes achieve in year 2008 when they fully recovered from massive losses in 2005 and 2006. The losses are mainly supply from the NPLs from its Labuan offshore unit after the decision to transform them form subsidiaries into branch. BIMB later comes out with major corrective action plan on the implementation of strategic changes in the management and operation such us loan recovery programme and strategic business expansion.

Figure 3a
Total loans of BIMB (mil MYR)

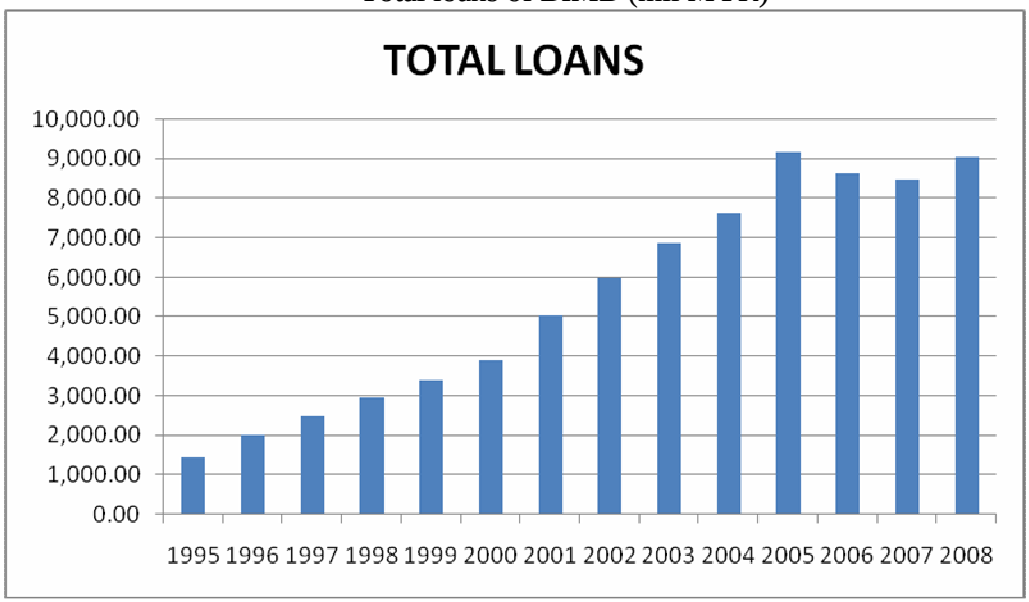


Figure 3b
Loans growth of BIMB (%)

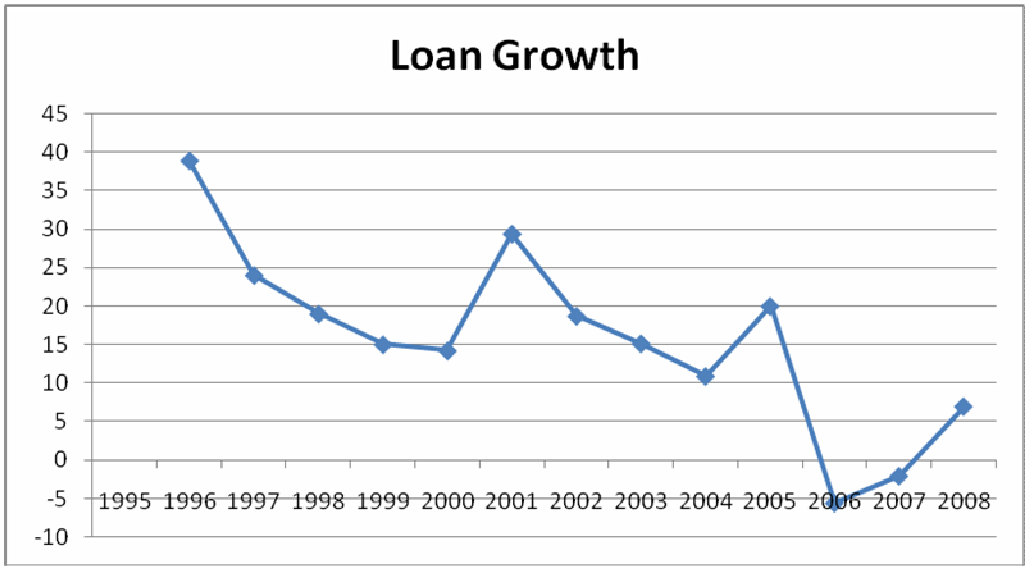


Figure 4a
Total assets of BIMB (mil MYR)

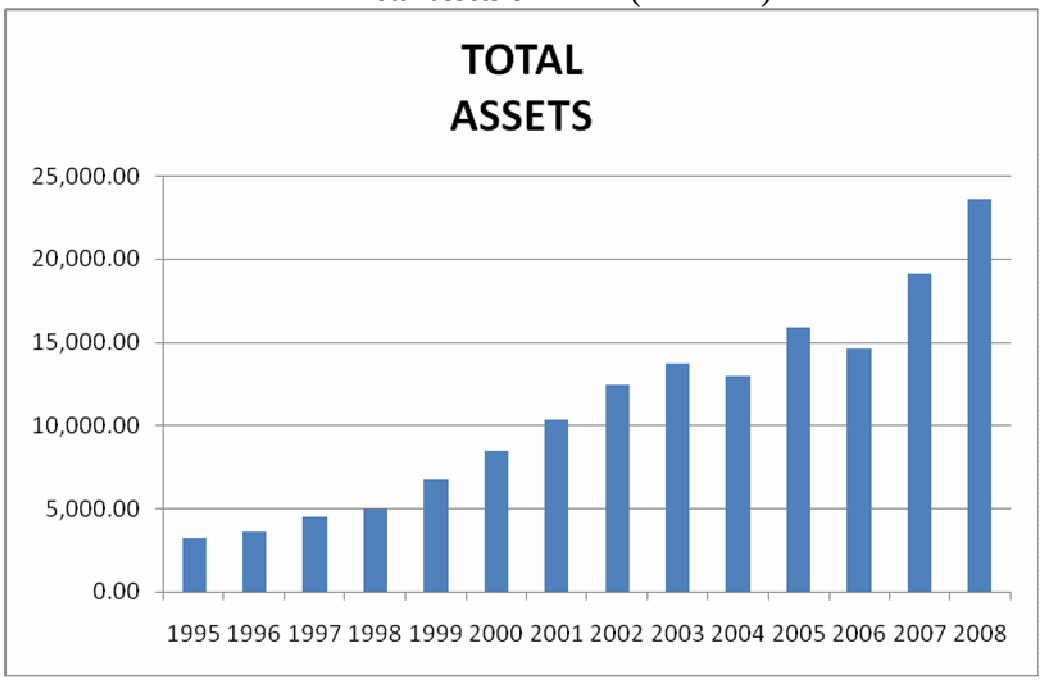


Figure 4b
Assets growth of BIMB (%)

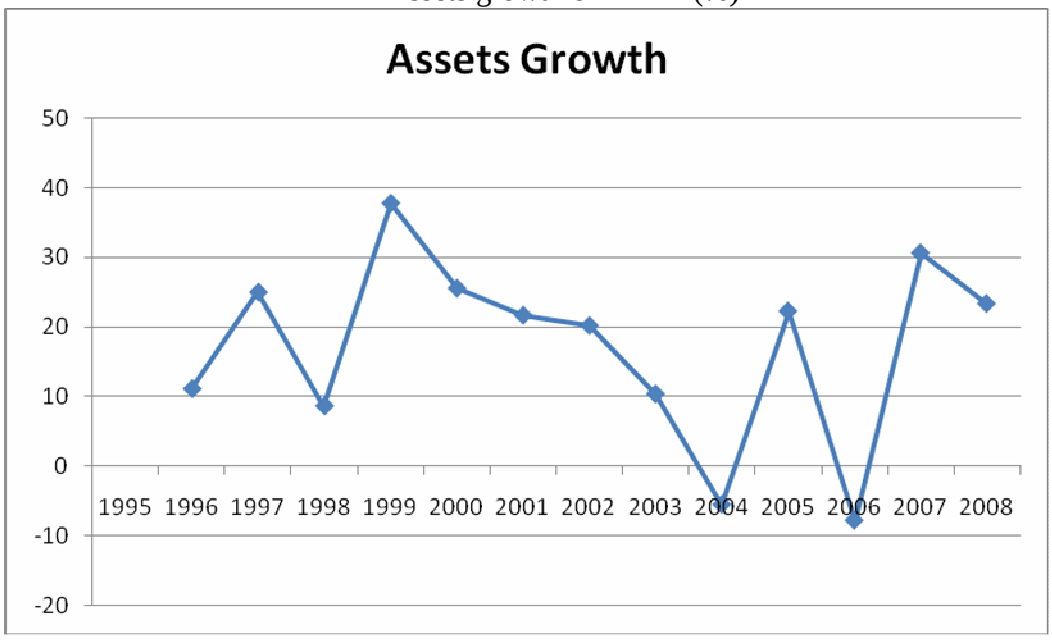


Figure 5a
Total deposits and short-term funding of BIMB (mil MYR)

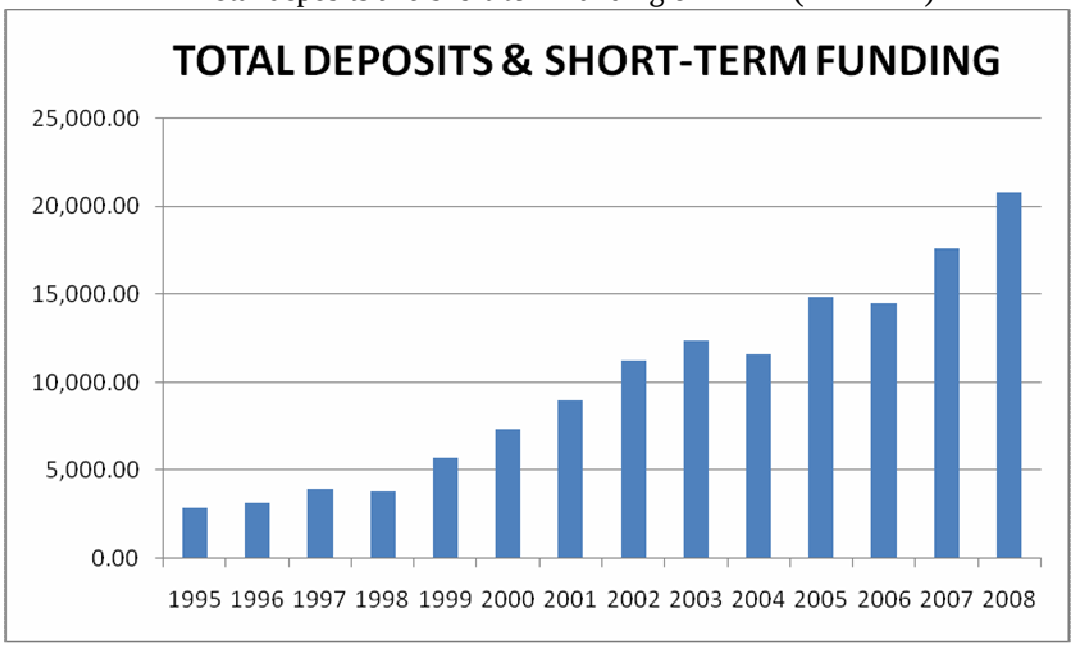
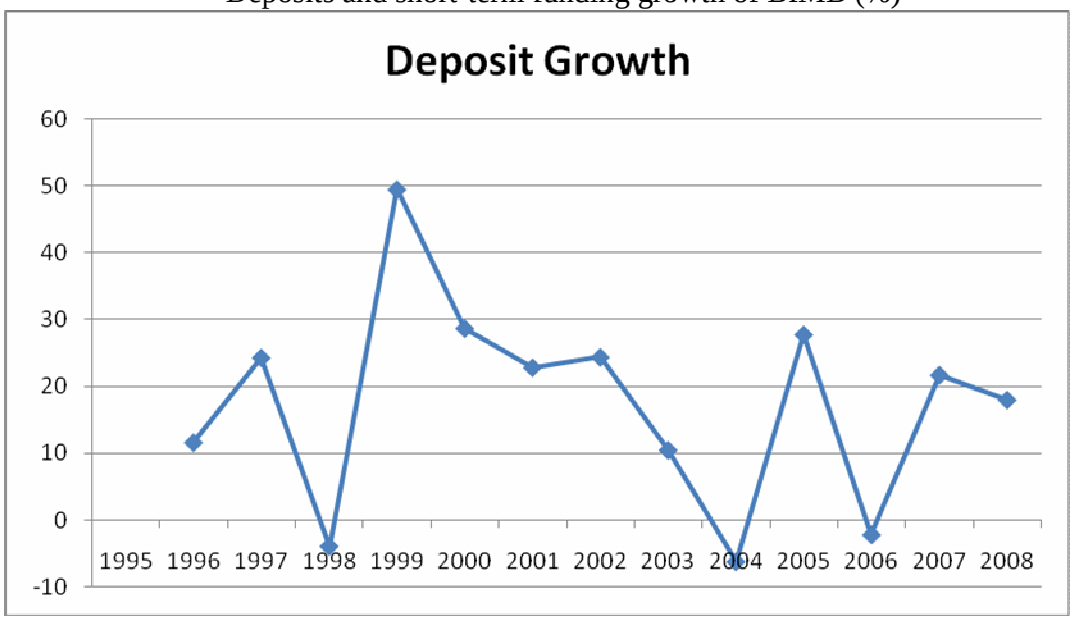


Figure 5b
Deposits and short-term funding growth of BIMB (%)



Nowadays BIMB does not only serve Muslim customers but half of its deposits are contributed by non-Muslim. Unique behavior of these non-Muslim in choosing Islamic bank over conventional banks provides signals of Islamic banking competitiveness in the industry. The ideas and evidence on survival level of Islamic banks enhanced market confidence with Islamic banking operation and management. Samad & Hassan (1999) study the performance of BIMB and reveal from its financial ratios that BIMB is relatively more liquid and less risky as compared to conventional banks in Malaysia.

Figure 6

Profits of BIMB (mil MYR)

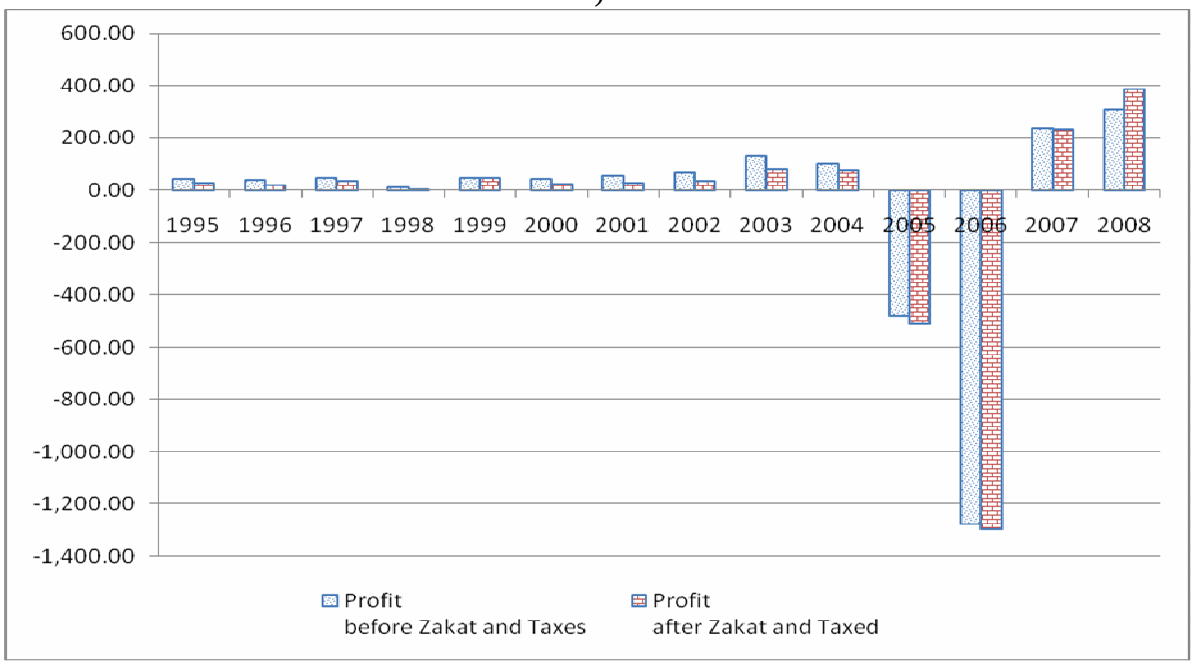
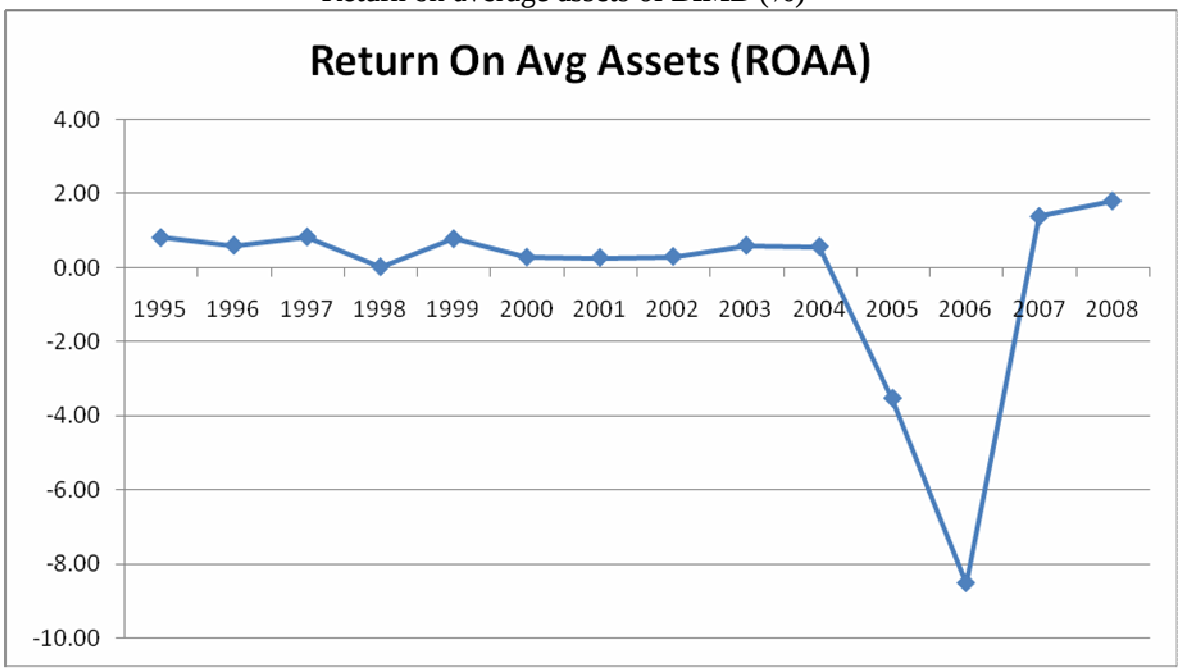


Figure 7
Return on average assets of BIMB (%)



During recent 2007-2008 Global Financial Crisis, none of Malaysian Islamic banks particularly BIMB, have been hit by the U.S. subprime crunch. The reason behind that is in term of the structure of Islamic banks itself which are less flexible in its investments. Islamic banks are prohibited to involve in highly risky business and

investment in security market must be based on real underlying assets. Speculation and interest bearing activities are totally forbidden under Shari'ah law. In order to facilitate liquidity management and fund transfer for Islamic banks, Islamic money market instrument and Sukuk market were introduced. Malaysia has first introduced Islamic interbank money market to enhance liquidity management of Islamic banks.

5. Issues On Risk Control Mechanism In Islamic Banking

5.1 Liquidity Management in Islamic Banking

Islamic banks hold on to the Shari'ah principles in its operation and basically they are not allowed to involve in unacceptable risky investment. The motivation behind these rules is for consumer protection as the profits from Islamic banking activities should depends on actual business rather than speculative activities from the underlying assets. With these unique operations and risks, Islamic banks are expected to be more stable and less affected by the financial crisis.

In term of liquidity position, Islamic banks generally maintain higher liquidity level than the conventional ones. In previous study, it is found that Islamic financial institutions are 50 percent more liquid than the conventional banks (Majid, 2003). This is mainly caused by less flexible funds raising activities through securities and money markets. Unlike conventional banks, Islamic banks must maintain sufficient liquidity in term of cash as the reliance of derivative instruments is almost forbidden. Table 1 shows the comparison on types of assets for Islamic and conventional banks in Malaysia as the mean value of proportion of total assets. It indicates that Islamic banks hold more proportion of non-earning assets as compared to conventional banks and lower proportion of loans than conventional banks. Apart from that, being risk averse in relative to conventional banks, Islamic banks invest more on the government bonds and securities. Government securities carry low risks and it has active traded market that enhance the liquidity management of Islamic banks as this type of assets is considered to be very liquid with low variation in value.

Table 1
Mean value of assets classification in proportion of total assets (%)
for Malaysian banks

	TOTAL LOANS	**TOTAL OTHER EARNING ASSETS**	**FIXED ASSETS**	**TOTAL NON-EARNING ASSETS**	**PERIOD**
Islamic Banks	**49.35**	**26.04**	**0.92**	**23.70**	1995 - 2009
Commercial Banks	**51.08**	**26.99**	**0.69**	**21.24**	1993 - 2009

5.2 Islamic Liquidity Instruments

Recently, Islamic money market has been developed to enable Islamic banks to invest and at the same time to support the liquidity management. The establishment of International Islamic Financial Market (IIFM) in 2001 that promotes active secondary market with Shari'ah compatible instruments should be able to facilitate liquidity management of Islamic banks and other financial institutions. The effort to create harmonization among Islamic countries in dealing with different Shari'ah school of thought and interpretation can be achieved through IIFM. IIFM involves the agreement between the President of the Islamic Development Bank with other major countries that practice Islamic banking and financial market such as Malaysia, Bahrain, Indonesia and Sudan.

In this section, we will discuss on Islamic liquidity instruments adopted by Islamic banks in Malaysia. It includes of Commodity Murabaha, Malaysia Islamic Interbank Money Market and Sukuk. In any structures of each instrument, although some of it has been adapted from conventional market, the basis of Islamic instruments must comply with Shari'ah law in every level of transaction.

Commodity Murabaha is the most common and popular short-term investment practice of Islamic banks to ease liquidity management. It is based on Murabaha contract and used for the buying and selling commodities in international market at agreed mark-up price. Basis of Murabaha is the banks buys certain tangible assets or commodity and sell it at mark-up price for deferred payment. Although it assists in liquidity improvement for Islamic banks, this instrument does not promise high return for the investment. An example of Commodity Murabaha contract is palm oil contracts launched by Malaysia's Commodity Murabaha House (CMH) in June 2009 in providing underlying assets to the market for Islamic liquidity management scheme.

Malaysia Islamic Interbank Money Market (IIMM) was set up in 1994 to fulfill the formation of comprehensive Islamic financial market in Malaysia. The activities includes buying and selling of Islamic financial instruments among market players, interbank investment activities and Islamic clearing and settlement system. This instrument makes available of means to transfer surplus fund to the deficit needs in Islamic financial markets. Islamic securities traded in IIMM are ABS (Islamic Bonds), Cagamas BAIS, Corporate Bond (Islamic), Government Investment Issues, Islamic Commercial Papers, Islamic Medium Term Notes, Malaysian Islamic Treasury Bills and Sukuk Bank Negara Malaysia Ijarah.

Islamic bond or better known by Sukuk differs from conventional types of bond in term of its structure, product design, product offering and rating methodology. The first Sukuk issuance to be rated in Malaysia by Rating Agency Malaysia (RAM) initiates in 1994 for Petronas Dagangan Sukuk (Ayob). The most commonly used Sukuk contract under the provision of Accounting and Auditing Organisation for Islamic Financial Institution (AAOIFI) includes Mudharaba, Musharaka, Istisna'a, Ijarah, Salam and Murabaha. Currently, there are four broad categories of Sukuk; debt-based Sukuk, asset-based Sukuk, project-based Sukuk and asset-backed Sukuk.

Debt-based Sukuk securitise on Islamic receivables and it must be originate from Islamic approved contracts that create future receivables. Conversely, asset-based Sukuk are based on the underlying assets used to facilitate the issuance of Sukuk. The new innovation of Sukuk, project-based Sukuk seems to be better in mitigating financial crisis as compared to the earlier two Sukuk. Project-based Sukuk is a PLS arrangement and the pay-off relies on the performance of underlying projects. Sukuk investors need to consider the risk of investment on the asset quality and quality of cash flows of the project before embarks to the investment. In this Sukuk arrangement, there is no guarantee of profit payment or principal redemption to the investors. Finally, asset-backed Sukuk represent the real form of securitisation and Sukuk investors are exposed to the real value and risk of the underlying asset. Asset-backed Sukuk is non-recourse Sukuk with the underlying assets forming the sole source of profit and principal payments.

5.3 Islamic Deposit Insurance

Islamic banks in Malaysia established under the supervision of Bank Negara Malaysia (BNM), the central bank and operate under the advice of Shari'ah Advisory Council. All Islamic banking licenses issued by BNM are in deemed to obey with Malaysia Deposit Insurance Corporation (MIDC) Act 2005. The key objective of the establishment of MIDC is to ensure the stability of the Islamic financial system and to retain public confidence to the banks. The lesson of previous bank failure brings out the importance of risk management in banking and thus it should be seriously taken into account. The establishment of MIDC further strengthens customers' protection in Islamic deposits.

Islamic deposit insurance administered under MIDC must follow the rules in investing only in Shari'ah-compliance instruments and activities. As discuss earlier, the existence of deposit insurance may lead to moral hazards of banks by tolerate with excessive risk. However, the probability of moral hazards in Islamic banking should be very minimal as the pillar of Shari'ah law itself is to conduct ethical business with the main interest to protect customers apart from generating handsome return. Furthermore as evidence in Ng, et al (2010) the existence of deposits insurance in Malaysia demonstrate positive impacts in banking risk management.

Malaysia Islamic Deposits Insurance since its starts has prove its excellent rational towards Islamic banking and finance stability. Other countries that began to starts and strengthen their Islamic financial markets realised the importance of risk controls and believe many things could be learned from MIDC. For instance Nigeria Deposit Insurance Corporation (NDIC) entails the exposure on Islamic deposit insurance and Islamic banking in Malaysia for the preparation of Islamic banking operation in Nigeria (Ekundayo, 2010; Komolafe, 2010).

5.4 Regulatory Framework for Islamic Banks

Regulation is vital in banking industry as it promotes banking soundness and stability. The main agenda of regulation and supervision is to protect the right of every stakeholder in banking sector. As another part of banking business, Islamic banks may need its own

sets of regulation to fits in Islamic banking framework. The need is compulsory seeing that Islamic banks require tailor made regulation for their unique products. Apart from its product, it is crucial for Islamic banks to have proper regulatory framework to guarantee the true security instruments in accordance of Shari'ah principles (Ahmad & Luo, 2010). Other than that, supervisions are necessary in monitoring capital level of Islamic banks from any misconduct and excessive risks; in observing liquidity position to avoid withdrawal run; and in promoting disclosure and transparency in financial reporting.

As Islamic banks operate in parallel to conventional banks locally and internationally, the enactment of special law for Islamic banks may not be possible. Therefore the adaption of existing law and regulation to suit Islamic banking operation is practical. The collaboration of Islamic agency such as AAOIFI and Islamic Financial Standard Board (IFSB) with Basel II would be sensible in ensuring standardisation and at the same time to be recognised internationally (Hassan & Dicle, 2005). Similar to conventional banks, Islamic banks are required to comply with the Basel II of minimum 8 percent capital adequacy requirement.

Capital adequacy requirement provides an opportunity for Islamic banks to strengthen their risk management. Islamic banks should maintain higher capital adequacy to enhance due diligence and discipline in avoiding extreme risk taking in its operation. Brana and Lahet (2009) highlight the needs to properly structure capital requirement as the 1998 Basel capital requirement trigger the 1997 Asian financial crisis and create external common shock. Solvency ratio (BIS) illustrates bank's actual capital as a percentage of its risk-weighted assets. It consists of Tier 1, Tier 2 and Tier 3. Tier 1 represent the core capital consists of equity, reserve and retained earnings; Tier 2 contains preferred shares and debt certificates; and Tier 3 consists of short-term subordinated debts (Bikker & Bos, 2008). Table 2 represents the mean value of funds and equity as percentage of total capital for Malaysian banks. It shows Islamic banks hold higher proportion of equity than conventional banks although deposits and short-term funding is slightly higher than conventional ones. The ratio indicates Islamic banks' ability to withstand losses and signal lower risk exposure with better capital adequacy.

Table 2
Mean value of funds and equity in proportion of total liabilities and equity (%) for Malaysian banks

	TOTAL DEPOSITS & SHORT-TERM FUNDING	**TOTAL OTHER FUNDING**	**TOTAL OTHER (NON-INTEREST BEARING)**	**TOTAL EQUITY**	**PERIOD**
Islamic Banks	**80.50**	**1.30**	**2.65**	**15.53**	1995 - 2009
Commercial Banks	**79.99**	**5.03**	**3.79**	**11.18**	1993 - 2009

Basel II also grants financial stability through the requirement of banks disclosure and transparency. As suggested in the third pillar of Basel II, six categories of financial disclosure and transparency are the financial performance; financial position, risk

management strategies and practices; risk exposure; accounting policies; and basic business, management and corporate government information. Transparency and disclosure provides benefits to customers, banks and the economy. Acceptable disclosures boost up customers and investor confidence through bank accountability. This is guide to discipline in banking practice and thus promote financial market and economic stability.

6. Conclusion

Banking sector and financial crisis have very close relationship in one another. Islamic banks are not excluded with the banking fragility toward systemic risks in banking industry. Thus, the effort in finding resolution should come in advance before the crisis hits the market. Islamic banks however, are presume to be more stable during the banking and financial crisis due to their nature in holding to Shari'ah principles.

Nevertheless, Islamic banks are in needs to be equipped with tools and instrument that can improve their performance and mitigate the adverse effect of financial crisis. Among issues should be taken into consideration are the risk management of liquidity, capital and operation. Islamic banks normally maintain higher liquidity level due to inflexibility in short-term fund raising through money market. The introduction of Islamic liquidity instruments should assist Islamic banks in utilizing the mechanism of fund transfer in Islamic money market. Other than that, Islamic banks need to have sufficient capital requirement as this is to ensure bank solvency and low level of risk.

Appropriate standards and regulation are necessitates in promoting Islamic banking soundness and financial prudent. Currently AAOIFI and IFSB actively monitor and offer guidelines for Islamic banking operation and the collaboration of these bodies with co-existence authority would assist the standardisation and internationalisation of Islamic banks globally. While Islamic banking growth is tremendous, the perseverance of Islamic banks to survive during the financial crisis is importance considering their unique characteristics that distinguish them with the conventional counterparts.

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TOPIC: A Revisit to Several Issues in Zakat: A Case Study of Zakat Collection Centre – Majlis Agama Islam Wilayah Persekutuan (MAIWP)

ABSTRACT

Zakat is one of the pillars of Islam and a major contributor to the development of Muslim economy. In Malaysia, zakat institution is under the State Islamic Religious Council which is governed by Islamic Religious Department in government department. Previously, state religious council are responsible to manage zakat collection and distribution office. However, starting 1991 there are number of zakat institution was corporatized in order to improve the performance of zakat collection and distribution. One of them is Zakat Collection Centre – Federal Territory Islamic Religious Council (MAIWP). This council was corporatized as the centre with subsidiary – Harta Suci Private Limited or it is called as Pusat Pungutan Zakat (PPZ). The main function of PPZ is to collect zakat throughout the federal territories of Kuala Lumpur, Putrajaya and Labuan, while the distribution of zakat to asnaf still maintained by Baitulmal Division. The centre of this research is focusing on the Zakat Collection Centre (PPZ) operation (mainly at Majlis Islam Wilayah Persekutuan). In this research, the main focus is to observe how this centre operates, and its performance after MAIWP has corporatized the organisation and also to study the issues arise in terms of collection and distribution of zakat. The process of observation is done by identifying the performance in 4 perspectives; consumer, financial, internal business process and learning and growth. Meanwhile, the external factor which will influence the performance of collection will be identified. The proposed method of analysis in this research is SLEPT analysis (for general environment), Balanced Scorecard analysis, SWOT analysis and TOWS Matrix analysis. By using this method of analysis,

the performance and effectiveness of the organisation will be clearly discovered and some alternative solution will be recommended in the final stage of the research.

Keywords;

Zakat,collection and distribution of zakat,elimination of poverty,balance score card,TOWS analysis

Introduction

Zakat institution in this country is listed under the jurisdiction of the respective states. Even though Islam is the official religion in Malaysia, Federal Government does not have the fullest authority in religious affairs. Every state has its own religious Administration Enactment for the Islam matters including administering of zakat affairs. Islamic Religious Department, in the state government provide administrative services and implement the decision of the Council which is responsible as a policymaker and supervisory body headed by the Sultan or Ruler of each state.

Zakat management office is under the respective Islamic Religious Council of each state known as various names such as Zakat and Baitulmal Office, Zakat Committee, Zakat Unit or Zakat Department. In Zakat Collection office, there are zakat officers or amil who are appointed to collect the zakat.

In this case study, before 1991, Zakat Collection Centre was managed by Federal Territory Islamic Religious Council (MAIWP). In that period, the collection and distribution of zakat has been conducted by one organisation and it was similar with other states.

At that particular time, the performance of collection in zakat organisation was also poor. This situation became worse due to inefficiency of the zakat organisation itself in managing the zakat. As mentioned by Sanep Ahmad, Hairunnizam Wahid & Adnan Mohamad, one of the factors why Muslim society pay the zakat to informal zakat organisation is because the non- effectiveness of zakat management, corruption in

organisation, inaccurate distribution etc. It also will affect the good will of organisation among public. This situation automatically makes Muslim society lost their trust on the credibility of the organisation as the zakat collector and distributor. In some cases, there are people who prefer to pay zakat directly to asnaf rather than zakat collection centre. As a result, it affects the performance of collection within the states and the distribution of the zakat also was imbalanced among the asnaf. In order to prevent and reduce this problem, in 1991, Federal Territory Islamic Religious Council (MAIWP) has taken initiative to corporatize the Zakat Collection Centre. The zakat management has divided by 2 divisions, which is Zakat Collection Centre for collection and Baitulmal Division for distribution. By this corporatization, there are some improvements in the statistic of zakat collection.

Background of Study

Zakat means grow (in goodness) or 'increase',' purifying' or 'making pure'. According Yusuf Qardawi[1]; Zakah means to grow and to increase. When it is said about a person, it means to improve, to become better. Consequently, zakah is blessing, growth, cleanliness, and betterment.[2]

In Malaysia, Zakat institution is organized under State Islamic Religious Council. Based on Rawi Nordin[3] and Siti Mashitoh Mahmood[4] research, the zakat law in each state is legislating by a state law council and caused no uniformity of the zakat collection in every area. Therefore, each state has their own zakat law (contains in enactment of states Islamic Management). It may cause non-concordance in zakat matters.

[1] *Hukum Zakat*, 10nd edition, Linter AntarNusa
[2] *Mu'jam al Wasit*, Vol.. 1 p. 398
[3] *Enactment and Fatwa of Zakat in Malaysia*. Zakat Research Institute Malaysia (IKAZ), UITM
[4] *Sistem Perundangan Zakat di Malaysia: Antara Realiti dan Harapan.* Akademi Pengajian Islam, Universiti Malaya, KL.

In term of organization of Zakat institution, there is a formal institution which is responsible to collect the zakat payment. This institution should effectively play their role. According Syawal Kassim[5], Zakat must be governed in the most proper manner according to the Syariah law, and the State has the full responsibility and accountability to implement the law of zakat within the jurisdiction. On the other hand, Ariffin Md Salleh[6] said, amil is important person in Zakat institution, that's because they are representative for institution to collect the zakat payment. To be a good amil, they must building workforce excellence across cultures and job roles, should know how to valuing people, implement their responsibility with transparency, and always improve their performance by consistence of strength training. Musa Ahmed[7], also said zakat institution should implement professionalism in management. Professionalism from his view is performing tasks as best as possible to achieve mission and objective of the organization. Government also take some action to create an excellence zakat organisation by institutionalize zakat as a social institution by establishment of Zakat Collection and Distribution unit, and appointment of zakat officials at every states to implement zakat rules and regulation (Shawal Kaslam[8]). During 1991, government has corporatized Zakat Collection Centre Wilayah Persekutan Kuala Lumpur and followed by other states (Selangor, Penang, Pahang, Negeri Sembilan, and Melaka). Meanwhile, the effectiveness of management in zakat institution also depend on the span of control in the organization. There are two approaches in managing zakah; centralised and decentralised approach which are discussed in Ataina Hudayati & Achmad Tohirin[9] research; 3 different countries; Malaysia, Pakistan and Indonesia, which is

[5] *Corporate governance in zakat institution.* Zakat Research Institute Malaysia (IKAZ), UITM.
[6] *Theory and Concepts of Excellence for Amil.* Zakat Research Institute Malaysia (IKAZ), UITM
[7] *Excellence in Zakat Management.* Research Institute Malaysia (IKAZ), UITM
[8] *Governing Zakat as a Social Institution: The Malaysian Perspective.* Zakat Research Institute Malaysia (IKAZ), UITM
[9] *Management of Zakah: Centralized Vs Decentralized Approach.*7th International Conference – The Tawhidi Epistemology: Zakat and Waqf Economy, Bangi 2010.

Pakistan tends to use centralised approach, Indonesia uses decentralised approach, and Malaysia has provide interesting learning; centralised zakat institution at the state level, and might also viewed as decentralised at federal level. Nevertheless, the researchers prefer centralised approach, that's because, the coordination between national zakah institution and the fiscal policy maker can be implemented with more easily.

On the other hand, tax issues could affect the performance of collection in zakat institution. According to Mahmood Zuhdi Hj. Abd Majid[10], the cooperation between income tax department (LHDN) and Zakat institution has already established; provide deduction tax or rebate from the amount of zakat on income. He also suggested, government also should give this rebate to zakat on business payer. That's because, based on Abd Rahim[11] article, currently Islamic business entities such as Bank Islam Malaysia Berhad (BIMB) and Lembaga Urusan dan Tabung Haji (LUTH) must pay 2 types of payment which is corporate tax and zakah on business wealth. According to Ruziah Ghazali[12], in 2005 government has allowed the company who paid zakat (2.5% from aggregate income); they can get the discharge in company's allowable expenses. But, this incentive still couldn't reduce company financial burden in order to encourage them to pay the zakat. She also stated that, the company and individual prefer to pay the tax because of no penalty in this country can be imposed for those are averse to pay the zakat.

Even though there is a lot of initiative has been taken, the level of awareness in Muslim society is still in moderate level. From the research that has been done by Hairunnizam Wahid, Mohd Ali Mohd Noor & Sanep Ahmad. (2005)[13], the increasing of

[10] *Pemantapan Sistem Zakat dan Cukai ke arah Kemajuan Ekonomi Ummah. Akademi Pengajian Islam*, UM.

[11] *Pre-requisite for Effective Integration of Zakah into Mainstream Financial System in Malaysia.* Islamic Economic Studies Vol.14, No1&2, Aug. 2006 & Jan. 2007. IIUM.

[12] *Implikasi Zakat Terhadap Sistem Percukaian Negara.* Nordant Management Consultant's (M) Sdn. Bhd. KL.

[13] *Kesedaran Membayar Zakat: Apakah Faktor Penentunya.* Fakulti Ekonomi dan Peniagaan, UKM.

age, people who already married and also increasing the level of income is a factor of influences to raise awareness for Muslim to fulfil this obligation. From this result, they suggested that, the awareness program must be focused to younger generation who haven't got married, and have a lower income. In their other research[14] (Hairunnizam Wahid, Mohd Ali Mohd Noor & Sanep Ahmad); one of the methods to attract more Muslim to pay the zakat is through salary deduction scheme. So, zakat institution must more cooperate with employer in order to make the employee more flexible to pay their zakat. There is another factor also will influence the awareness of zakat payment. Azman Ab Rahman & Syed Mohd Najib Syed Omar[15] has viewed the other factors in their research which is about Tauhid Epistemology approach. In their article, they have explained how Tauhid Epistemology approach may raise awareness among Muslim community which is; first, zakat is religious obligation, through the zakat, the monetary responsibility and ibadah could be performed for the sake of society, second, the payment of zakah is an obligatory act under Syariah and related to the act of upholding aqidah, and third, the capability to pay zakat sincerely and wholeheartedly to Allah SWT is only a form of test to the people who has been granted with worldly wealth. Thus, Muslim community need to be explained in all these matters in order to encourage them to pay zakat.

On the other hand, there is a research which was conducted by Sanep Ahmad & Hairunnizam Wahid[16], to observe whether Muslim society in this country willing to share their wealth through the payment of zakat. From their study, the Muslim society has given

[14] *Kesedaran Membayar Zakat Pendapatan di Malaysia*. Kumpulan kajian ekonomi & kewangan Islam, Fakulti Ekonomi & Perniagaan, UKM.

[15] *Tauhid epistemology in increasing the number of zakat of wealth payers and its contribution toward the development of Malaysia economy.* 7th International Conference – The Tawhidi Epistemology: Zakat and Waqf Economy, Bangi 2010.

[16] *Kesediaan Berkongsi Kekayaan dan Kebahagiaan : Kajian Kes Bayaran Zakat bagi Harta yang Diikhtilaf.* Persidangan Kebangsaan Ke-2 PPSPP 5-6 September 2005.

positive response to the payment of zakat for income, agriculture, livestock, and mineral. They also recommended that zakat institution should increase the understanding of Muslim society through campaign, talk and others. The factors to encourage payment of zakat do not depend on their demographic condition or Tauhid Epistemology only, but the level of motivation also can influence the individual decision in zakat contribution. Based on Muhammad Muda, Ainulashikin Marzuki & Amir Shaharuddin. (2006)[17] research, from the response by the respondent, it shows that the factor of motivation which most influenced is altruism and personal reward is not an important contribution in this factor. They also conclude that, individuals pay zakat not only because of religious factor, such as level of iman and belief but also because of satisfaction received performing the activity. Furthermore, the marketing in zakat institution also plays an important part in order to attract zakat payer to contribute the zakat. From Hj. Mohd Rais Hj Alias[18] article; marketing is an important element that can ensure whether a product or its service is successful, or fail if the marketing is ineffective. One factor that needs to be highlighted is the maintenance of client relationship and satisfaction, particularly in regards to the zakat payers.

In surah al-Taubah verse 60, Allah SWT explained regarding the type of asnaf who have right to receive the zakat;

"Alms are for the poor and the needy, and those employed to administer the (funds); for those whose hearts have been (recently) reconciled (to Truth); for those in bondage and in debt; in the cause of Allah, and for the wayfarer: (thus is it) ordained by Allah, and Allah is full of knowledge and wisdom."

[17] *Factors Influencing Individual Participation in Zakat Contribution: Exploratory Investigation*. Islamic Banking and Finance Seminar, Kuala Lumpur.
[18] *The marketing of zakat: PPZ Federal Territory's experience.* Majlis Agama Islam Wilayah Persekutuan.

This verse, has mentioned 8 of types of asnaf. The person in this group who is responsible to find the asnaf is amil. They must analyse and make sure this people are truly asnaf. However, based on Hairunnizam Wahid, Sanep Ahmad & Radiah Abd Kadir[19], majority of Muslim respondents are not satisfied with the distribution of zakat and there a lot of surplus of zakat collection which failed to allocate to the asnaf. From their observation, this problem is resulted from the ineffectiveness of the distribution system and amil also has face difficulty to recognize the asnaf especially for al-riqab, al-gharimin, and ibn- sabil. So, they suggest the collection and distribution of zakat should implement by zakat institution in a several of level which involved a rural or urban area, and state which based on the Muslim area. For the same problem also, Hairunizam Wahid & Radiah Abd Kader[20] recommend that, to localize zakat institution in every area. The advantage is that the local government could easily distribute the goods and service to the local residents especially asnaf which has been recognised by them.

In other context, the distribution of zakat must be efficient to the asnaf and meet the Maqasid- Al Syariah perspective. According Rosbi Abd Rahman & Sanep Ahmad[21], the contribution of zakat must equivalent with Maqasid – Al Syariah which is maqasid dharuriyat, ad-din, al-nafs, al-aql, al-nasl and al-mal. Then, they try to match with Maslow Hierarchy which has 5 types of need for every human life. Besides that, Patmawati Hj Ibrahim[22] also studied about the effectiveness of the contribution of zakat in order to improve the ummah economic. From her research, she found distribution of zakah is

[19] *Pengagihan Zakat oleh Institusi Zakat kepada Lapan asnaf: Kajian di Malaysia*. Seminar Kebangsaan Ekonomi Islam 2009.

[20] *Localization of Malaysian Zakat Distribution: Perceptions of Amil and Zakat Recipients*.7th International Conference – The Tawhidi Epistemology: Zakat and Waqf Economy, Bangi 2010.

[21] *Pengukuran Keberkesanan Agihan Zakat: Perspektif Maqasid Al-Syariah*. 7th International Conference – The Tawhidi Epistemology: Zakat and Waqf Economy, Bangi 2010.

[22] *Pembangunan Ekonomi Melalui Agihan Zakat : Tinjauan Empirikal*. Shariah Journal, Vol. 16, No. 2 (2008) 223-244.

capable to reduce imbalance of income distribution among asnaf; al-fuqara, al-masakin. She also recommend the distribution of zakat to asnaf should based with 'kifayah limit' as income poverty line and also taking into account about the location of asnaf whether from rural or urban area. The amount of assistance must up or more than poverty line according to kifayah limit.

As a conclusion, we can see there are many issues regarding zakat institution. However, there is no study about the effectiveness of Zakat Collection Centre, in term of operation and also the performance after MAIWP corporatized the organisation. The study will identify the performance in 4 perspective; consumer, financial, internal business process and learning growth, which haven't touched by other researcher. All this perspective is considered as the important factors which can influence the effectiveness of the Zakat Collection Centre in the performance of zakat collection. Meanwhile, the external factor also will be taken into account, to observe how this element affects the performance. Finally, by using Balanced Scorecard Analysis, SLEPT analysis, SWOT, and also Tows Matrix, the performance and effectiveness of institution will be clearly discovered. Finally, after the observation, we can recommend some alternative solution which can help zakat institution to improve or maintain their performance.

Methodology

In this study the researcher intends to verify the strategy of Zakat Collection Centre in order to see the performance of zakat collection after the strategy has been implemented and the factor that can influence the performance of zakat collection.

The method of analysis which used in this study is SLEPT analysis for external environment. While for internal environment, the method is balanced scorecard and

SWOT analysis. Finally, all the information from analysis will proceed to TOWS Matrix analysis in order to formulate the appropriate strategy and solution for the case study.

The structure of SLEPT is categorised in various factor such as a) Social factor, which discussing about population, aging population, level of education and workforce, level of unemployment, b) Legal factor, involved with zakat law and the enforcement of zakat law to Muslim society and company, c) Economic factor regarding economic growth rate, Consumer Price Index (CPI) and New Economic Model (MEB), d) Politic factor which related current political structure and e) Technology factor discover about technology (ICT) facility and the trend of technology usage

Meanwhile in Balanced Scorecard analysis, it is used to observe how the performance in 4 perspective; customer perspective, financial perspective, internal business process perspective and learning and growth perspective which are related with effectiveness of the Zakat Collection Centre to improve the zakat collection. Nevertheless, this analysis will focus to the specific area which involved with performance of collection.

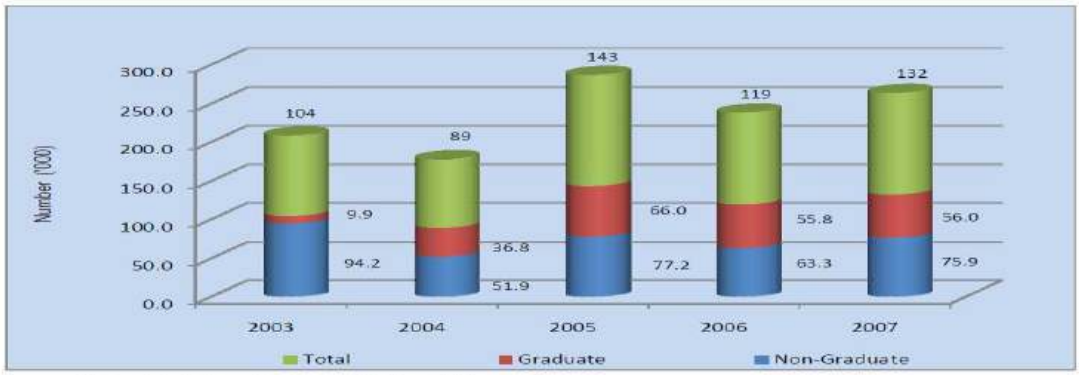
Next in SWOT analysis, the internal environment will list the strengths and weaknesses which are controllable factors in organisation. Whereas external environment will classify the factor in opportunities and threats which are uncontrollable factors for organisation. However, in the same time some of strengths items also can be consider as opportunities for improving the organisation performance.

Finally TOWS Matrix analysis will conduct in order to formulate the appropriate strategies and alternative in order to solve the problem or to improve the performance.

DATA ANALYSIS AND FINDINGS

SLEPT Analysis

Social factor - The population for the country is 28,306,7000 people which is 31.9% is below than 15 years old, 63.6% is from 15-64 years old and 4.5% is people who are 65 years old and above. For level of education,



Source: Electronics Labour Exchange, Ministry of Human Resources

Number of graduate and non-graduate registrants, Malaysia, 2003-2007

In 2007, from the total of 132 thousands of registrants, there are 75.9 thousand (57.5%) were non graduate, while 56.0 thousand (42.4%) were graduate registrants. In workforce and level of unemployment,

Main Indicators	Q1/2008	Q4/2008	Q1/2009
Labour force ('000)	10,923.3	11,170.8	11,208.5
Employed ('000)	10,525.3	10,819.8	10,757.8
Unemployed ('000)	398.0	351.0	450.7
Outside labour force ('000)	6,608.1	6,625.6	6,703.2
Labour force participation rates, LFPR (%)	62.3	62.8	62.6
Unemployment rate (%)	3.6	3.1	4.0

Principal statistics of labour force, Malaysia

The involvement of labour force was increased from quarter 4 in 2008 which is 11,170.8 thousand to 11,208.5 thousand in first quarter 2009. However, the total of employed labour was decreased to 10,757.8 thousand in quarter 1, 2009 if compared with pervious year.

Meanwhile, the unemployment rate rose by 4.0% in first quarter 2009 while during quarter 4, 2008 the rate was only 3.1%. In other case, the involvement of three races in labour force;

Ethnic group	Q4/2008	Q1/2009
Total	100.0	100.0
Malaysian citizens	89.9	90.0
Bumiputera	57.1	57.9
Malay	46.3	47.1
Other Bumiputera	10.8	10.7
Chinese	24.9	24.3
Indians	7.1	7.0
Others	0.8	0.8
Non-Malaysian citizens	10.1	10.0

Percentage distribution of employed persons by ethnic group, Malaysia, Q4/2008 and Q1/2009.

57.9% of the total employed was Bumiputera followed by Chinese (24.3%) and Indians (7.0%). The involvement of workforce of the majority of employed persons was from secondary level. However, the percentage was increased in tertiary level from 21.5% in quarter 4 in 2008 to 23.2% in quarter 1, 2009.

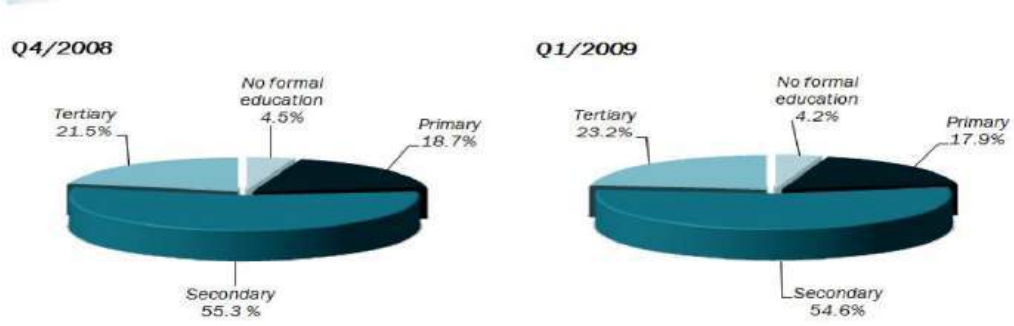
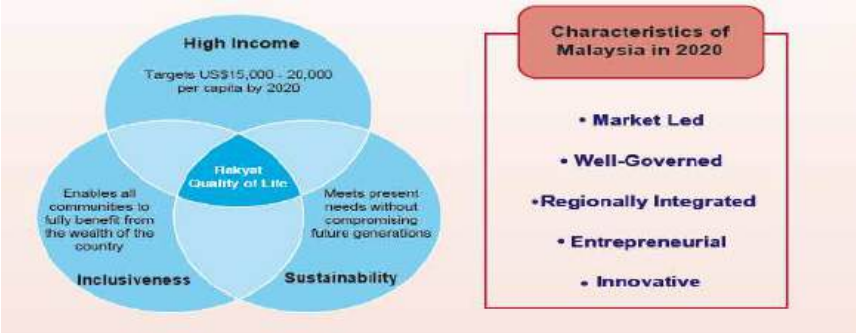


Figure 5: Percentage distribution of employed persons by educational attainment, Malaysia, Q4/2008 and Q1/2009.

b) **Legal factor** - the zakat law is listed in Act 559, Syariah Criminal Offences (Federal Territories) Act 1997 in i) section 16, section 33, and section 34. For the enforcement of zakat law to Muslim society and company, according Siti Mashitoh Mahmood, the enforcement of zakat law is not fully imposed in the whole country. Most of Zakat Centre

and council are more emphasized to the dakwah method in order to create the awareness among the Muslim society.

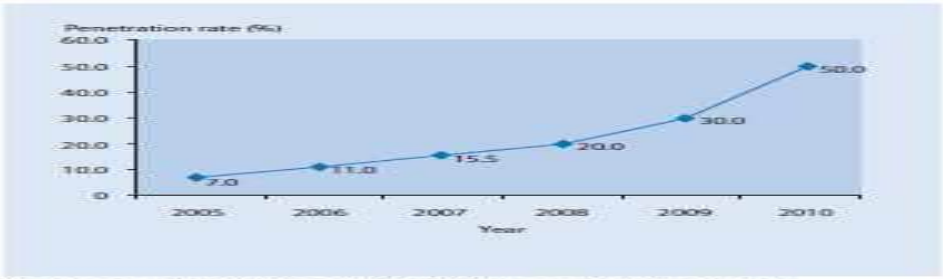
c) **Economic factor** - The economic growth rate in first quarter of 2010 is 10.9%. This growth are expanded robustly if compared with the fourth quarter in the last year 2009; 4.4%. For Consumer Price Index (CPI) is increased by 1.4% to 113.3 from 111.7 for January-May 2010 in the same period last year. In New Economic Model (MEB), is the transformation of the economic model for economic movement for the country in the new revolution from the 'middle income trap' due to the slow of economic growth. The goals and characteristics of MEB will show as below:



d) **Politic factor** - The political structure in this country is constitutional monarchy – federal states. The head of state is Yang Di Pertuan Agong Tuanku Mizan Zainal Abidin, while the prime minister is Najib Tun Razak. In the National Legislative Bodies; there have 2 houses which is lower house; house of representative (dewan rakyat), and upper house; senate (dewan Negara). There are 3 major parties in this country; Barisan Nasional (BN), Parti Keadilan Rakyat (PKR), Democratic Action Party (DAP) and Parti Islam se-Malaysia (PAS).

e) **Technology factor** - Since eighth Malaysian Plan, government has provided several facilities for ICT infrastructure such as electronic government (e-government), National

Multipurpose Card (my-card), smart school, telehealth, E-business, R&D clusters and technoprenuer development. For the trend of technology



Source: Malaysian ICT 2007 and Malaysian Communications and Multimedia Commission

usage is shown in the increase usage of broadband and the performance will sustain until 2010 due to widest usage of internet and upgraded of ICT facility by government.

Balanced Scorecard Analysis

Customer Perspective

i. <u>The social activity which has been done to create awareness to the community.</u>

The activity which has been done were; adoption program to Orphan and Poor Hostel, created a "First-aid Squad" to help the victim from disaster such as flood, landslide and fire, distribution of free food for al-fuqara and al-masakin group for every Wednesday and Ramadhan evening in the whole year, assisted the dialysis centre and sponsored the patient who are in need of the medical fund , launched a program with community such as collaborative events, sponsored free newspaper to a selected secondary and primary school in Federal Territory, and sponsored a motivation program to a selected school.

ii. <u>The Statistic of Zakat Payer</u>

Type of Zakat	**2008 No. of Payer**	**2007 No. of Payer**	**+/-%**
Zakat on Income	55,020	46,559	18.17%

Zakat on Business	1,169	1,062	10.8%
Zakat on Saving	9,978	9,708	2.78%
Zakat on Property	4,158	4,100	1.41%
Qadha Zakat	254	223	13.90%
Others	3,070	2,685	14.34%
Total	73,649	64,337	14.47%

From the data above, it is shown that the percentage of increase of zakat on income is higher (18.17%) than other types of zakat. The lowest of percentage of growing is in zakat on property (1.41%).

iii. The statistic of asnaf (receiver)

Types of Asnaf	2008 (RM)	2007 (RM)
Al – Fuqara	20,506,789.33	19,363,534.39
Al-Masakin	22,616,745.81	20,675,005.82
Amil	31,643,535.29	16,249,998.20
Muallaf	5,652,879.45	3,796,131.37
Al-Riqab	0.00	0.00
Al-Gharimin	1,652,908.30	1,395,073.19
Ibnu Sabil	399,643.90	382,981.80
Fisabilillah	85,035,345.54	56,361,593.42
Total	167,507,847.62	121,224,318.69

It was found that, the majority of fund for asnaf are mostly contributed to fisabilillah group. This group consists of people who are pursuing something for the way to Allah and Islam. One of the types in this group is student. Some of them need a fund to further their study. While for the other group, PPZ is focused to assist al-fuqara and al-masakin.

iv. Any recognition for quality service

PPZ-MAIWP has obtained the recognition of MS ISO 9001:2000 until 24 January 2011 and meanwhile, SIRIM QAS International Sdn Bhd has found the record of PPZ-MAIWP is free from Non-Compliance Report (NCR).

Financial Perspective

i. The revenue which collected in different method of payment

	Collection		
Method	**2008 (RM)**	**2007 (RM)**	**+/-%**
Salary Deduction Scheme	115,429,577.27	91,009,773.02	26.83%
PPZ-MAIWP Counter	81,057,035.38	69,818,950.23	16.10%
Postal	3,190,877.29	4,200,747.02	-24.04%
Bank Counter	5,072,702.82	3,655,645.88	38.76%
Post Office	506,355.38	337,363.75	50.09%
Credit Card	12,710.00	11,610.00	9.47%
Cheque Deposit Machine	83,799.08	183,058.75	-54.22%
Mobile Money	362.57	85.00	326.55%
Collection Agent	879,308.72	-	-
Kiosk	28,438.77	-	-
Total	206,261,147.28	169,217,233.65	21.89%

Majority of the revenue comes from salary deduction scheme. It is shown that, PPZ-MAIWP has done their work efficiently in this method, because they are able to attract more people to pay zakat through this scheme.

ii. The statistics of zakat collection

The table below has shown the collection of revenue in different of type of zakat. Most of the revenue of zakat is generated from zakat on income. Nevertheless, zakat on property and saving are still low.

Type of Zakat	**2008 (RM)**	**2007 (RM)**	**+/-%**
Zakat on Income	137.571,807.25	109,800,306.20	25.29%
Zakat on Business	28,702,947.32	23,326,234.39	23.05%
Zakat on Saving	15,063,180.16	13,670,863.27	10.18%
Zakat on Property	23,680,791.26	21,500,920.34	10.14%
Qadha Zakat	545,092.67	281,230.27	93.82%
Others	697,328.62	637,679.18	9.35%

Total	206,261,147.28	169,217,233.65	21.89%

iii. The percentage of distribution of zakat fund which has been distributed to asnaf

	2008 (RM)	**2007 (RM)**
Collection	206,261,147.28	169,217,233.65
Distribution	167,507,847.62	121,224,318.69
Balance of Collection	38,753,299.6	47,992,915.0
% of distribution	81.21%	71.64%

This table showed that the percentage of distribution of zakat fund to asnaf has improved.

iv. The total expenditure for corporate social responsibility (CSR) by PPZ-MAIWP

Activity	**RM**
Orphan and Poor Hostel	63,714.78
First-aid Squad	25,200.00
Distribution of free food	72,000.00
Dialysis Centre	586,910.00
Community Program	20,000.00
Motivational Program	37,420.00
Others	637,505.38
Total	**1,442,750.16**

Even though the responsibility of distribution of Zakat is done by Baitulmal division, PPZ-MAIWP is still making the CSR activity to the Muslim society. The total of distribution is approximately RM1,442,750.16.

Internal Business Process Perspective

i. The trend of payer in different method of payment

	No. of Payers		
Method	**2008 (RM)**	**2007 (RM)**	**+/-%**
Salary Deduction Scheme	41,554	34,137	21.73%

PPZ-MAIWP Counter	22,508	21,413	5.11%
Postal	889	1,122	-20.77%
Bank Counter	5,321	4,264	24.79%
Post Office	615	531	15.82%
Credit Card	11	13	-15.38%
Cheque Deposit Machine	32	66	-51.52%
Mobile Money	3	6	-50
Collection Agent	43	-	-
Kiosk	72	-	-
Total	71,048	61,552	15.24%

Most of zakat payers prefer to pay their zakat through salary deduction scheme and bank counter.

The trend of zakat payer in e-zakat system

Based on the PPZ annual report, the method of counter bank includes other method of payment such as internet banking, ATM machine and phone banking. Consequently, the trend of usage of e-system as shown from the previous table is increased and the performance is encouraging (24.79%).

ii. Awareness Program

During 2008, Zakat Collection Centre (PPZ) has organized several activities such as; Festival Zakat in National level and federal territory, produced a mini album; "Zakat Menjunjung Amanah", in collaboration with Malaysia Administrative Modernisation and Management Planning Unit (**MAMPU**) to implement the online payment facility using "MyBayar", cooperated with Maybank Bhd through Maybank2e service in order to facilitate employer with system for salary deduction scheme, introducing the new payment facility; kiosk at mosque association with Majumaz Aktif Sdn. Bhd, internet banking by Bank Rakyat and kiosk at Petronas petrol pump station in Kuala Lumpur, provided the new service in online system such as zakat culcultor, advertisement of zakat, nisab and

zakat online. Meanwhile, this organisation is also involved in other medium of advertisement such as through article published in the newspaper (Harian Metro), awareness program in radio station (Labuan FM, IKIM, KL FM), and also through TV program (Rancangan Selamat Pagi Malaysia-RTM 1, Rancangan Tazkirah Ramadhan-TV3).

Learning and Growth Perspective

i. The training program for staff in order to improve the efficiency of collection activity

There are several training program which has been conducted by PPZ-MAIWP in order to improve their performance. The training programs are; Presentation of I and II of Procedure of Internal Audit, First Aid talk by Red Crescent club, briefing of Hartasuci Sdn Bhd Management to MAIWP CEO, Training of Document Management System usage (DMS), Presentation of Head Unit Program for 2009 Strategic Plan, Base Camp Self-Development Courses at Hulu Langat, Selangor, and Internal Workshop Management of Zakat on Business.

ii. The performance of technology development in organisation

The main system which is used in PPZ-MAIWP is Zakat Integration System (SIZA). Based on annual report 2008, the development progress of SIZA system is achieved 90% before launching.

In the meantime, this organisation has started using Document Management System (DR-DOK) to renovate the physical file practice.

For the internet usage, they also upgraded the online networking from 100kbps to 1Gbps which using AMP Cat 6.

SWOT analysis

Strengths

- PPZ-MAIWP has good reputation among the public via the social activity which actively done in the whole year. This feedback of good reputation can be seen from the performance of statistics of zakat payer in every year.
- They have achieved recognition of quality service; MS ISO 9001:2000 until 24 January 2011 and cleaned record from Non-Compliance Report (NCR).
- There are several of types of payment facilities which can give convenience for Muslim to pay the zakat.
- Able to attract more zakat payer to pay the zakat through Salary Deduction Scheme and Bank Counter
- One of organisation which active with CSR activity
- Energetic in advertisement program and capable to produce mini album in order to create awareness

- Sustain to improve the development of working system by existing Zakat Integration System (SIZA) and Document Management System (DR-DOK). In the meantime, they also upgraded the online networking from 100kbps to 1Gbps which using AMP Cat 6.

Weaknesses

- The performance of collection of zakat on business, savings, and property is not really good if compared with other types of zakat.

- The statistics also showed the payment facilities like postal, credit card and cheque deposit machine is less preferable from the payer. It could be the service has provided is not up to payer expectation.

- The awareness program for zakat on business, saving, and property is quite less if compared with zakat on income. Most people interested to pay zakat on income because of deduction tax or rebate from the payment of zakat.

- The advertisement is not fully encouraging; don't have the advertisement in medium such on TV in order to inform all the Muslim about the facility which have been provided by this organisation.

- PPZ-MAIWP prefer to implement dakwah method rather than law enforcement. Therefore, people will take this responsibility as a simple thing.

Opportunities

- Most of employed labour is Malay which equivalent with the total of population of the race. Consequently, the PPZ-MAIWP can generate more zakat collection.

- Increasing labours which are from tertiary level. So, more people are eligible to pay the zakat.

- Malaysia has showed economic growth and launched new economic model. Every citizen will get the benefit from this transformation. So, it will effect zakat collection.

- Politic in this country also is considered as a stable and systematic.

- Government also has provided a lot of ICT facility, and the penetration of ICT usage is showed encouraging. So, this organisation can promote more about e-zakat to the society.

Threats

- The employed labour was decreased and the unemployment rate also increased

- Enforcement of zakat law is not fully standardized in the whole country – affect the operation of zakat management

- Consumer Price Index (CPI) is increased, so people will fill burden to pay another expenses-zakat

- With 3 different politic parties also could interfere the zakat management system.

TOWS Matrix analysis

TOWS Matrix Analysis		
	External Opportunities (O)	External Threats (T)
Internal Strengths (S)	**SO** *"Maxi-Maxi" Strategy* Strategies that use strengths to maximise	**ST** *"Maxi-Mini" Strategy* Strategies that use strengths to minimise

	opportunities.	threats.
Internal Weaknesses (W)	**WO** *"Mini-Maxi" Strategy* Strategies that minimise weaknesses by taking advantage of opportunities.	**WT** *"Mini-Mini" Strategy* Strategies that minimise weaknesses and avoid threats

Maxi-Maxi strategy

Maximise Strengths	Maximise opportunities	Strategy
• Good reputation • Quality service recognition • Excellence in Salary Deduction Scheme and Bank Counter • Several types of payment facilities • Active doing CSR • Active in awareness program • Working system – SIZA, DR-DOK, 1Gps – Amp cat 6	• Most of Bumiputera employed • Increased the group in tertiary level • Good economic growth and launched New Economic Model • Politic stable • Good facility in ICT, and ICT usage is increased	✓ Sustain and maximise the strengths which are implemented in the organisation, in order to generate more zakat collection by taking the advantage from opportunities which are occurred outside of the organisation.

Maxi-Mini strategy

Maximise Strengths	Minimise threats	Strategies
• Good reputation • Quality service recognition • Excellence in Salary Deduction Scheme and Bank Counter • Several types of payment facilities • Active doing CSR • Active in awareness	• Decreased of employed labour • Increased of unemployment rate • Not standardised of law enforcement • Increased of CPI\ • 3 different parties politic – interfere zakat management	✓ Sustain the good reputation, and provide a good service in several payment facilities in order to attract more payer although labour force percentage is not in good performance ✓ Always active in

program • Working system – SIZA, DR-DOK, 1Gps – Amp cat		awareness program, in order to get cooperation from other zakat centre to standardised the law enforcement and also to avoid from the interfering of politic parties in organisation.

Mini-Maxi Strategy

Minimise Weakness	Maximise Opportunities	Strategies
• Collection of zakat on business, saving, and property is not very good • Service for postal, credit card and cheque deposit machine is poor • Less awareness program for zakat on business, saving and property • Advertising is not encouraging • Not strictly in law enforcement	• Most of Bumiputera employed • Increased the group in tertiary level • Good economic growth and launched New Economic Model • Politic stable • Good facility in ICT, and ICT usage is increased	✓ They should improving the collection for this type of zakat by attract more payer through awareness program ✓ Upgrade the service in postal, credit card and cheque deposit machine by taking advantage from ICT facilities that provided by government. ✓ Should strict in law enforcement, since zakat law has established

Mini-Mini Strategies

Minimise weaknesses	Avoid threats	Strategies
• Collection of zakat on business, saving, and property is not very good	• Decreased of employed labour • Increased of unemployment rate	✓ PPZ should develop or transforms the new ways to improving the zakat especially in

• Service for postal, credit card and cheque deposit machine is poor • Less awareness program for zakat on business, saving and property • Advertising is not encouraging • Not strictly in law enforcement	• Not standardised of law enforcement • Increased of CPI\ • 3 different parties politic – interfere zakat management	zakat on business. ✓ They also must be strictly imposing the law even though this country not standardised the zakat law, that's because it will avoid the zakat management from interfering by parties politic.

Suggestion and Recommendation

After the analysis, it showed that the performance PPZ-MAIWP in zakat collection has improved since its corporatisation. By the statistic of zakat collection, it has shown that the collection of zakat was still not in balance. People tend to pay zakat on income in order to get the benefit from tax deduction. The awareness of paying zakat in its true sense for Islam is still far from encouraging.

Another loophole of the system is the impelementation of law pertaining to zakat. As what we are aware zakat is one of the pillars of Islam same like other obligations like solat and fasting. If we noticed in Malaysia if is found that any muslim who does not fast or eat in public during Ramadhan will be arrested and fined. However it is not in the case of any muslims who do not pay zakat, no legal implication will be imposed on them. The failure to perform this ibadah is not only effect to the one person, but it will give more impact to the whole society. In this case, we have to bear in mind, the concept of wealth in Islam emphasize more on the sharing of wealth among the people.

CONCLUSION

As a conclusion, zakat is one of the important ibadah that all the Muslim must perform. If the Muslim failed to perform, it will affect the society especially to the asnaf group which is in need of zakat.

The organisation of the zakat also must play their role with accountability and integrity. Failure to implement this thing will influence the zakat collection performance. People will lose their trust with zakat organisation, and it will cause themr to pay the zakat directly to asnaf or do not pay at all.. If this happen, the distribution of zakat to asnaf will not balance. However, the effectiveness of zakat institution does not only depend on the internal factor but also by external factor such as economic condition, labour force condition, level of education and the development of ICT facility in this country.

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دراسة مقارنة بين معدلات الفائدة في البنوك التجارية الكويتية وعوائد بيت التمويل الكويتي

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كلية الدراسات التجارية– الكويت

ملخص

يقدم هذا البحث دراسة مقتضبة عن المعضلة ناجمة عن ضرورة اتساق مسيرة أسعار الفائدة على الدولار والدينار الكويتي للمحافظة على سياسة سعر الصرف من جهة، وتلبية احتياجات الاقتصاد الوطني بإبقاء أسعار الفائدة على القروض مرتفعة نسبياً من جهة ثانية لضبط نمو الطلب المحلي وآثاره التضخمية. ومن ثم محاولة الوصول إلى مقارنة بين معدلات الفائدة في البنوك التجارية الكويتية وعوائد بيت التمويل الكويتي. هذا وقد خلص البحث إلى عدم وجود فرق جوهري بين متوسط معدل الفائدة الفعلي عن متوسط معدل الفائدة النظري. كما أظهرت النتائج ومن خلال عمل مقارنة بين معدلات الفائدة في البنوك التجارية وعوائد بيت التمويل الكويتي أن متوسط معدلات الفائدة في البنوك التجارية 3.78% بينما يبلغ متوسط معدلات عوائد بيت التمويل الكويتي لنفس الفترة 5.264%، مما يعني أن معدلات الفائدة في البنوك التجارية تقل في حدها الأدنى عن معدلات عوائد بيت التمويل الكويتي بمقدار 1.484%.

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تقديم:

شهد الاقتصاد الكويتي تطوراً ملموساً في كافة القطاعات الاقتصادية، حيث واصل أداءه المتميز في عام 2006 متأثراً بأسعار النفط المرتفعة، وبالنمو الملحوظ في بعض القطاعات غير النفطية، حيث سجل الناتج المحلي الإجمالي نمواً بلغت نسبته 20.8% في عام 2006 مقارنة مع 37.9% لعام 2005، وانخفض النمو ليتراوح ما بين 6% إلى 10% خلال عام 2007ن ومع انخفاض أسعار النفط خلال النصف الثاني من عام 2008 ليصل إلى 45 دولار للبرميل فإن الاقتصاد الوطني الكويتي سوف يشهد تباطؤ ليصل معدل النمو إلى أقل من 5% في عام 2009.

إن قيام البنك المركزي الكويتي بتغيير سعر الفائدة مسترشداً بقرارات مجلس الاحتياطي الفيدرالي الأمريكي بخفض إضافي على سعر فائدته الرئيسية، ومن ثم تخفيض سعر فائدة الريبو دون المساس بسعر فائدة الخصم أو حتى بزيادة الأخير، مفسحاً المجال أمام اتساع الفجوة ما بين السعرين.

المشكلة موضوع البحث:

أن هناك معضلة ناجمة عن ضرورة اتساق مسيرة أسعار الفائدة على الدولار والدينار الكويتي للمحافظة على سياسة سعر الصرف من جهة، وتلبية احتياجات الاقتصاد الوطني بإبقاء أسعار الفائدة على القروض مرتفعة نسبياً من جهة ثانية لضبط نمو الطلب المحلي وآثاره التضخمية. ومن ثم محاولة الوصول إلى مقارنة بين معدلات الفائدة في البنوك التجارية الكويتية وعوائد بيت التمويل الكويتي.

الهدف من البحث: مقارنة معدلات الفائدة في البنوك التجارية الكويتية وعوائد بيت التمويل الكويتي.

تبويب البحث: لتحقيق هدف البحث فقد تم تبويبه إلى أربعة مباحث وهي:

المبحث الأول: دراسة الفجوة بين سعر الفائدة على الودائع وسعر فائدة القروض.

المبحث الثاني: استخدام الدالة الاحتمالية لتوزيع باريتو في التنبؤ بمعدلات الفائدة على الودائع.

المبحث الثالث: مقارنة بين معدلات الفائدة في البنوك التجارية وعوائد بيت التمويل الكويتي.

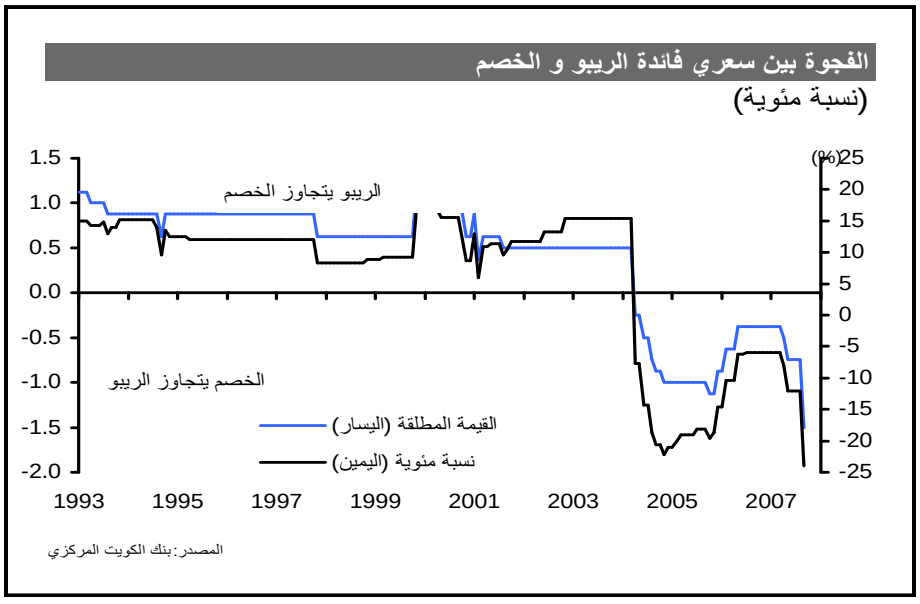
المبحث الأول

دراسة الفجوة بين سعر الفائدة على الودائع وسعر فائدة القروض

إن الفرق بين أسعار الفائدة على الودائع والقروض يعتبر محدداً رئيسيا لهامش الربح التي تتقاضاه البنوك على نشاطها الإقراض، وبالتالي فإن التباين بين أسعار الفائدة الرسمية يعمل على ترسيخ هامش الربح لدى البنوك في الوقت الذي يسعى فيه لبنك المركزي نحو النشاط المصرفي وتطبيق أفضل المعايير الدولية– ومما هو جدير بالذكر أن حجم التأثير على ربحية البنوك لا يتضح ببساطة من خلال الفرق بين أسعار الفائدة الرسمية، فمع أن بعض أسعار الفائدة التي تمنحها على ودائعها قد تراجعت بالفعل إلى أن على البنوك أن تتنافس وربما بدرجة أكبر لاستقطاب الودائع حتى يتسنى لها الإبقاء بنسبة القروض إلى الودائع.

وباستطاعة البنك المركزي استخدام بعض المعايير الكمية لضمان ضبط نمو القروض عند مستويات ملائمة، وفي حقيقة الأمر فإن البنك المركزي قد وظف بعض الإجراءات، حيث ألزم بدءا من شهر يوليو 2005 بعدم تجاوز الحد الأقصى إلى الودائع البالغة 80%، ويمكن القول أن هذا الإجراء يمكن أن يكون فعالاً بشكل كبير في تحقيق حالة من التوازن ما بين نمو القروض من جهة ومقدرة البنوك على استقطاب الودائع والاحتفاظ بها من جهة أخرى. إلا أن تسارع النمو في الودائع خلال السنوات العشر السابقة سمح بدوره بتسارع نمو القروض والذي وصل حتى يوليو سنة 2007 نمو 35%. أن تبدل أولويات السياسة النقدية للبنك المركزي واهتمامه بأن يكون سعر فائدة الريبو دائما أعلى من سعر الخصم يعكس رغبة البنك المركزي في تشجيع تدفق الأموال من الخارج وذلك عن طريق جعل الدينار عملة أكثر جاذبية كوعاء استثماري.

الفجوة بين سعري فائدة الريبو والخصم



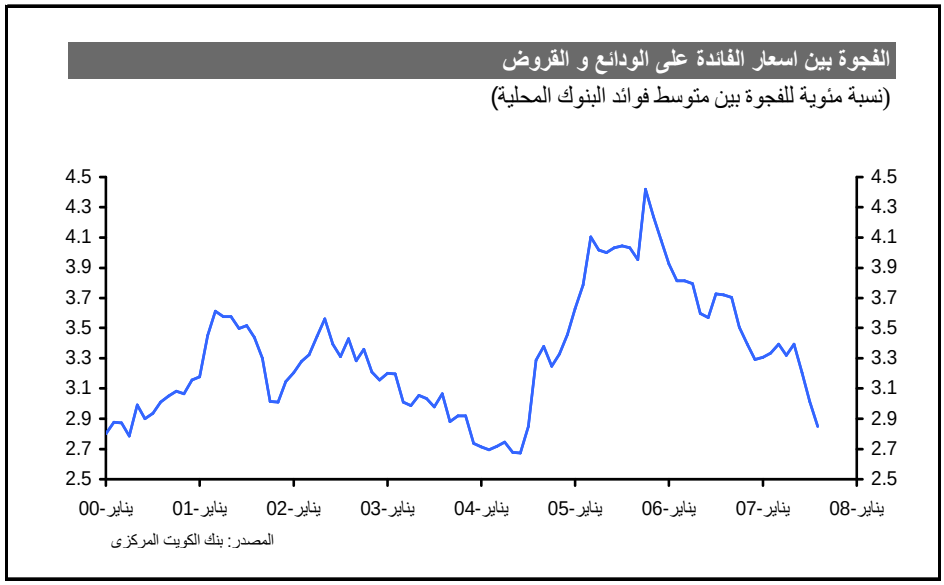
ولكن في ضوء تخفيضات أسعار الفائدة على الدولار والتي استوجبت قيام البنك المركزي بخفض أسعار الفائدة المحلية ما بين عامي 2001 و2004 ومن ثم سعر الفائدة على الدولار صعوداً، إلا أنه ومنذ شهر يوليو من عام 2006 بدأت توجهات السياسة النقدية بالتغير، فالمعطيات الاقتصادية التي تحكم مسار الاقتصادين الأمريكي والكويتي قد أخذت بالتباين بشكل حاد. وبالتالي، فالحاجة إلى استقطاب التدفقات المالية من الخارج والمحافظة عليها قد تبدلت بالحاجة إلى السيطرة على معدل نمو القروض، ولاحقا إلى التصدي للمضاربات على سعر صرف الدينار، وعليه، فقد تجاوز سعر فائدة الخصم لسعر الريبو منذ شهر أبريل من عام 2004 وذلك للمرة الأولي في تاريخ الكويت الحديث، وبدأت الفجوة ما بين سعري الفائدة بالاتساع. وكما هو الحال مع التغيير الذي حدث مؤخراً في سياسة سعر الصرف، فإن البنك المركزي قد عاد إلى إتباع سياسة مشابهة لسياسة كان قد استخدمها قبل بضع سنوات.

وللوقوف على مغزي هذه التطورات، تجدر الإشارة بداية إلى أن أهمية الفجوة الحالية في سعر الفائدة تعتمد بشكل جزئي على حجمها، فالتخفيضات في سعر الفائدة قد أدت إلى اتساع القيمة المطلقة لهذه الفجوة لتصل إلى 1.5 نقطة مئوية، متجاوزة بذلك لقيمتها القياسية البالغة 1.25% التي سجلتها في عام 2000 وعلى امتداد فترة قصيرة. وبما أن المستويات الحالية لأسعار الفائدة تقل عن مثيلاتها التي سادت قبل سنوات محدودة، فإن الفارق ما بين سعري الفائدة بالنسب المئوية يصبح أكبر وبحدود 25% في عام 2007 مقابل 15% لعام 2000.

ووفقا لهذه التطورات، يبرز التساؤل حول الجدوى الفعلية للتغير في أسعار الفائدة الرسمية. ومع الأخذ بعين الاعتبار أن ربحية البنوك قد تتأثر إيجابا أو سلبا جراء ذلك، فمن المؤكد أن سياسة البنك المركزي هذه قد زادت من درجة التعقيد في النشاط المصرفي، وخفضت من سلامة عملياته.

وفي الأجل القصير، فمن الظاهر أن أي انعكاسات على الاقتصاد الوطني والنظام المالي قد تنجم جراء اتساع الفجوة ما بين أسعار الفائدة على الودائع والقروض يمكن التعامل معها بسهولة. فقطاع الشركات يمتاز بربحيته ووفرة موجوداته السائلة، هذا إلى جانب أن خططه الاستثمارية مدفوعة بشكل كبير بارتفاع درجة التفاؤل والعوائد المستقبلية المحتملة. وفي الوقت ذاته، فإن التزايد الحاد في حجم المصروفات الحكومية يوفر الدعم للاقتصاد الكلي، مما سيحد من أي تراجع في النشاط الاقتصادي قد ينجم عن تقييد استهلاك المواطنين الذين أصبحت مديونيتهم مثار جدل سياسي في الآونة الأخيرة. وفي كل الأحوال، فإن تخفيض معدل النمو في القروض الاستهلاكية يبدو محبذاً.

الفرق بين سعري الفائدة على الودائع والقروض



ولكن إذا ما قام مجلس الاحتياط الفيدرالي الأمريكي بتخفيض إضافي على سعر فائدته الرئيسية كما هو محتمل بشكل كبير، فإن سياسة البنك المركزي ستكون أمام معضلة: إما تخفيض أسعار الفائدة على الودائع مرة ثانية مع السماح للفرق مع أسعار فائدة القروض بالاتساع، أو عدم تغيير أسعار الفائدة والمخاطرة بزيادة حدة المضاربات على الدينار لرفع سعر صرفه. وإذا ما تم اختيار البديل الأول، أن الفجوة ما بين أسعار الفائدة على الودائع والقروض ستبدأ بلفت الأنظار بشكل ملحوظ، وتؤدى إلى ممارسة الضغوط بضرورة إعادة التوازن لأسعار الفائدة المحلية. فلو كان توسيع فجوة أسعار الفائدة بشكل كبير أمراً عملياً. وقابلاً للاستمرار، فما الذي سيمنع البنك المركزي من زيادة سعر الخصم للمساعدة في احتواء الضغوط التضخمية التي تسود الاقتصاد الوطني؟ فهذه السياسة قد تكون عملية وناجحة في الأجل القصير، لكن زيادة الفجوة بين أسعار الفائدة المحلية قد تستنفذ فاعليتها في المستقبل القريب.

المبحث الثاني

استخدام الدالة الاحتمالية لتوزيع باريتو في التنبؤ بمعدلات الفائدة على الودائع

تستخدم[1] نظرية الاحتمالات والتوزيعات الاحتمالية ، وتحديد قسط الخطر من خلال دراسة معدل تكرار الحوادث، ووطأة الخسارة، ومن ثم حساب متوسط معدل تكرار الحوادث من ناحية، ومتوسط قيمة الخسارة من ناحية أخرى. وباستخدام التوزيعات الاحتمالية المنفصلة، والمتصلة يمكن الوصول إلى تقدير لقسط الخطر.

وإذا كان معدل الفائدة يخضع لتوزيع احتمالي متصل فإنه من خلال مطابقة كلا التوزيعين الفعلي، النظري. يمكن الحكم على مدى جودة التوفيق، وذلك بمقارنة الخطأ المعياري للفرق بين متوسط معدل الفائدة الفعلي، ومتوسط معدل الفائدة النظري.

وقد تبين للباحث أن متوسط معدل الفائدة السنوي وفقاً للتوزيع الفعلي 3.5% والتباين يساوي 0.08%

.

1. B. Hossack. "Introductory Statistics with application in general Insurance", Cambridge uni-1993, P.84-90.

وباستخدام الدالة الاحتمالية لتوزيع باريتو

The Pareto distribution – density Function:

$$f(x) = \frac{a}{b}\left[\frac{b}{x}\right]a+1 \qquad (x > b) \qquad (1)$$

And distribution Function:

$$f(x) = 1\left[\frac{b}{x}\right]a \qquad (x > b) \qquad (2)$$

وذلك بوسط حسابي، وتباين التوزيع كما يلي:

The mean and variance are given by:

$$mean = \left[\frac{ab}{a-1}\right] \qquad (3)$$

$$\text{var}\,iance = \frac{ab^2}{a-2}\left[\frac{ab}{a-1}\right]^2 \qquad (4)$$

وللحصول على معامل التوزيع (a,b) نساوي الوسط الحسابي لمعدلات الفائدة للتوزيع الفعلي بالوسط الحسابي لتوزيع باريتو، وأيضاً تباين التوزيع الفعلي بتباين التوزيع النظري ومن ثم نجد أن معالم توزيع باريتو كما يلي:

a = 6.15

b = 0.49

وباستخدام معامل توزيع باريتو يمكن إعداد جدول توزيع معدلات الفائدة النظري، ومن ثم يتم حساب متوسط معدل الفائدة النظري، وأيضاً التباين.

جدول التوزيع الاجتماعي

لمعدلات الفائدة وفقاً لدالة بارنتيو

فئات المعدل ع%	الاحتمال ح	الاحتمال التراكمي مجـ ح	مراكز الفئات ع%	(ع×ح)%
- 2	0.097	0.97	2.25	0.218
- 2.5	0.16	0.257	2.75	0.440

0.507	3.25	0.413	0.156	- 3
0.487	3.75	0.543	0.130	- 3.5
0.824	4.25	0.737	0.194	- 4
0.864	4.75	0.919	0.182	- 4.5
0.445	5.5	1	0.081	6 – 5
3.785			1	

من الجدول السابق يتضح أن متوسط معدل الفائدة وفقاً لدالة باريتو يساوي 3.785% وأن التباين يساوي 0.0017%

وبإجراء اختبار جودة التوفيق بين التوزيع الفعلي لمعدلات الفائدة والتوزيع النظري التقديري، وذلك باستخدام دلالة الفروق بين متوسطي التوزيعين عم طريق حساب الخطأ المعياري المتوسطة لكل توزيع في مقارنة الفرق بين المتوسطين بالخطأ المعياري لهذا الفرق، فإذا كان الفرق بين المتوسطين يساوي ثلاثة أمثال الخطأ المعياري أو أكثر اعتبرناه فرقاً جوهرياً ذي مغزى، وإذا وجدناه أقل من ذلك اعتبرناه ظاهرياً يخضع للصدفة.

وبحساب الخطأ المعياري لكل من التوزيع الفعلي، والنظري نجد أن

الخطأ المعياري للتوزيع الفعلي	الخطأ المعياري للتوزيع النظري
0.564	0.486

وبحساب الخطأ المعياري للفرق بين الوسطين نجد أنه يساوي 0.79 والفرق بين متوسطي معدل الفائدة الفعلي النظري يساوي 0.285

ويلاحظ أن هذا الفرق أقل من الخطأ المعياري للفرق بين الوسطين ومن ثم يمكن القول أنه لا يوجد فرق جوهري بين متوسط معدل الفائدة وفقاً للتوزيع الفعلي عن متوسط معدل الفائدة وفقاً لدالة باريتو الذي يساوي 3.785%.

المبحث الثالث

مقارنة بين معدلات الفائدة في البنوك التجارية وعوائد بيت التمويل الكويتي

البنوك الإسلامية في الكويت

تأسس بيت التمويل الكويتي "بيتك" عام 1977كأول بنك إسلامي في دولة الكويت. وقد تمكن "بيتك" وبخطوات واثقة من توسيع أعماله وانجازاته ليتبوأ مركز الصدارة في مجال العمل المصرفي الإسلامي ويصبح مؤسسة مالية قيادية ليس في الصناعة المصرفية الإسلامية فحسب بل أيضاً ضمن قطاع الصناعة المصرفية ككل. يقدم "بيتك" الكثير

من الخدمات والمنتجات التي تتوافق مع مبادئ الشريعة الإسلامية مثل الخدمات البنكية، العقارية، التداول المالي، المحافظ الاستثمارية، الخدمات التجارية والخدمات التمويلية المخصصة للشركات والأفراد.

لعل من أهم الجوانب الفارقة لنظام العمل المصرفي الإسلامي هي المشاركة في المخاطرة وإيجاد صيغة للتعامل المصرفي بعيداً عن الربا (الفوائد) الذي يحرمه الإسلام بكل أشكاله إذ يحظر جميع التعاملات والخدمات التمويلية التي تعتمد الفائدة. من ناحية أخرى تقوم المصارف الإسلامية على مبدأ مشاركة نسبة المخاطرة في الأدوات الاستثمارية لتفعيل دور التعاملات العادلة ضمن دائرة الحلال والتي بدورها تعمق التعاون وتقاسم المصلحة والمنفعة لكلا الطرفين. لقد تم تحديث وتطوير العديد من الخدمات والمنتجات المبتكرة التي ترتكز على تأمين كافة الاحتياجات التمويلية للعملاء دون التنازل عن الأسس والقواعد التي يقوم عليها الدين الإسلامي الحنيف كالمرابحة، المضاربة، المشاركة، الإجارة، بيع السلم، الاستصناع، الصكوك وغيرها من المنتجات المصرفية المتوافقة مع أحكام الشريعة.

لبيتك 48 فرعاً بالإضافة إلى عدد من الشركات التابعة والمملوكة داخل الكويت. يمتلك بيتك كذلك مجموعة من البنوك الإسلامية خارج الكويت ومنها: بيت التمويل الكويتي – ماليزيا بنك والمملوك بالكامل لبيتك والمسجل بدولة ماليزيا منذ عام 2006، بيت التمويل الكويتي-البحرين والمملوك بنسبة 93% لبيتك والمسجل بمملكة البحرين منذ عام 2002 والبنك الكويتي التركي والمملوك بنسبة62% لبيتك والمسجل بدولة تركيا منذ عام 1989.

قبل خمس سنوات لم يكن في الكويت إلا بنك إسلامي واحد منفرد بالسوق المحلي بينما يتنافس الآن خمسة بنوك إسلامية تتساوى في عددها مع البنوك التقليدية في الكويت. فبالإضافة إلى بيت التمويل الكويتي هناك بنك الكويت الدولي (البنك العقاري سابقاً)، بنك بوبيان، بنك وربة (تأسس عام 2010)، وأخيراً البنك الأهلي المتحد (بنك الكويت والشرق الأوسط وهو أحد البنوك التقليدية والتي تحول خلال عام 2010 إلى بنك إسلامي). يبلغ رأسمال هذه البنوك مجتمعة حوالي 649 مليون دينار كويتي تمثل حوالي 42 % من إجمالي رأسمال القطاع المصرفي الكويتي. مع نهاية الربع الثالث من عام 2009 كان بيت التمويل الوحيد الذي حقق أرباحاً من بين البنوك المحلية الإسلامية الثلاثة العاملة خلال تلك الفترة (بيت التمويل وبوبيان والكويت الدولي) بينما تكبد البنكان الآخران خسائر غير محققة نتيجة لاقتطاع نسبة كبيرة من الأرباح كمخصصات.

عوائد بيت التمويل الكويتي

جدول يوضح عوائد بيت التمويل الكويتي على الودائع
من عام 1998 إلى 2008

السنة	العائد على الودائع %
1998	7.2
1999	6.75

2000	6.625
2001	5.25
2002	4.5
2003	4.4
2004	4.8
2005	6.807
2006	8.458
2007	8.632
2008	4.3
المجموع	67.722

بحساب متوسط العائد السنوي على الودائع في بيت التمويل الكويتي خلال فترة الدراسة والبالغ 6.15% وبانحراف معياري قدره 1.5% خلال نفس الفترة. يقدر الحد الأدنى المتوقع لمتوسط عائد بيت التمويل الكويتي 5.264% بينما يقدر الحد الأعلى المتوقع لمتوسط عائد بيت التمويل الكويتي 7.036% وذلك بدرجة ثقة 95%.

مقارنة بين معدلات الفائدة في البنوك التجارية وعوائد بيتك

بعمل مقارنة بين معدلات الفائدة في البنوك التجارية وعوائد بيت التمويل الكويتي لفترة الدراسة يتبين لنا أن متوسط معدلات الفائدة في البنوك التجارية 3.78% بينما يبلغ متوسط معدلات عوائد بيت التمويل الكويتي لنفس الفترة 5.264%، مما يعني أن معدلات الفائدة في البنوك التجارية تقل في حدها الأدنى عن معدلات عوائد بيت التمويل بمقدار 1.484%.

النتائج والتوصيات

أولاً: النتائج:

من خلال دراسة تطور معدلات الفائدة في السوق المصرفي الكويتي خلال الفترة من 1997 (1998 بالنسبة لبيتك) إلى 2008 اتضح ما يلي:

1 - متوسط معدل الفائدة خلال فترة الدراسة يساوي 3.5%.

2 - أن التوزيع الاحتمالي النظري لمعدلات الفائدة يقترب من توزيع باريتو وان متوسط معدل الفائدة الفني وفقاً لهذا التوزيع يساوي 3.75%.

3 - لا يوجد فرق جوهري بين متوسط معدل الفائدة الفعلي عن متوسط معدل الفائدة النظري.

4 - أن الاحتمال التراكمي لوقوع معدل الفائدة ما بين (2% إلى 4%) يساوي .0.737

5 – أن الحد الأدنى لمتوسط العائد في بيت التمويل الكويتي 5.264%.

6 – أن الحد الأعلى لمتوسط العائد في بيت التمويل الكويتي 7.036%.

ثانياً: التوصيات:

1 – ضرورة استخدام تقدير متوسط معدلات الفائدة وفقاً لدالة باريتو عند حساب معدلات الفائدة على الودائع وأيضاً على أساس سعر الخصم.

2 – ضرورة إصدار تعليمات واضحة من بنك الكويت المركزي لشركات الاستثمار بحجز مخصص للتقلبات في سعر الفائدة.

3 – تشجيع الاستثمار في المؤسسات المالية الإسلامية.

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2 – تقرير البنك الوطني الكويتي، 1998 - 2008.
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FACTORS ADOPTING ISLAMIC HOME FINANCING: A CASE STUDY AMONG CONSUMERS OF ISLAMIC BANKS IN MALAYSIA

By

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Abstract

The developments of the Islamic banking are increasingly challenging and face strong competition not only from local and foreign Islamic banks but also from non-Islamic rivals. Malaysia is the first country to implement a comprehensive dual banking system. Islamic banks have introduced a number of Islamic home financing products under BBA concept. The Islamic home financing has shown an increasing trend for the past ten years from 2001 to 2009. In 2009, the Islamic home financing stood at RM23.3b as compare to RM6.8b in 2001. In 2009, the Islamic home financing contributed 17.8% of total Islamic total financing (Islamic Finance Research, KFH). This study aims to understand and assess the factor that influences the awareness and adoption of the Islamic home financing offered by Islamic banks. A self administered questionnaires dealing with Islamic home financing were distributed to a simple random sampling of 200 respondents. Of these, 72 questionnaires were returned with a response rate equivalent to 36.0%. The sample T-test result of the study reveals that there is no significant different between Malay and Chinese in their level of awareness on Islamic home financing products. Further investigation using one-way ANOVA test found that there is a significant relationship between different respondents' age and education group against their level of awareness. Finally, the Pearson correlation and regression analysis indicated that the factor of consumer adapting to Islamic home financing products offered by Islamic banks can be explained by consumers' awareness, individual factors and financial institution factors. However, the individual and financial institution factors have strong significant relationship while consumers' awareness did not have significant relationship. It is hoped that the study would facilitate the management of the banks in developing more competitive Islamic home financing products as well as strengthen the marketing strategies which is very important for the survival of the bank specifically due to intense competition arising from the foreign banks.

1.0 INTRODUCTION

Since the establishment of Bank Islam Malaysia Berhad the first Islamic bank in Malaysia in 1983, the Islamic banks have continued to play an important role as a financial intermediary, the products also have received wide acceptance not only by Muslim but also by non-Muslim. Generally, the Islamic banks offer products and services which are similar to those offered by conventional banks. However, the Islamic banks are differ from conventional banks in several ways such as compliant to Shariah rules,

prohibition of transactions based on riba or interest and operate according to certain procedure determined by the Central Bank. Now, the Islamic banks in Malaysia have offered wide range of products from deposit to financing under various types of Islamic concepts mainly to cater to the needs of those who wish to avoid conducting their financial dealings operating on the riba or interest.

There are approximately 180 Islamic banks and financial institutions operating in Asia, Africa, Europe and the United States. In Malaysia, the Islamic banks have been part of the important players in the banking service industry. As at Dec 2009, BNM has issued 17 Islamic banking licenses, 11 licenses to local banks and 6 to foreign banks. The rationale for BNM to issue separate licenses for Islamic banking is mainly driven by Shariah requirement for greater compliance. Running an interest bearing and Islamic banking business under one roof may invite ambiguities (gharar) concerning the legitimacy of profit generated from the business.

The Islamic home financing is one of the products offered by almost all Islamic banks in Malaysia as alternative to conventional interest based home financing mode which forbidden in Islam. This product has faced strong competition not only from local and foreign Islamic banks but also from non-Islamic rivals. However, the home financing products and services offered by the Islamic banks nowadays are very competitive. This indicate that the Islamic banks are no longer regarded as a business entity striving only to fulfill the religious obligations to Muslim community but more significantly as a business entity that is unavoidably in need of winning over new customers whilst retaining the regular one as well (Wilson 1995). A question can be raised to a country such as Malaysia where both Islamic as well as conventional banks operate, as to what are the main factors that motivate the customers to deal with Islamic banks compare to conventional banks for home financing.

There are several Shariah compliant modes for home financing that have been introduced, the dominant among which are the Al-Bay' Bithaman Ajil (BBA) and Musharakah Mutanaqisah Partnership (MMP) contract. The home financing under BBA concept is the most popular and widely practice in Malaysia compared to MMP. The MMP financing concept was adopted widely in Middle East, United States, Canada, United Kingdom and Australia.

According to the Bank Negara Malaysia (BNM) Monthly Statistical Bulletin February 2009, the total of Islamic home financing given by the Islamic banking institutions over the ten years period from 2001 to 2009 showed an increase of 242.65% from RM6.8b in 2001 to RM23.3b in 2009, contribute 17.8% of Islamic banking total financing. The BBA concept remained dominant, constituting 32.15% of total financing. It can be concluded that home financing under the BBA concept has played an important role in the development and success of Islamic banking in Malaysia. This product has allowed the Muslims as well as non-Muslims to purchase assets without being involved with riba which are declared as one of the greatest sins in Islam. The Islamic home financing has shown an increasing trend for the past ten years from 2001 to 2009. In 2009, the Islamic home financing stood at RM23.3b as compare to RM6.8b in 2001. In 2009, the Islamic home financing contributed 17.8% of total Islamic total financing (Islamic Finance Research, KFH).

In this study, an attempt is made to assess the degree of customer perception and awareness towards the Islamic home financing products and services by the Islamic Banks in Malaysia

Interview on three banks, namely Maybank Islamic Berhad, CIMB Islamic Bank and Bank Simpanan Nasional say that the Islamic financing for properties are growing and BNM statistic testify to that (Thean Lee Cheng, The Star). CIMB Islamic Bank CEO, Badlisyah Abdul Ghani says their growth rate for the first quarter 2009 has exceeded the industry growth, putting their overall islamic property financing market share at 9.8% as at June 2009. Meanwhile, the Executive Vice President of Maybank Islamic Berhad, acting CEO Ibrahim Hassan says their financing on residential and non-residential properties grew at an average of 6% from 2007 til June 2009.

In order to fulfill the need for those who wish to avoid dealing with riba or interest in home financing, the Islamic banks have introduced number of Shariah compliant mode for home financing such as Al-Bay Bithaman Ajil (BBA) and Musharakah Mutanaqisah Partnership (MMP). The most popular Islamic home financing concept and first made available to individuals in Malaysia is under the principle of BBA or deferred payment. BBA has accounted for the largest share of total Islamic financing in the country. BBA financing concept is not only popular in Malaysia but also in Indonesia and Brunei. The Islamic home financing in Malaysia starts to evolved in 2006 after the establishment of Kuwait Finance House (KFH). A new home financing concept being introduced namely the MMP (diminishing parnership). In 2007, RHB Islamic Bank has introduced the MMP financing concept for its home financing product. The introduction of this new concept has resulted the market share for BBA gradually dropped from 40.7% in 2006 to 31.9% in Nov 2009. Although the MMP concept is popular in the Middle East, USA, Canada, United Kingdom and Australia, it has yet to dominate the Malaysia market.

Problem Statements

The conventional banking system has been well established in Malaysia. As a result the Malaysian population favors conventional banking as their sources of financing. Even though majority of the population is Malay who is Muslim, it is expected that minimal volume of financing demanded from Islamic banking for all types of financing including home financing (Wan Marhaini, Asmak, Nor Aini and Azizi). There are several reasons behind the lack of demand for Islamic financing products compared to conventional such as:

- Lack of customer's awareness towards Islamic banking
- Lack of competitiveness of Islamic financing products
- Lack of specialized officer at the branch level to educate the customer to understand more about the Islamic financing products

The Malaysian Government is highly supported the development of the Islamic financial system. However the success is very much influenced by the market share which

reflects the public acceptance of this system. Therefore the Islamic banks have to be more alert to consumers' sensitivity, awareness, preferences and behavior toward the Islamic home financing in order to increase the market share. Thus this study is to understand the factors that influence the consumer in adopting the Islamic home financing.

Research Objective

The objectives of this study understanding the factors that influences the consumer in adopting the Islamic home financing as follow:

- Study the awareness of the consumers towards the Islamic home financing products characteristics and features.
- Examine the factors that influence consumers in adopting Islamic home financing products.
- Conduct opinion for full-fledge in consumer adopting of Islamic home financing products and the significant relationship among the effective factors.

2.0 LITERATURE REVIEW

Generally, people who deal with conventional banks in the capacity as depositors and borrowers are well aware of the practice of interest (riba) element in the banking operations. This situation has lead to the establishment of the Islamic banking. Unlike conventional banking, the Islamic banking prohibits usury (riba), the collection and payment of interest, instead promotes profit sharing in all conduct of banking business (BNM 2007). The Islamic banking term can be defined as the conduct of banking operations in consonance with Islamic teaching (Mirakhor 2000, Haque et al 2007). Since the establishment of the first Islamic bank in Malaysia about 27 years ago, the Islamic bank has emerged as one of the fastest growing industry. This industry has spread not only in Malaysia but also to all corners of globe and received wide acceptance by both Muslims and non-Muslims (Aziz ZA 2006). The development of the Islamic banking is well supported by the Malaysian Government. It is the vision of the government to develop a progressive and robust Islamic banking industry rooted in the Islamic core values and principles that best serve the needs of the nation economy.

Consumer awareness towards Islamic banking

Rogers E.M (1999 & 2003) defines the adoption process as the process through which individual adopters pass from awareness to full acceptance of a new innovation. According to Rogers (2003), before the consumers are ready to adapt to a product or service, they have to go through a process of knowledge, persuasion, decision and confirmation known as 'Pre-contemplation'. The consumer awareness has been tested and used as one of the variable in numerous studies such as online banking, internet banking and self service technology adoption, according to Sathye 1999, Suganthi et al 1999,

Yusof 1999, Gerad et al 2003. However the study to investigate the consumer awareness towards Islamic banking is limited.

One of the pioneer studies on the awareness of the existence of the Islamic bank was conducted by Haron et al (1994). His study found that almost 100% of Muslims and 75% non-Muslims were aware of the existence of the Islamic bank and wishes to have relation if they have a complete understanding of the system. A study carried by Sudin Haron, Norhafifah Ahmad and Sandra L.Planisek (1994) in Sungai Petani, Alor Setar and Kangar reported that only 63% of the Muslims have either completely or partly understood the difference between Islamic and conventional banking. The remaining of about 39% of the respondents believed that religion in the only reason for them to be a customer or client of the Islamic bank. Another study by Gerard (1997) and Kamal et al (1999) found that though the Muslim respondents aware of the fundamental term in Islam, they were unaware the meaning of specific Islamic financial terms like Mudharabah, Musharakah and Ijarah. Similarly, Hamid and Nordin (2001) found that the Malaysian commercial bank customers have high awareness of Islamic banking but poor self-reported knowledge of specific Islamic products including poor understanding to differentiate between Islamic and conventional banking. The poor knowledge in Islamic banking was supported by a study from Ahmad and Haron (2002) whereby 60% of the respondents admitted to having limited knowledge of Islamic banking. However they believed the concept had a good potential in Malaysian market. Recent study by Adelaide Rammal and Zurbruegg (2007) on 300 Muslims respondents shows that they are aware of the Islamic banking products and they are interested in and prepared to use Islamic concept of financing but do not know how the function.

In order to promote the development of Islamic banking in Malaysia, extra efforts are needed from the industry to promote greater awareness and educating the general public especially non–Muslims to understand and accept Islamic banking and services and also to train more local talent to acquire the necessary expertise in Islamic principles, and to develop and innovate better products and services based on such principles to meet the growing demands of the consumers and their businesses.

Factor Influence Selection of Islamic Banking

Initially, it is expected that religiosity has a significant influence for consumers in selecting Islamic banking. The statement was supported by Metawa and Almossawi (1998) who interviewed 100 Islamic bank customers in Bahrain. The result shows the most important factor for selection of Islamic bank is the Shariah based principles that govern these financial institutions. Naser et al (1999) examined the religious factor as a criterion of Islamic banking choice among customer visiting the Islamic bank's branches in Jordan cited that religious is the motivation reason of their Islamic banking patronage. Study by Ahmad and Haron (2002) found that religious to be main factor affecting the Islamic banking selection. However it has been treated as a minor contributor for Islamic banking selection. Bley and Kuehn (2004) found that the consumer selection criteria of Islamic banking are primarily driven by religious belief not financial knowledge where the stronger the religious commitment, the higher preference for Islamic banking services.

In contrary, the study by Sudin Haron, Norhafifah Ahmad and Sandra L.Planisek (1994) reported that non-religious aspect such as service efficiency, transaction speed and

friendliness of bank personnel seen to be largely influence the selection criteria of Muslims in Malaysia. In their study also reported there is no significant different between Muslims and non-Muslims in their selection criteria. Similarly, Gerrard and Cunningham (1997) replicated the study in Singapore and found that there is no difference in banking selection criteria between Muslims and non-Muslims. Nearly 25% of the feedback shows that religion was not the only basis for choosing an Islamic bank. The recent study by Dusuki and Abdullah (2007) also supported the above. They found that financial reputation and quality service are the key factors affecting consumer decision to select banks. On top of that, good social responsibility practice, convenience and product price are other important factors explaining why consumer chooses the bank. These result pointed that Islamic banks do not need to rely on religious factor as a strategy to attract consumer for business, in fact they should focus on the quality and efficient services. The study concluded that both religious and non-religious factors are significant in selecting Islamic banking.

Hanudin Amin (2008) in his study on choice criteria for Islamic home financing among Malaysian bank customers suggested that Shariah principle, lower monthly installment, transparency practice, interest free practice and 100% financing are the first five decision criteria considered as being very important. However, other major findings are that peer group influence plays an important role in selecting Islamic banks as depository institution.

Financial Institution Factors

Study by Sudin Haron, Norhafifah Ahmad and Sandra L.Planisek (1994) reported the friendliness of bank personnel is one of the factor influence the selection criteria of Muslims in Malaysia. The bank personnel that always interact with consumers is the front liner. Therefore the employees working in the front line play prominent roles in representing an organization to the outside world as discovered by Bowen and Scheider (1988). They are the one who able to influence, educate and create awareness to the consumer on the products and services offered by the bank as well as assessment made by the consumer. Cogram and Friedman (1991) further confirmed the importance of the front line employees in delivering a quality service.

Additionally, Haron and Ahmad (2002) in their study highlighted that nearly 65% of corporate banking customer had very limited knowledge of Islamic banking. Therefore the author further stressed that the bank need to put more effort into marketing their products and services and educating their customers. Saiful Azhar Rosly (2005) pointed that the Islamic banking has no direct control of the marketing and promotion. This is because the marketing unit usually handles by conventional, and promotion done via bank's branch by the branch manager who reports to the conventional that overseeing the whole operation of Islamic and conventional.

According to Wan Marhaini, Asmak, Nor Aini and Azizi (2005), majority of the consumer found that apart from favorable credit terms of the financing products, efficiency in service especially the after hour and less hassle services of using the electronic services are the most important factors in choosing where they get their financing. The author suggested that the bank should seriously consider the above factors in designing their products and perfecting their customer services especially when developing their market strategies concerning working customer.

3.0 METHODOLOGY

Conceptual Framework

This study tries to identify the consumer awareness and adoption on the Islamic home financing offered by EIBB. Malaysia is a multicultural country but the percentage of Muslims is higher compare to other races (Chinese and Indian). Based on the discussion in literature review, it was identified that quality of services, confidence in bank, social and religious perspective and availability of services are the main factors affecting the customer in choosing their home financing. Therefore, based on these factors theoretical framework of this study has been developed, Figure 1.

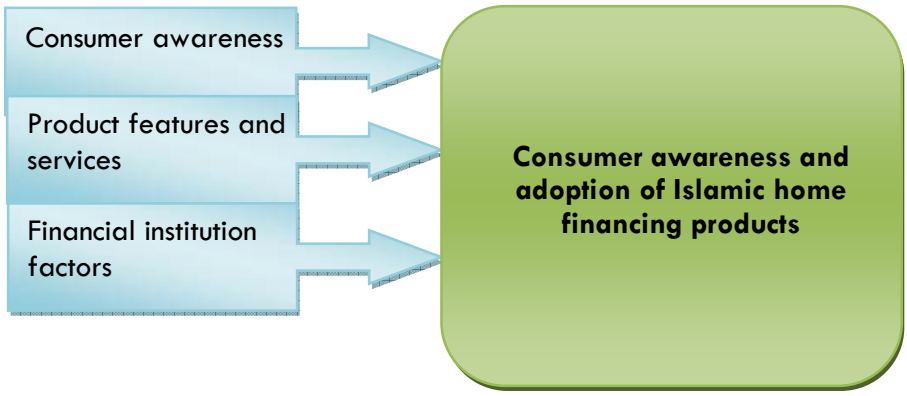


Figure 1

Hypothesis

Following hypothesis have been selected in the study based on the analytical interpretations in the previous section:

H_1 : ***Consumers regardless of races and religion are of the Islamic home financing products***

H_2 : ***The Islamic home financing product features has positive influence to individual to the adoption by the consumer.***

H_3 : ***The role of the Islamic Banks' personnel has the positive influence to the adoption by the consumer.***

H_4 : ***The role of marketing strategy that holds by Islamic Banks has the positive influence to the adoption by the consumers.***

Sampling

This study investigates the factors that influence the consumer in adopting the Islamic home financing. The respondents of this study are the Islamic home financing customers as well as non-customers that potentially to adopt the Islamic home financing products.

A simple random sampling method was employed in which 200 questionnaires were distributed to respondents. Even though the proportion of sample size is very small in relation to actual population, the sample size is deemed sufficient for this study. Out of the 200 questionnaires distributed through hardcopies and e-mails, 72 were returned which yielded a response rate of 36.0%. The rule of thumb for determining the sample size that appropriate for most research is larger than 30 and less than 500 as proposed by Roscoe (1975). Therefore we view that our sample size and number of questionnaires returned seem to be consistent with this argument.

Instrument

The primary data had been used for this study and data were collected through distributing self administered questionnaires through hardcopies and e-mails. A structured questionnaire was used for collecting the necessary information which is related to this study. The questionnaire consists of three sections. Section one includes information about the consumer awareness of the Islamic home financing products offered by Islamic Banks. Section two collected the data of factors influence consumer in adopting the Islamic home financing products. This section consist of three parts: individual factors, financial institution factors and factors of adopting the Islamic home financing. In section one and two, the respondents were asked to indicate, on a five-point Likert-type scale, ranging from "strongly disagree" to "strongly agree".

Finally, section three gathers the demographic information of the respondents including gender, age, race, academic qualification, profession and income.

Data Analysis

The data was analysed using Statistical Package for Social Science (SPSS) version 15.0 for windows. The statistical techniques employed in this study are as follows :-

1. Descriptive and frequency analysis were conducted to measure consumers' attitudinal differences in their perceptions and awareness about the Islamic home financing products and to represent the respondents' demographic profiles.
2. Reliability test to check the reliability of the data by applying Cronbach's alpha.

3. T-test and ANOVA were used to examine the differences between awareness, individual, financial institution and adoption factor against demographic factors. The means for two groups of cases are used to test whether the difference in means of one variable in two groups of respondents is significantly different from zero.
4. Correlation to measure the relationship between dependent and independent variables.

4.0 Findings and Analysis

Descriptive Analysis

Descriptive analysis has been employed to carry out the respondents' data analysis. Consumers' profile was one of the sections in the questionnaire in this study. Varies demographic factors were included there. A profile of respondents is shown in Table 1. The result reported in Table 1 indicated that majority of the respondents are non-customer of Islamic home financing with 70.8% while the rest are the customer of Islamic home financing. The number of male and female respondents participated in this study are equal. The data were also collected from different age group. The large group of respondents was from 26 to 40 age group with 68 .1% which are the main ages of working, followed by 41 to 55 age group with 22.2%. Race was another important demographic factor in this study. There are three major races in Malaysia: Malay, Chinese and Indian. According to the sample of respondents, 73.6% were Malay, 20.8% Chinese, 1.4 % Indian and 4.2% represented other races. Majority of the respondents in this study are well educated, with 45.8% holding a bachelor degree and 29.2% holding post graduate and above.

Table 1 also showed that the sample respondents in this study consist of 8.3% work in government agency, 69.4% in private sector, 2.8% was self employ while 19.4% work in other sector. In term of monthly income, 54.2% of the respondents informed that their monthly income stood between RM2,501 to RM5,000, followed by 29.2% who informed their monthly income as between RM5,001 to RM10,000. Whereas 15.3% respondents' monthly income were found less than RM2,500.

Table 1 : Respondents demographic profile

Description		Frequency	Percent	Cummulative Percent
Customer of IB	Yes	21	29.2	29.2
	No	51	70.8	100.0
Gender	Male	36	50.0	50.0
	Female	36	50.0	100.0
Age	18 to 25	7	9.7	9.7
	26 to 40	49	68.1	77.8
	41 to 55	16	22.2	100.0
	Above 55	0	0.0	100.0
Race	Malay	53	73.6	73.6
	Chinese	15	20.8	94.4

	Indian	1	1.4	95.8
	Others	3	4.2	100.0
Education	Secondary/Certificate	8	11.1	11.1
	Diploma	10	13.9	25.0
	Graduate	33	45.8	70.8
	Post graduate and above	21	29.2	100.0
Profession	Government	6	8.3	8.3
	Private sector	50	60.4	77.8
	Self employed	2	2.8	80.6
	Others	14	19.4	100.0
Monthly income	< RM2,500	11	15.3	15.3
	RM2,501 to RM5,000	39	54.2	69.4
	RM5,001 to RM10,000	21	29.2	98.6
	> RM10,000	1	1.4	100.0

Table 2 : Consumer awareness of Islamic home financing products offered by Islamic Banks

Description	Frequency	Percent	Cummulative Percent
Strongly disagree	9	12.5	12.5
Moderately disagree	4	5.6	18.1
Agree	19	26.4	44.4
Moderately agree	13	18.1	62.5
Strongly agree	27	37.5	100.0
Mean = 3.63			

Table 3 : Consumer adoption due to awareness

Description	Frequency	Percent	Cummulative Percent
Strongly disagree	1	1.4	1.4
Moderately disagree	5	6.9	8.3
Agree	32	44.4	52.8
Moderately agree	16	22.2	75.0
Strongly agree	18	25.0	100.0
Mean = 3.63			

Frequency distribution of respondents showed that most of respondents are aware of the Islamic home financing products available in the market. According to Table 2, 37.5% of respondents were strongly aware of the products, only 12.5% were not aware. The respondents also were asked to report whether their adoption to Islamic home financing was due to their awareness and the result showed that most of the respondents were agree. Table 3 shows that 44.4% of the respondents were agree that they adapt to the product due to their awareness. Since, in order to investigate the adoption of Islamic home financing it is important to explore the consumers' awareness towards the products. This enables a financial institution to make useful comparison while evaluating quality of service and marketing strategy.

Reliability Test

Inter-item analysis is used to check the scales for internal consistency or reliability. Salkind (2000) states that reliability and validity is the hallmarks of good measurement. It is the researchers' first line of defence against spurious and incorrect conclusion. In this study Cronbach's Alpha is calculated for each scale of variables as recommended for empirical research in operation management (Flynn et al 1990, Malhotra and Grover 1998, Forza 2002).

Table 1 shows Cronbach's Alpha values calculated for independent and dependent variables used. The Cronbach's Alpha is calculated as 0.734, 0.787, and 0.843 for consumers' awareness, individual influence factor and financial institution factor as independent variables respectively. While Cronbach's Alpha for adoption to Islamic home financing as dependent variable is calculated as 0.739. The overall Cronbach's alpha values for each independent and dependent variables are more than 0.7 which is considered adequate for exploratory research. Gliem & Gliem (2003) indicated that Cronbach's alpha reliability coefficient of the items in the Likert-type scale is acceptable for [alpha] > 0.7.

Table 4 : Cronbach's Alpha test on all independents and dependent variables

Description	Cronbach's Alpha	Cronbach's Alpha Based on Standardised Items	N of Items
Consumer awareness	.734	.738	8
Individual factor	.787	.795	6
Financial institution factor	.843	.849	6
Adoption to Islamic home financing	.739	.741	4

T-Test

The T-test is used in order to assess whether races between Malay and Chinese has different socio-demographic characteristics in adopting the Islamic home financing products offered by Islamic banks. The result in Table 5 contains the group statistics. The mean for awareness level for Malay was considerably lower at 3.55 compared to 3.70 for Chinese. The standard deviation for Malay was somewhat larger at 0.64 however than for Chinese at 0.58.

The result in Table 6 provides the information for independent sample T-test which helps to determine whether the mean of awareness level are significantly different between Malay represent Muslim and Chinese represent non-Muslim. The information in column Sig (2-tailed) shows the means is not significantly different (>0.05) for assumption of either equal variance assumed and not assumed. Thus we can conclude that there is no significant different between Malay and Chinese in their awareness level of Islamic home financing products offered by Islamic banks. A study by Haron et al (1994) also found that Muslim and non-Muslim were aware of the existence of the Islamic bank and wish to have relationship.

Table 6 also reveals that individual factor, financial institution factor and factor adopting the Islamic home financing products are not significant at the 0.05 level between two race groups. This implies that Malay and Chinese have no significant different in

relation to awareness, individual factor and financial institution factor in adopting the Islamic home financing products.

Table 5 : Group Statistics

	Race	N	Mean	Std. Deviation	Std. Error Mean
Avg_Aware	malay	53	3.5519	.64508	.08861
	chinese	15	3.7000	.58782	.15178
Avg_IndFac	malay	53	3.1258	.67218	.09233
	chinese	15	2.9111	.55943	.14444
Avg_FinFac	malay	53	2.8899	.65937	.09057
	chinese	15	3.0333	.60487	.15618
Avg_Adopt	malay	53	3.1179	.75734	.10403
	chinese	15	2.9000	.43095	.11127

Table 6 : Independent Samples Test

		Levene's Test for Equality of Variances		t-test for Equality of Means						
									95% Confidence Interval of the Difference	
		F	Sig.	t	Df	Sig. (2-tailed)	Mean Difference	Std. Error Difference	Lower	Upper
Avg_Aware	Equal variances assumed	.200	.656	-.800	66	.427	-.14811	.18524	-.51795	.22172
	Equal variances not assumed			-.843	24.406	.408	-.14811	.17575	-.51052	.21429
Avg_IndFac	Equal variances assumed	1.037	.312	1.129	66	.263	.21468	.19007	-.16481	.59416
	Equal variances not assumed			1.252	26.583	.221	.21468	.17143	-.13733	.56668
Avg_FinFac	Equal variances assumed	.341	.561	-.756	66	.452	-.14340	.18957	-.52189	.23510
	Equal variances not assumed			-.794	24.261	.435	-.14340	.18054	-.51580	.22901
Avg_Adopt	Equal variances assumed	8.850	.004	1.063	66	.292	.21792	.20499	-.19136	.62721
	Equal variances			1.431	40.782	.160	.21792	.15233	-.08975	.52560

	not assumed								

ANOVA

The ANOVA test was conducted to assess whether consumer with different races i.e. Malay, Chinese, Indian and others race have different perception on adopting the Islamic home financing products. Table 7 shows the overall result. The analyses of variance reveal that races between Malay, Chinese, Indian and other races have no significant relationship at 5% level in awareness, individual factor, financial institution factor and adoption to Islamic home financing products. This result implies that consumer with different race group have no different in the above dependent variables and it is consistent with the earlier hypothesis that consumer regardless of races are aware on the Islamic home financing products offered by Islamic Banks.

Table 7 : Analyses variance for races

			Sum of Squares	df	Mean Square	F	Sig.
Avg_Adopt * Race	Between Groups	(Combined)	.657	3	.219	.432	.731
	Within Groups		34.467	68	.507		
	Total		35.124	71			
Avg_Aware * Race	Between Groups	(Combined)	.500	3	.167	.410	.746
	Within Groups		27.632	68	.406		
	Total		28.132	71			
Avg_IndFac * Race	Between Groups	(Combined)	.605	3	.202	.469	.705
	Within Groups		29.228	68	.430		
	Total		29.833	71			
Avg_FinFac * Race	Between Groups	(Combined)	.597	3	.199	.468	.705
	Within Groups		28.897	68	.425		
	Total		29.494	71			

The second ANOVA is tested between the consumers' age group. According to the results with 95% confidence, Table 8 shows that there is a significant relationship at 0.034 which is less than 0.05 in the awareness of the Islamic home financing. The consumers' age group did not show significant relationship towards the other variables. Therefore we conclude that one of the age group has significant relationship in the consumer awareness of Islamic home financing products offered by Islamic banks. This is consistent with the result from study by Wan Aini and Wan Marhani where significant relationship between age group and Islamic product awareness.

Table 8 : Analyses variance for age group

			Sum of Squares	df	Mean Square	F	Sig.
Avg_Adopt * Age	Between Groups	(Combined)	.413	2	.206	.410	.665
	Within Groups		34.711	69	.503		
	Total		35.124	71			
Avg_Aware * Age	Between Groups	(Combined)	2.630	2	1.315	3.558	.034
	Within Groups		25.502	69	.370		
	Total		28.132	71			
Avg_IndFac * Age	Between Groups	(Combined)	.268	2	.134	.312	.733
	Within Groups		29.566	69	.428		
	Total		29.833	71			
Avg_FinFac * Age	Between Groups	(Combined)	2.331	2	1.166	2.961	.058
	Within Groups		27.162	69	.394		
	Total		29.494	71			

The third ANOVA is tested on the consumer education level. With 95% confidence level, the result in Table 9 indicated that education level does not have significant relationship with the adoption towards Islamic home financing products. The education level also did not show significant relationship with individual and financial institution factor with 0.630 and 0.128 respectively. Despite these three factors, the education level showed significant relationship with consumer awareness towards Islamic home financing products. This suggests that education can assist in making people more knowledgeable consumers of the products being offered, thus the potential to make more educated decisions about the value and risks of their choices. The result is same as the study conducted in Pakistan by Naveed Azeem Khattak and Kashif-Ur-Rehman (2010) where there is significant relationship among the academic qualification and the awareness of Islamic banking products.

Table 9 : Analyses variance for education level

			Sum of Squares	df	Mean Square	F	Sig.
Avg_Adopt * Education	Between Groups	(Combined)	.440	3	.147	.288	.834
	Within Groups		34.684	68	.510		
	Total		35.124	71			
Avg_Aware * Education	Between Groups	(Combined)	4.131	3	1.377	3.901	.012
	Within Groups		24.001	68	.353		
	Total		28.132	71			
Avg_IndFac * Education	Between Groups	(Combined)	.745	3	.248	.581	.630
	Within Groups		29.088	68	.428		
	Total		29.833	71			
Avg_FinFac * Education	Between Groups	(Combined)	2.349	3	.783	1.962	.128
	Within Groups		27.145	68	.399		
	Total		29.494	71			

Correlation and Regression

Correlation test (Pearson correlation) is used to test hypothesis 2, 3 and 4. The Pearson correlation will examine the relationship as well as measure the strength and direction between dependent and independent variables.

Table 10: Correlation among Islamic home financing product adoption

		Avg_Aware	Avg_IndFac	Avg_FinFac	Avg_Adopt
Avg_Aware	Pearson Correlation	1	.132	.070	.173
	Sig. (2-tailed)		.270	.559	.146
	N	72	72	72	72
Avg_IndFac	Pearson Correlation	.132	1	.679(**)	.609(**)
	Sig. (2-tailed)	.270		.000	.000
	N	72	72	72	72
Avg_FinFac	Pearson Correlation	.070	.679(**)	1	.625(**)
	Sig. (2-tailed)	.559	.000		.000
	N	72	72	72	72
Avg_Adopt	Pearson Correlation	***.173***	***.609(**)***	***.625(**)***	1
	Sig. (2-tailed)	***.146***	***.000***	***.000***	
	N	72	72	72	72

** Correlation is significant at the 0.01 level (2-tailed).

Table 10 shows a Pearson correlation analysis to examine whether there is a relationship between consumer awareness, individual factors and financial institution factors against consumer adoption to Islamic home financing products.

The results revealed a significant and positive relationship between individual factors and financial institution factors against consumer adoption. The Pearson correlation for individual factor is 0.609 with significant 0.000 and financial institution factor is 0.625 with significant 0.000. This indicate that there is strong or high correlation for both independent variables. The higher levels of consumer adoption to Islamic home financing were associated with higher levels of individual and financial institution factors. Meanwhile the consumer awareness has a weak correlation (r = 0.173) and did not have significant relationship (Sig = 0.146) with the level of adoption.

Table 11: Model Summary of regression

Model	R	R Square	Adjusted R Square	Std. Error of the Estimate
1	.681(a)	.464	.441	.52610

a Predictors: (Constant), Avg_FinFac, Avg_Aware, Avg_IndFac

The multiple regression employed in this study is to examine the effects of the multiple predictors or independent variables on a single outcome variable. The information in Table 11 shows that the R-Square is 0.464 and this indicate that 46.4% of the consumer adoption to Islamic home financing products can be explained by the three independent variables in the model.

Table 12 : Analyses of variance for variables

Model		Sum of Squares	df	Mean Square	F	Sig.
1	Regression	16.303	3	5.434	19.634	.000(a)
	Residual	18.821	68	.277		
	Total	35.124	71			

a Predictors: (Constant), Avg_FinFac, Avg_Aware, Avg_IndFac
b Dependent Variable: Avg_Adopt

The Sig (p-value) in Table 12 is 0.000 below the 0.05 level and it tells that the overall effect of the three independent variables on consumer adoption is significant. Therefore we conclude that the overall model is statistically significant, or that the variables have a significant combined effect on the dependent variable.

Table 13 : Coefficients of variables

Model		Unstandardized Coefficients		Standardized Coefficients	t	Sig.	95% Confidence Interval for B	
		B	Std error	Beta			Lower Bound	Upper Bound
1	(Constant)	.297	.457		.649	.519	-.616	1.209
	Avg_Aware	.114	.100	.102	1.143	.257	-.085	.314
	Avg_IndFac	.356	.132	.328	2.696	.009	.092	.619

Avg_FinFac	.431	.132	.395	3.263	.002	.167	.694

a Dependent Variable: Avg_Adopt

Table 13 also shows that individual factor (Beta = 0.328, $p < .001$) and financial institution factors (Beta = .395, $p < .001$) were positively correlated with the adoption of Islamic home financing products. This suggested that higher levels of individual and financial factors are associated with higher levels of adoption the Islamic home financing products. On the other hand, the consumer awareness is not a significant predictor of adopting the products ($p = 0.257$).

The correlation and regression analysis found that the factor of consumer adapting to Islamic home financing products offered by Islamic Banks can be explained by consumers' awareness, individual factors and financial institution factors. All the three independent variables show a positive relationship. The individual and financial institution factors have strong significant relationship while consumers' awareness did not have significant relationship. However, the overall analyses of variance for independent variables show a significant relationship. We can therefore reject the null hypothesis of no relationship between variables.

5.0 Conclusion

One of the hypotheses in this study is to understand how the Malay, Chinese and Indian that represent different religion differ in term of awareness toward Islamic home financing products. Base on the analyses, the test result proposed that there is no significant different between race and religion group in term of awareness toward Islamic home financing products offered by Islamic Banks. This finding consistent with the study conducted by Sudin Haron, Norhafifah Ahmad and Sandra L.Planisek (1994) where there is no significant different between Muslims and non-Muslims in their selection criteria. The replicated study conducted in Singapore by Gerrard and Cunningham (1997) also found no difference in banking selection criteria between Muslims and non-Muslims.

Next hypotheses tested on the factor influence the consumer adoption to Islamic home financing products. This is to understand the pertinent factors which consumers perceive as influential to their selection and adoption of the financing products. The test result found that there is significant positive relationship for individual and financial institution factors. Study by Wan Marhaini, Asmak, Nor Aini and Azizi (2005) also found that favorable credit terms of the financing products, efficiency in service especially the after hour and less hassle services of using the electronic services are the most important factors for consumer in choosing where they get their financing. As such it is suggested that the financial institutions to seriously consider the above factors in developing their Islamic home financing products as well as perfecting their customer service.

The Islamic banking industry in Malaysia has emerged in global banking system and continued to show strong growth as reflected by the increased market share of the Islamic banking industry in terms of assets, financing and deposits of the total banking system. Since the races and religion is no longer the main factor in attracting customers, the Islamic banks should expand their customers' base by including non-Muslim as potential customer instead of depending on Muslim as source of deposits or funds users.

Thus, the Islamic banks should improve their quality of service, and products and services compatible with those offered by the conventional banks. This will enable the Islamic banks to provide beneficial products and services to consumer according to the current demands of customers.

The lack of competitive financing products and marketing effort in promoting Islamic financing products could be the contributory factor towards the static growth and smaller market share of Islamic financing in banking industry. Therefore it is important for Islamic Banks to put more effort in developing and promoting more competitive Islamic home financing products in order to capture more market share. This study could not mention relationship between the consumers' perception and preference factors that influence their adoption to Islamic home financing. With such limitations, findings of this study must not be used as generalized thoughts, rather a scope for further investigations toward expanded research.

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KEDUDUKAN SUKUK SEBAGAI HARTA YANG BERNILAI (*AL-MUTAQAWWIM*) MENGIKUT PERSPEKTIF ISLAM

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Abstract

Investment is one of the economic activities which claimed by Islam. One of the investment method that occur in the modern Islamic financial system can be applied by using sukuk as an instrument. This kind of instrument help between two parties namely surplus unic and other parties which need capital called defisic unic. Sukuk is an alternative way that can be practised to get enough capital fund by using the partnership method. Sukuk is an instrument that can be trade in Islamic financial market, it is also must has a value and give usufruct to general. This paper will elaborate theory and concept of property in Islam. This paper is also views on sukuk instrument, whether it consist property that worth (*al-mal mutaqawwim*) or as a property which had no value (*al-mal ghayru mutaqawwim*) by Islamic law.

Key Words: Sukuk, Harta Yang Bernilai (*Mutaqawwim*).

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Pendahuluan

Segala kekayaan yang wujud adalah ciptaan dan milik Allah. Manusia yang dilantik sebagai khalifah di muka bumi telah diberi hak untuk menggunakanya dengan sebaik mungkin tanpa berlaku pembaziran[4]. Islam memandang serius tentang pencarian harta yang halal kerana sudah menjadi fitrah manusia untuk mendapatkan harta kekayaan[5]. Oleh yang demikian beberapa peraturan telah digariskan agar manusia tidak melakukan kegiatan yang menyalahi syara untuk mendapatkan harta.

Pembekuan harta adalah ditegah oleh Allah, ini kerana harta tersebut akan menjadi tidak produktif serta tidak mengalir dalam sistem kewangan. Pembekuan harta bermaksud pengumpulan terhadap harta serta menahannya daripada peredaran (pengeluaran). Perbuatan ini akan menimbulkan kemerosotan dalam sesebuah ekonomi dan ia juga akan memberi kesan yang merbahaya terhadap moral[6]. Oleh yang demikian, Islam menganjurkan agar harta yang dimiliki oleh manusia hendaklah dilaburkan pada jalan yang halal disisi syara.

Pelaburan harta yang sempurna akan dapat menyediakan peluang pekerjaan kepada masyarakat awam dan meningkatkan pendapatan terhadap pelabur serta menambahkan hasil dapatan sesebuah negara tersebut[7]. Sebagaimana sabda Rasullah:

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[7]Rafīq Yūnus al-Mi□r (2005), *Fiqh al-Mu□aāmalāt al-Mālīyah*, c.1, Damsyik: Dār al-Qalam, h.48.

[illegible] [8].

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> *Telah menceritakan kepada kami Muhammad bin Ismail: menceritakan kepada kami Ibrahim bin Musa: menceritakan kepada kami al-Walid bin Muslim dari al-Muthanna bin al-sabbah, dari 'Amru bin Syu'aib, dari bapanya, dari datuknya sesungguhnya Nabi S.a.w telah berkata kepada kumpulan manusia dengan berkata: ' Barang sesiapa yang menjadi wakil kepada anak yatim yang mempunyai wang maka hendaklah harta (wang) itu diniagakan (dilaburkan), dan janganlah wang tersebut ditinggalkan (beku) begitu sahaja sehingga wang tersebut dimakan (dikenakan) sedekah.*

Salah satu cara untuk membuat pelaburan harta pada zaman sekarang ialah dengan pelaburan menggunakan instrumen sukuk. Transaksi pembelian sukuk ini akan dapat membantu golongan yang kekurangan modal agar dana tersebut dapat digunakan untuk memajukan sesebuah perniagaan[9]. Pelaburan harta merupakan salah satu kaedah bagaimana harta tersebut dapat diproduktifkan. Ini bersesuaian dengan hadis Rasullah agar wang tersebut diniagakan supaya wang tersebut dikenakan sedekah.

Pengertian Harta Pada Pandangan Islam

Ibn al-Athīr menyatakan asal kalimah *al-māl* telah digunakan dikalangan masyarakat arab yang menunjukan pemilikan individu keatas emas dan perak secara khusus. Kemudian kalimah *al-māl* telah mula meluas penggunaannya kepada pemilikan harta golongan yang

[8] □ālah bin Abdul al-A□ī□ bin Muhammad bin Ibrāhīm (2000), *Mawsū□at al-Hadīth al-Syarīf al-Kutub al-Sittah, Jami' al-Tirmizi, Kitāb al-Zakah, (bāb Mā Jā' fī Zakāh Māl al-Yatīm),* no. Hadith 641, c.3, Saw□uūdīyah: Riyā□, Dār al-Salām lil Nasyri wa Taw□ī□, h.1709.

[9] Ghārīb al-Jamāl menerangkan bahawa didalam asnaf zakat terdapat golongan '*al-Ghārimīn*' iaitu mereka yang berhutang untuk menjalankan usaha-usaha kebajikan yang dapat memberi manafaat kepada umat Islam. Golongan ini akan menghadapi kesukaran sekiranya mereka ini kehabisan modal atau tidak mempunyai kecukupan modal untuk mengembangkan perniagaan mereka. Dalam keadaan begini pemerintah boleh memainkan peranan dengan memberi pertolongan dari segi pinjaman kewangan kepada mereka tersebut sebagai modal suntikan. Rujuk. Ghārīb al-Jamāl (1332h), '*al-Ma□ārif wa al-□Amal al-Ma□rafiyah: Syarī□ah al-Islāmiyah wa al-Qānūn,* Dār al-Ijtihad al-□Arābīah, h. 449.

kaya. Kebanyakan golongan yang kaya ini mempunyai unta (ini kerana unta merupakan harta yang paling bernilai dan banyak dikalangan bangsa arab pada ketika itu)[10]. *al-Māl* dari segi bahasa merupakan kata terbitan dari kalimah تمول (*tamawwal*) iaitu memiliki harta. Ianya bermaksud apa yang dimiliki daripada sesuatu[11]. Kalimah *māl* juga merupakan kepelbagaian barangan samada ianya sedikit ataupun banyak dari apa yang dimiliki oleh individu[12].

Para fuqaha telah berbeza pandangan dalam mendefinisikan makna harta. Perbezaan ini timbul kerana adakah harta ini terhad untuk barangan fizikal (*'ayn*) sahaja atau harta ini merangkumi manafaat dan juga hak. Fuqaha □anafīyah telah berselisih pandangan tentang manafaat harta kepada dua pandangan. Pandangan yang pertama dari fuqaha yang terdahulu (*al-mutaqaddimūn*) yang mengatakan bahawa harta hanya terhad kepada barangan fizikal sahaja[13].

Adapun pandangan yang kedua pula terdiri daripada fuqaha yang terkemudian (*al-muta'akhkhirūn*) yang mengatakan bahawa harta juga merangkumi manafaat dan juga hak[14].

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[10] □Abbās A□mad Muhammad al-Bāz(1999), *A□kām al-Māl al-Harām wa □awābi□ al-Intifā□ wa al-Ta□arruf fī al-Fiqh al-Islāmī,* c.2, al-Urdun: Dār al-Nafā□is li al-Nasyri wa al-Tauzī□. Lihat juga. Ibnu al-Athīr. al-Mubārak bin Muhammad bin Muhammad al-Jazāri (1963), *al-Nihāya□ fī Gharīb al-Hadīth wa al-athār,* j.4, Mi□r: al-Maktabah al-Islāmiyyah, al-Qāhira□, h. 373.

[11] □Abd. al-Rahīm bin Ibrā□īm bin Abd. al-Rahman al-Sayyīd al-□āshim (2006), *al-Ta□yīn wa Atharuhu fī al-'Uqūd al-Mālīyyah,* c.1, al-Mamlaka□ al-'Arabīyyah al-Sa□ūdīyah: al-Riyā□, Wazāra□ al-Ta□līm al-'ālī, h. 24.

[12] Muhammad 'Amāra□ (1993), *Qāmūs al-Mu□□alahāt al-Iqti□ādīya□ fī al-Ha□hāra□ al-Islāmīyah,* c.1, Lubnān: Dār al-Syurūq, Bayrūt, h.503.

[13] Golongan fuqaha' mazhab □anafi yang terdahulu ini antaranya Muhammad Amīn al-Syamīr Ibnu al-'Ābidīn dan Syamsu al-Dīn al-Sarkhasī, mereka mengatakan bahawa yang dimaksudkan dengan harta ialah benda atau barangan yang bersifat fizikal sahaja. Harta tersebut hendaklah bersifat dengan sifat dimiliki (تمول). Bagi mereka (تمول) merupakan pemeliharaan serta pengawalan sesuatu harta dan ia mungkin boleh digunakan ketika berhajat. Mereka telah menyangkal pandangan yang mengatakan manafaat adalah harta, mereka telah berhujah bahawa manafaat tidak kekal dan ianya akan terhasil daripada fizikal harta (sebagai sandaran kepada manafaat). Rujuk. al-Sarkhasī. Syamsu al-Dīn al-Sarkhasī (1989), *Kitābul Masbū□ li Syamsu al-Dīn al-Sarkhasī,* j.11, Lubnān: Dār al-Ma'rifah, Bayrūt, h. 79-80. Manafaat merupakan sesuatu yang maknawi pada barangan berjasad dan ianya tidak boleh dicapai. Oleh yang demikian manafaat disisi mereka merupakan akad terhadap sesuatu harta seperti mana akad sewaan, ianya merupakan akad keatas manafaat harta tersebut. Manafaat dan hak bagi mereka merupakan pemilikan dan ia tidak dianggap sebagai harta. Lihat. Ibnu al-'Ābidīn, Muhammad Amīn al-Syamīr Ibnu al-'Ābidīn (1966), *Hāsyīya□ Raddu al-Mukhtār 'alā al-Dār al-Mukhtār : Syar□ Tanwīr al-Ab□ār fī fiqh maz□ab al-Imām Abī □anīfa□ al-Nu'mān,* c.2, j.4, Mi□r: Maktabah Mu□□afa al-Bābī, h. 501.

[14] Ianya merupakan pandangan Jumhur ulama termasuklah fuqaha' dari mazhab □anafi (*al-muta'akhkhirūn*) antaranya, al-Kāsāni. Beliau menyatakan bahawa harta tersebut bukan sekadar bersifat fizikal, akan tetapi termasuk juga manafaat dan hak. Fuqaha □anafīyah *al-muta'akhkhirūn* juga telah bersetuju dengan pandangan

Fuqaha al-Mālikīyah pula menerangkan maksud harta ialah apa yang dimiliki oleh individu samada berbentuk fizikal mahupun manafaat. Pemilik harta tersebut juga mempunyai kuasa terhadap hartanya menjangkaui individu lain menurut syara yang telah ditetapkan[15]. al-Kāndalawī memperjelaskan lagi bahawa harta merangkumi apa yang terdapat dipermukaan bumi[16] (seperti tanah dan tumbuhan) dan apa yang terdapat padanya (manafaat daripada tanah seperti buah anggur serta buah tamar)[17]. Berdasarkan definisi di atas, harta menurut pandangan mazhab al-Mālikīyah ialah sesuatu barangan (samada barangan tersebut berbentuk fizikal atau manafaat) yang boleh dimiliki.

Bagi fuqaha al-Syāfiīyah antaranya al-Sayūī menerangkan bahawa tidak dinamakan sesuatu benda itu harta kecuali ia mempunyai nilai (nilai jualan terhadap harta tersebut) serta dipertanggungjawabkan keatas orang yang merosakkannya (menggantikannya) walaupun bilangannya sedikit[18]. Beliau juga menjelaskan bahawa sesuatu harta itu tidak ditolak penggunaannya oleh manusia seperti wang dan apa yang seumpamanya[19]. Iz al-Dīn Abd. al-Azīz Ibn Abd. al-Sulamī pula menambah, keutamaan bagi sesebuah harta yang bernilai terletak pada manafaatnya[20]. Manafaat bagi sesebuah fizikal harta itu dipecahkan kepada dua bahagian yang asas. Pertama manafaat fizikal harta itu sendiri seperti makanan dan minuman. Manakala bahagian kedua pula ialah, apa yang mendatangkan manafaat dengan fizikal harta tersebut seperti binatang digunakan sebagai kenderaan dan rumah

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ini. Mereka beranggapan bahawa pandangan fuqaha *mutaqqadimin* ini kurang sesuai berpandukan firman Allah هو الذي خلق لكم ما في الارض جميعا ... surah al-Baqara (2:29). Bersandarkan ayat tersebut, Mutafa Ahmad al-Zarqā telah membuat definisi yang terkini terhadap *al-māl*. al-Zarqā melihat harta adalah segala benda yang mempunyai nilai kebendaan pada pandangan manusia. Lihat. Mutafa Ahmad al-Zarqā(1968), *al-Madkhal al-Fiqhi al-'Am al-Islāmi fī Tsaubihi al-Jadīd*, j. 1, Lubnān: Dār-al-Fikr, Bayrūt, h.329.

[15]Abū Ishāq al-Syāibi(t.t), *al-Muwāfaqāt fī Uūl al-Syarīah Abū Ishāq al-Syāibī*, j.2, Mir: al-Maktabah al-Tijārīyah al-Kubra, al-Qāirah, h. 17.

[16]Muhammad Zakarīyā bin Muhammad bin Yahyā al-Kāndalawī(1999), *Aujāz al-Masāliki ilā Muwaā Mālik*, j.12, c.1, Lubnān: Dār al-Kutub al-'Ilmīya, Bayrūt, h. 275.

[17]*Ibid.*, h.276.

[18]Jalāl al-Dīn 'Abd. al-Rahman bin Muhammad al-Sayūī(1990), *al-Asybā wa al-Naā'ir*, c.1, Lubnān: Dār-al-Kutub al-'Ilmīyyah, Bayrūt, h. 327.

[19]Jalāl al-Dīn 'Abd. al-Rahman bin Muhammad al-Sayūī(1990), *op.cit.*, h. 327.

[20]Abī Muhammad Iz al-Dīn Abd. al-Azīz ibn Abd. al-Sulamī (1968), *Qawāid al-Ahkāmi fī Mibāhi al-Anām*, c.1, j.1, Mir: Dār al-Syarq li Tibāah, al-Qāirah, h. 183.

sebagai tempat tinggal[21]. Oleh yang demikian, apa yang menentukan harta tersebut bernilai atau tidak bernilai hendaklah diukur dari segi manafaat harta itu sendiri dan bukan dilihat pada bentuk fizikal sahaja.

Menurut Ibn Qudāma□ al-Maqdisī maksud harta ialah apa yang mempunyai manafaat yang diharuskan disisi Islam selain dari waktu darurat[22]. Abī Ishāq Burhān al-Dīn menjelaskan apa yang dimaksudkan ketika darurat ialah, keharusan melakukan apabila ditimpa musibah[23]. Seperti diharuskan memakan perkara yang diharamkan pada waktu biasa (memakan bangkai ketika kebuluran). Begitu juga keharusan untuk meminum arak pada waktu darurat (ketiadaan air). Keharusan untuk berbuat demikian hendaklah dibuat dengan hati yang berdukacita dan bukan dengan cara menikmatinya[24]. Ketiga-tiga definisi di atas (selain pandangan fuqaha □anafīyah *al-mutaqaddimūn*) mempunyai persamaan pada asasnya yang bertunjangkan kepada manafaat harta tersebut dan bukan kepada bentuk fizikal harta sahaja.

Para fuqaha semasa pula berpegang kepada pandangan jumhur iaitu apa yang dimaksudkan dengan harta merupakan sesuatu yang bermanafaat samada harta tersebut berbentuk fizikal atau pun tidak. Muhammad Yūsuf Mūsa telah membuat pentafsiran harta sebagai setiap apa yang mampu dimiliki oleh manusia, ia terdiri daripada apa yang terdapat dimuka bumi ini seperti haiwan, wang dan lain - lain lagi. Harta tersebut itu juga boleh dimanafaatkan dengan cara yang dibenarkan oleh syarak[25].

[21]Abī Ishāq Ibrāhīm bin □Ali bin Yūsuf al-Faizūri al-Syīrāzī (1995), *al-Muhazzab fī Fiqh al-Imām al-Syāfi□eī*, (*kitāb bay□*), c.1, j.2, Lubnān: Dār-al-Kutub al-'Ilmīyyah, Bayrūt, h. 11.
[22]Ibn Qudāma□ al-Maqdisī (t.t), *al-Syarh al-Kabīr 'alā Matn al-Mughnī*, j.4, Lubnān: Dār-al-Kutub al-'Ilmīyah, Bayrūt, h. 7.
[23]Abī Ishāq Burhān al-Dīn Ibrāhīm bin Muhammad bin □Abdullah (t.t), *al-Mubdi□u fī Syrah al-Mughnī*, (*kitāb al-bay'), Fu□ūl al-Thālith : In Yakūn al-Bay' Mālā*, j.4, Maktabah al-Islāmī. h.9.
[24]*Ibid.*, h. 9.
[25]Muhammad Yūsuf Mūsa (1952), *al-Amwāl wa Na□arīyah al-□Aqd fī al-Fiqh al-Islāmī Ma□a Madkhal li Dirāsa□ al-Fiqh wa Falāsafa□:Dirāsa□ Muqārana□*, Mi□r: Dār al-Kitāb al-□Arabī, h.162.

Jumhur fuqaha juga telah bersepakat bahawa yang dimaksudkan dengan harta itu terbina daripada dua asas yang utama. Asas yang pertama ia hendaklah berupa barangan yang dimiliki dan boleh didagangkan dikalangan manusia tidak kira samada berbentuk fizikal ataupun berbentuk manafaat. Sekiranya barangan tersebut tidak mempunyai nilai dikalangan manusia seperti sebiji beras atau setitik air maka ianya tidak boleh disenaraikan sebagai harta. Asas kedua, hendaklah barangan bernilai tersebut bermanafaat dengan penggunaannya pada setiap keadaan. Sekiranya barangan tersebut bernilai dikalangan segelintir manusia sahaja, akan tetapi bukan disisi syarak seperti arak dan babi ia tidak boleh diketegorikan sebagai harta yang bernilai di sisi Islam[26].

Pembahagian Ketegori Harta Bernilai (*al-Mutaqawwim*)

Fuqaha telah membuat pembahagian harta kepada empat bahagian utama, yang mana setiap bahagian tersebut mempunyai implikasi hukumnya yang tersendiri. Pembahagian yang pertama ialah harta yang bernilai (*al-māl al-mutaqawwim*) dan harta yang tidak mempunyai nilai (*al-māl ghayru al-Mutaqawwim*). Keduanya harta yang boleh dialih (*al-māl al-Manqūl*) dan harta yang tidak boleh dialih (kekal) (*al-māl al-□aqār* (*ghayru al-manqūl*)). Pembahagian ketiga pula merangkumi harta yang mempunyai persamaan serta senang untuk didapati di pasaran (*al-māl al-mithlī*) dan harta yang mempunyai perbezaan dan sukar untuk didapati di pasaran (*al-māl al-qīmī*). Ketegori yang terakhir sekali ialah harta pakai habis setelah digunakan (*al-māl al-isti□lākī*) dan harta yang kekal zatnya setelah digunakan (*māl al-isti□mālī*).

Pemerhatian terhadap pembahagian harta ini lebih memfokuskan kepada harta bernilai (*al-māl al-mutaqawwim*) dan harta yang tidak mempunyai nilai (*al-māl ghayru al-*

[26] □Ādil Syā□īn Muhammad Syā□īn (2004), *'Akhzu al-Māl □alā 'Akmāl al-Qurab,* c.1, j.1, Sa'udīyāh: Dār Kunūz lil Nasyri wa al-Taw□i□, Riyā□, h.43-44.

mutaqawwim) sahaja. Dengan adanya pembahagian ini, satu ketentuan hukum akan terhasil samada harta tersebut harus atau haram penggunaannya disisi syarak.

Harta bernilai (*al-māl al-mutaqawwim*) merupakan apa yang dapat dikawal oleh manusia. Ia harus memberi manafaat dengan penggunaan harta tersebut dalam pelbagai keadaan seperti rumah atau kereta[27]. Harta yang bernilai (*al-māl al-mutaqawwim*) merupakan harta yang mempunyai nilai menurut hukum syara serta harus mengambil manafaat dari harta tersebut. Harta yang bernilai disisi Islam ialah harta yang boleh dikumpulkan dan disimpan melalui daya usaha seseorang dan ianya dibawah kawalan empunya harta tersebut seperti tanah, wang dan sebagainya.

Sekiranya harta tersebut bukan dibawah kawalan empunya harta seperti kumpulan burung di langit yang sedang terbang, atau sesuatu yang tidak diharuskan penggunaannya oleh syara untuk dimanafaatkan dalam keadaan biasa (bukan dalam keadaan darurat) ia tidak dikira sebagai harta yang bernilai. Syariah Islam telah memberi perlindungan terhadap harta yang bernilai. Oleh yang demikian, adalah menjadi satu kewajipan bagi sesiapa yang merosakanya secara sengaja atau tidak untuk menggantikan barangan tersebut.

Daripada pentakrifan harta *al-mutaqawwim* yang telah diutarakan oleh fuqaha, boleh kita membuat kesimpulan bahawa harta ialah setiap apa yang mempunyai nilai kebendaan disisi syara dan dikalangan manusia. Harta tersebut hendaklah bermanafaat dengan penggunaannya walaupun untuk masa akan datang tanpa melibatkan keadaan darurah di sisi syara samada harta tersebut berbentuk fizikal, manafaat atau hak.

Harta yang tidak bernilai (*ghayru al-mutaqawwim*) disisi Islam merupakan harta yang diharuskan oleh syara pada waktu darurat sahaja. Menurut al-Sarkhasī, harta yang tidak bernilai (*ghayru al-mutaqawwim*) merupakan apa yang tidak harus mengambil manafaat

[27]A□mad Yusof (1991), *al-Māl fī al-Syarī□a□ al-Islāmīyah Bayna al-Kasbi wa al-'Infāq wa al-Tawrīth*, Mi□r: Dār al-Thaqāfah lil Nasyri wa al-Tawzī□, al-Qā□irah, h.21.

dengannya ketika waktu biasa[28]. Harta jenis ini diharamkan oleh syara untuk mengambil manafaat dengannya. Arak dan babi merupakan contoh harta yang tidak bernilai disisi Islam akan tetapi ia merupakan harta yang bernilai disisi *kafir zimmi*[29]. Ini kerana, mereka boleh memanafaatkannya pada setiap keadaan dan waktu[30].

Kesimpulannya, harta *al-mutaqawwim* merupakan harta yang boleh dijadikan barang dagangan untuk transaksi jual beli. Ia juga harus dijadikan sebagai barangan wasiat serta boleh dihibbahkan[31]. Sedangkan harta *ghayru al-mutaqawwim* pula tidak sah untuk urusan jual beli, sekiranya perkara ini berlaku akad jual beli tersebut adalah batal. Ini kerana tidak sah pembelian arak antara orang muslim.

Pengertian Sukuk atau *Sanadāt* dan Sekuriti Hutang Islam Pada Kacamata Islam

Sukuk berasal daripada katanama Arab iaitu □*akka* yang membawa maksud suatu ikatan dengan harta[32]. Kalimah □*akka* berasal dari huruf ص dan ك yang bermaksud pada bahasa ialah hentakan, menemukan dua benda dengan kuat secara bersungguh-sungguh seakan-akan saling pukul memukul antara satu dengan yang lain[33]. Manakala makna lain bagi □*akka*, jamaknya □*ikāk* ialah penulisan pada sebuah buku yang tertera padanya perihal harta yang tertangguh atau yang seakan dengannya[34]. Ia juga membawa maksud lain iaitu sebuah penulisan yang tertera didalamnya suatu perjanjian dengan jualan atau gadaian atau yang

[28]al-Sarkhasī (1998), *op.cit.*, j. 12, h.110.
[29]'Abd. al-Salām Dawūd al-'Ibādī (2000), *al-Mulkīya□ fī al-Syarī□ah al-Islāmīyah □abī□atuha wa wazhīfatuhu wa Qayūduha Dirāsah Muqāranah bi al-Qawānayn wa Nuzmu al-Wadh□iyah*, c.1, j.1, Lubnān: Mu□assasah al-Risālah, Bayrūt, h. 227.
[30]□Abd. al-Mu□alib □Abd. al-Rā□aq Hamdān (2007), *al-Māl al-Dhā'i□ Haqīqatuh wa Hukmuh wa Turuq al-Taqātuh fī al-Fiqh al-Islāmī*, Mi□r: Dār al-Jāmiah al-Jadīdah, Qāhira□, h.9.
[31]Muhammad Yūsuf Mūsa (1952), *op.cit.*,h.165.
[32]*al-Mu□jam al-Wasī□* (1983), c.2, j.1&2, h. 544.
[33]Abī al-Husayn Ahmad bin Fāris bin Zakarīyā(t.t), *Mu□jam Maqāyis al-Lughah*, j.3, Lubnān: Dār al-Jīl, Bayrūt, h. 276. Lihat juga. □Alī bin Muhammad al-Jum□ah(2000), *Mu□jam al-Mu□□alahāt al-Iqti□ādīya□ wa al-Islāmīyah*, c.1, Mamlakah al-Sa□ūdīyah: Maktabah al-□Ubaykān, al-Riyād, h. 356.
[34]Muhammad □Amāra□(1993), *Qāmus al-Mu□□alahāt al-Iqti□ādīya□ fī al-Hadāra□ al-Islāmīyah*, c.1, Mi□r: Dār al-Syurūq, Madīnah al-Na□r, Qā□irah, h. 332. Lihat. □Alī bin Muhammad al-Jum□ah(2000), *op.cit*, h. 326.

seakannya[35].

Terdapat juga istilah lain turut digunakan bagi sukuk Islam iaitu *sanadāt*. Kalimah murfadnya ialah *al-sanad* bermaksud bersandaran antara satu dengan lain[36]. Kalimah *sanadāt* pada istilah merupakan suatu terbitan (sekuriti) bagi sesebuah negara oleh perbendaharaan negara berbentuk saham dengan kadar keuntungan. Terbitan ini dikeluarkan apabila berlakunya kegawatan ekonomi bagi sesebuah negara[37]. Perkataan *sanadāt* dan □*ukūk* mempunyai persamaan dari segi nilai, seperti nilai keberhutangan sesebuah firma kerajaan[38] atau swasta yang diterbitkannya sehingga tamat tempoh matang bagi sijil terbitan tersebut[39].

Dari segi istilah, pengertian sukuk menurut AAOIFI ialah sijil yang mempunyai nilai yang sepadan. Ia mewakili nilai saham secara keseluruhan dalam pemilikan aset yang nyata, serta perkhidmatan bagi sesebuah projek atau ekuiti untuk kegiatan pelaburan[40]. Sukuk pada sifatnya merupakan satu bukti pemegangnya (pelabur) turut terlibat dalam pembiayaan sesebuah projek atau aktiviti ekonomi patuh syariah. Beberapa prinsip syariah telah diaplikasikan pada sukuk agar ianya dapat memenuhi kreteria-kreteria yang mematuhi syariah[41].

Pengertian Sekuriti Hutang Islam pula dikenali sebagai *syahādah al-dayn* atau *sukūk al-dayn*[42] membawa maksud yang seerti dengan bon Islam. Ia merupakan suatu bukti

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[35]*Ibid.*, h. 356.
[36]Abī al-Husayn A□mad bin Fāris bin Zakarīyā(t.t), *op.cit.*, j. 3, h. 105.
[37]Muhammad □Amāra□(1993), *op.cit.*, h. 296-297.
[38]*Sanadāt* firma kerajaan terbahagi kepada 2 jenis, 1) *Sanadāt Hukūmīyah Mutawasi*□ *li 'Ajli* (*Treasury Note*), 2) *Sanadāt Hukūmīyah* □*awīlah li 'Ajli* (*Treasury Bond*). Rujuk. □Alī bin Muhammad al-Jum□ah(2000), *op.cit.*, h. 327.
[39]Ridwān Samīr □Abd. al-Hamīd(1996), *Aswāq al-Awrāq al-Mālīyah*, c.1, Mi□r: al-Ma□had al-□Ālamī lil Fikr al-Islāmī, Qāhirah, h. 291.
[40]Accounting and Auditing Organization for Islamic Financial Institution (AAOIFI), http://www.aaoifi.com/. 25 Februari 2010.
[41]Suruhanjaya Sekuriti telah mengenakan beberapa syarat asas bagi penerbitan sesebuah sekuriti hutang Islam. Sekuriti yang diterbitkan hendaklah mendapat kelulusan Majlis Penasihat Syariah Suruhanjaya Sekuriti. Lihat, Suruhanjaya Sekuriti(2001), *SIDC-Bond Basics*, h. 11.
[42]Mohd Daud Bakar(2001), 'Structuring Islamic PDS: Role of Independent Syariah Advisers', (Seminar on Islamic Private Debt Securities (IPDS) di Conference Hall Securities Commision, Kuala Lumpur, 24-25 September 2001), h.2.

berlakunya pelaburan yang dibuat oleh pelabur terhadap sesebuah firma. Pembayaran keuntungan/kupon dibuat terhadap pelabur mengikut syarat perjanjian yang telah dipersetujui ataupun pada harga jualan pada akhir tempoh yang ditetapkan[43].

Sukuk juga merupakan suatu ikatan perjanjian bertulis berserta syarat yang dibuat oleh dua pihak. Perjanjian tersebut menyatakan tentang pembayaran modal (hutang) secara tertangguh yang telah diberikan kepada penghutang dengan sejumlah wang keuntungan berkadaran tertentu sehingga tamat tempoh waktu matang تاريخ الاستحقاق [44]. Pembayaran keseluruhan modal yang laburkan oleh pelabur hendaklah dijelaskan oleh syarikat apabila tempoh matangnya tamat. Sukuk juga boleh didefinisikan sebagai sijil bertulis yang menunjukkan pemilikan hak ke atas sesebuah pelaburan atau projek tertentu yang disokong oleh aset sandaran (*back up by underlying tangible asets*)[45].

Terdapat perbezaan diantara sukuk dengan bon, sekiranya ditinjau dari aspek pemilikan yang terdapat pada sukuk ia memberi hak pemilikan yang tidak berbelah bagi kepada pelabur terhadap aset sandaran (*underlying asset*)[46]. Oleh itu, pemegang sukuk berhak untuk berkongsi pendapatan yang dihasilkan oleh aset pendasar. Terdapat 3 ketegori pembahagian sukuk secara umum iaitu, Sukuk Kerajaan (sukuk *al-hukūmīyah* @ sukuk *al-qi□ā□ al-'Āmam*), Sukuk Korporat (sukuk *al-a□līyah* @ sukuk *al-qi□ā□ al-khās*)[47] dan yang terakhir sekali Sukuk Quasi Kerajaan[48].

[43]*Ibid.,* h. 2.
[44]Nabīh Gha□□ās(1985), *Mu□jam Mu□□alahāt al-Iqti□ād wa al-Māl wa Idāra□ al-□Amāl,* c.2, Lubnān: Maktabah Lubnān, Bayrūt, h. 66.
[45]Glosari Pasaran Modal Islam (2005), c.1, Kuala Lumpur: Dewan Bahasa dan Pustaka, h.157 & 159.
[46]Shabnam Mokhtar, Saad Rahman, Hissam Kamal&Abdulkader Thomas (2009), 'Sukuk and The Capital Markets', dalam Abdulkader Thomas(*ed*.), *Sukuk: Islamic Capital Market Series,* Malaysia: Sweet&Maxwell Asia, Petaling Jaya, Selangor, h. 21.
[47]Syabān Muhammad Islām al-Barwāwī(2005), *Būr□a□ al-Awrāq al-Mālīya□ min Mandhūr Tahlīlīyah Naqdīyah*, Sūrīyah: Dār al-Fikr, Damsyīq, h. 131.
[48]Sukuk Quasi Kerajaan Rujuk. Persatuan Remisier Bumiputra Malaysia(2005), *Malaysian Islamic Capital Market,* Malaysia: Cetakan PRIBUMI, Kuala Lumpur, h.186.

Sukuk terbitan kerajaan merupakan suatu instrumen yang mempunyai kesamaan nilai. ia diterbitkan oleh kerajaan samada berbentuk kekal[49] atau sementara[50]. Manakala sukuk terbitan korporat ataupun swasta pula merupakan suatu terbitan yang diterbitkan oleh badan korporat atau swasta selain daripada pihak kerajaan. Kelebihan yang terdapat pada sukuk ini adalah, ia mempunyai peratusan keuntungan yang tinggi berbanding dengan sukuk terbitan kerajaan. Disebalik keuntungan peratusan yang tinggi, sukuk korporat juga mempunyai tahap risiko yang agak tinggi[51]. Ini bertepatan dengan konsep asas kewangan iaitu semakin tinggi tahap risiko semakin tinggi bakal pulangan yang akan diperolehi (*higher risk higher return*). Adapun Sukuk Quasi Kerajaan pula merupakan sukuk yang diterbitkan oleh Khazanah Nasional Berhad yang menawarkan *Zero Coupon Bond* [52].

Kedudukan Sukuk Sebagai Harta Yang Bernilai Mengikut Pandangan Islam

Sukuk merupakan katanama Arab daripada perkataan □*akka* yang membawa maksud

suatu ikatan dengan harta[53]. Ianya juga membawa maksud kepada sijil amanah (*trust certificates*) atau pun sekuriti perkongsian (*participation securities*)[54]. Sukuk juga boleh didefinisikan sebagai sijil bertulis yang menunjukkan pemilikan hak terhadap sesebuah

[49]Terbitan kekal bermaksud tidak mempunyai had dari segi tempoh matang akan tetapi kadar keuntungan yang dibayar adalah tetap. Pembayaran keuntungan tersebut dibuat samada setiap setahun sekali ataupun setiap 6 bulan. Terbitan sementara pula merujuk kepada tempoh matang yang telah ditetapkan. Rujuk. □Abd. al-□Azīz Fahmī(1981), *Mawsū□ah al-Mu□□alahāt al-Iqti□ādīya□ wa al-□Ihsā□īyah*, c.1, Lubnān: Dār al-Nahdha□ al-□Arabīyah, Bayrūt, h. 100-101.

[50]Syabān Muhammad Islām al-Barwāwī(2005), *op.cit.*, h. 132. Terdapat kebarangkalian yang amat kecil terhadap bon yang diterbitkan oleh kerajaan untuk mengalami kerugian. Ini kerana, kerajaan boleh meminta bantuan daripada pihak bank negara agar membuat pembayaran keuntungan dan juga pembayaran bagi penebusan terhadap *par value* apabila tempoh matang tamat. Rujuk. G.Sivalingam(1993), *Investment Management in Malaysia*, Kuala Lumpur: Berita Publishing Sdn. Bhd. Kuala Lumpur, h. 76.

[51]Muhammad □abrī Hārūn(1999), *'Ahkām al-Sūq al-Mālīyah (al-□Ashām wa al-Sanadāt)*, c.1, Urdūn: Dār al-Nafā□is, Yarmouk, h. 239.

[52]Ianya turut dikenali sebagai Sukuk Pertubuhan Serantau (*al-Muna□□amāt al-□Iqlīmīyah*). Penerbitan sukuk tersebut dilakukan oleh Bank Negara untuk pembangunan semula ekonomi sesebuah negara. Rujuk. Ahmad bin Muhammad al-Khalīl(2004), *al-Asham wa al-Sanadāt wa Ahkāmuha fī al-Fiqh al-Islāmī*, c.1, Sa□ūdīyah: Dār al-Jawzī, Jeddah, h. 82.

[53]*al-Mu□jam al-Wasī□* (1983), c.2, j.1&2, h. 544.

[54]Islamic Financial Services Board., http://www. http://www.ifsb.org/com/060401_icap_products.htm#sukuk.1 Januari 2008.

pelaburan atau projek tertentu yang disokong oleh aset sandaran (*back up by underlying tangible asets*)[55]. Manakala sukuk pada sifatnya merupakan satu bukti yang menyatakan bahawa pemegangnya turut terlibat dalam pembiayaan sesuatu projek atau aktiviti ekonomi mengikut prinsip-prinsip syariah.

Berdasarkan kepada maksud sukuk yang diutarakan diatas jelas menunjukkan bahawa sukuk merupakan sijil kewangan yang disandarkan kepada aset sandaran. Aset sandaran yang digunakan dalam menerbitkan sukuk samada berupa fizikal aset, manafaat ataupun hak. Tidak seperti bon konvensional yang juga merupakan sijil kewangan akan tetapi ianya tidak disandarkan kepada aset sandaran yang nyata. Ini merupakan suatu perbezaan yang ketara diantara kedua-dua sijil kewangan ini.

Islam telah membuat penetapan perihal harta bernilai yang mana ia terbina daripada dua asas yang utama. Asas yang pertama hendaklah barangan tersebut dimiliki dan boleh didagangkan dikalangan manusia. Manakala asas yang kedua pula, harta tersebut bermanafaat penggunaannya pada setiap keadaan. Huraian bagi asas yang pertama, barangan tersebut adalah milikan individu secara sah serta ianya boleh diurusniagakan sesama manusia. Sekiranya dilihat dari segi nilai pemilikan, sukuk merupakan suatu tuntutan pemilikan (*ownership claim*) bagi pelabur. Mengikut fuqaha al-Mālikīyah maksud harta ialah apa yang dimiliki dan pemiliknya mempunyai kuasa terhadap harta tersebut daripada orang lain(bukan pemilik) menurut syara yang telah ditetapkan[56].

Ini jelas menunjukan bahawa sukuk mempunyai jaminan pemilikan yang sah bagi individu yang membuat pelaburan. Oleh yang demikian, apabila pemilik mempunyai pemilikan yang sah bagi sesuatu barangan ianya diketegorikan sebagai harta bagi individu

[55]Glosari Pasaran Modal Islam (2005), c.1, Kuala Lumpur: Dewan Bahasa dan Pustaka (DBP), h.157 & 159. Lihat juga. Bala Shanmugam, Nafis Alam & Zaha Rina Zahari(2008), *Encyclopedia Islamic Finance*, Malaysia: Aslita Sdn. Bhd., Kuala Lumpur, h.480.
[56]Abū Ishāq al-Syā□ibi(t.t), *op.cit.*, h. 17.

tersebut. Syarat untuk sukuk juga hendaklah mempunyai nilai dagangan dikalangan manusia sama seperti nilai wang. Ini bersandarkan kepada takrifan yang telah dibuat oleh al-Suyūtī berkaitan tentang harta yang menggunakan □*urūf* sebagai asasnya:

> 'Tidak dinamakan harta kecuali ke atas harta tersebut mempunyai nilai, ianya boleh dijual….dan apa yang tidak ditolak oleh manusia ke atas harta tersebut seperti wang dan harta yang umpamanya.'[57]

al-Suyū□ī menegaskan bahawa sesuatu harta itu hendaklah mempunyai dua ciri yang utama. Ciri yang pertama, harta tersebut hendaklah bermanafaat dan yang kedua, harta tersebut hendaklah mempunyai nilai[58]. Tidak dianggap sesuatu barangan sebagai harta sehingga ia mempunyai nilai, boleh dijual dan penggunaannya tidak ditolak oleh manusia. Dari petikan di atas juga terdapat *'...harta tersebut seperti wang dan harta yang umpamanya'*. Maksud harta yang seumpamanya ialah harta yang bernilai dikalangan manusia dan sah untuk diperdagangkan sesama manusia. Ini bersesuaian dengan sifat yang terdapat pada instrumen kewangan Islam seperti sukuk.

□*Urūf* merupakan salah satu sumber hukum dalam perundangan Islam. Ianya terbentuk berasaskan kepada 3 perkara yang utama iaitu *al-ma□ālihul al-□urūriyah, al-ma□ālihul al-hājīyat* dan *al-ma□ālihul al-ta□sīnīyah*. Adapun *al-ma□ālihul al-□urūriyah* bermaksud, sesuatu yang mesti dilakukan untuk menegakkan kemaslahatan agama dan kehidupan di dunia. Sekiranya perkara ini tidak dilakukan nescaya ianya akan mendatangkan kehancuran bagi kehidupan di dunia dan kerugian di akhirat kelak[59]. Ia juga mendorong ke arah mengawal kepentingan sesuatu disamping menjaga asas-asas syariat Islam daripada

[57]Jalāl al-Dīn 'Abd. Rahman al-Suyūtī(2004), *al-Asybā□u wa al-Nazā□ir fī Qawā'id wa Furū' al-Syāfi'īyah*, c.1, j.1&2, Mi□r: Dār al-Salām, Madīnah al-Na□r, h. 606.
[58]*Ibid*., h. 607.
[59]Abī Ishāq Ibrāhīm bin Mūsa bin Muhammad al-Syātibī (1996), *al-Muwāfaqāt*, c.1, j.2, Sawdia: Dār Ibn 'Affān lil Nasyri wa al-Tawzī'e, h.17-18.

kepentingan yang utama iaitu agama, jiwa, akal, keturunan dan juga harta[60]. Ini kerana yang dimaksudkan dengan □*Urūf* ialah perkara yang tetap didalam diri manusia dari segi aqal fikiran dan diterima baik oleh tabiat yang sejahtera atau sempurna[61].

al-Daraynī pula menjelaskan, harta termasuk dalam ketegori *al-ma□ālihul al-hājīyat*[62] kerana ianya dapat menolak kesempitan dan kesukaran yang tiada jalan penyelesaiannya. Dengan harta juga, manusia dapat memudahkan segala urusan harian sesama mereka. Tanpa harta, sudah tentu manusia akan mendapat kesukaran dalam meneruskan kehidupan mereka di muka bumi ini[63].

Manakala asas kedua pula dalam menentukan status *mutaqawwim* disisi syara ialah harta tersebut hendaklah berupa barangan yang bermanafaat dengan penggunaannya pada setiap keadaan. al-Daraynī pula menerangkan bahawa setiap sesuatu yang bernilai semestinya barangan tersebut memberi manafaat terhadap penggunaannya. Sekiranya sesuatu itu tidak bernilai dan tidak memberi bermanafaat ia bukanlah digelar sebagai harta. Beliau juga menerangkan kalimah *mā* (ما) yang terdapat pada pentakrifan Suyūtī merangkumi kalimah umum untuk semua benda yang bernilai dan juga benda yang berupa maknawi seperti manafaat (dari harta tersebut)[64].

Perkataan *al-qīma*□ membawa maksud bernilai, Islam telah menetapkan bahawa nilai bagi sesuatu barangan tersebut terbina di atas beberapa asas yang umum, antaranya[65]:

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[60]*Ibid.*, h. 20.
[61]Muhammad al-Sa□id ‘Ali ‘Abd. Rabba□(t.t), *Buhūth fī al-‘Adillah al-Mukhtalifah Fīhā ‘Inda al-‘Usūlīyīna*, (t.t.p), h. 176.
[62]*al-Ma□ālihul al-hājīyat* merupakan salah satu kaedah untuk menegakkan keadilan dalam syariah Islam selagi mana tidak terdapat dalil yang khusus pada permasalahan tersebut ataupun kaedah yang umum secara *qa□□eīyah* atau dari Ijmak.
[63]Fathī al-Daraynī(t.t), *Haq al-Ibtikār fī Fiqh al-Islāmī al-Muqārin*, Lubnān: Mua’assah al-Risālah, Bayrūt, h.23.
[64]Fathī al-Daraynī(t.t), *op.cit.*, h.24.
[65]Muhammad Rawās Qal□a□ Jī (1991), *Mabāhith fī al-Iqti□ād al-Islāmī min ‘Usūlih al-Fiq□īya□*, c.1, Lubnān: Dār al-Nafāis, Bayrūt, h. 110-112.

1) Manafaat bagi barangan. Untuk menentukan nilai sesebuah barangan ia hendaklah berasaskan kepada manafaat penggunaan barangan tersebut. Sekiranya barangan tersebut tidak mempunyai manafaat, ianya tidak dikira mempunyai nilai.

2) Kesukaran untuk mengeluarkan barangan tersebut. Kesukaran ini juga melihat dari aspek upah dan juga pengangkutan (kos pengeluaran) yang dikenakan untuk mengeluarkan barangan tersebut.

3) Penawaran dan permintaan terhadap sesuatu barangan. Harga sesuatu barangan tersebut akan meningkat sekiranya permintaan terhadap barangan tersebut meningkat. Sekiranya terdapat sedikit permintaan terhadap barangan tersebut, nilai harganya akan menjadi murah. Akan tetapi jika terdapat banyak permintaan untuk barangan tersebut, secara langsung nilai harga barangan tersebut akan meningkat tinggi.

4) Risiko. Ini juga merupakan perkara yang boleh menjadikan nilai barangan tersebut meningkat atau turun.

Sukuk merupakan sijil kewangan yang bernilai serta bermanafaat pada setiap keadaan sehinggalah tamat tempoh matangnya. Penerbitan sukuk akan disandarkan dengan aset sandaran yang bernilai. Sukuk akan ditawarkan pada pasaran saham yang mempunyai faktor penawaran daripada unit lebihan (*surplus units*) kepada pihak unit kurangan (*deficit units*). Pemegang sukuk juga boleh menjual syernya pada setiap waktu kerana ia mempunyai nilai kecairan yang tinggi.

Jika dikaji dari segi perlaksanaan sukuk, ia merupakan satu indeks syariah yang mengikut piawaian perundangan Islam. Sungguhpun begitu, sukuk yang bernilai pada pandangan syarak mestilah bebas dari elemen-elemen yang melanggari hukum syarak. Majlis Penasihat Syariah (MPS) memainkan peranan yang penting bagi memastikan penerbitan

indeks saham lulus syariah bebas dari riba atau *interest*, penipuan (*gharar*) dan perjudian (*gambling*)[66].

Sesebuah syarikat yang mempunyai aktiviti percampuran unsur yang dibenarkan syarak dengan unsur yang diharamkan syarak diketegorikan sebagai *'grey area'*[67]. Sekiranya syarikat tersebut ingin menerbitkan sukuk ia hendaklah memenuhi beberapa syarat tambahan yang dibuat oleh Majlis Penasihat Syariah (MPS). Pertama, aktiviti utama syarikat mestilah bukan daripada aktiviti yang bertentangan dengan syarak. Kedua, pandangan baik masyarakat tentang imej syarikat penerbitan sukuk tersebut. Dan yang terakhir sekali, aktiviti utama syarikat hendaklah mempunyai maslahat dan kepentingan kepada umat Islam dan negara.

Sekiranya terdapat segelintir kecil sahaja unsur haram pada syarikat yang melibatkan perkara *umum balwa* (kerumitan yang meluas yang sukar dielakkan)[68] ianya dimaafkan. Setelah syarikat tersebut memenuhi syarat-syarat tambahan yang dibuat oleh MPS, syarikat tersebut akan dibenarkan untuk transaksi penerbitan sukuk di pasaran Primer.

MPS telah menetapkan setiap urusniaga penerbitan sukuk dibenarkan selagi mana mematuhi kehendak syariah serta mengikut komponen indeks yang terdiri daripada sekuriti lulus syariah. Indeks sukuk juga mempunyai kaunter lulus syariah yang khusus. MPS telah mengiktirafkan sukuk sebagai suatu aset yang berharga. Dengan ini, instrumen sukuk dianggap sebagai harta yang bernilai (*al-mutaqawwim*) disisi syara selagi mana ia menepati syarat yang telah digariskan oleh MPS.

KESIMPULAN

[66]Suruhanjaya Sekuriti Malaysia. http://www.sc.com.my/sub.asp?pageid=&menuid=267&newsid=&linkid=&type=, 15 Ogos 2009.
[67]Rahail Ali (2008), "Section 2: Equity and Funds. Overview of Islamic Asset Management", dalam Imtiaz Shah & Lovells (*ed.*), *Islamic Finance : A Practical Guide*, United Kingdom: Globe Business Publishing Ltd., London, h. 17.
[68]Securities Commision (2003), *Resolutions of the Securities Commission Syariah Advisory Council*, c.2, Kuala Lumpur: Securities Commision, h.114-115. Lihat juga. Muhammad Ma'sum Billah (2007), *Applied Islamic Law of Trade and Finance: A Selection of Contemporary Practical Issues*, c.3, Kuala Lumpur: Sweet & Maxwell Asia, Petaling Jaya, h. 95-99.

Sebagaimana yang telah diutarakan dalam perbincangan ini, terdapat dua sifat asas yang utama pada sukuk diperlukan agar ia disenaraikan dalam ketegori harta *mutaqawwim* disisi Islam. Asas yang pertama hendaklah barangan tersebut dimiliki dan boleh didagangkan dikalangan manusia. Asas yang kedua pula harta tersebut bermanafaat penggunaannya pada setiap keadaan. Kedua-dua sifat asas ini terdapat pada sukuk yang merupakan salah satu daripada instrumen kewangan Islam masa kini. Ini jelas menunjukan bahawa sukuk merupakan salah satu harta *mutaqawwim* pada kacamata Islam.

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RISK MANAGEMENT OF CORPORATE FIRMS USING INSURANCE: A COMPARISON BETWEEN ISLAMIC AND CONVENTIONAL INSURANCE DEMAND IN MALAYSIA

by

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Abstract:

The general takaful industry in Malaysia has recorded progressive growth, particularly over the last six years. Demand for general takaful products has continuously risen, as reflected in the improvement in contributions (premiums) of general takaful. Besides that, the conventional insurance industry also continued to register positive growth, buoyed by stronger growth in the general insurance sector. In addition, over 50 percent of total premiums were from the business corporation for takaful and conventional insurance in Malaysia. Factors like underinvestment and leverage, growth opportunities, expected bankruptcy costs, tax considerations, managerial ownership, company size and regulatory environment have been examined in this study to identify the determinants of corporate demand for Islamic and conventional insurance of Public Listed Companies in Malaysia. The data covers a five-year period from year 2002 – 2006. Three models of panel data estimation were employed, namely GLS with non-effects, GLS with fixed effects and GLS with random effects. The findings are robust to alternative specifications of the model i.e. GLS with the fixed effects model that help us to control for unobservable heterogeneity. The findings show that leverage, expected bankruptcy costs, tax considerations, company size, and managerial ownership play an important role in determining the corporate demand for conventional insurance and takaful in Malaysia. This study gives some important implications for various groups like the insurers and takaful (Islamic insurance) operators, the shareholders and creditors as well as the regulators in reflecting with the factors that determine the corporate demand for Islamic and conventional insurance in Malaysia.

1.0 Introduction

Corporate risk management has been the subject of a large body of academic literature in the last twenty years. Corporate risk management methods consist of risk controlling and risk financing in which insurance is one of the risk financing methods (Dorfman, 2003). In Malaysia, the government entrusted Bank Negara Malaysia with the regulatory and supervisory role over the conventional and Islamic insurance

(takaful) industries[1]. These two contracts have the common objective of reducing a financial burden arising from any disaster or accidental loss like fire, flood or storm. In other words, takaful and the conventional insurance contract is an integral part of corporate risk management. Takaful and conventional insurance have more or less the same characteristics, for example, in terms of the nature of their businesses, products and services offered. The only difference is that takaful is based on the Shariah law, while conventional insurance is not.

This research focuses on property or asset-based Islamic and conventional insurance[2]. The majority of empirical studies focused upon identifying the factors affecting corporate demand for property insurance. Their studies try to find the relationship of these factors with property insurance and whether they are significantly or insignificantly related with property insurance and then whether they are positively or negatively related with property insurance (Yamori, 1999; Hoyt and Khang, 2000; Zou, Adams and Buckle, 2003; Daniel and Paul, 2003; Zou and Adams, 2006). Among the factors affecting corporate insurance that has been studied are; Underinvestment problem and leverage, Growth opportunities, Managerial Ownership, Tax consideration, Expected bankruptcy costs and Company size. It is therefore, this study would like to examine the above mentioned factors affecting corporate demand for insurance by public listed companies of main board at Bursa Malaysia.

The general takaful industry in Malaysia has recorded progressive growth, particularly over the last six years. Demand for general takaful products has continuously risen, as is evident from the improvement in contributions (premiums) of general takaful. For example, total net contributions for general takaful expanded by a double-digit growth rate at an average of 19.2% annually, to register RM356.6 million in 2005. The Central Bank of Malaysia also reported that the conventional insurance industry continued to register positive growth in 2005, buoyed by stronger growth in the general insurance sector. The general insurance sector expanded with strong growth in 2005 with a premium growth of 9.7% (2004) to RM9, 386.1 million. The data also indicate that over 50 percent of total premiums are from business corporations for general insurance business. It is, therefore, important to highlight the factors affecting corporate demand for Islamic and conventional insurance.

This study contributes to the existing literature where it extends to study on the corporate demand for takaful. In contrast of all other previous studies like Mayers and Smith (1990), Yamori (1999), Hoyt and Khang (2000), Zou, Adam and Buckle (2003), Daniel and Paul (2003) and Zou and Adam (2005 & 2006) were study the corporate demand for insurance (conventional) only. Takaful and conventional insurance provide similar characteristics of the product, underwriting and claims consideration except for shariah principles.

[1] The Central Bank and the Financial System in Malaysia – A Decade of Change (1989-1999), p. 256

[2] There are two types of takaful and conventional insurance business i.e. i) General takaful and general insurance which consists of property and liability takaful & property and liability insurance. ii) Family takaful and life insurance. As in prior studies (e.g., Hoyt and Khang, 2000; and Zou et al., 2003), only property insurance is covered in this study, whilst liability insurance is excluded for two reasons. First, third party liability insurance/takaful is compulsory and the corporate demand for other liability insurance/takaful is still very minor (less than 5 percent of total general insurance/takaful premium, BNM 2005). Second, Hoyt and Khang (2000) report that the levels of liability-based premiums are unlikely to correspond closely with current measurable firm-specific factors (e.g., size).

The rest of the paper is organized as follows. The next section discusses the literature review. Section 3 describes the research design, followed by the analysis of findings in Section 4. The final section provides the conclusion of the study and also discusses the implications, limitations of study and suggestion for future research.

2.0 Prior Studies

Mayers and Smith (1990) was the first empirical study of the determinants of reinsurance purchasing behaviour of insurance companies. In this study they examine reinsurance purchases for a sample of United States (US) based property and casualty insurance companies because such data are systematically reported in insurers' statutory returns. The empirical model employed in their study uses the ratio of reinsurance ceded to total business premium received as the dependent variable. Company characteristics such as size, degree of concentration in insurance lines, extent of geographic concentration and best rating are used as independent variables. They find that ownership structure, size, line of business concentration, geographical location and default risk show significant effects. However, due to data limitations, many factors like growth opportunities and tax are absent from their analysis and some variables specific to the insurance industry. Since only one industry i.e. the insurance industry is considered, it is difficult to make meaningful inferences about the insurance purchasing behaviour of other firms. In other words, their study fails to provide evidence of the insurance purchasing behaviour of non-insurance companies. In addition, as described by Mayers and Smith (1990) reinsurance purchases from another member of the same group are not distinguished from external purchases. That is, the actual retention is included in reinsurance purchases. The limitations described here could be mitigated with the use of data for industrial firms.

Yamori (1999) studies this area of research by focusing on the demand for corporate insurance in Japan for 504 industrial companies using 1986 data only due to the availability of published insurance premium data. His study shows that size and regulatory status appear to be important factors in the demand for corporate insurance. Some potentially important determinants of insurance purchase like growth opportunities and expected bankruptcy were absent from his study. Moreover, this study uses time specific data (1986 only) on a cross sectional analysis that might limit the empirical results to some extent. The OLS methods of cross sectional estimation methods assume that all firms have the same behaviour in making decisions to protect their property against insurable risks. These assumptions of uniform behaviour deny any form of heterogeneity, which is, in practice, very likely to prevail. Thus, cross section and time-series data is also useful to be considered to differentiate among individuals in recognition of the fact that each individual, or cross sectional unit, may have some special characteristics of its own.

Hoyt and Khang (2000) was the first study to test a full set of determinants of the corporate demand for property insurance by using insurance premium data from a questionnaire survey distributed to 251 public listed (NYSE) companies for 1989.

They discover that leverage, firm size, growth opportunities and tax consideration have a significant impact on the factors for the demand of corporate insurance. However, this study also only focuses on one year specific data (1989 only) that could also limit their empirical results to some extent.

Main (2000) discusses corporate demand for insurance by offering a review of the theoretical work in this area and presenting the results of a survey of large companies in Great Britain regarding their insurance purchase decisions. He finds evidence that institutional and regulatory considerations are the important factors in the company's insurance purchase decision. However, Main (2000) uses only questionnaire survey analysis to conclude the corporate demand for insurance without analyzing financial data analysis that is the main focus of this research to fill the gap between the irrelevance of results derived from the benchmark of perfect capital markets (Modigliani and Miller, 1958) and the practical importance of risk management decisions on insurance in modern corporations.

Zou, Adams and Buckle (2003) analyze panel data for 235 companies in China by using insurance premium data from a telephone survey and financial data from the Shanghai Stock Exchange (SHSE) and the Shenzhen Stock Exchange (SZSE) in China. The period of data was from 1997-1999. The companies were divided into systematic and unsystematic risks based on the performance of the stocks of the companies. They employ a two-stage analytical approach to address the question of the determinants of the participation and volume insurance purchasing decisions. Their study indicates that the managerial decision to purchase property insurance is positively related to company size, insolvency risks and geographical concentrations. In contrast, the amount of property insurance purchased is positively related to systematic risks but negatively related to insolvency risk and unsystematic risks company size and leverage. However, as they mentioned in their study that the interpretation of their results might be tempered by a recognition of the limitations in their study such as the short time series of data used, 3 years only (1997-1999) and potential endogeneity issue.

Daniel and Paul (2003) explore the data on property insurance in the United States (US) from 1991 through 2002.The data for insurance was from SwissRe, one of the world's largest insurance companies and the financial data was collected from Compustat of the Securities and Exchange Commission (SEC). Due to insufficient quality in the data, they ignore a large part of the available contracts and perform the analysis with 180 firm-year observations. They use excess value as a proxy for corporate insurance demand. They find that expected default costs and size play an important role in determining property insurance. They argue that a major strength of their analysis compared to previous studies by Yamori (1999), Hoyt and Khang (2000) and Zou, Adams and Buckle (2003) is that they observe corporate choices for the excess value of property insurance as a proxy of demand. Yamori (1999), Hoyt and Khang (2000) and Zou, Adams and Buckle (2003) rely on the insurance premium as a proxy for demand. Under an excess, the insurer does not participate in the loss until the actual loss exceeds a certain amount (Rejda, 2005). This means that excess is a first amount of loss that should be borne by the insured in the event of loss. Some property insurance policies impose voluntarily excess and some property insurance policies impose compulsory excess. Thus, it is believed that an accurate proxy to

measure property insurance demand is premium that is calculated depending on the nature and types of risk which is based on underwriting principles of insurance. Therefore, Daniel and Paul (2003) who use excess value as a proxy for insurance demand is not accurate to justify the corporate behaviour of property insurance.

Zou and Adams (2005) use insurance data sets for 698 Chinese publicly listed companies for the period 1997-2003 where the study tests the simultaneous linkage among debt capacity, cost of debt and corporate property insurance. Their results suggest that debt capacity, cost of debt and corporate insurance appear to be simultaneously related. This study is a follow-up and extension of research by Zou et al. (2003) using the Simultaneous Equation Method (SEM) of analysis.

Zou and Adams (2006) again analyze the panel data (1997-1999) for 235 publicly listed companies in the Peoples Republic of China without segregating the companies into systematic and unsystematic risk types of companies as in their previous study (Zou et al., 2003). They analyze all the factors suggested by Hoyt and Khang (2000) and add some additional factors like geographical location and other ownership structures (e.g. foreign ownership and state ownership). Their results suggest that the decision to use property insurance is positively related to leverage but negatively related to state ownership and tax. In contrast, the volume of property insurance purchased is positively related to managerial ownership and growth options but inversely related to size. Again, as they mentioned in their study, the interpretation of their results might be tempered by recognition of the limitations in their study such as the short time series of data used, which was 3 years only (1997-1999), and the potential endogeneity issue. Moreover, unlike the managerial ownership factor, some additional factors that have been included in the study like foreign and state ownership were actually not strongly developed in the financial theory to relate and fill the gap between the irrelevance of results derived from the benchmark of perfect capital markets (Modigliani and Miller, 1958) and the practical importance of risk management decisions on insurance in modern corporations.

3.0 Research Design and Hypotheses Development

3.1 Data Description

Data is divided into two categories, namely a) Dependent variables: insurance and takaful premium ratio (b) Independent variables: Financial data. The insurance and financial data are collected on an individual firm basis from public listed companies in the main board of Bursa Malaysia excluding finance sector.

Ratio of property conventional insurance premium and ratio of property insurance premium for takaful (known as takaful contribution) by corporate sector of public listed companies are used as a proxy for demand which is as a dependent variable. The data is collected from Etiqa Insurance Berhad and two takaful operators in Malaysia. Previous studies like Yamori (1999); Hoyt and Khang (2000); Zou, Adams and Buckle (2003) and Zou and Adam (2005 and 2006) also used insurance premium as a proxy for the demand.

The amount of insurance premium by a firm is represented by the ratio of property insurance premium to the value of insurable assets. The amount of lands is subtracted because they are not usually subject to insurance. This is according to the Replacement or Reinstatement Basis Clause stated in insuranceor insurance policy. Previous studies like Hoyt and Khang (2000), Zou, Adam and Buckle (2003) and Zou & Adam (2005 and 2006) used this kind of formula to constitute the denominator of dependent variable.

There are 112 public listed companies on the main board which have been identified to have the property insurance coverage with these takaful companies. Out of the 112 companies, 44 companies were excluded because of having property insurance with takaful for less than 3 years, missing information on the annual reports for more than 2 years of 5-year period of study and insufficient data on Data Stream International software. The final number of companies is 68 companies for the period of 2002 – 2006. On the other hand, there are 124 public listed companies on the main board which have been identified to have property insurance coverage with conventional insurance companies (i.e. MNI and MBGAB). Out of the 124 companies, 42 companies were excluded because of having property insurance with the conventional insurers for less than 3 years, missing information on the annual reports for more than 2 years of 5-year period of study or insufficient data on Data Stream International software. The final number of companies is 82 companies for the period of 2002 – 2006.

As shown in Table 3.1, companies in all industries using conventional insurance and takaful were included in the study on each corporate demand for conventional insurance and takaful. Five companies are considered as regulated companies (regulated for risk management practice i.e. utility industry and oil and gas industry) in corporate demand for takaful and three companies are considered as regulated companies in the corporate demand for conventional insurance. These companies are put as a dummy variable of 1 for regulated firms in using insurance/takaful and other companies are being put as a dummy variable of 0 for unregulated firms in using insurance/takaful.

Table 3.1
Industrial Classification for All Companies

NO.	INDUSTRY	CDI	CDT
1.	PLANTATION	7	4
2.	TECHNOLOGY	1	4
3.	CONSUMER PRODUCTS	11	6
4.	INDUSTRIAL PRODUCTS	21	12
5.	TRADING/SERVICES	18	20
6.	PROPERTY	11	16
7.	INFRASTRUCTURE PROJECT	2	-
8.	HOTEL	3	1
9.	CONSTRUCTION	8	5
	TOTAL	**82**	**68**

CDI: Number of Listed Firms Using Conventional Insurance
CDT: Number of Listed Firms Using Takaful

The financial data of public listed companies are considered as explanatory or measurable variables (independent variables). In sourcing for the data employed, the ownership data are obtained directly from company's annual report. Other firm's financial data on the other hand, are gathered from DataStream International, a financial database provider. Financial data and hypotheses statements are developed as follows:

3.2 Financial Data and Hypotheses Development

The financial data of public listed companies are considered as explanatory or measurable variables (independent variables). In sourcing for the data employed, the ownership data are obtained directly from company's annual report. Other firm's financial data on the other hand, are gathered from DataStream International, a financial database provider. Based on an earlier discussion of the theoretical framework in Chapter three, financial data and hypotheses statements are developed as follows:

3.2.1 Underinvestment problem and leverage: Debt / Equity ratio

A firm that has more debt in its capital structure would purchase more insurance against its firm specific risks. In other words, the purchase of property insurance could be affected by a firm's capital structure i.e. financial leverage. Debt-equity ratio is used as a proxy for leverage. Previous studies which use this ratio include Hoyt and Khang (2000), Zou et al. (2003), Daniel and Paul (2003) and Zou and Adams (2006)

Therefore, the following hypotheses are proposed:

Conventional insurance:	$H_{1:}$	High leverage firms are likely to purchase more conventional insurance. Therefore, leverage is expected to be positively related with conventional insurance
Takaful:	$H_{1:}$	High leverage firms are likely to contribute more to takaful. Therefore, leverage is expected to be positively related with takaful

3.2.2 Growth Opportunities: Market to Book Value

According to Froot et al. (1993), the purchase of property insurance not only reduces the risk of financial distress, but it can also lower the incidence of cash flow shortfalls following a major accidental loss that could trigger a costly resort to the capital markets or scaling down of potentially value enhancing investment i.e. the so-called underinvestment problem. Thus, this study expects a positive relation between growth opportunities and property insurance. The market to book value ratio will be used as a proxy for growth opportunities in line with previous studies like Zou, Adams and Buckle (2003), Daniel and Paul (2003) and Zou and Adams (2005). Accordingly, this

study measures the market to book value as the ratio of book value plus convertible debt and preferred stock plus the market value of equity divided by total assets.

Therefore, the following hypotheses are proposed:

Conventional insurance:	$H_{2:}$	High growth-opportunities firms are likely to purchase more conventional insurance. Therefore, growth opportunities are expected to be positively related with conventional insurance.
Takaful:	$H_{2:}$	High growth-opportunities firms are likely to contribute more to takaful. Therefore, growth opportunities are expected to be positively related with takaful

3.2.3 Expected Bankruptcy costs: Working capital to Total Assets ratio

The amount of expected bankruptcy costs can be defined as bankruptcy costs multiplied by the bankruptcy probability (Hoyt and Khang, 2000). As, according to Warner (1977), the amount of bankruptcy costs is not proportional to firm size, this means that the larger companies have smaller relative bankruptcy costs than smaller companies. Therefore, natural logs of firm size measured by total assets can proxy the absolute amount of bankruptcy costs. Meanwhile, the bankruptcy related literature (Altman, 1968 and Ohlson, 1980) suggests that a proxy that is the most appropriate for measuring the probability of bankruptcy is the ratio of working capital to total assets. This implies that a negative sign for this proxy with respect to insurance premium can be expected. Other studies like Hoyt and Khang (2000) and Daniel and Paul (2003) also use the formula to measure the probability of bankruptcy.

Therefore, the following hypotheses for conventional insurance and takaful are proposed:

Conventional insurance:	$H_{3a:}$	Highly expected bankruptcy costs firms (small firms) are likely to purchase more conventional insurance. Therefore, expected bankruptcy costs are expected to be negatively related with conventional insurance.
Takaful:	$H_{3a:}$	Highly expected bankruptcy costs firms (small firms) are likely to contribute more to takaful. Therefore, expected bankruptcy costs are expected to be negatively related with takaful

(ii) Interest coverage ratio (Earning Before Interest & Tax / Interest), and Long-term debt ratio (Long Term Debt / Total Assets)

Conventional insurance:	$H_{3b:}$	It is believed that the higher a firm's interest coverage ratio and the higher its long term-debt

		ratio, the lower is the probability of default. Hence, it is expected to have a positive influence of the interest coverage ratio and a negative sign for the long term debt ratio on conventional insurance demand.
Takaful:	$H_{3b:}$	It is believed that the higher a firm's interest coverage ratio and the higher its long term-debt ratio, the lower is the probability of default. Hence, it is expected to have a positive influence on the interest coverage ratio and a negative sign for the long term-debt ratio on takaful demand.

3.2.4 Tax Considerations: Total Depreciations to Total Fixed Assets

The component of the tax effect hypothesis is the insurance on depreciated property says that demand for insurance would grow when economic depreciation is greater than accounting depreciation. This means that the greater the depreciation is, the more insurance the firm has the incentive to purchase. The statement might be supported by the fact that most fixed assets of the firm are insured on replacement or reinstatement cost basis according to the revised fire tariff of the General Insurance Association of Malaysia (PIAM). This was supported by Hoyt and Khang (2000) who use the ratio of depreciation to fixed assets to show the relationship between insurance and depreciated property. They suggest that the larger the amount of depreciation of a firm's assets, the greater will be the demand for insurance. DeAngelo and Masulis (1980) argue that firms use other non-interest items like depreciation, amortization, tax credit, and pension funds to derive the tax benefits. In this study, the depreciation expense over total fixed assets is used as a proxy for Insurance on depreciated property.

Therefore, the following hypotheses for conventional insurance and takaful are proposed:

Conventional insurance:	$H_{4:}$	Firms with higher depreciated property are likely to purchase more conventional insurance. Therefore, depreciated property is expected to be positively related with conventional insurance.
Takaful:	$H_{4:}$	Firms with higher depreciated property are likely to contribute more to takaful. Therefore, depreciated property is expected to be positively related with takaful

3.2.5 Managerial Ownership: The proportion of shares owned by managers

Obviously, managers may or may not have the same incentives as owners and, therefore, the more conflicting interest exists the higher will be the privately motivated influence of managers on corporate insurance demand. Since there are two competing hypotheses concerning the influence of managerial ownership on the corporate demand for insurance i.e. the managerial risk-aversion and incentive-

alignment hypotheses, the influence of managerial stock holdings (managerial ownership) on the corporate insurance decision is ambiguous (Daniel and Paul, 2003). However, Smith and Stulz (1985) argue that as the ownership of managers increases, they are expected to become more risk averse because they have more financial interest in the company. As a result, managers are likely to pursue risk management activities through insurance in order to reduce the risk of bankruptcy following major accidental losses.

The ratio of common stocks held by company managers to the total number of common stocks issued is used to measure the managerial ownership effect of the corporate decision on insurance (Hoyt and Khang, 2000; Zou, Adams and Buckle, 2003; Daniel and Paul, 2003 and Zou and Adams 2006).

Therefore, the following hypotheses for conventional insurance and takaful are proposed:

Conventional insurance:	$H_{5:}$	Firms with high levels of managerial ownership are likely to purchase more conventional insurance. Therefore, managerial ownership is expected to be positively related with conventional insurance
Takaful:	$H_{5:}$	Firms with high levels of managerial ownership are likely to contribute more to property takaful. Therefore, managerial ownership is expected to be positively related with takaful

3.2.6 Company Size and Insurer's Risk Management Services: The Natural Logarithm of Total Assets

Previous study like Hoyt and Khang (2000) supports the inverse relation between company size and the corporate decision to purchase insurance where small companies are more likely to purchase property insurance than large companies. According to Mayers and Smith (1990), smaller firms can gain more from insurers' risk management services than the larger firms. Firm size is measured by total assets which could affect the amount of insurance purchased by the firm. This study follows other studies like Hoyt and Khang (2000), Yamori (1999) Zou et al. (2003), Daniel and Paul (2003) and Zou and Adams (2006) using the natural logarithm of total asset.

Therefore, the following hypotheses for conventional insurance and takaful are proposed:

Conventional insurance:	$H_{6:}$	Small Companies are likely to purchase more conventional insurance. Therefore, size is expected to be negatively with conventional insurance.
Takaful:	$H_{6:}$	Small Companies are likely to contribute more to takaful. Therefore, small size is expected to be negatively related with takaful

3.2.7 Regulatory environment: Dummy (1, if the firm is in a regulated industry, 0, otherwise)

According to Yamori (1999), the electric power and gas industry is the typical regulated industry in Japan. Daniel and Paul (2003) group the data in five industries and a finer industry classification would be desirable. However, small sample size prevents them from such an analysis. Hoyt and Khang (2000) include only one industry which is price regulated i.e. utility industry. All of the above studies use a dummy variable which is 1 if a firm is classified into regulated industry and zero if classified otherwise. This study follows regulated industry suggested by Yamori (1999) and Hoyt and Khang (2000) i.e. Utility industry and oil and gas industry are also considered as highly price regulated in Malaysia. Thus, a dummy variable is 1 if a firm is classified into regulated industry and zero if classified otherwise. However, previous studies like Hoyt and Khang (2000), Zou et al. (2003) and Daniel and Paul (2003) show that financial theory does not make any clear prediction as to whether regulation has an effect on property insurance. Hoyt and Khang (2000) also argue that contradictory hypotheses exist. However, this study has revisited the possible relationship proposed by Mayers and Smith (1982) where firms in a regulated industry would purchase more insurance than those in an unregulated industry.

Therefore, the following hypotheses for conventional insurance and takaful are proposed:

Conventional insurance:	$H_{7:}$	Regulated firms are likely to purchase more conventional insurance. Therefore, regulatory environment is expected to be positively related with conventional insurance
Takaful:	$H_{7:}$	Regulated firms are likely to purchase more to takaful. Therefore, regulatory environment is expected to be positively related with takaful

3.3 Methodology

A pooled combination of cross sectional and time series that incorporates fixed effect, random effect for both time and specific correlation are deployed. The techniques used are the Generalized Least Squares (GLS) for panel data regression technique of non effect, fixed effect and random effects models. Under these techniques, the insurance premium ratio is regressed against the explanatory variables. The purpose of this regression is to identify the determinants of corporate demand for insurance and to asses or evaluate the direction of the coefficients with the theory. Thus, this study would employ a cross-sectional and time-series regression model by using panel data. The model has the following functional form:

Property Insurance Premium and Takaful Contribution = f (Leverage, Growth Opportunities, Bankruptcy Costs, Regulated Industries, Managerial Ownership, Company Size, Tax Considerations).

Where property insurance and takaful premium denote the dependent variable and leverage, growth opportunities, bankruptcy costs, managerial ownership, company size and tax consideration represent variables measuring the firm's various operating characteristics relevant to the study. Hence, the following general model will be used to verify the determinants of corporate demand for insurance (CDI) and takaful (CDT). The general estimation model can be specified as follows: `

$$CIPR_{it} = \alpha_0 + \beta_1 DER_{it} + \beta_2 MBVR_{it} + \beta_3 MOWN_{it} + \beta_4 TA_{it} + \beta_5 MTR_{it} + \beta_6 WCR_{it} + \beta_7 LTDR_{it} + \beta_8 ICVR_{it} + \beta_9 RGD_{it} + \varepsilon_{it}$$

$$TCR_{it} = \alpha_0 + \beta_1 DER_{it} + \beta_2 MBVR_{it} + \beta_3 WCR_{it} + \beta_4 ICVR_{it} + \beta_5 LTDR_{it} + \beta_6 DEP_{it} + \beta_7 MOWN_{it} + \beta_8 LNTA_{it} + \beta_9 REGDMY_{it} + \varepsilon_{it}$$

Definition of Variables;

CIPR	The ratio of property insurance premium to insurable assets
TCR	The ratio of property takaful contribution to insurable assets
DER	Debt / Equity ratio
MBVR	Market to Book Value
MOWN	Managerial Ownership
TA	Total Assets (Log)
MTR	Marginal tax rate after interest payment (MTR) (Total Tax Payment)
WCR	Working capital to Total Assets ratio
RGD	Regulated Industry: Dummy (1, if the firm is in a regulated industry, 0, otherwise)
ε	Error term
i	*i* th firm
t	*t* th period

The general estimation models are divided into three specific models as follows:

i.) **Model 1: Fixed Effects Model:** The fixed effect model treats omitted (unobservable) firm-specific variables as constant over period specific variables as invariant across companies. In the fixed effects model, the intercept in the regression model is allowed to differ among individuals in recognition of the fact that each individual, or cross sectional unit, may have some special characteristics of its own

ii.) **Model 2: Random Effects Model:** The random effects model treats both firm and period specific factors as random. By following steps suggested by Gujerati (2003), instead of treating α_{0i} for model CDT as fixed, it is assumed that it is a random variable with a mean value of α_0 (no subscript i) and the intercept value for an individual firm.

However, the choice between the fixed and random effects models involves a trade-off between the degrees of freedom lost due to the dummy variable approach in the fixed effects model and the treatment of individual effects as uncorrelated with other regressors, as in the random effects formulation. Testing the orthogonality of the random effects and the regressors is thus important. The usual procedure is to use the Hausman test statistic for the difference between the fixed effects and random effects estimates, as suggested by Hsiao (2003).

4.0 Analysis Of Findings

Table 4.1 of Panel A and Panel B presents the descriptive statistics for the conventional insurance premium ratio (CIPR) and Takaful contribution ratio (TCR) and the firm-specific characteristics for the pooled company/year sample of 82 and 68 public listed companies of Bursa Malaysia for the period of 2002-2006 respectively. The result shows that the CIPR and TCR, which is derived by dividing total property insurance premium by total property, plant and equipment plus inventory, indicates that the average conventional insurance premium was roughly 0.2 percent relative to the value of insurable physical assets (Property, plant and equipment plus inventory). This observed level of property insurance premium is much lower than the same figures reported in the developed insurance markets (e.g., the US). For example, Hoyt and Khang (2000) report that the average value of property insurance premiums purchased by US corporations was around 5 percent of the value of insurable assets. The mean and median ratios of the property insurance premium show 0.2 percent and 0.09 percent respectively. However, there is a big dispersion on the conventional insurance demand evident from the ratio of standard deviation of 0.9 percent. This situation is supported by the findings of Daniel and Paul (2002), Zou et al. (2003) and Zou and Adams (2006), which show that the dispersion on the insurance demand is the result of firms in different industries that tend to pay their relative premium over time.

Table 4.1: Descriptive Statistics

Panel A: Corporate Demand for Conventional Insurance (CDI)

Variables	Mean	Median	Std Dev	Skewness	Kurtosis	Jarque-Bera
CIPR	0.0024	0.0009	0.0091	9.4855	101.0425	167034.8***
DER	1.0478	0.5223	2.2768	4.9845	34.8518	18658.16***
MBVR	0.0012	0.0002	0.0041	8.0187	73.7432	88135.15***
WCR	0.1305	0.1312	0.2214	-1.1229	9.8416	868.5014***
DEP	0.0159	0.0105	0.0224	3.9516	24.8683	9056.492***
MOWN	0.1299	0.0372	0.1734	1.2723	3.4375	111.6556***
TA	2081.850	618.55	4505.34	4.2660	22.86008	7825.910***
REGD	0.0373	0.0000	0.1898	4.8825	24.8388	9585.798***

Panel B: Corporate Demand for Takaful (CDT)

Variables	Mean	Median	Std Dev	Skewness	Kurtosis	Jarque-Bera
TCR	0.0012	0.0009	0.0025	-12.1436	199.6210	531506.0***
DER	0.4451	0.3932	2.8216	-16.3002	285.2023	1092825***
MBVR	0.0008	0.0002	0.0018	8.4745	109.6924	158038.5***
WCR	0.1374	0.1143	0.1949	0.1361	3.5060	4.4712***
DEP	0.0137	0.0109	0.0148	0.4222	10.6918	810.8355***
MOWN	0.1172	0.0020	1.0470	17.5928	314.5459	1331130***
TA	3035.05	693.62	8949.921	5.3252	32.7576	13527.42***
REGD	0.0708	0.0000	0.2568	3.3476	12.2066	1754.834***

*** Significant at 1%

****Notes:***

Variable definitions:

CIPR	= The ratio of property conventional insurance premium to insurable assets
TCR	= The ratio of property takaful contribution (premium) to insurable assets
DER	= Debt / Equity ratio
MBVR	= Market to Book Value
WCR	= Working Capital to Total Assets ratio
DEP	= Total Accumulated Depreciation / Total Fixed Assets
MOWN	= Managerial Ownership
TA	= Total Assets
REGD	= Regulated Industry (1, if the firm is in a regulated industry, 0, otherwise)

TEST OF MULTICOLLINEARITY

In the presence of multicollinearity, the OLS estimator is still the best linear unbiased estimator (BLUE) (Kennedy, 1998). However, Belsley, Kuh and Welsh (1980) describe the possibility of other variables' involvement being obscured by a dominant relation as being high when diagnostic procedures for collinearity exhibit: 1) High variance decomposition proportions for two or more coefficient variances, and 2) this occurs in a single high condition index.

Panel A1 and A2 of Table 4.2 presents the results of the Pearson's correlation coefficients among independent variables for corporate demand for conventional insurance and takaful data respetively. For univariate analysis between conventional insurance premium ratio (CIPR) and independent variables using Pearson's correlation indicates DEP and MOWN are found to be significantly related to property insurance, though the finding MOWN is inconsistent with expectations.

Panel B1 in Table 4.2 presents the Pearson's correlation coefficients among independent variables for corporate demand for takaful data. For univariate analysis between takaful contribution ratio (TCR) and independent variables using Pearson's correlation indicates, DER, WCR, DEP, TA and REGD are found to be significantly

related to property takaful, although the result of WCR is inconsistent with the expected result.

The statistically significant correlations between some of the independent variables reported in Panel A1, Panel B1 of Table 4.2 raise the possibility of multicollinearity. The correlation coefficients between pairs of independent variables are generally low, suggesting that a serious collinearity problem is unlikely. However, variance inflation factors (VIF) and condition indices are also computed to test for the presence of multicollinearity. The results of variance inflation factors and condition indices are reported in Panel A2 and Panel B2 of Table 4.2

According to econometric practice, the variance decomposition proportion is considered high when the value exceeds 0.5 and the condition index is considered high when the value exceeds 30 (Belsley, Kuh and Welsch, 1980). Kennedy (1998) suggests that a VIF of more than 10 indicates harmful collinearity. Panel A2 and Panel B2 of Table 4.2 show that the calculated VIF are all less than 2 and the (largest) condition indices in both models are less than 10. Therefore, multicollinearity does not appear to be a severe problem in this study.

Table 4.2: Pearson's Correlations

Panel A1: Pearson's Correlations for CDI

	DER	MBVR	WCR	DEP	MOWN	TA	REGD
DER	1.00						
MBVR	0.015	1.00					
WCR	-0.200***	-0.027	1.00				
DEP	-0.119***	-0.016	0.152***	1.00			
MOWN	0.014	-0.068*	0.057	-0.134***	1.00		
TA	0.013	-0.053	-0.106**	-0.036	-0.122***	1.00	
REGD	0.025	-0.049	-0.074*	-0.020	-0.145***	0.272***	1.00

*** Significant at 1% ** Significant at 5% *Significant at 1%

Panel B1: Pearson's Correlations for CDT

	DER	MBVR	WCR	DEP	MOWN	TA	REGD
DER	1						
MBVR	.013	1					
WCR	.122**	.137***	1				
DEP	-.070	-.034	.196***	1			
MOWN	.006	-.014	-.021	-.049	1		

TA	.061	-.105**	-.102**	.011	-.028	1	
REGD	.029	-.090	-.208***	-.029	-.026	.423***	1

*** Significant at 1% ** Significant at 5% *Significant at 10%

PANEL A2 & B2: Collinearity Diagnostics for CDI and CDT

CDI			CDT		
	Condition Index[a]	**VIF**		**Condition Index[a]**	**VIF**
DER	1.655	1.244	DER	1.489	1.091
MBVR	1.723	1.077	MBVR	1.723	1.035
WCR	1.891	1.092	WCR	1.774	1.164
DEP	2.409	1.057	DEP	2.210	1.137
MOWN	2.608	1.075	MOWN	2.522	1.014
LNTA	3.375	1.221	LNTA	2.741	1.424
REGD	4.313	1.119	REGD	4.664	1.291

[a] A condition index is the square root of the ratio of the largest Eigenvalue to the individual Eigenvalue

DETERMINANTS OF CORPORATE DEMAND

In verifying the determinants of corporate demand for conventional insurance and takaful based on the profile reported above, the regression analysis is carried out using GLS techniques on the corporate demand for conventional insurance and takaful. The GLS minimizes the weighted sum of residual squares. In the GLS, the weight assigned to each observation is proportional to its σ_i, that is, observations coming from a population with larger σi will get a proportionately larger weight in minimizing the residual sum of squares. The ideal estimation is to give more weight to observations that are closely clustered around their mean than those that are widely scattered (Gujarati, 2003).

Table 4.3 report the results of GLS regression with fixed effects (Model 1) as well as the GLS regression with random effects (Model 2) on the corporate demand for conventional insurance (CDI) and takaful (CDT) respectively.

This section is divided into three parts namely Analysis of Models: Econometric and Statistical Analysis, Models Selection Tests and Corporate Demand Analysis using the best and most appropriate model.

The estimation using fixed effects regression that exploits time series variation, cross-sectional variation in any omitted variables in this model, is captured in firm-specific intercept terms. Thus, as suggested by Johnson (2003), this study omit the regulated firm dummy (REGD) from this regression because it does not vary over time. Studies by Zou et al. (2003), Daniel and Paul (2003) and Zou and Adams (2006) also omit the regulated firm dummy in their fixed effect analysis.

Table 4.3: Multivariate results

Specification	Expected Sign	Fixed Effects		Random Effcets	
		CDI	CDT	CDI	CDT
Constant	+/-	0.00229 (49.69480)***	0.00074 (20.96580)***	0.00038 (1.25509)	0.00081 (2.49195)**
DER	+	0.00014 (13.45323)***	0.00078 38.13419***	0.00033 (2.40769)**	0.000808 (54.81683)***
MBVR	+	-0.00708 (-1.54627)	-0.00395 (-1.74688)*	-0.02418 (-1.10667)	-0.00511 (-0.37342)
WCR	-	-0.00020 (-1.18301)	0.00035 (5.07929)***	-0.00133 (-0.50453)	0.00063 (1.60435)
DEP	+	0.01689 (11.02951)***	0.00909 (9.24419)***	0.14299 (1.92109)*	0.009719 (1.21349)
MOWN	+	0.00036 (3.43793)***	4.02E-05 (2.22066)**	-0.00165 (-1.58374)	4.30E-05 (3.98772)
LNTA	-	2.90E-08 (3.40286)***	7.49E-08 (6.95075)***	6.60E-08 (2.31738)**	3.19E-08 (1.64169)
REGD	+			-0.00119	0.000492

			(-0.83738)	(1.84322)*
N	402	325	402	325
R^2	0.90063	0.96525	0.17529	0.89151
Adj. R^2	0.87228	0.95479	0.15635	0.88841
F-test	30.45072***	44.83278***	9.25732***	287.6086***
DW-test	1.80224	1.84079	2.13423	1.65129

Figures in the parentheses for directional prediction are t-statistics.
*** Significant at 1% ** Significant at 5% *Significant at 10%

Notes:
Results are based on White-Hetroscedasticity Corrected Regression.

Models Selection Tests

Panel A and Panel B in Table 4.4 show the results of the Chow test and the Hausman test for CDI and CDT respectively.

As shown in Panel A of Table 4.4, the result of the Chow test for a pooled model (non-effect) vs a fixed-effects model for CDI, F = 13.94, is significant at 1% level (one-tailed), suggesting that a heterogeneous fixed effects model is superior to the pooled model. While the Hausman test for random-effects vs a fixed-effects model, χ^2 = 128.89, is significant at 1% level (one-tailed), indicating that the unobservable company specific effects are correlated with the explanatory variables. Thus a fixed effects model is better than a random effects model. As such, the fixed effects model is better in the estimation process than the other two models (non effects and random effects) in this study for CDI.

Panel B of Table 4.4 exhibits the result of the Chow test for a pooled model (non-effect) vs a fixed-effects model for CDT, F = 8.60, as being significant at 1% level (one-tailed), suggesting that a heterogeneous fixed effects model is superior to the pooled model. While the Hausman test for the random-effects vs the fixed-effects model, χ^2 = 17.65, is significant at 5% level (one-tailed), indicating that the unobservable company specific effects are correlated with the explanatory variables. Thus a fixed effects model is better than a random effects model. As such, the fixed effects model is also better in the estimation process than the other two models (non effects and random effects) in this study for CDT.

These findings are consistent with the previous studies like Zou et al (2003), Daniel and Paul (2003) and Zou and Adams (2006) who find that the fixed effects model can derive consistent estimates when they perform the Hausman test. That is to say that the fixed effects model that treats omitted company specific variables as constant over time or period-specific variables as invariant across companies is more reliable in the case of this study for conventional insurance and takaful. In contrast, the random effects model which treats company and period-specific factors as random is not very reliable for conventional insurance and takaful demand.

Therefore, the discussion on the corporate demand analysis for conventional insurance and takaful in the next section is based on Model 2: the GLS with fixed effects.

Table 4.4: Panel Specifications Tests

Panel A: CDI

Test	Statistics	Statistics Value	p-value
Chow test for Pooled Model vs Fixed-Effects Model	F	13.9392	0.0000
Hausman test for a Random Effects vs Fixed-Effects Model	χ^2	128.8916	0.0000

Panel B: CDT

Test	Statistics	Statistics Value	p-value
Chow test for a Pooled Model vs Fixed-Effects Model	F	8.6035	0.0000
Hausman test for a Random Effects vs Fixed-Effects Model	χ^2	17.6510	0.0240

The coefficient for leverage is found to be positive and statistically significant at 1 percent level. The t-statistics of the measure, DER indicates that the ratio of total debt to equity is significant and positively related to property insurance premiums and takaful contribution paid per unit value of insurable assets. That is, higher debt-financing leads to more insurance and takaful purchases. This supports the hypothesis $H_{1,}$ that firms with a high leverage are more likely to use property conventional insurance than companies with less debt in their capital structure in order to mitigate the agency conflicts between shareholder and debt holder. This result is also in line with Hoyt and Khang (2000) who claim that property insurance is found to be used to reduce the underinvestment problem and agency costs.

The hypotheses 3 are the hypotheses for the expected bankruptcy costs factor. WCR is not statistically significant as predicted in hypothesis H_3 for CDI. However,. WCR is positive and significant at 1 percent level which contradicts the expected sign in H_3 for CDT. The rationale behind this finding is related to the finding of firms' size factor which will be explained below and the possible rationale behind this finding is related to the finding of firms' size factor which will be explained below.

On the other hand, the tax effect hypothesis (H_4) is strongly supported by the empirical evidence which is significant at 1 percent level and positively related to property insurance as well as takaful. This finding is supported by Hoyt and Khang (2000) who claim that the greater the amount of cumulative depreciation, the more insurance is purchased. Arguably, in order to increase the positive tax effects, the firm buys insurance to the extent that tax deduction is allowable. This is true where most of

the physical assets of corporations are insured based on the 'Replacement Cost Basis' with the indemnification of payment in the event of loss or disaster without taken into consideration the depreciation value. That is the reason why, the higher the accumulated depreciation is the lower the tax payment, and the higher the payment of insurance premium.

Consistent with the hypothesis H_5, the coefficient for MOWN is positive and statistically significant at 1 percent level on the corporate demand for conventional insurance and takaful. This finding is compatible with Smith and Stulz's (1985) managerial risk-aversion hypothesis, but inconsistent with the incentive-alignment hypothesis. This finding suggests that managers with relatively high levels of share ownership are more likely to purchase insurance in managing assets risk since they have an interest in the firms compared with relatively low levels of share ownership. This result is consistent with the empirical evidence of Zou and Adams (2006) but contrary to the evidence documented in Hoyt and Khang (2000).

Contrary to hypothesis H_6, the coefficient for size measured by the natural log of total assets (TA) is positive and statistically significant at 1 percent level for both CDI and CDT. This finding indicates that firm size is associated with corporate incentive to purchase insurance and takaful through the risk management services of insurers and takaful operators. The significant positive sign strongly suggests that large corporations in Malaysia benefit more from the risk management services of insurers and takaful opetators which contradicts the hypothesis. This runs contrary to the evidence documented in most of previous studies like Yamori (1999), Hoyt and Khang (2000), Zou et al (2002), Daniel and Paul (2003) and Zou and Adams (2006) whey they find that size is negatively relation with the insurance decision making. A possible interpretation of the contrary result in this study is that the risk management program by Malaysian corporations are still at the development stage of risk management as compared to other countries like the United States, the United Kingdom, China and Japan. However, firm size is associated with an incentive to purchase insurance through the risk management services of insurers and also expected bankruptcy costs of the firms. Therefore, one cannot precisely evaluate the practical validity of the expected bankruptcy costs argument with this evidence only, until observing the effects of both elements at the same time. The t-statistics of the measure, the ratio of working capital to total assets (WCR) of hypothesis 3, indicates that WCR is not related to the dependent variable. This finding shows bankruptcy costs are not related to size in managing risks via insurance. This implies that even large firms can be expected to have smaller relative bankruptcy costs as mentioned before, large corporations are more likely to purchase insurance and takaful to reduce the probability of incurring these costs. The finding is consistent with previous research like Zou and Adams (2006).

Besides that, MBVR which is a proxy of measurement for growth opportunity is not found to be an important determinant of corporate demand for conventional insurance and takaful parallel with the findings in Daniel and Paul (2003). It is worth noting that MBVR appears to be negatively related to property insurance, suggesting that firms might prefer to use other kinds of risk management mechanisms for investment in their new projects.

TABLE 4.5 : Summary of Empirical Findings

Determinant Factors	Predicted Sign	Consistent with Previous Findings		
		CDI	CDT	
Leverage	DER: Positive	Positive***	Positive***	Hoyt & Khang (2000) and Daniel & Paul (2003)
Growth Opportunities	MBVR: Positive	Insignificant	Negative*	Daniel & Paul (2003)
Expected Bankruptcy Costs	WCR: Negative	Insignificant	Positive***	Insignificant: Hoyt & Khang (2000), Positive/Significant: Daniel & Paul (2003)
	ICVR: Positive	Positive***	Positive***	Daniel & Paul (2003)
	LTDR: Negative	Negative***	Negative***	Daniel & Paul (2003)
Tax Considerations	DEP: Positive	Positive***	Positive***	Hoyt & Khang (2000)
Managerial Ownership	MOWN: Positive	Positive***	Positive**	Zou & Adams (2006)
Size of the Company	TA: Negative	Positive***	Positive***	-
Regulatory Environment	Dummy: Positive	Inconclusive	Inconclusive	Zou et. al (2003), Daniel and Paul (2003) and Zou and Adams (2006)

*** Significant at 1% ** Significant at 5% *Significant at 10%

5.0 Conclusion

This paper investigates the determinants of corporate demand for property insurance in Malaysia by utilizing a panel data analysis of public listed companies at Bursa Malaysia. A major strength of our analysis is that, we extend to study on the comparison between corporate demand for Islamic and conventional insurance in Malaysia. In contrast of all other previous studies like Mayers and Smith (1990), Yamori (1999), Hoyt and Khang (2000), Zou, Adam and Buckle (2003), Daniel and Paul (2003) and Zou and Adam (2005 & 2006) were study the corporate demand for conventional insurance only. We find that corporate finance factors of leverage, expected bankruptcy costs, firm size and managerial ownership as well as tax consideration play an important role for determining the insurance and takaful demand in Malaysia. This is an interesting results where corporate demand for insurance in Malaysia are also related with the theory of finance which has been proved in conventional insurance studies of other countries like US, UK, China and Japan. Our conclusions are robust to alternative specifications of the model i.e. GLS with Fixed Effects model that help us to control for unobservable heterogeneity. However, there are several implications on important parties like regulator, shareholders and creditors as well as the insurance and takaful companies in which they should take action and attention from the findings of this study despite of some important factor like growth opportunities and regulated industries show insignificant factors. For instance, insignificants results in the growth opportunities and the corporate decision on property insurance put a sign that insurance and takaful companies may wish to make better reflect of risk management needs of enterprises in their product innovation and market strategies.

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Education Financing Scheme in Islamic Banks In Malaysia: From the Perspective of *Maqasid al-Shariah*

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ABSTRACT

The ultimate goal of education in Islam is to produce a Muslim personality equipped with knowledge, faith (Tawhid), dedication and virtuous attitudes (Mahmudah) based on the divine revelation of al-Qur'an and al-Sunnah. Full access to proper education that suits everyone's ability is crucial in order to produce human capital that is well mastered with specific knowledge and skills. Thus, this paper tries to explore the different types of education scheme or facility provided by Islamic banks in this country. In addition, this paper also attempts to ascertain that the scheme provided by the Islamic banks meets the objective of Shariah (Maqasid al-Shariah). This paper is as a result of document analysis and observation from pamphlets and websites on the education facility offered by the Islamic banks as well as through the telephone inquiry with the relevant officers of the banks.

Keywords: *Maqasid al-Shariah, Daruriyyah, Hajiyyah, Tahsiniyyah, Bank Rakyat.*

INTRODUCTION

In Islam, knowledge is considered as an important prerequisite for human development. Knowledge gives the possessor higher rank in the hierarchy from the eyes of Allah S.W.T. *Al-Qur'an* confirms that it is the man with knowledge who fears Allah S.W.T the most. Yet, Islam is a religion based upon knowledge and encouraged his follower to master all kinds of knowledge for the benefit of oneself and *ummah* as a whole as a mean to achieve Allah S.W.T consciousness (*Taqwa*)[1].

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[1] A.O.Shuriye. 2003. "Islamic Education: Issues in Approach and Methodology". *IKIM Journal*. Vol.11, No.2, July/December 2003, Kuala Lumpur: Institute of Islamic Understanding Malaysia, p.100; Afzalur Rahman. 1995. *Islam: Ideology and The Way of Life*. Kuala Lumpur: A.S. Noordeen, p.216. *Taqwa* and the verbs and nouns connected with the root, signify: (1) the fear of Allah; (2) restraint, or guarding one's tongue, hand, and heart from evil; (3) righteousness, piety and good conduct. See *The Holy Qur-an: English Translation of the Meanings and Commentary*.1410H. Madinah: King Fahd Holy Qur-an Printing Complex, p.7.

Indeed, the text of *al-Qur'an* is replete with verses inviting man to use his intellect, to ponder, to think and to know, for the goal of human life is to discover the truth, which is none other than worshipping Allah S.W.T in His Oneness. It may be said that Islam is the path of "knowledge." No other religion or ideology has so much emphasized the importance of *'Ilm*. In the *Qur'an,* the word *'Alim* has occurred in 140 places, while *al-'Ilm* in 27 times. In all, the total number of verses in which *'Ilm* or its derivatives and associated words are used is 704 times[2].

In other words Islam rates knowledge highly. The quest for knowledge would include studying for higher education i.e. courses offered by institute of higher learning , locally or internationally. The levels of courses offered are certificate, foundation, matriculation, diploma, degree, master degree and doctorate level.

Nowadays, higher education is expensive and paying for the cost of higher education is the major headache for every parents and students. Under the presents set up, majority of the students are forced to take a financing from the government through Perbadanan Tabung Pendidikan Tinggi Nasional (PTPTN). Selected students who meet stringent criteria can apply for financial aid from Majlis Amanat Rakyat (MARA), government through Public Services Department, corporates, well established foundations, State Religion Council for every states and also banks.

This paper will focus on education financing schemes made available by Islamic Banks in the country. There are number of questions need to be answered such as what

[2] Afzalur Rahman. *op.cit*., p.218. For instance, Allah (*s.w.t*.) says in the *al-Qur'an*: "*And He taught Adam the names of all things; then He placed them before the angels, and said: Tell me the name of these if ye are right*" (Surah al-Baqarah:31); "*But no one knows its true meanings except Allah and those who are firmly grounded in knowledge*" (Surah Ali Imran:7); "*Allah will raise up, to (suitable) ranks and degrees, those of you who believe and who have been granted knowledge, and Allah is well-acquainted with all ye do*", (Surah al-Mujadalah:11).

are the education schemes or facility provided by Islamic banks for students in this country to further their studies at higher institutions and are these schemes meet the objective of *Shariah* (*Maqasid al-Shariah*)?

MAQASID AL-SHARIAH

Definition of *Maqasid al-Shariah*

The term *Maqasid*, which is plural from root word *Maqsid* can be defined as objective, principle, purpose or goal[3]. *Shariah* is a word that refers to the road to the watering place[4]. When combining these two words, *Maqasid al-Shariah* can be defined as the objective of *Shariah* for the realization of benefit to the people, with regard to their affairs in this world and the day after[5]. In other words, the aim of *Maqasid al-Shariah* is the attainment of good, welfare, advantage or benefits and warding off evil, injury and loss for the creatures[6].

The majority of scholars agree that most of the injunctions of *Shariah* were revealed with certain objectives and reasons. Certainly, these objectives are rational and easy to be identified except in certain injunctions related to the worship (‘*Ibadah*). The *Qur’an* describes the main purpose of *Shariah* is to secure benefit for the people and prevent them against evil or harm by using the word mercy or compassion (*Rahmatan*)[7]. Allah (*s.w.t.*) says in the *Qur’an*:

[3] See for instance Ibn Manzur. n.d. *Lisan al-‘Arab*. Beirut: Dar Beirut, Vol.3, pp.353-355.
[4] Yusuf Hamid al-Alim. 1997. *al-Maqasid al-‘Ammah li Shari’ah al-Islamiyyah*. Misr: Dar al-Hadith, p.19.
[5] Dr. Mohamad Akram Laldin. 2008. *Introduction to Shari’ah & Islamic Jurisprudence*. Kuala Lumpur: CERT Publications Sdn. Bhd., p.14.
[6] ‘Abd al-Karim Zaydan. 1986. *Majmu’ah Buhuth Fiqhiyyah*. Baghdad: Maktabah al-Quds, p.141.
[7] Dr. Mohamad Akram Laldin, *op.cit.*, p.14. There are many verses in the Qur’an indicates that the originality or aim of the *Shariah* is to ease burden of mankind such as in Surah al-Haj verse 78, Surah al-

"And We have sent you (O Muhammad) not but as a mercy for the whole world"

Surah al-Anbiya' (21):107.

Meanwhile, the aims and objectives of *Shariah* are everlasting and unchangeable. They are set by Allah S.W.T and their application or interpretation is not left to the sweet will of any person or class. These aims relate to both the worldly life and the life hereafter and to take them only for the worldly benefits at the cost of the hereafter life's benefits is prohibited and condemned. However, *Shariah* is considerate in case of *Darurah* (necessity) and hardships[8].

Shariah has set priority order for the worldly and religious affairs and the people have been enjoined upon to follow this priority order, and they are not allowed to apply their whims while following either of the two. *Shariah* has prohibited the use of some goods as well as the indulgence in certain economic activities, though sometimes or even always their use or practice may yield economic fruits or progress[9].

Similarly, *Shariah* has permitted and sometimes required the use of certain things or the initiative of certain economic activities, though apparently they do not yield such fruits as the prohibited things do. The philosophy behind the permission or prohibition of certain goods or economic activities is known to Allah (*s.w.t.*). However, some of its parts have been revealed by Him and explained by The Prophet (*s.a.w.*). In all such commandments, *Shariah* ensures ease and it has permitted the ease of unlawful and

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Baqarah verse 185 and Surah al-Maidah verse 6. See for instance Muhammad Tahir Bin 'Ashur. 2007. *Maqasid al-Shari'ah al-Islamiyyah*. Qahirah: Dar al-Salam, p.12; 'Abd al-Karim Zaydan, *op.cit*., p.141.

[8] Yusuf Hamid al-Alim. *op.cit*., pp.82-83.

[9] Dr. Mohamad Akram Laldin. *op.cit*., pp.36-40.

prohibited goods and activities in case of necessity (*Darurah*)[10]. In this connection, in addition to the verses quoted earlier, the following references are note-worthy:

"Allah desireth for you ease; He does not desireth hardship for you".

Surah al-Baqarah (2):158.

Classification of *Maqasid al-Shariah.*

The objective of *Shariah* or *Maqasid al-Shari'ah* can be classified as *Daruriyyah, Hajiyyah* and *Tahsiniyyah* as follows[11]:

1. *Daruriyyah (*Essential/Necessities*)*

These are the objectives which are must and basic for the establishment of welfare in this world and the world hereafter in the sense that if they are ignored, then the coherence and order cannot be established and *Fasad* (chaos and disorder) will prevail in this world and the hereafter. The essentials are the matters on which the religion and worldly affairs of mankind depend on and any negligence will lead to total disruption and bring to evil ending. All these matters must be safeguarded individually or by government in order to protect these basic requirements of the people.

The essential (*Daruriyyah*) can be further divided into the protection of five fundamental values (*al-Daruriyyah al-Khamsah*) namely[12]:

a. Protection of Faith (*Din*).

Al-Din (Faith/religion) is the most important value that must be protected by Muslim. The protection of religion is achieved through the observance of the different

[10] 'Abd al-Karim Zaydan. *op.cit*., pp.142-143..
[11] Muhammad Kamal al-Din Imam. 2005. *Usul al-Ahkam al-Shar'iyyah al-FIqh al-Islami*. Iskandariyyah: Jami'ah al-Iskandariyyah, pp.200-201; Dr. Mohamad Akram Laldin. *op.cit*., pp.18-30; Imran Ahsan Khan Nyazee. 2006. Islamic Jurisprudence, New Delhi: Adam Publishers & Distributors, p.203.
[12] Muhammad Kamal al-Din Imam. *op.cit*., pp.200-201; Imran Ahsan Khan Nyazee. *op.cit.*, p.202; Dr. Mohamad Akram Laldin. *op.cit*., pp.18-30.

kind of worships for example, performing prayers, fasting, paying tithe and etc. Executing all these rituals will increase faith of a particular person and he is safeguarded from committing any sin or evil. In this regards, Allah (*s.w.t.*) says in *al-Qur'an*:

"And perform the Solat (prayer), verily the prayer can prevent from al-Fahsha (great sin) and al-Munkar (disobedient)"

Surah al-Ankabut (29):45.

b. Protection of Life (*Nafs*).

As life is very valuable to everyone, then protection for the life in all circumstances is essential to be upheld. In this regards, there is no different between the life of the rich and poor, between leader or folk, whereby safeguarding everyone's life is equally important to each individual. Allah (*s.w.t.*) says in the *al-Qur'an*:

"And do not kill anyone which Allah has forbidden, except for a just cause"

Surah al-Isra'(17):33.

Indeed, *Shariah* has enacted serious punishment for those who kill other especially to innocent human being. Allah (*s.w.t.*) orders in the *al-Qur'an*:

"O you who believe! Qisas is prescribed for you in case of murder: the free for the free, the slave for the slave, and the female for the female, but if the killer is forgiven by the relatives of the killed against blood money, then adhering to it with fairness and payment of the blood money, to the heir should be made in faurness".

Surah al-Baqarah (2):178.

c. Protection of Posterity (*Nasl*).

Islam is very concerned about the posterity or dignity of a person. Protection of posterity includes the safeguarding of individual rights to privacy and not accusing others

of misdeed. In fact, Islam has mandated many guidelines in order to protect the dignity of man and women and all mankind. Clearly, Islam disallows the manipulation of women and prohibits adultery between man and women. In order to prevent mankind from committing adultery, Islam has imposed severe penalty for those who commit the deed. Allah (*s.w.t.*) says:

"The women and the man guilty of illegal sexual intercourse, flog each of them with a hundred stripes, let not pity withhold you in their cases, in a punishment prescribed by Allah, if you believe in Allah and the Last Day"

Surah al-Nur (24):2.

d. Protection of Property (*Mal*).

Islam encourages its followers to accumulate property and wealth for their benefits, but must be done in proper and lawful ways. Islam prohibits anyone to transgress and acquire the property of others in illegitimate and improper ways. Allah (*s.w.t.*) emphasizes this point in the *al-Qur'an*:

"And eat up not one another's property unjustly nor give bribery to the judges that you may knowingly eat up a part of the property of others sinfully"

Surah al-Baqarah (2):188.

Islam has imposed severe punishment for those who steal the properties of other, practicing usury (*riba*) and taking the property of orphan unlawfully by the following injunctions:

"Cut off the hand of the thief, male or female, as a recompense for that which they committed, a punishment by way of example from Allah"

Surah al-Maidah (5):38.

"Those who take riba will not stand but as stands whom the demon has driven crazy by his touch. That is because they have said that trading is but like riba. And Allah has permitted trading and prohibited riba"

Surah al-Baqarah (2):275.

"Verily, those who unjustly eat up the property of orphans, they eat up only a fire into their bellies, and they will be burnt in the blazing Fire!"

Surah al-Nisa' (4):10.

e. Protection of Reason ('*Aql*).

Allah (*s.w.t.*) has ordered that everyone should protect his mind or intellect by using the mind for the benefit of all and not for any kind of evil or anything that might bring to the destruction. Protection of the mind requires safeguarding it from anything that might harm the ability and function of the mind. This includes the consumption of liquor that will disturb the proper function of brain. Allah (*s.w.t.*) says:

"O you who believe! Intoxicants, gambling, al-Ansab and al-Azlam (arrows for seeking luck) are an abomination of Satan handiwork, so avoid that abomination in order that you may be successful"

Surah al-Maidah (5):90.

In addition, Islam has given freedom for its followers to express their views and has tolerated the differences of views and opinions. However, the expression of views and differences of opinion must conform to the moral and ethical values that are provided by *al-Qur'*an and *al-Sunnah*.

According to al-Shatibi, these five protections are *Daruriyyah* for the establishment of welfare in this world as well as in the world hereafter. The protection of the above mentioned elements can be made possible through two types of essential elements[13].

i. Necessities required for bringing into and maintaining the very existence of the above mentioned elements, that is: *din, nafs, nasi, mal* and *'aql*.
ii. Necessities required for protecting these elements from their destruction. The worships ('*Ibadah*) for example, aim at maintaining the very existence of faith.

Iman (attestations in words and intention), *Salah*, *Zakah*, fasting and *hajj* are the elements that are required for the maintenance of the very existence of faith (din). All such provisions of *Shariah* are said to have the aims that can be labeled as *Daruriyyah*[14].

Similarly, the permission to benefit from drinkables, clothing and housing is meant to maintain life and hence fulfill the objective of necessities. Such matters and dealings that are required to maintain and protect the existence of property, reason and posterity also promote necessities from the point of view of bringing these into existence. On the other hand, such dealings or legal provisions (*Jinayat*), which are required to stop destruction of the above mentioned elements will also be said to aim at *daruriyyah* from the point of view of the objectives of *Shariah*[15].

2. *Hajiyyah* (Complementary)

Shariah aims at facilitating life or removing hardships. All such provisions of *Shariah* which aim at facilitating life, removing hardship are said to fulfill the *Hajiyyah*

[13] Al-Shatibi. 1996. *al-Muwafaqat fi Usul al-Shariah*. Beirut: Dar al-Ma'rifah, Vol., pp.324-325.
[14] Muhammad Tahir Bin Ashur. *op.cit*., pp.302-305.
[15] *Ibid*.

(requirements). The complementary interests are referred to those kind of interests whose neglect leads to hardship of the individual or community although it does not lead to the total disruption of normal life[16].

A great number of the *rukhsah* (concessions) such as the shortening of the *Salah* and the forgoing of the fast by the sick and the traveler, may be classified as *Hajiyyah.* In almost all areas of obligatory worship, the *Shariah* has granted such concessions. These concessions are aimed at preventing hardship, but they are not essential, whereby people could live without them if they were obliged to[17].

For example, a sick person is allowed to pray in sitting position and break his fast in Ramadan and also permission of hunting and validity of some *Muamalah* contracts such as *Ijarah* (leasing), *Musaqat* (profit sharing) and *Bay' al-Salam* (forward buying of a commodity which does not yet exist) are the examples of *Shariah* provisions that aim at facilitating life or removing hardships in the life in this world.

3. *Tahsiniyyah* (Desirable/Beautification)

Shariah beautifies life and puts comforts into it. There are several provisions of *Shariah* which are meant to ensure better utilization, beautification and simplification of *Daruriyyah* and *Hajiyyah. Tahsiniyyah* refer to interests whose realization lead to improvement and the attainment of that which is desirable. These interests seek to attain refinement and perfection in the customs and conduct of the people at all levels[18].

Thus, the *Shariah* encourages cleanliness of the body and attire for the purpose of '*Ibadah* and recommends the wearing of perfume when attending the Friday

[16] Mohammad Hashim Kamali. 1998. *Principles of Islamic Jurisprudence*. Kuala Lumpur: Ilmiah Publishers Sdn. Bhd., pp.398-399.
[17] *Ibid*.
[18] Dr. Mohamad Akram Laldin. *op.cit*., p.30.

congregational prayer. In addition, permission to use beautiful, comfortable things, to eat delicious food, to have cold drinks and juices and to wear fine clothing are examples of *Tahsiniyyah*[19].

The category of *Tahsiniyyah* comprises what leads to the perfection of the community's condition and social order so that it leads a peaceful life and acquires the splendour and beauty of human society in the sight of other nations. In this way, the Muslim community will become an attractive model for others to belong to it or seek friendship with it[20].

EDUCATION SCHEMES PROVIDED BY ISLAMIC BANK

In Malaysia, out of 17 Islamic banks and 9 Islamic banking schemes[21] offering Islamic banking products and services, only one bank namely Bank Rakyat that offers financing for education purpose. The scheme is called Education Financing-i Falah and developed for individuals who plan to continue their education locally or abroad. This financing covers tuition fees, cost of living as well as the purchase of text books and other educational aids[22].

This financing facility uses the concept of *Bay' al-Innah*, which is widely accepted among the Malaysian. The eligibility for applying this facility is the applicant must be a Malaysia citizens aged 18 and above and must not exceeding 65 years of age at the end of the financing period. The applicant should also be a working student with fixed

[19] *Ibid.*
[20] Muhammad al-Tahir Ibn Ashur. *op.cit.*, p.120.
[21] Suhaimi Mohd. Yusof. 2010. "Isu-isu Perundangan Dalam Kewangan Islam". Convention of Islamic Banking & Finance 2010. Masjid Sultan Salahuddin Abdul Aziz Shah, Shah Alam, 13th March 2010.
[22] Bank Rakyat, http://www.bankrakyat.com.my/pendidikanifalah, 1st April 2010.

income or full time students without income, but must apply through parents, spouses, siblings or legal guardians[23].

The maximum amount of financing is up to RM200,000 for applicant with guarantor and unlimited financing amount for applicant with specific collateral (subject to collateral value). For this type of financing, the student is required to be a guarantor and an additional guarantor is required if payment not made through Biro Perkhidmatan Angkasa (BPA). The type of collateral can be either landed property or Bank Rakyat's Investment Certificates. The maximum period of repayment for this scheme is limited to 15 years[24].

Table 1.1 below shows the rate of Bank Financing Rate (BFR) per annum based on the period of payment.

Table 1.1

Period of Payment (year)	Rate (per annum)
1 to 5	6.45%
5 to 10	6.95%
10 to 15	7%

Source: Telephone Inquiry with Bank Rakyat's officer on 1st April 2010 at 2.30 p.m. The telephone number is 03-21179000.

[23] *Ibid*.
[24] *Ibid*.

ANALYSIS FROM THE PERSPECTIVE OF *MAQASID AL-SHARIAH*

As far as the objective of *Shariah* is concerned, the introduction and application of Islamic financing for education by Bank Rakyat is within the purpose of *Shariah*. As been explained in the earlier section, the essential (*Daruriyyah*) in the objective of *Shariah* can be divided into five fundamental values and indeed, the application of financing products for education in Islamic bank is regarded to fulfill these five values altogether.

The intention and attempt to acquire knowledge are considered not only a way to protect mind (‘*aql*), but also to preserve those five fundamental values of *Daruriyyah*. Education is a way to protect one’s mind and intellect. Person who has proper education and skill is able to use his mind for the benefit of others. Take for instance, a professor in university can use his ability to do research in his field of expertise and produce a new findings for the benefits of all human be it in the field of economics, science, technology, medicine and etc.

Education is also a step to preserve one’s life since with the relevant knowledge and certificates may secure a better job and salary for the person. For this reason, a person who is equipped with knowledge will try to his best to protect his life for example, by participating in activities that are less riskier and taking healthy foods for the benefit of his body. Activities that are riskier and taking harmful products such as smoking and taking drug will be avoided.

In terms of protection of property, education is the best method in guiding a person to be more rational in spending and not wasting his property for unhealthy means. Indeed, there are a lot of differences between person who has knowledge and at the same

time has a lot of property with a person who has no knowledge and has a lot of property. Person who has knowledge and property are able to manage his property not only for the benefit of himself, but also for the benefits of his children.

Education is also a proper way to preserve dignity of particular person. Person who has knowledge will not involve in sinful actions such as gambling and adultery intimacy (*Zina*). Adultery is prohibited in Islam and one of the bad impacts of *Zina* is producing illegal child, which usually will bring a lot other bad consequences to the person and society as a whole. Thus, the dignity of the person will be vanished. Person who has knowledge and understand the effects of *Zina* certainly will avoid it, although there are a lot of encouraging factors to do it in current time.

Lastly, education is the best mechanism to protect one's religion (*Din*). If all the above four values able to be protected by acquiring knowledge and education then, the religion of the person is actually will be safeguarded. A person who is equipped with accurate knowledge knows how to be a good Muslim and able to practice all the compulsory and recommended acts in Islam accordingly. Doing all the good deeds in Islam certainly will increase one's religion from the eyes of Allah S.W.T.

On the other hand, a person who has no education will commit a lot of sinful activities, which will decreased his religion or in more harmful case will bring a person to deny Islam when the subject of theology (*Aqidah*) is not well understood by him.

Indeed, the introduction of education scheme by Bank Rakyat is regarded an essential approach in order to achieve those five fundamental values of *Daruriyyah* in *Maqasid al-Shariah*. Nonetheless, through the observation and telephone inquiry with the bank officer of the bank, the student and parents who are interested to apply this type of

scheme are encountered with a lot of requirements that can be waived accordingly and in a case to case basis if and only if the introduction of the facility is intended to help those in dire need to finance the applicant's higher education cost and so meeting the *Maqasid al-Shariah*. The rigidity imposes by the bank will burden to those who for instance, unable to find suitable guarantor to guarantee the financing. This actually will hinder the achievement of essential elements in the objective of *Shariah*.

Therefore, for the benefits of all parties, including the Islamic bank, we would like to propose some suggestions for the considerations of all parties. For the Islamic banks, hopefully a lot more Islamic banks will introduce education facility and not only for Bank Rakyat. The government, through Bank Negara Malaysia (BNM), can extend its regulatory role by regulating such financing schemes in the same way that BNM regulates certain government's initiative scheme via Credit Guarantee Corporation Malaysia Berhad (CGC). For example, Credit Enhancer Islamic Scheme offered by all commercial banks offering Islamic banking products. The main objective of CGC is to assist small and medium-sized enterprises (SMEs), especially those with inadequate collateral or without collateral, gain access to financing from financial institutions at a reasonable cost.

Islamic bank such as Bank Islam Malaysia Berhad that previously did offer education facility should reintroduce their products in the market to help those in need for financing their education. Although, the scheme will not give good return to the bank, but the reintroduction of the scheme will give a lot of advantages to the Islamic banking industry as a whole. This is also will ensure students that have minimum requirements to further their study will be able to do so.

All Islamic banks should simplify the requirements for the facility. They should also be flexible in processing the applications and waive certain requirements where appropriate to accommodate the applicants case by case. For example, students who obtain good results, but unable to provide guarantor for their application should be given the opportunity to further their studies. Another way to help the students is through the extension of payment period to 20 years and the first repayment should be given one year after the completion of the study. Such arrangements can be structured not at the expense of banks' interest.

Islamic banks also should introduce other type of contracts in *fiqh muamalah* such as *Ijarah* (leasing) or *Musharakah* (partnership) as a basis principle underlying the education financing facility. The partnership concept seems to be a good idea for financing education and a comprehensive mechanism should be carefully reviewed by the bank for the benefit of all parties.

CONCLUSION

This article has touched on the aspect of education and financing opportunity given by Islamic bank for the education purpose from the perspective of *Maqasid al-Shariah*. Islam through the objective of *Shariah* has made a clear understanding that acquiring knowledge is very pivotal for achieving the *Maqasid al-Shariah*. The introduction of Islamic facility for education is within the purpose of *Maqasid al-Shariah*. The finding shows that there are only one Islamic bank in this country provides facility for education financing and a lot more Islamic banks are called to be part of this novel endeavor.

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AL- 'IBADAH WAL KASB
A COMPARATIVE ANALYSIS OF THE SUPERIORITY OF ACQUISITION OF WEALTH AND WORSHIP, THE THANKFULNESS OF THE WEALTHY AND THE PATIENCE OF THE IMPOVERISHED

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Abstract/Introduction

Islam is a comprehensive way of life vouchsafe to man by Allah-his creator and cherisher. It is by means of this (Islam) that man can fulfil his mission on earth and attain his much desired peace and salvation not only here but equally in the hereafter for the life here is just a transit camp to the next or rather a cultivating field, the harvest of which is in the eternal one. It ensures moderation necessary for the attainment of success in both worlds. Hence, it frowns at unbridled asceticism and inordinate ambition (Materialism) to amass wealth. Thus, it implores man to see life as a compact whole and that he should avoid compartmentalization of life into spiritual and secular as such demarcation of life is bound to have their accompanying woes-the like of which man is experiencing today[1]. He should therefore bear in mind that just as he needs food and water for his physical development and growth, he equally stand in need of **al-hidayyah** (Divine Guidance of Allah) for his spiritual development and growth as well, as he is made of Spirit and Matter.

Man is never an economic animal (Homoeconomicus) so that is needs are only food, shelter and cloth. No doubt, he needs all these basic necessities of life and cannot neglect them. He possesses physical body, yet all his problem could not be solved via physical sciences alone. Man is equally psychological as he has emotions, desires, likes and dislikes yet psychology alone could not provide solution to his multi-dimensional problems. He is also social as he lives together with others and cannot afford to do otherwise, yet it will be misleading to think that solution can be proffered to his avalanche of problems through sociology alone. Infact, the result is going to be

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pernicious than the problem it is aimed at solving, for this is indeed, a case of wrong diagnosis which will definitely lead to wrong medication.[1]

Let me round this section off by quoting Alexis Carrel who put it in a rather subtle language: "Economists would realize that humanbeings think, feel and suffer, that they should be given other things than work, food and leisure; that they have spiritual as well as physiological needs. And also that the causes of economic and financial crises may be moral and intellectual. We should no longer be obliged to accept the barbarous condition of life in great cities, the tyranny of factory and office, the sacrifice of moral dignity to economic interest, of mind to money, as benefactions conferred upon us by modern civilization. We should reject mechanical inventions that hinder human development. Economics would no longer appear as the ultimate reason for everything. It is obvious that the liberation of man from the materialistic creed would transform most of the aspect of existence. Therefore, modern society will oppose with all its might this progress in our conception[1].

Islam: Its Meaning and Worldview

Islam is a derivative of an Arabic verbal noun, meaning: to surrender, to submit, to concur, to obey or oblige, etc. It is equally one of the attributes of Allah- ***As-Salam***, that is, the Lord of peace. Islam is therefore defined as a religion of peace and total submission to the will of Allah. It is a religion as well as a comprehensive way of life that covers the whole gamut of human life in all its ramifications. It regulates the life of its adherents from their cradle to their grave and beyond. Hence, it determines the kind of life they should lead and how they should earn their living. All these are well encapsulated in the Qur'an and further elucidated and practically demonstrated by the Prophet (S.A.W.). An adherent of Islam is called Muslim. By the foregoing definition of Islam, a Muslim is the one who surrenders himself and whatever he purportedly has wholeheartedly to the Will of Allah without leaving anything behind with himself to be given to Caesar as Caesar and whatever he had belong to Allah to Whom he had eventually returned. Thus, the life of a Muslim is that of obedience: obedience to Allah and His Apostle and those of the constituted authority among them.

Since Islam is a way of life as complete and comprehensive as we have observed, it must necessarily has its own philosophy of life or rather worldview. For no doubt, it is, its worldview that determines the form and configuration of the kind of life its adherents are leading. This is what equally gives them their ideology as well as their identity by means of which they are distinct from other people. Islamic worldview is based on four major principles. These are: ***At- Tawheed, Ar- Risalah/An-Nubuwah***, ***Al- Khilafah/ Al-Ubudiyyah and Al- Ihsan***.

At-Tawhheed

This is the first cardinal principle of Islamic worldview. ***Tawheed*** means to unify, to make one, to make unique etc. It technically refers to the holistic monotheistic thought of Islam or rather Islamic concept of God.

Islam teaches that Allah is the First without beginning and the Last without end; as everything or rather anything that has beginning will definitely has an end. It teaches further that the existence of Allah as well as His unity is neither controvertible nor compromisable. Since there cannot be a design without a designer, the Heaven and the Earth with their perfect harmony could neither have evolved by themselves nor by a "Big Bang" as we are made to understand. The truth about the universe uphold by Islam is that, Allah is its architect, creator, and cherisher. He created them not in vain but as a manifestation of His Power and Majesty for a purpose He assigned to each of its constituent parts. They, no doubt, constitute a significant pointer to His Existence, Essence and Unity[1].

Asserts Dr. Khalifah Abdul Hakim (1951),

The Qur'an says that God is the cause of all causes, and the ultimate cause of all existence. He is the being as the foundation of all becoming; He is the stable reality which creates and supports all changes; "He is the beginning and He is the End; He is the Outer Appearance and He is the Inner Reality.(Q57:3)[1]

It is the unity of the creator that manifested itself in the cosmos hence the universe and not a multi-verse, the harmony and not chaos. Indeed, it affords man the opportunity to study and know the laws governing the nature or the nature of things. Hence, his ability to manipulate them in order to suit his purpose or needs. This could not have been possible if Allah Had not make them subservient to him.

Allah says:

We Have honoured the sons of Adam; provided them with transport on land and sea; given them for sustenance things good and pure; and conferred on them special favours, above a great part of Our creation[1] .

He also says: It is Allah Who hath created the heavens and the earth and sendeth down rain from the skies, and with it bringeth out fruits wherewith to feed you; it is He Who hath made the ship subject to you, that you may sail through the sea by His command; and the rivers (also) hath He made subject to you. And He made subject to you the sun and the moon, both diligently pursuing their courses; and the night and the day hath He (also) made subject to you. And He giveth you of that ye ask for. But if ye count the favours of Allah, never will ye be able to number them.[1]

It is Allah Who has subjected the sea to you, that ships may sail through it by His command, that ye may seek of His Bounty, and that ye may be grateful. And He has subjected to you, as from Him, all that is in the heavens and on earth: behold, in that are Signs indeed for those who reflect.[1]

Do ye not see that Allah has subjected to your use all things in the heavens and on the earth, and has made His bounties flow to you in exceeding measure, (both) seen and unseen?[1]

O ye assembly of Jinns and Men! If it be ye can pass beyond the zone of Heavens and the earth, pass ye! Not without My authority shall ye be able to pass![1]

Khurshid Ahmad had summed it up in a very succinct manner in the following points:

(1) True existence is that of Allah alone; Man and the entire creation exist only because Allah wills them to exist.
(2) As there cannot be two sources of creation, as Allah alone is the creator, everything comes from Him and goes back to Him; hence the entire creation including Man is the manifestation of Allah's Power and Glory, and hence of His Qualities and Attributes.
(3) The relation between Man and Allah is that of a servant and a Master. As man owes his existence to Allah, to worship anything else is to commit the gravest sin.
(4) The above three aspects of Faith in Allah are realised by Man only when he responds to the Message of Allah and this is possible when he believes in Muhammad (S.A.W.) as the Messenger of Allah.
(5) As a Messenger, he is the last and the greatest, about whom all the early Messengers have predicted and who thus completes the process of revelation.
(6) He is therefore the perfect Ideal for Mankind, the perfect servant of Allah and hence the most complete and the ideally balanced manifestation of the attributes of Allah.
(7) To believe in him is to believe in all other Prophets
(8) To believe in him is also to believe that the Qur'an contains all the revelations sent to Mankind through him, that these revelations provide guidance to us and that we should worship Allah by following these revelations according to the method prescribed for us by Muhammad (S.A.W.) and hence in accordance with his sayings and practice, known as Hadith and Sunnah.
(9) To believe in him is also to believe in the carriers of this message, the angels, who are described in the Qur'an as functionaries[1].

Suffice to add that Allah alone creates, gives and takes life, enriches and straitens provisions, enthrones and dethrones, and changes situations and circumstances as He wills.

Since no man petitioned Allah for him to be created or nor even have a fore knowledge of his creation or that of existence, it goes therefore, that he should be guided as to his mission on the surface of the earth. Thus, Allah Has continued from the earliest time of human existence to be sending down guidance (***al- hidayyah***) to him to intimate him with his purpose on earth as it would not augur well for him to be left alone to go (grope) in darkness, hence the scriptures that were sent to him for his guidance as "Manual of Life.[1]"

Thus, laws governing his life could only be formulated or enacted by Allah alone. And since there is no other deity besides Him, his ***Ibadah*** (Devotional Worship) could only be for Him alone who created and honoured him as His ***Khalifah***. It should be noted here that ***Ibadah*** is not limited to prayers (***As-Salat***), Charity (***Az-Zakat***), Fasting (***As-***

Siyam/As-Sawm), Pilgrimage (***Al-Hajj***) etc alone but rather encompasses everything a believer could do to please his Lord and Creator: by way of obedience and righteous deeds. No wonder therefore, that Islam considers seeking means of livelihood as act worship.

The Qur'an teaches that obedience of a Muslim is due to Allah, His Apostle and those of the constituted authority so long as they command what is good and forbid what is evil. However, if they swerve from this ideal, obedience is not due to them; for obedience is not due to a creature who commands disobedience to the Creator-Allah (S.W.T.). Allah says:

> O ye who believe! Obey Allah, and obey the Messenger,
>
> And those charged with authority among you
>
> If you differ in anything amongst yourselves, refer it to
>
> Allah and His Messenger, if ye believe in Allah and the
>
> Last Day: that is the best and the most suitable for final determination.[1]
>
> We have given to you a law (a way of life) so follow it, and do not follow
>
> the fancies of those who know not[1].

Sayyid Qutb posit that, "*They are equipped with nothing but fancies and ignorance when they undertake the task which is no concern of theirs and does not properly belongs to them, their claim to one of the properties of Divinity is a great sin and a great evil. (*This Religion (of Islam), p28*)*

Tawheed is a revolutionary concept and it constitutes the essence and the pivot upon which stands the edifice of Islamic Worldview and its teachings. It means, as we have observed earlier, that there is only One Supreme Lord of the universe. He is Omnipotent, Omnipresent, Omniscient and the Sustainer of the whole world of which man is inclusive. Allah asks:

Say "See ye?- if your stream be some morning lost (in the underground earth), Who then can supply you with clear- flowing water?[1]

Do they then seek after a judgement of (the Days of) Ignorance? But who, for a people whose faith is assured, can give better judgement than Allah?[1]

Asserts Khurshid Ahmad, How can one observe the inexhaustible creativity of nature, its purposefulness, its preservation of that which is morally useful and destruction of that which is socially injurious, and yet fail to draw the conclusion that behind nature there is an All-Pervading Mind of whose incessant creative activity the processes of nature are

but an outward manifestation? The stars scattered through the almost infinite space, the vast panorama of nature with its charm and beauty, the planned waxing and waning of the moon, the astonishing harmony of the seasons- all points towards one fact: there is a God, the Creator, the Governor, we witness a superb, flawless plan in the universe-can it be without a planner? We see great enchanting beauty and harmony in its working-can they be without a creator? We observe wonderful design in nature- can it be without a Designer[1]….

O people! Adore your Guardian Lord, Who created you and those who came before you, that ye may become righteous. Who has made the earth your couch and the heavens your canopy; and send down rain from the heaven; and brought forth therewith fruits for your sustenance; then set not up rivals unto Allah when ye know the truth.[1]

How can ye reject the faith in Allah?-Seeing that ye were without life, and He gave you life; then will He cause you to die, and will again bring you to life; and again to Him will ye return[1].

Ar- Risalah/An- Nubuwah

Ar- Risalah signifies the Divine Guidance or Message sent by Allah to man in order to realise the purpose of his creation. ***An- Nubuwah*** on the other hand refers to the vehicle through which it is conveyed to humanity- that is Prophethood. This becomes necessary as we have rightly observed in the foregoing discussions as a result of the fact that man is ignorant of his coming to the surface of the earth and since he was created to serve a purpose for which he is going to be held responsible, the need therefore arise that he should be properly guided to have correct understanding (***fahm***/ ***fiqh)*** of the purpose for which he had been created. No wonder therefore, that Allah had been sending revelation (Guidance) through His angels to the chosen ones amongst men (that is, the Prophets and Messengers).

We said: 'Get ye down all from here: and if, as sure, there comes to you Guidance from Me, whosoever follows My guidance, on them shall be no fear, nor shall they grieve[1]'

This no doubt, pre-supposes that men are to emulate the Messengers that were sent for their success here and salvation in the hereafter. This becomes necessary in view of the observation we made earlier, that man is ignorant of the purpose of his creation.

Allah makes it clear, that there is no single nation to which a prophet had not been sent and that before a nation would be destroyed or punished for their evil deeds, an Apostle would have been sent to forewarn them. The scripture sent by Allah to mankind via these Messengers could therefore be likened to the Manual (Users' Guide) bought along with items in the market, particularly electronics and related goods. Thus, failure to read, digest, comprehend and apply its content will rob the buyer of the valuable service or utility of such item. In the same vain, it behoves man to equally read, not only read but

commit to memory as much as he can thereof, digest, comprehend and imbibe the teachings of the scripture sent by Allah for his proper guidance. For just as he (man) stands in need of food and water for his physical development and growth, he equally stands in need of ***al-hidayyah*** (Divine Guidance of Allah) for his spiritual development and growth as well. No wonder, this is referred to as Spiritual Diet. This is borne out of the fact that man is composed of Matter and Spirit and so the two components should be nurtured together. However, if one or both is or are neglected, it is going to be pernicious for man as society or even life becomes unworthy of living. This is why neither materialism nor unbridled asceticism is acceptable to Islam. It rather maintains a golden mean course between these two opposing extremes.

Allah says:

But his Lord chose him (for His Grace): He turned to him and gave him guidance. He said: " Get ye down, both of you- all together, from the Garden, with enmity one to another: but if, as is sure, there comes to you Guidance from Me , whosoever follows My Guidance, will not lose his way, nor fall into misery. But whoever turns away from My Message, verily for him is a life narrowed down, and We shall raise him up blind on the Day of Judgement. He will say: O my Lord! Why hast Thou raised me up blind, while I had sight (before)? (Allah) will say: Thus didst thou, when Our Signs came unto thee, you disregard them: so wilt thou, this day, be disregarded.[1]"

It becomes necessary therefore, that man, in taking care of the sum total of his affairs, should follow the prescriptions of Allah (his Lord) as contained in the Glorious Qur'an. This follows from the fact that although man is endowed with intellect which enables him to participate in the knowing of things and gives him an edge or degree over and above every other creature of God, yet his knowledge and indeed himself is limited to time and space. Thus, the need for him to follow and depend on God's injunctions (his creator and cherisher), who is Omniscient in His essence.

Al- Khilafah / Ubudiyyah

Khilafah literarily means vicegerence or vicegerency, viceroyship, representation, etc. In Islamic parlance, it refers to the position of honour conferred on man by Allah amongst the comity of His creatures. Man by this token, apart from being the acme of Allah's handiwork, is the king and the overseer of the universe, a position he is holding in trust for Allah- to Whom belongs the hegemony of the whole universe of which he is just a part. Allah says, 'We indeed offer the Trust to the Heavens and the Earth and the Mountains; but they refused to undertake it, being afraid thereof: but man undertook it;- he was indeed unjust and foolish;-[1]' His position therefore, in the scheme of things, is that of trust (***amanah),*** nay, of responsibilities. For every opportunity a man has there is always an attendant responsibility. He therefore has certain duties to his Lord, to himself, his family, neighbours, the larger society as a whole as well as the environment. All these responsibilities could not be achieved unless he earns a living. So, just like a plenipotentiary is rewarded for his laudable achievements or recalled by his country for trial over his misdeed and or ineptitude conducts, in the same vain is man going to be

recalled for reward and or punishment as the case may be. This accounts for why man is going to be resurrected after death.

So, his life here is transient and ephemeral. It is a field of cultivation for the eternal one, that is, life hereafter. Man therefore, is a representative and most importantly a servant of Allah over which he is going to be held accountable. He is to enjoy his right of vicegerency but not to abuse it. He is the creation of highest honour who could still be reduced to the lowest of the low should he fails in the aforementioned responsibilities. There is no right without responsibility/ duty. Man is subordinate to Allah and thus expected to carry out His will.

'By the Fig and the Olive, and the Mount of Sinai, and this City of security, We have indeed created man in the best of moulds, then do We abase him (to be) the lowest of the low- except such as believe and do righteous deeds; for they shall have a reward unfailing. Then what can, after this, contradict thee, as to the Judgement (to come)? Is Allah not the Wisest of Judges[1]'

However, God does not make man a robot as he is endowed with intellect and ability to discriminate between good and bad, right and wrong, that is the will power and freedom to make choice-that of doing the Will of Allah or jettison it. It is therefore clear, that man is at liberty to make or mar his life. He is going to make his life as he would secure peace and prosperity here and eternal bliss in the hereafter if he lives his life according to the dictates of Allah as contained in the Qur'an. He mars his life if turns out to be disobedient and ungrateful to Allah and thereby follows the footsteps of Satan so that by and large life becomes unworthy of living and eternal damnation becomes his lots.

"But those will prosper who purify themselves[1]"

These are the principles of Islamic worldview to which every devout Muslim must subscribe, understand and reflect in his life by way of acting by it. He is therefore, responsible to Allah over Allah's right, rights and duties to himself, relatives and neighbours, as well as the larger society (that is, social responsibilities). This is the practical demonstration of his faith in Allah and his sincere devotion to Him. Islam teaches that, man should, in a bid to proffer solutions to his multifaceted problems avoid unnecessary compartmentalization of life into spiritual and temporal (religious and secular).

'Say: Verily! My prayers, my sacrifice, my living and my dying are all for Allah- the Lord of the Worlds, He has no partner; this is what I am commanded and I am foremost of those who surrender themselves to Allah[1]'

Rather, all the problems should be taken into consideration as a compact whole without giving undue preference to anyone above the others as such unnecessary water tight compartment are bound to have their accompanying woes. Thus, his psychological, sociological, economic, political, moral and religious problems should be simultaneously taken into consideration. Man is theomorphic and not *homoeconomicus*. He is never an

ordinary beast so that his needs are only food, shelter and sexual gratification and or clothing alone. He needs all these basic necessities of life and cannot neglect them. He possesses the physical body, yet all his problem could not be solved via physical sciences. Man is equally psychological as he has feelings, emotions, desires, like and dislikes, yet psychology alone could not provide clue to his multi-dimensional problems. He is social as he lives together with other fellow humans, and equally interacts with the environment, and cannot afford to do otherwise; yet it will be misleading to think that solution could be proffered to his avalanche of problems a la sociology alone. In fact, the resultant effects would be more pernicious than the problems it is aimed at solving, for this is indeed a case of wrong diagnosis which would eventually result into wrong medication.

But seek, with the (wealth) which Allah Has bestowed on thee, the home of the Hereafter nor forget thy portion in this world. But do thou good as Allah has been good to thee, and seek not occasion for mischief in the land for Allah loves not those who do mischief[1].

Alexis Carrel puts it in a rather subtle way*: Economists would realise that human beings think, feel and suffer, that they should be given other things than work, food and leisure; that they have spiritual as well as physiological needs. And, also that the causes of economic and financial crises may be moral and intellectual. We should no longer be obliged to accept the barbarous condition of life in great cities, the tyranny of factories and offices, the sacrifice of moral dignity to economic interest, of mind to money, as benefactions conferred upon us by modern civilization. We should reject mechanical inventions that hinder human development. Economics would no longer appear as the ultimate reason for everything. It is obvious that the liberation of man from the materialistic creed would transform most of the aspect of existence. Therefore, modern society will oppose with all its might this progress in our conception*[1].

Al- Ihsan / Righteousness

Al- Ihsan in the literary sense means righteousness. The technical meaning given to it by Islam could be deduced from the Hadith of the Prophet when he was answering a poser from Jubril (A.S.) According to the Prophet, 'It is to worship Allah as if though one is seeing Him for if one cannot see Him; He sees one.[1]' It is therefore a mind set that leads to a habit. A mind set that God is not only ever present but equally watchful. This would bring into effect sincerity of purpose, a situation whereby actions are taken only to please Allah alone. This, according to Islam is the peak of righteousness.

It therefore means sincere devotion to Allah by way of worship, obedience, being dutiful to oneself- particularly taking care of the soul, being dutiful to ones relations, neighbours, the larger society and even the living and non-living things in the environment. This therefore, call for conscious struggle for ones living, his dependants and social welfare base on Islamic concept of ***al-falah***

Allah says: Allah commands justice, the doing of good, and the liberality to the kith and kin, and He forbids all shameful deeds, and injustice and rebellion: He instructs you, that ye may receive admonition[1].

Let me state here no matter how brief, that out of one thousand and one sins that a man may commit, it is only one that affects Allah directly, thus the only unpardonable sin, yet the other ones affect fellow creatures-humans and non-humans. Hence faith and righteousness are the twain ticket to paradise (***Al- Jannah***). Therefore, it is clear that earning a living is *ipso facto* an act of worship as we are going to see in the succeeding paragraphs. It equally shows that there is no conflict between earning a living and worship as long as one does not trespass into domain of the other. One is to strengthen the other.

According to the foregoing discussion, all men are equal before their Lord to whom they are all responsible individually and collectively. Hence Islam places a high premium on cooperation, equality, justice and benevolence as well as sincerity for the attainment of ***falah*** both individually and collectively for this is the ultimate desire of every Muslim. This becomes necessary in view of the fact that it will be difficult for individual to succeed in isolation of their society.

We can therefore, conclude by saying that, since man is not the architect of his life, there is need for him therefore, to adopt a way of life suitable for his nature. This, his nature ***(fitra) is*** assigned to him by One who created him. Guidance on this has been sent to him and in following it lies his success here and in the hereafter. Hence, if he jettisons it and follows his desires, whims and caprices life becomes miserable not only for him but for all other things around him.

Allah says: But his Lord chose him for His Grace: He turned to him, and gave him guidance. He said get down, both of you- all together, from the garden, with enmity one to another: but if, as is sure, there comes to you guidance from Me, whosoever follows My guidance, will not lose his way, nor fall into misery. But whosoever turns away from the message, verily for him is a life narrowed down, and We shall raise him up blind on the Day of judgment. He will say: O my Lord! Why hast thou raised me up blind, while I had sight (before)? (Allah) will say: Thus didst thou, when Our signs came unto thee, disregards them: so wilt thou, this day, be disregarded[1].

Observed the late H.A.R. Gibb, "Within the Western world, Islam still maintains the balance between exaggerated opposites. Opposed equally to the anarchy of European nationalism and the regimentation of Russian communism, it has not yet succumbed to that obsession with the economic side of life which is characteristics of present- day Europe and present-day Russia alike. Its social ethic has been admirably summed up by Professor Massignon: Islam has the merit of standing for a very equalitarian conception of the contribution of each citizen by the tithe to the resources of the community; it is hostile to unrestricted exchange, to banking capital, to state loans, to indirect taxes on objects of prime necessity, but it holds to the rights of the father and the husband, to private property, and to commercial capital….[1]

Islam is a religion as well as a way of life. It is indeed, a comprehensive way of life that covers the whole gamut of human life in all its ramifications. It regulates the social, political, economic and spiritual life of its adherents telling them what is lawful (***halal***), unlawful (***haram***), desirable (***mandub***), detestable (***makruh***), etc

Islamic economic system therefore, is part of the subject matters of ***shari'ah***–the Islamic Law to which every Muslim is a subject (***Mukallaf***). Obedience to the law (***Shari'ah***) is the practical demonstration of their faith (***Iman***) in God which Islam demands from them. Hence, Islamic economic system or rather economic and or commercial activities of man, is seen as an aspect of or an act of worship ***(Ibadah***) in Islam. The Qur'an says:

Say! Verily my prayers and my sacrifice, my living and my dying, are all for Allah, the Lord of the worlds; He has no partner. This is what I am commanded and I am foremost of those who surrender themselves to His will[1].

Although, Islam has laid down the principle upon which Muslims are expected to conduct their economic activities and transact their businesses. The questions here are, how faithfully do they (Muslims) adhere to such principles? What are the trends? What are the factors responsible for such trends? All these issues are looked into in the succeeding paragraphs with a particular reference to Islamic concept of ***falah***

Philosophy of Islamic Economic System

The Qur'an and the **Sunnah** of the Prophet are the basis of Islamic Economics from where the philosophy as well as the principles of the system is derived. The Qur'an is an embodiment of the comprehensive codes of life, guiding and regulating the daily activities of a believer. It is the major primary source of Islamic law (Shari'ah). It was reveal to Prophet Muhammad in piece-meal (***bil-tadaruj***) for a period of twenty three years.[1] The ***Hadith*** or the ***Sunnah*** on other hand is the practical demonstration or practices of those codes as well as verbal explanations given by Prophet Muhammad for proper elucidation of the injunctions of Allah contained in the Qur'an, as it affects a believer's life.

The Qur'an asserts that it contains everything (wet and dry) that man ought to know. For Allah (SWT) could not just leave man alone to go (grope) in darkness.[1] Thus, prophets and revelations were sent for his proper guidance from time to time.[1] Quite a good part of such revelation deals with economic activities of man. Such verses do not only encourage Muslims to engage in economic and commercial activities by extolling the virtues in them; but guide them as to how to go about them[1]. They shed light on what is ***halal*** (lawful) ***haram*** (unlawful), ***wajib*** (mandatory), ***makruh*** (detestable), ***mandub*** (approved) etc, all in respect of every facet of man's life as Islam or rather Allah does not divide life into water tight confines of spiritual and temporal.[1] It could therefore be said, that Islamic Economics forms part of the subject matters of ***shari'ah*** (the Islamic law) of which every believer (Muslim) is a subject (***Mukallaf***) Allah says:

We have given to you a law (a way of life) so follow it and do not follow the fancies of those who know not[1].

> "*Some people will travel seeking bounties of Allah (through trade) and some will travel to fight war of defence* ***(jihad****) in the path of Allah*"[1].

The above verses states two basic reasons why man especially a Muslim (believer) engages in travelling: for the purpose of economic and or commercial activities as well as for the defence and propagation of his religion. Let us quickly add here, that it is not Allah's intention to reduce man to just an ordinary robot and this is why He endowed him (man) with intellect so that he could think, reflect and exert himself in order to better his lots. And it is of great interest that even the secondary sources of Islamic law are the products of human minds regulated by Allah's revelation or Guidance. These secondary sources include: ***Ijma', Qiyas, Ra'y*** etc.[1]

Islam considers wealth as belonging to Allah and that He gives it to individuals in different proportions as His trustee over His treasures so as to try them thereby.

> "*To Allah belong the Dominion of the Heavens and the Earth; and Allah has power over all things*"[1].

The above verse shows clearly that everything in the Heaven as well as on the Earth belongs to Allah; man inclusive.

Allah again says:

> "*O men! Remember the grace of Allah unto you! Is there a creator, other than Allah, to give you sustenance from Heaven or Earth? There is no god but He: How then are you perverted*"[1].

Abdullah Yusuf Ali asserts:

> "*The primal cause of all things is Allah thus the need for man to turn to Allah instead of running after false fancies. For Allah is not only the source, but the centre of life and activity, and all affairs return to Him. The world is sustained, by Allah's grace and providence. 'Sustenance' is to be taken in Qur'anic language, for all that helps to maintain and develop every aspect of life, physical and spiritual. It would be height of folly, then for men to ignore Allah's gracious message, as explained in His Revelation*".[1]

Allah says:

"*Believe in Allah and His Messenger and spend (in charity) out of the (sustenance) whereof He has made you Heirs. For those of you who believe and spend (in charity) for them is a great reward*"[1].

Ali Abdullah Yusuf again comments:

> Wherever power or wealth or influence or any good thing is transferred from one person to another, it involves added responsibilities to the person receiving these advantages. They must be more zealous in real charity and all good works; for that is a part of the evidence that they give of their faith and gratitude. And, besides, their good deeds carry their own rewards.[1]

Consider what Allah says:

> "*Let those who find out the wherewithal for marriage keep themselves chaste, until Allah gives them means out of His grace. And if any of your slaves ask for a deed in writing (for emancipation). Give them such a deed if you know any good in them; ye give them something yourselves out of the means which Allah has give to you. But force not your maid*"[1].

The above verse further corroborates the fact that all wealth belongs to Allah and that He gives it to people in different proportions.

> "It is He who has made the Earth submissive to you so traverse its path and eat what He provides you".

Man according to Islam is Allah's vicegerent on Earth and so every thing needed by him had long before his coming to Earth been provided by God. This is to ease his task or rather his duties and responsibilities of God's representative on earth. Thus, Islam considers as misleading and of course ***embarrasse de richesse*** the tendency of narrowing down human life to economic pursuit alone. This tendency has reduced man to ordinary animal controlled by its basal passion.

It should be borne in mind that Islam considers human problem as multi-faced and so in proffering solution to them, all the facets are taken into consideration as a compact whole. It thus, maintains a middle golden mean course. Hence, neither materialism nor unbridled asceticism is acceptable to Islam. Man is never an ordinary economic animal so that his needs are only food, shelter and cloth. He needed all these basic necessities of life and cannot neglect them. He possesses the physical body yet all his problems could not be solved through physical sciences.

Man is equally psychological as he has emotions, desires, likes and dislikes yet, it is a recondite fact of mute reality that psychology alone can not provide panacea to his multi-dimensional problems. He is also social as he lives together with others and cannot afford to do otherwise yet it will be misleading to think that solution can be preferred to his avalanche of problems via sociology alone. In fact, the resultant effects would be

more devastating than the problem it is aimed at solving. For no doubt, this is a case of wrong diagnosis and wrong medication as earlier observed.

> "*This approach is however utterly unscientific. It is as if an expert in the liver disease isolate the liver from the whole bodily system and disregarding the position allotted to and occupied by the liver in the human body and its relationship with other bodily organs starts looking at the liver in isolation and he becomes so much absorbed in examination than ultimately the whole bodily frame and physical system appear to him as a vast liver and nothing else*".[1]

According to Aristotle, 'the life of money making is a life of constraint; and wealth is obviously not the good of which we are in quest; for it is useful merely to something else".

Principles and Practice of Islamic Economics

All Wealth Belong To Allah

> All wealth according to Islam belong to Allah and He gives it in whatever proportion He likes to His creature just as He wishes.
>
> "*It is He who hath made you inheritors of the earth. He hath raised you in ranks, some above others, that He may try you in the gifts He hath given you for thy Lord is quick in punishment; yet He is indeed oft forgiving Most Merciful*"[1].

Islam holds economic activities in high esteem as it has lofty purpose to serve, however it can attract the pleasure and or wrath of Allah based upon the way or manner it is acquired and disbursed. Man is therefore, a trustee of Allah with regard to wealth given to him.

Acquisition of Wealth Is a Necessity of life

Since man can not provide all his need by himself, the need therefore, arise that he should make available his own goods and services for the satisfaction of those of others as he would definitely stands in need of theirs. Thus, he need to work or rather engage in economic/commercial activities so as to be able to acquire the basic necessities of life such as food, shelter and clothing. Besides, the pillars of Islam require money. To build mosque which according to Islam, attracts a lot of rewards, money is definitely needed. To pay ***Zakat*** wealth is needed just as money is needed for ***Hajj***-the holy pilgrimage to ***Makkah*** and its precincts.

Allah says:

> "*But seek, with the (wealth) which Allah has bestowed on thee, the home of the Hereafter nor forget thy portion in this world. But do thou good as Allah has been*

good to thee, and seek not (occasion for) mischief in the land for Allah loves not those who do mischief[1]*"*.

Acquisition of Wealth Is a Means to an End

Economic/commercial activities are not ends in themselves but rather a means to an end. Hence, Islam teaches that wealth has to be acquired via a lawful and wholesome means. And just as it has to be acquired through rightful means, the disbursement has to be wholesome as well, and should not be spent on things declared as unlawful by Islam. Hence, Islam teaches that Muslim should neither be extravagant nor niggardly, rather they are to maintain middle course in between the conflicting extremes. It therefore, condemns in an unequivocal way inordinate ambition to amass wealth, passionate love for the same and megalomania tendency, all of which are inherent in man and further aggravated by modern materialistic view of the world we inhabit. Islam frowns at the idea of the 'end justifies the means'. So, as earlier observed, it regulates the sum total of the affairs of its adherents. It teaches that satisfaction and soccur is not achieved by way of amassing wealth but rather via God consciousness or rather remembrance of Allah.

The Qur'an says:

Those who believe and whose hearts find satisfaction in the remembrance of Allah; for without doubt, in the remembrance of Allah, do hearts find satisfaction[1].

Islam therefore appeals strongly to its adherents to avoid such tendency of neglecting other duties they owe God and follow human beings as a result of their passionate desire to amass wealth.

'The mutual rivalry for pilling up (The good things of this world) diverts you (from the more serious things), until ye visit grave but nay, ye soon shall (know the reality). Again, ye soon shall know! Nay ! were ye to know with certainty of mind (ye would beware.) Ye shall certainly see hell fire! Again, ye shall see it with certainty of sight, then, shall ye be questioned that day about the joy (ye indulged in!)[1]'

According to Prophet Muhammad (S.A.W.):

'A truthful trader will rise up with the prophets, the righteous and the martyrs.'

As a human weakness, greed and temptation over power man, particularly the greed for wealth and paraphernalia. This is alluded to by the prophet when he says: A man gets older and two things become younger in him: the desire to get more wealth and live longer. In another Hadith, the Prophet was reported to have said: Whoever gather unlawful riches and then gives out in charity, it will not be accepted of him. There will be no blessing in what he spends and what he leaves behind (for his dependents) but it is a provision for the fire of hell.

Going by the above verses of the Qur'an as well as ***ahadith*** of the prophet (SAW), it becomes clear that the dictum: 'the end justifies the means,' is not compatible with Islam.

Wealth is a Trial from God

Wealth for both the haves and the have not is a trial from Allah. It is a trial in the sense that the haves are charged with certain social responsibilities while those of have nots are expected to be patient and avoid all ineptitude conducts in a bit to get rich. Wealth may therefore constitute a source of pleasure or displeasure based on certain factors. The source of ones wealth as well as the way it is being spent must be wholesome as man according to Islam is going to give account of his earnings or incomes especially with regards to how he comes by them and on what he spends them. Hence, he should avoid a situation whereby the struggle for wealth eludes his attention towards his duties to Allah and or his fellowmen. Thus, he should not allow the hustle and bustle for wealth to deter or rather debar him from prayer ***(salat***), charity or alms ***(zakat*** or ***sadaqah***), pilgrimage (***hajj***) and striving for the cause of Allah, it is the duty of those who have to support those who have not among their relatives, neighbours, wayfarers etc. This is ***sadaqah*** which is distinct from the statutory ***zakah*** payable only once in a year on a ***nisab***. This, according to Islam, is the right of Allah which has to be fervently and reverently observed by every Muslim. Allah says:

And in your property is the right of the beggars and those devoid of riches (i.e. the poor).

You give to your relatives their rights and to the poor and wayfarers

….those who, when they spend are neither extravagant nor niggardly; but hold just (balance) between those extremes.

O ye who believe! There are indeed many among the priest and anchorites, who in falsehood devour the substance of men and hinder (them) from the way of God. And there are those who bury gold and silver, and spend it not in the way of God: announce unto them a most grievous penalty. On the day when heat will be produced out of that (wealth) in the fire of hell, and with it will be branded their foreheads, their flanks and their backs. 'This is the (treasure) which ye buried for yourselves: taste ye, then, the (treasure) ye buried.

Islam condemns all acts of dissoluteness, wanton conviviality and obscenity. A situation whereby a rich man indulges in adultery and or fornication, and arrange for an army of prostitutes is condemned as a great sin in Islam, a sin against God and a crime against humanity as it greatly affects the social fabric of the society. Sensual enjoyment of music and wine that warrant the need to employ another army of musicians, dancing girls, drum beaters and manufacturers of musical instruments and distillers of wine are out-rightly condemned. This, according to the Qur'an is lavish and evil spending of the highest order and those who engage in them are dubbed as incarnates of Satan. Just as wealth is a trial for the wealthy ones so it is for the indigent members of the society. They are to be hardworking, prayerful and put their hope and trust in God. They should not be too

passionate in their bid to get rich. Therefore, to steal or commit any other form of fraud or to be begging for alms while they are healthy, hale and agile to toil and struggle for their livelihood is considered as a crime, indeed ***haram*** (unlawful) in Islam. This is one of the significant differences between Islamic and the conventional economics. While Islamic economics is religiously (morally) imbued, the conventional economics is materially inclined.

Individual Ownership

Islam permits and encourages individual ownership of wealth for cogent reasons. This is why Islamic economics is described as a mid-way between capitalism and socialism or communism. Even though, certain power is given to the state to check the excesses of its subjects and to inflict certain punishment where necessary; yet, Islam permits individual ownership just because, on the Day of Judgment, there is not going to be collective accountability. Moreso, one of the major issues upon which account is going to be rendered is economic or commercial pursuit of man. Thus, owing to the fact that individuals will appear before Allah to give accounts of their deeds, it behoves that individual or private ownership be granted man. This suggests that, individual has to be very careful of pilling up wealth unlawfully for the generations coming after him. For such generations would only give account of how they spend it and not how they come about it. This encourages healthy competition and facilitates economic development and growth of individuals and nations.

Acquisition of Wealth as a Form of Worship

Apart from the fact that Muslims use the proceeds from their labour for acts of worship like ***zakah***, ***hajj***, building of mosques, and or striving for the cause of Allah; a great reward awaits a believer who sets out of his place in search of his livelihood and of course, this is categorised to be part of remembrance of Allah which the Qur'an tags as the greatest virtue. Allah says: Say verily, my prayer (***salah)*** and sacrifice (***nusuk***) my living (***hayah***) and my dying (***mamat***) are surely for Allah-the Lord of the worlds, this is what I am commanded and I am foremost of those who surrender themselves to the will of Allah.

Conclusion

Islam considers economic and commercial activities of man as an act of worship as long as they are based on good motives and are in consonance with the teachings of Islam. It further teaches that economic or material well–being of man is not enough to guarantee the much needed peace and happiness that man so desires. To achieve this all–important feat in this world and the next, a synergy it opines, should be formed by combining the spiritual well-being with material comfort. No wonder, the Qur'an and ***Sunnah*** of the Prophet are replete with several verses charging Muslims to explore and exploit all the resources that have been made available at their disposal. Prophet Muhammad once said: "Take to trade, for out of ten divisions of livelihood nine are in trade.'' This is why neither asceticism nor materialism is acceptable to Islam, it rather maintain a middle

course between the two extremes. When Muslims took to this lofty teachings of Islam their 'Ummah was an autarchy and they were leaders of thought in all ramifications. Today, the 'Ummah is the weakest, hungry, ignorant, to say the least; the most backward among the comity of nations. This was the effects of the fitnah experienced by the 'Ummah towards the tail end of the period of the Khulafaur-Rashidun as a result of which God fearing men withdrew from active life into a life of quietude.

It should be noted therefore, that Islam does not approve the dichotomy between spiritual and temporal life, a situation that has become well pronounced in our midst today; hence, the need for re-orientation of the Muslims.

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الشروط المقترنة بالعقد في ضوء القوانين المدنية وتطبيقها في المصارف الاسلامية (بيع المرابحة نموذجا)

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ملخص:تتناول هذه الورقة الشروط المقترنة بالعقد في ضؤبعض القوانين المدنية وهي القانون الأردني واليمني والماليزي وتطبيقها في اعمال المصارف الاسلامية، وعلى الخصوص في عقد بيع المرابحة كنموذج .و علم الشروط يحمل اهمية بالغة في المعاملات المالية التي تقوم بين الافراد في المجتمع ،وكما قال الامام السرخسي(واعلم بأن علم الشروط من آكد العلوم ،وانظمها صنعة فأن الله تعالى امر بالكتاب في المعاملات فقال عزوجل (اذا تدينتم بدين الى اجل مسمى فاكتبوه) فكان في الشروط صيانة الأموال وقد آمرنا بصيانتها ونهينا عن اضاعتها)[3] وكما جاء في حديث رسول الله (المسلمون عند شروطهم الا شرط احل حراما او حرم حلالا) وكما جاء في الاثر عن عمر ابن الخطاب أنه قال(مقاطع الحقوق عند الشروط)،ثم أن صحة العقود تتوقف على صحة الشروط التي التي تقترن بها.

وتتجلى أهمية هذا البحث في وجود مشكلة قائمة ان اعمال البنوك ومنها العقود والشروط التي تمارس المصارف من خلالها اعمالها المختلفة ،فان هذه العقود وما تتضمنه من شروط تتضمنها تتعارض في بعض منها مع القوانين المدنية ، مما ينشا عن ذلك منازاعات تكون المصارف احد اطرافهاوما يترتب على ذلك النزاع من خسارة مادية تلحق بالمصارف .وقد توصلت هذه الدراسة الى ان الالتزام بهذه الضوبط القانوية المتعلقة بالشروط تجنب المصارف المنازاعات والخسائر المادية التي يمكن ان تلحق بها.

[1]- محاضر زائر اكاديمية الدراسات الاسلامية جامعة ملايا. استاذ مشارك كلية الشريعة والقانون جامعة صنعاء.

[2]-عميد اكاديمية الدراسات الاسلامية واستاذ في قسم الشريعة والقانون في الاكاديمية جامعة ملايا.

[3]المبسوط-لشمس الدين السرخسي، دار المعرفة للطباعة والنشر بيروت-لبنان ط 3. 1398 /1678م.

المقدمة:

إن موضوع الشروط المقترنة بالعقود في القوانين المدنية لهااهيتها العملية الكبيرة في المعاملات المالية والمصرفية الاسلامية، فهي التي تضبط التزامات المتعاقدين ،والبنوك الاسلامية لا تمارس اعمالها بمعزل عن القوانين المدنية التي تعد الاساس لكثير من اعمالها ومنها العقود ، لذلك ليس للافراد الحرية المطلقة في وضع الشروط التي يريدونها في العقود التي تبرم بينهم ،فهناك الشروط الصحيحة التي يجوز اقترانها بالعقود وهناك الشروط غير الجائزة ، التي لايجوز اقترانها بالعقود والتي تتعارض مع مقتضيات العقد او تتعارض مع النظام العام في الدولة، وكذلك الشروط التي تخالف احكام الشريعة الاسلامية التي تعتبر مصدر لهذه القوانين

وتتجلى أهمية هذا البحث في وجود مشكلة قائمة ان اعمال البنوك ومنها العقود والشروط التي تتضمنها هذه العقود تتعارض في بعض منها مع القوانين المدنية . و يقدم هذا البحث معا لجة التشريعات المدنية للشروط المقترنة للعقود ،وسنقتصر على عرض القانون المدني الاردني واليمني والماليزي، وتطبيقات الشروط على اعمال البنوك الاسلامية.في بيع المربحة كنموذجا لهذه الأعمال.لذلك .نتناول هذه الدراسة في ثلاثة مباحث،مبحث أول في التعريف بالشرط وانوعه ومشروعيته في الفقه الاسلامي، ونخصص المبحث الثاني للشروط المقترنة بالعقود في في القوانين المدنية ، والمبحث الثالث لتطبيقات الشروط في أعمال المصارف الإسلامية.

المبحث الاول : تعريف الشرط وانواعه ومشروعيته في الفقه الإسلامي.

المبحث الثاني الشروط المقترنة بالعقود في القوانين المدنية

المبحث الثالث: تطبيقات الشروط في اعمال المصارف الاسلامية:

المبحث الاول:

التعريف بالشرط وانواعه ومشروعيته:

اولا : تعريف الشرط .

الشرط في اللغة: الزام الشئ والتزامه في البيع ونحوه ، وجمعه شروط [4] والشرط بفتحتين : العلامة ، وجمعها أشراط ومنه قوله تعالى(فهل ينظرون إلاالساعة أن تأتيهم فقد جاءأشراطها)[اية 18سورة محمد]

وفي الاصطلاح: ما يتوقف عليه وجود الشيء ويكون خارجا عن ماهيته ،ولا يكون مؤثرا في وجوده.) وعرف ايضا بانه –ما يلزم من عدمه عدم المشروط ، ولايلزم من وجوده وجود ولاعدم،لذاته[5].

ثانيا:أنواع الشرط.

الشرط نوعان:شرط شرعي وشرط جعلي:

والشرط الشرعي :هو ماكان مصدر اشتراطه الشارع ،أي أن الشارع هو الذي اشترطه لتحقيق الشيء، ومثاله بلوغ الصغير سن الرشد لتسليم المال اليه،ومثاله سائر الشروط الشرعية التي اشترطها الشارع في العقود والتصرفات والعبادات والجنايات.

والشرط الجعلي: هو ماكان مصدر اشتراطه إرادة المكلف،كالشروط التي يشترطها الناس بعضهم على بعض في عقودهم وتصرفاتهم ،أو التي يشترطهاالمكلف في تصرفه الذي يتم بإرادته المنفردة كالوقف.ويدخل في هذا النوع الشرط المقترن بالعقد[6].

ثالثا:تعريف الشرط المقترن بالعقد:

-الشرط المقترن بالعقد، هو من الشروط الجعلية ، وهو ما كان مصدر اشتراطه إرادة المكلف ورغبته فيجعل بعض عقوده،أو التزامته معلقة عليه ،أومقيدة به بحيث إذا لم يتحقق ذلك الأمر لاتتحقق تلك العقود والالتزامات[7] . وعرفه البعض بانه التزام العاقد في عقده أمرازائدأعلى اصل العقد[8].اذا فهوالشرط الذي يتم وضعه باردة المتعاقدين ورضاهم في عقودهم وتصرفاتهم المختلفة.وهذه الشروط هي محل الدراسة في هذا البحث:

رابعا:الحث والامر من الشارع في الوفاء بالعهود والعقود.

وردت أيات قرانية واحاديث نبوية تحث على الوفاء بالعقود والعهود، فالعقود تتضمن التزامات و شروط متبادلة تلزم العاقدين الوفاء بها،و من هذه الايات والاحايث :قوله تعالى في القران الكريم(يأيها الذين امنوا أوفوا بالعقود)[9] وقوله تعالى(وأوفو بالعهد أن العهد كان عنه مسؤلا)[10]

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[4]-القاموس المحيط 368/2مادة شرط.

[5]-السالوس.علي احمد/،فقه البيع والاستيثاق والتطبيق المعاصر دراسة في الفقه الاسلامي مقارنا بالقانون،مكتبة دار القران ،مصر، ص600،د.وهبه الزحيلي ،اصول الفقه الاسلامي وادلته،دار الفكر المعاصر –دمشق،2007/1428،ج1،ص106

[6]-عبد الكريم زيدان،الوجيزص48،الزحيلي المرجع السابق ،ص105

[7]-اصول الفقه الزحيلي101/1

[8]- د.محمد سلام مدكور،المدخل للفقه الاسلامي،،دار الكتاب الحديث،مصر 648.

[9]-سورة الماءدة،الآية:1

[10]-سورة

فهذه النصوص القرانية وغيرها واضحة الدلالة فيما تقرره من وجوب الوفاء بالعقود والعهود التي تبرم بين المتعاقدين ،فالانسان يكون مسؤلا في تنفيذ عهده ووعده، وفي تفسير الجصاص لهذه الايات القرانية يقول(وكذلك كل شرط شرطه الانسان على نفسه في شئ يفعله في المستقبل فهو عقد.[11])

ومن الاحاديث الصريحة الدالة على الوفاء بالشروط قوله صلى الله عليه وسلم (المسلمون عند شروطهم الاشرطا أحل حراما أو حرم حلالا).ويقول عمر بن الخطاب ان مقاطع الحقوق عند الشروط)ا.فهذه الاحاديث وغيرها تدل على مشروعية الشروط ووجوب الوفاء بها، وهي الشروط النى لا تحلل حراما أو تحل حراما

خامسا:موقف الفقه الاسلامي من الشروط :

ان موضوع الشروط المقترنة بالعقد من المسائل الهامة التي تناولها فقهاء الشريعة الإسلامية وخصص لها البعض باب خاص هو باب الشروط المقارنه للعقد ، وما ذلك الا لاهمية هذه الشروط في معاملات الافراد ،وما يترتب عليها من صحة العقد ومن عدمه ، وللفقهاء مواقف مختلفة حول الشروط والاصل فيها ،ومجمل القول حول موقفهم من الشروط، ان الفقهاء متفقون على أن هناك ماهو جائز ويصح اشتراطه في العقد والالتزام به ، ومنها مالم يبحه الشرع فلا يجوز اشتراطه ولا يصح الالتزام به، وهنال من الشروط المختلف حول صحتها لاختلافهم حول النصوص الشريعة الوادرة بشأن هذه الشروط،ثم ان الفقهاء اختلفوا حول الاصل في الشروط هل الاصل الاباحة ام الحظر ،والقول الغالب لدى بعض الفقهاء القدامى والمعاصرين أن الاصل في الشروط الاباحة ، وليس الحظر لانه يعطي السعة والمرونة والقدرة على اسيعاب المعاملات الجديدة [12].

المبحث الثاني

الشروط المقترنة في القوانين المدنية.

عالجت القوانين المدنية محل الدراسة الشروط المقترنة بالعقود، فوضعت نصوص خاصة بالشروط المقتنرن بالعقود

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[11]-الجامع لاحكام القران ،لابي عبد الله محمد بن احمد الأنصاري القرطبي ، دار الكتب العربية للطباعة والنشر ط3 للقرطبي،295/3.

12-تنص المادة الثالثة من الدستور اليمني على أن(الشريعة الإسلامية مصدرا لجميع التشريعات)

[11]-القرضاوي .يوسف،القواعد الحاكمة افقه المعاملات ، بحث للكتور يوسف القرضاوي قدمه الى الدورة التاسعةعشة المجلس الاروبي. وانظر الشرط الجزائي،وأثره في العقود المعاصرة .د. محمد سعد اليمني.ص127 ، وعبد الناصر توفيق العطار ،توحيد تقنينات الأزهر للشريعة الإسلاميه.305/2.

وتعتبرالقوانين الاطار الذي يحكم علاقة المتعاقدين ،و هي التي يرجع اليها في حال الخلاف حول صحة العقود و الشروط ، لذلك نظمت القوانين الشروط واقترانها بالعقود. وبينت احكام العقود المقترنة بهذه الشروط.

و لما كانت المصارف الاسلامية تلتزم في اعمالها ومنها العقود والشروط باحكام الشريعة الاسلامية فان ذلك يعني ان تكون تلك القوانين متفقة مع احكام الشريعة ،وبالتالي فلا يكون هناك تعارض بين الشريعة الاسلامية و القوانين المدنية التي تجعل الشريعة الاسلامية مصدرا لقوانينها ، ، ثم ان معا لجة القوانين للشروط يحل مسالة الشروط الخلافية في الفقه الاسلامي كالعربون وشرط التعويض والاحتفاظ بالملكية وغير ذلك من الشروط الخلافية في الفقه الاسلامي والتي حسمت القوانين الخلاف بالنص الصريح على حكم ذلك النص ،ومن هذه الدول التي جعلت الشريعة مصدرا لتشريعاتها اليمن والاردن[13]،امابالنسبة للدول التي لا يكون مصدر القانون فيها الشريعة الاسلامية فيحدث تعارض بين تنظيم القانون والشريعة الاسلامية مما يؤدي الى منازاعت بين الافراد حول الواجب التطبيق على اعمال البنوك احكام الشريعة ام القانون ،

وسنتناول الشروط المقترنه بالعقود كما نصت عليها القوانين والاصل في الشروط في هذه التشريعات على النحوالتالي:

المطلب الأول: الشروط الصحيحه في القانون

اوردت القوانين المدنية –محل الدرسة-الشروط الصحيحة المقترنة بالعقود مقتفية اثر الفقه الاسلامي ونتناول الشروط في هذه القوانين.

اولا:القانون المدني الاردني:

تنص المادة 164من القانون المدني الاردني على ان " 1-يجوز ان يقترن العقد بشرط يؤكد مقتضاه أو يلائمه او جرى به العرف والعادة.2-كما يجوز أن يقترن بشرط فيه نفع أحد العاقدين أو للغير ما لم يمنعه الشارع أو يخالف النظام العام أوالآداب والإ لغا الشرط وصح العقد ما لم يكن الشرط هو الدافع إلى التعاقد فيبطل العقد ايضا.

ثانيا:القانون المدني اليمني:

تنص المادة 263من القانون المدني اليمني على ان "يصح أقتران العقد بالشرط الذي يقتضيه أو يلائمه ويؤكد موجبه كما يصح اقتران العقد بالشرط المتعارف عليه الذي جرت به عادة البلد أو تقرر في المعاملات بين التجار وأرباب الصنائع بما لا يخالف الشرع."

و يتضح من هذه النصوص ان المقنن الأردني واليمني قد اجازا اقتران العقد بالشرط وبينا الضوابط لاقتران العقد بالشروط، متفقين بذلك مع جاء في الشريعة الاسلامية وهي اربعة انواع من الشروط على النحو التالي:

1-الشرط الذي يقتضيه العقد ويؤكد موجبه، ويراد به الشرط الذي يرتب اثا رالعقد من حقوق والتزامات . وهذا الشرط يوجب على المتعاقدين الوفاء به بحكم القانون ، فاذا اشترط شرطا من مقتضيات العقد ومن لوزمة يكون من باب التأكيد ، لا ن الوفاء بهذا الشرط واجب يقع على عاتق المتعاقدين سواء اشترط في العقد ام لم يشترط ،فكما هو معلوم فقد وضعت التشريعات لكل عقد احكاما تعتبر من مقتضيات العقد وموجباته ،فاذا ورد في العقد شرطا من هذه الشروط تكون مؤكدة للعقد، كإشتراط المشتري تسليم المبيع او اشتراط البائع على المشتري دفع ثمن المبيع ونحو ذلك من الشروط التي تعد من مقتضى العقد وموجباته فمثل هذه الشروط صحيحة ولاتنافي مقتض العقد.

-.13=تنص المادة الثالثة من الدستور اليمني على أن"الشريعة الاسلامية مصدر جميع التشريعات."

ومن امثلة الشروط الصحيحة ، شرط الزام البائع بتسليم المبيع ونقل الملكية وضمان العيوب، والزام المشتري بدفع الثمن . فمثل هذا الشرط نصت عليها القوانين صراحا كالتزامات على البائع والمشتري(م458مدني اردني وما بعدها وم 529يمني وما بعدهامدني). فاذا اشترط اي من العاقدين ايا من تلك الشروط فاالعقد يكون صحيحا كونه لا يتعارض مع القانون وانمايؤكد مقتضاه.

2-الشرط الذي يلائم العقد. ، وهو الشرط الذي لايقتضيه العقد ولا من لوازمة ولايوجبه القانون ، وانما يكون ملائما لمقتضى العقد ويحقق مصلحة للعاقدين او احدهما ، وهي الشروط التي يلجأ لها المتعاقدين او احدهما لضمان تحقق مقتضي العقد، وتنفيذه،، ،كاشتراط البائع على المشتري تقديم رهنا بالثمن او كفيلا للوفاء بما تأجل من الثمن .فاي من هذه الشروط تكون صحيحة ولاتؤثرفي صحة العقد ،وتلزم العاقد الوفاء بها في حال اشتراطها. وهذه الشروط والتي تضمن تنفيذ العقد او الوفاء بالدين ، قد نظمتها القوانين المدنية،وبالتالي تخضع في حال اشترطها لاحكام القوانين المدنيه .

3-الشرط الذي جرى به العرف. وهو كل شرط درج عليه الناس في معاملاتهم ،واصبح ملزما،فعيتبر الشرط الذي يقضي به العرف ملزما للمتعاقدين، اذا توافرت فيه شروط العرف ، والعرف يعد من المصادر الرسميةللقوانين المدنية، .وتؤد وجوب العتبار بالعرف القواعد الفقهية والقانونية منها " المعروف عرفا كالمشروط شرطا"(م 224مدني اردني ونحوها من المواد225،226،220بقولها "العادة محكمة" وكذلك القانون المدني اليمني م12).

4-الشرط الذي فيه نفع لاحد العاقدين او لكليهما:

ونص على هذاالشرط صراحة القانون المدني الأردني، ،ويقصد به الشرط الذي لايقتضيه العقد ولايلائمه، وانماهو ما يشترطه احد المتعاقدين على الاخر ،ويكون فيه منفعة لاحدالمتعاقدين اوكلاهما،:كأن يشترط المشتري صفات معينة في المبيع ، اوشرط يتعلق بالنفقات او ان توصيل المبيع الى موطن المشتري ،او تدريب او تعليم المشتري في كيفية استعمال الشئ المبيع،او ان يبيع الشخص داره ويشترط السكنى فيهالمدة ما لنفسه او لغيره، ونحو ذلك من الشروط د ولتي لا تخالف النصوص القانونية الآمره ،وانما فيها نفع للمتعاقد وتتم برضى المتعاقدين.

ثالثا:القانون الماليزي :

ان النظام القانوني في ماليزيا ،وفيما يتعلق بالعقود والشروط ، تحكمه مبداء العقد شريعة العاقدين ، وقانون العقود أو contractActs هو قانون الأساس في تنظيم العقود سواء كانت تجارية او مدنية.ولذلك كل العقود التي يقوم بابرامها الافراد أوتنفيذها تخضع لاحكام هذا القانون، والعنون الكامل لهذا القانون هوقانون العقود (1950رقم 50) واصل هذا القانون قانون العقود الهندية رقم 9لسنة 1950م ، بحيث ان معظم مواد القانون اخذت من قانون الهند مع بعض التعديلات الملائمة . وكلا من هذاين القانونان الهندي والما ليزي تقتبس احكامها من القانون الانجليزي وهي غير مكتوبة حتى الآن.[14] ويأخذ القانون الماليزي بمبدأ العقد شريعة المتعاقدين ، وهوما تجري عليه قوانين كثير من الدول العربية على حد سواء ، ويفقضي المبدأ جواز ادخال أي شروط في العقود، واالتي تكون موافقة للقانون ،فاالقانون الماليزي لا يجيز اقتران العقود بشروط مخالفة للقانون أو شروط يمنعها القانون . وذكر القانون الأمور التي لايسمح اقترانها بالعقود في المدة (24) منه .[15]

وبهذا يمكن أن نقول أن القانون الماليزي بالنسبة الى العقود فهو يقربجواز اقتران شروط في العقد تحت مبدأ حرية التعاقد مادام لا يخالف القانون، وقبل أن نختم الكلام في هذه النقطة جدير بالذكر أن القانون الما ليزي يفرق في الشروط بين ما يسمى ب conditionوما يسمى بwarranty ,وكلا من هذه الشروط الشروط معتبره في الفقه

[14]-أنظر .visu sinnadurai قانون العقود في ماليزيا وسنغافره .طبعة ثلنية ،سنغافره 1687.ص9.
[15]-انظر أحمد هدايلت بوانج" اقتران الشروط في العقد)مجلة الشريعة ج3رقم 2،1995م، ص 265-266

الاسلامي والقوانين في الدول العربية ، ففي القانون الماليزي فان condtionيعتبر شرطا اساسيا في العقد بحيث أن إنكاره سيؤدي ألى أبطال العقد ويحكم باالغرم و يطلب التعويض أو الجزاء وبينماwarrany انكاره لم يستحق الطرف الغرم ابطال العقد بل له طلب التعويض فقط [16]

وبمقتضى هذه النصوص القانوية يجوز اقتران العقود بالشروط المختلفة وبما يتفق مع هذه الضوبط القانونية التي وضعتها هذه القوانين..

المطلب الثاني: الشروط غير الصحيحة في القانون.

تنص المادة 264 من القانون المدني اليمني على ان":يبطل الشرط الذي لايكون من مقتضيات العقد ولوازمه ولامايؤكد موجبه ولا جرى به العرف وكذا الشرط الذي لانفع فيه لآحد العاقدين أو لغيرهما والعقد المقرون به صحيح"

بين القانون اليمني في هذا النص الشرط الباطل وهو الشرط الذي لايكون من مقتضيات العقد ولامن لوازمة ولاجرى به عرف وكذلك الشرط الذي لانفع فيه لاحد العاقدين اولكليهما ، فاذا اشترط اي من العاقدين شرط من هذه الشروط فان الشرط يقع باطلا.اضافة الى ذلك الشروط المخالفة للقوانين والنظام العام والاداب وكل قواعد القانون الامره،وكذلك الشروط الباطلة في الشريعة الاسلامية ،كون الشريعة الاسلامية مصدرا لهذا التشريع.

اما الشرط الباطل في القانون المدني الاردني فهو ماجاء في المادة(2/164)التي تقضى بان يكون الشرط باطلا في الحالات التالية:

اذا خالف الشرط النظام العام والاداب العامة ، واذا نص المشرع صراحة على منع الشرط ، كالاشتراط باستبعاد نظرية الظروف الطارئة مثلا[17].

اما الشرط غير الصحيح او الباطل في القانون الماليزي فقد نصت عليه المادة 42 من قانون العقود وهي كل :

(1)شرط ينافي الغرض أو المقصود الذي يحميه القانون.

(2)شرط يؤدي أو يسبب الضرر الى اخر.

(3)شرط يخالف الأداب والنظام العام للبلاد[18]

ويتضح من هذه النصوص انها وضعت الضوابط العامة للشروط غير الصحيحة والتي لا يجوز اقترانها بالعقود،وهي على وجه الاجمال ، ما تنافي مقتضى العقد فلاتعتبر صحيحة فهي تعطل الأثار المترتبة على العقد، مثال ذلك اشترط البائع على المشتري عدم التصرف في المال المبيع فان هذا الشرط يكون منافيا لمقتضى العقد، وقد تعني فكرة مقتضى العقدالاثر الظاهر للعقد ، اي الاثرالجوهري والأساسي للعقد،فلو اشترط المؤجرعدم السكن في العين المؤجرة ،كان شرطا منافيا لمقتضى العقد لأن الغرض من العقد هو السكن في الدار وهذ الشرط ينافي هذا الغرض[19] .

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[16]-انظر السيد أحمد السقاف مبادئ قانون العقود الماليزي .كولا لمبور 1996، ص 97-98.

[17]-انظر الجبوري المرجع السابق.ص562

[18]- أنظر أحمد هدايلت بوانج" اقتران الشروط في العقد)مجلة الشريعة ج3رقم 2،1995م، ص 265-266.

[19]-المبسوط في شرح القانون امدني الاردني/ ياسين الجبوري،406/1.وانظر فقه البيوع المنهي عنها مع بتطبيقاتها الحيثة في المصارف الاسلامية ،د.أحمد ريان، سلسلة محاضرات العلماء اصدارت البنك الاسلامي للتنميةط2003/3، ص59.

المطلب الثالث: حكم العقد المقترن بالشرط الباطل في القونين المدنية:

ان أثر الشرط الباطل على العقد في القانون المدني لا يختلف عن ماجاء في الفقه الاسلامي ، فجعلت القونين المدنية اثر الشرط الباطل بطلان الشرط دون العقد كقاعدة عامه ، فاثر الشرط الباطل في القانون اليمني بطلان الشرط دون العقد ، فالعقد ينعقد مع الشرط الباطل صحيحا ويرتب الالتزامات على عاتق المتعاقدين ، ولا يكون للشرط اي اثر على العقد.وهذ الاثر للشرط يكون في حالة اقتران الشرط لمقتضى العقد ((م294 السالفة الذكر)،وفي انواع اخرى من الشروط جعل اثر الشرط الباطل بطلان العقد والشرط، وهي مخالفة الشرط للنظام العام والقانون.

اضافة الى ذلك فقد بين القانون المدني اليمني اثر الشرط على العقد في نصوص خاصة من ذالك النصوص الخاصة بالبيع، اذ تنص المادة (459) من القانون المدني اليمني على ان(يصح البيع ولو اقترن به شرط لا نفع فيه لاحد المتعاقدين أولغيرها وفي هذه الحالة يلغو الشرط)وتنص المادة (460):منه على ان(لايصح البيع بالشرط الباطل وهو ليس من مقتضيات العقد ويعارضه ولاجرى به العرف فيلغو العقد والشرط معا في هذه الاحوال)

فالمقنن اليمني في هذه النصوص فرق بين نوعين من الشروط،احدهما و يترتب عليها بطلان الشرط دون العقد وهو الشرط الذي ليس فيه نفعا لاحدالمتعاقدين اوغيرها، وجعل اثر الشرط بطلان الشرط دون العقد ، والثاني الشرط الذي ينافي مقتضى العقد كاشتراط البائع على المشري عدم بيع المبيع او عدم التصرف فيه ونحو وذلك، واثر هذا الشرط بطلان العقد والشرط، لانه ينافي العقد وكذلك كل شرط مخالف للنظام العام.

كما أورد المشرع اليمني اضافة الى ذلك بعض الشروط الباطلة في مسائل متفرقة في القانون من ذلك الشروط المتعلقة بالبيع كاالشرط الذي يجهل به المبيع كاشرط الاستثناء من مبيع تم بيعه جملة(م499)،وشرطا الاعفا من ضمان استحقاق المبيع(544) وسقوط خيار الرؤية قبل ثبوته(م239)لأن مثل هذا الشرط ليس من مقتضيات عقد البيع ويؤدي الى التجهيل بالمبيع ، لتخلف شرط العلم الكافي به الذي لايقوم التراضي الابتحققه. وشرط اسقاط ضمان تحمل تبعة هلاك المبيع على البائع قبل التسليم لتعارضة مع حكم العقد،الذي يوجب على البائع تحمل تبعة هلاك المبيع قبل التسليم (م544)[20].

اما حكم اقتران العقد بالشرط الباطل في القانون الأردني، أي الشرط المخالف للتشريع او النظام العام فقد بين القانون حكمه كمايلي.

1-اذا كان الشرط هو الدافع الى التعاقد ،فانه يبطل العقد والشرط،،ويقصد به الحالة التي يوجد فيها ارتباط بين العقد والشرط في قصد العاقدين ، بحيث لو علم المشترط ببطلان الشرط لما أقدم على التعاقد. 2- اماذالم يكن الشرط هو الدافع إلى التعاقد. كان الشرط باطلا في ذاته،فيصح العقد ويلغى الشرط ، ومثاله أن يبيع الشخص داره ويشترط على المشتري أن يتخذها محلا للعب القمار .[21] كذلك أورد القانون المدني الأردني احكام خاصة لبعض الشروط في مسائل متفرقة ،من ذلك بطلان شرط الإعفاء من المسؤلية المترتبة عن الفعل الضار (م270)و،وبطلان كل شرط يمنع المتصرف اليه من التصرف(م1029)

وعلى ذلك فأن تلك القوانين قد وضعت الضوبط للشروط غير الصحيحة والتي لايجوز اقترانها بالعقود،واقتران العقود باي من هذه الشروط الباطلة يؤدي الى بطلان الشرط والعقد في بعض الحات ،وجملة القوال في الشروط

[20]-لمزيد من التفصيل انظر د،اسماعيل المحاقري،أحكام عقد البيع في القانون المدني اليمني،دار الكر للطباعة والنشر اليمن صنعاء 2008م ص25وما بعدها

[21]-المبسوط الجبوري المرجع السابق.،ص 421 ، 563 .

الباطلة انها تلك التي تخالف مقتضى العقد لأن العقد بفضي ترتيب الاثار القانونية علية فهو يقتضي نقل الملكية واطلاق التصرف في المعقود عليه والشرط المخالف لمقتضى العقد يمنع من ذلك.، وكذلك الشروط المخالفة للقانون والنظام العام وايضا الشروط التي تتعارض مع الشروط الباطلة في الشريعة الاسلامية..

المطلب الرابع:الأصل في الشروط في القانون

ان موقف القوانين المدنية من هذه المسألة انها لم تورد نصوص صريحة تبين موقفها من الاصل في الشروط ،وانما يستخلص موقفها من مجمل معالجتها لاحكام العقود والشروط بصفة عامه.

فبالنسبة للقانون المدني الاردني ،فقد ذهب بعض شراح هذا القانون إلى ان القانون الاردني قد اخذ بمبدا الاباحة في الشروط، اي ان الاصل في الشروط الاباحة، فهو يجيز اقتران العقد بالشروط التي فيها نفع لأحد العاقدين او الغير مادم المشرع لم يمنعها ،او انها غير مخالفة لنظام العام او الاداب العامة فقد اطلق القانون الحرية للمتعاقدين في أن يضمنوا العقد ما يشأوون من الشروط ولم يقيد حريتهم الابقيود النظام العام والادابولاداعي لذكر مسألة الشروطك المقترنة بالعقد في صلب القانون المدني ،لأن تلك الشروط على اختلاف انواعها الملائمة اوالتي تؤدك مقتضى العقد وغيرها لا تمنعها النصوص القانونية وبل ولاكثر من ذلك ان القانون المدني الاردني قد اخذ بمبدأ سلطان الارادة وحرية التعاقد[22]،اضافة الى ذلك فقدنصت المادة 213 منه الى أن الاصل في العقد رضا المتعاقين وما التزماه في التعاقد.

ومايمكن القول به بالنسة للشروط والاصل فيها ان المقنن اليمني قد اخذ بما قال به فقهاء المذاهب الاربعة فيما يعتبر من الشروط المقترنة بالعقد والتي بينتها ل المادة(163) سالفة الذكرفهو لايختلف عن نهج الشريعة في هذه المسألة ، ولكن بالنظر الى ماذكره من اجازة الشرط بما جرى به العرف وما نص عليه من حالات لبطلان بعض الشروط المقترنة بالعقد،كذلك ما جاء في القانون من نصوص خاصة تتعلق بالشروط ومن ذلك ما نص عليه في المادة(12) التي تقضي بأن (الأصل في المعاملات وأنواعها وكيفيتهاما اقره الشرع ثم ما جرى به عرف الناس وتراضوا عليه ما لم يخالف حكم الشرع من تحليل حلال أو تحريم حلال ...) ومانص عليه في المادة(13 منه) التي تقضي ان (العقد ملزم للعاقدين والأصل في العقود والشروط الصحة حتى يثبت ما يقتضي بطلانها والغش يبطل العقود والضرر اليسير فيها الذي لايمكن الاحتراز عنه عادة لايكون مانعا من صحة العقد) وماتنص عليه المادة (14) على ان (يجب في العقود والشروط الوفاء بها ..) يصل بنا الى القول ان الاصل في الشروط في القانون اليمني هو الاباحة فيجوز اقتران العقود بالشرو ط بشرط الاتكون مخالفة للقانون و النظام العام والاداب التي تعد قواعده آمرة لايجوز للافراد الاتفاق على مخالفتها كما يجب ان لاقترن العود بشروط مخالفة لاحكام الشريعة بان لاتتضمن تحليل حرام او تحريم حلال وما دامت تلك الشروط ايضا كانت محل تراضي بين المتعاقدين..و

وبالنسبة للقانون الماليزي فان القاعدة العامة في القانون الماليزي هي إحترام مبدأ حرية التعاقد بين المتعاقدين في العقد، وهذا يشمل إدخال أي شروط في العقد،وهذا المبدا وان لم ينص عليه قانون العقود الماليزي صراحة (1950)، ولكن المحاكم المليزية قد أقرت بهذه القاعدة في القضية التي فصلت فيها احدى المحاكم [23] doi

Lord Bris thamحيث يقول الحكم "لو كان مبدأ حرية التعاقد يقتصر في محل المعقود عليه المعين ينبغي على القانون ذكره على عدم جوازه ولايجوز للمشرع (البرلمان) ان يترك الأمر لإلى المحكمة في تعيين هذا الامر "[24]

[22]-المبسوط د. ياسين الجبوري 564/1

doi BOOn leong&drs v.cilibanu n.A[1684] 1 msy 222pc -38

المبحث الثالث:

تطبيقات الشروط في أعمال المصارف الاسلامية (شروط بيع المرابحة (نموذجا)

ان كثير من أعمال المصارف الاسلامية تتم عن طريق العقود التي تبرمها مع العملاء ، ويتم عادة وضع الشروط المختلفة في العقود والتي تؤكد حقوق والتزامات المتعاقدين وتحقق الضمان لأحدهما اوكلاهما..

فاالمصارف الاسلامية تضع من الشروط التي تحافظ بهاعلى اموالها في اطار من الشرع الاسلامي ، لذلك تتحرى في وضع الشروط الصحيحية التي لاتخالف احكام الشريعة الاسلامية ، وإلا ادى ذلك الى بطلان العقود وما يترتب على ذلك من خسارة اقتصادية تلحق المصارف في حال بطلان هذه العقود.

كما يجب على المصارف الاسلامية عند ابرام العقود مراعاة القوانين النافذة التي تحكم المعاملات والعقود بصفة عامة والا تضع في عقودها الشروط التي تخالف القوانين ، فكما هو معلوم ان التقنين يعد المصدر الرسمي الاول للقوانين المدنية وهو مستمد من الشريعة الإسلامية .ونتناول في هذه التطبيقات الشروط التي تقترن عادة بعقد بيع المرابحة والتي تجريها المصارف الاسلامية،

وهذهه الشروط كما وردت في كثير من نماذج العقود تتمثل في شرط الضمان والتعويض واالعربون والاحتفاظ بالملكية وحلول جميع الدين الاقساط..... ونحوذلك كما سنوردها على النحو التالي:

اولا: الشروط المتعلقة باالضمان

تعد شروط الضمان من الشروط الاساسية التي يشترطها المتعاقدين في المصارف الاسلامية لما لها من اهمية في حفظ الاموال وتنفيذ العقود، واذا نظرنا الى شروط الضمان التي تنص عليها بنود عقد المرابحة نجد انها منهاما تعد من الشروط اللملائمة لمقتضى العقد وتحقق مصلحة للمشترط،وهي صحيحة باتفاق الفقها ومنها ماهي محل خلاف في جوازها في الفقه الاسلامي كالعربون والتعويض المالي ، في حال مماطلة المدين عن سداد اقساط الدين. واحتفاظ البائع بملكية المبيع الى حين الوفاء بالاقساط ،والبراة من العيوب.ونشير بلمحة الى هذه الشروط ومدى ملائمتها مع الشروط القانونية.

اولا: الشروط المتعلقة بالتامينات.وهي الرهن والكفالة ،وهذه من الشروط الملائمة للعقد، فهي من العقود المشروعة لتوثيق الديون ولاخلاف بين فقهاء الشريعة في جوازها. ويلجا الدائن الى هذه الضمانات ،لعدم كفاية الضمانات الشرعية والقانونية التي تكفلت بها الاحكام العامة في الشريعة والقانون، وهي ان اموال المدين تكون ضامنة لديونه في حال عدم الوفاء بديونه،فهذه لا تكون كافية لحصول الدائن على حقه، فيلجا الدائن الى فرض الضمانات التي يراى انها تحقق له الضمان في الحصول على كامل حقوقه وهي ضمانات اجازتها القوانين المدنية ونظمت احكامها المختلفة وقبل ذلك الشريعية الاسلامية وهي الرهن والكفالة وهناك الشروط الاخرى التي تتعلق بالعربون والتعويض في حال التاخر في الوفاء بالدين وغير ذلك من الشروط التي سنعرض لها .

أولا-الرهن:

[24]-انظر أحمد هدايات بوانج ، مبداء حرية التعاقد في الفقه الاسلامي ، مجلة الشريعة ج2، غرةيناير 1993،ص 246-249-

يعتبر الرهن من الضمانات والتامينات الهامة التي تأخذ بها البنوك لسداد مستحقاتها ،و الرهن في اصطلاح الفقهاء :هو المال الذي يجعل وثيقة بالدين ليستوفي من ثمنه إن تعذر استيفاؤه ممن هو عليه[25]،وعرفه القانون المدني اليمني في المادة(983)بانه(عقد يقدم به المدين أو غيره باذنه عينا مخصوصة إلى الدائن أو عدل يختاره الطرفان لحبسها لاستيفاء مال مخصوص.كما يعد من انواع الرهون ما يعرف بالر هن غير الحيازي والذي يسمى في القانون اليمني بالتامين العقاري وعرفته المادة (1381)،بانه(حق عيني على العقارات المخصصة لضمان وفاءالتزام معين .....)ويشترط القانون في التامين العقاري ان يكون مكتوبا في السجل العقاري(م 1382)

ويعتبر الرهن من اقوي الضمان التي تكفل للدائن الحصول على حقه كاملا وتجيزه الشريعة الاسلامية والقوانين المدنية.

و الرهن تامين عيني اذ يحصل المرتهن(البنك) على عين معينةتامينا بحقه يحبسها تحت يده ،حتى يوفي الراهن الدين الذي عليه للبنك ، فان لم يقم بالوفاء في الموعد المحدد،فللمرتهن ان يستوفي الدين ،من العين المرهونة.

ثانيا -الكفالة:ومن الضمانات التي تقوم المصارف الاسلامية بأخذها لضمان تسديد الديون أو تنفذ العقود ،الكفالة وذلك باشترط شخص الى جانب المدين يضمن سداد الحق للبنك في حال عجز المدين الوفاء بالدين، والكفالة هي ضم ذمة الى الذمة في المطالبة في الدين)[26] ومنهم من عرفها بالقول ، ضم ذمة الضامن إلى ذمة المضمون عنه في الالتزام بالحق)[27]، وفي تعريف اخر(ضم الذمة الى الذمة في الدين) وعرف القانون المدني اليمني الكفالة بانها(ضم ذمة الكفيل إلى ذمة المكفول عليه للاسيتثاق فيما كفل به وتتم بلفظها ونحوه ولاتتوقف على رضاالمكفول عليه) والكفالة في القانون اليمني قسمان هما:1-كفالة بالمال وكفالة بالبدن(كفالة الوجه)(1028)

امالقانون المدني الاردني فقد عرف الكفالة في المادة (950)منه بانها(ضم ذمة إلى ذمة في المطالبة بتنفيذ التزام)

وهو تعريف شامل للكفالة بالنفس والكفالة بالمال، وهذه الكفالة تتضمن احضار المكفول ، وتعني ايضا التزام الكفيل بدفع الدين بدلا عن المدين ،

والبنوك الاسلامية تحتاط اكثر اذ تجعل الضمين كطرف ثالث يلزم بالدين او بسداد الدين في حال عدم قيام المدين بالوفاء بالدين من ذلك .

وقد اجازت هيئة المحاسبة والمراجعة للمؤسسات المالية الاسلامية للمؤسسة او المصرف هذه الضمانات معتبرة أن تلك الضمانات، لا تخالف مقصود العقد بل يؤكده(2/6)

كما اجازت للبنوك مطالبة العميل بأن يقديم شيكات أو سندات لآمر قبل ابرام عقد المرابحة للآمر بالشراء ضمانا للمداينة التي ستنشأ بعد ابرام العقد.(3/9)،وجملة القول في هذه الشروط انها من الشروط الصحيحة التي تلائم مقتضى العقد، ونصت القوانين المدنية على جواز اقترانها باالعقود.

:الضمانات المختلف على مشروعيهتا في الفقه الاسلامي وتجيزها بعض القوانين المدنية.

ثالثا:شرط التعويض المالي في حال عدم الوفا بالدين:ان من الشروط التي يشترطها المتعاقدين إشتراط احد المتعاقدين (الدائن)على المدين دفع مبلغ مالي كتعويض في حال الامتناع عن تنفيذ العقد او التاخر في التنفيذ،ومنها المماطلة في سداد الاقساط وهذا ما يعرف بالشرط الجزائي في الفقه والقانون وهو اتفاق المتعاقدين سلفا على تقدير

[25]-المغني لاين قدامة 361/4
[26] فتح القدير 163/7
[27]-49مغني ابن قدامه.590/4

التعويض الذي يستحق عند عدم التنفيذ العيني او التاخير فيه[28].وعرفه البعض بانه .اتفاق المتعاقدين سلفا على التزام معين يستحقه الدائن أو غيره على المدين ، اذالم يقم المدين بواجباته او تأخر في تنفيذها[29]

وحكم هذا الشرط في القانون ،فان القانون المدني اليمني يجيز الشرط الجزائي أ ما يسمى بالتعويض الاتفاقي في المادة 348، ويشمل التعويض في حالة التأخر في تنفيذ العقد في الاعمال،أما الاخر في سداد الدين عن موعده ، فان المقنن اليمني لم يكن واضحا في معالجتة هذا النوع من الاتفاق و التعويض ،فقد نصت المادة 356من القانون المدني على ان (كل اتفاق على فائدة ربوية باطل ولا يعمل به ، وكل اتفاق تبين انه يستر فائدة ربوية غير صحيح كذلك ولايعمل به ، ومع ذلك يجوز لصاحب الحق أن يتفق على عمولة في مقابل اي عمل يقوم به لمنفعة المدين بالوفاء ولا يجوز أن تزيد النسبة المتفق عليها في الفقرة السابقة عن(5%)من قيمة الحق ..)

وقد ذهب بعض الفقه[30]-وبحق- الى عدم الوضوح من العمولة عدم وضوح هذه العمولة ،لا يبعد ان تكون فائدة ربوية مستترة لا يجوز الحكم بها شرعا ، الا اذا ثبت للقاضي ان هذه العموله قد قابلها قيام الدائن بأداء خدمة حقيقية للمدين ونؤيد ما ذهب اليه هذا الرائ،فاشرط دفع مبلغ زائد فوقمبلغ الدين هو في حقيقته ربا مادم لا يوجد اي عمل قام به الدائن لصالح المدين مقابل هذه الزيادة، وهذ يتفق معا ما ذهب اليه الفقهاء المعاصرون من عدم جواز الاتفاق على التعويض،في بيع التقسيط اذا لم يقم المدين بالوفااو تأخر المدين بالوفاء بلاقساط في الموعد المحدد.

وللقاضي ان يقضي بعدم جواز هذه النسبة ان لم يكون لها مقابل اذ تصير او تعتبر الزيادة في هذه الحالة ربا...مما يعني انه لا يجوز في القانون اليمني اشتراط دفع اي مبلغ مالي في حال التأخير عد سداد الدين

اما القانون الاردني فلم ينص على جواز الاتفاق على التعويض القانوني او التعويض في حال تأخر المدين في سداد الدين ،. وانما جاء بنص عام يقضي بجواز الاتفاق على الضمان في حال التنفيذ بطرق التعويض ، واعطى للمحكمة الحق في تعديل الاتفاق بناء على طلب أحد الاطراف بما يجعل تقدير التعويض مساويا للضرر .(364/363مددني اردني) فالمقنن الاردني لم يتناول الحكم في حال التاخر عن سداد الدين كما ذهب القانون اليمني ..... مما يعني ان القانون الاردني لايجيز الاتفاق على فوائد مخالفة للشريعة الاسلامية .

وحكم هذ الشرط في الفقه الاسلامي،انه من الشروط المختلف فيها بين الفقهاء،فقد ذهب اغلب الفقه والمجامع الفقهية إلى عدم جواز التعويض ،وكذلك القانون اليمني الذي يعتبر الاتفاق غلى فائدة ربوية باطل،مما يعني بطلان البيع .اذا تضمن بيع المرابحة هذا الشرط.[31]

ولحرمة مثل هذا التعويض فان بعض عقود المربحة جاءت خالية من اشتراط دفع التعويض في حال التأخر في سداد الدين كبنك التضامن الاسلامي في اليمن ، بينما اجازات بعض عقود البنوك ذلك الاتفاق.[32] كا البنك الاسلامي الأردني،وبنك اسلام الماليزي الذي ينص في احد شروطه في البيع بالتقسيط على حق البنك احتساب واحد في المائة في حال استحقاق البنك للقسط وعد فيام المشتري بالسداد في الموعد الحدد. متفقة مع ما يذهب اليه بعض الفقه

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[28]-السنهوري،الوسيط 852/2

[30]-د.محمد حسين الشامي،النظرية العامة للالتزام في القانون اليمني ، مكتبة الجيل الجديد ، صنعاء 1997م ، ص 71.

[31]-انظر الشرط الجزائي وأثره في العقود المعاصره، د. محمد عبد العزيز سعد اليمني ، المرجع السابق،وانظر الشرط الجزائي في المعاملات الملية والمصرفية .د.محمد الزحيلي،مجلة كلية الدراسات الإسلامية والعربية،د العدد الخامس والعشرون ،2003م.تصدرها كلية الدراسات الإسلامية والعربية .دبي.

[32]- انظر نموذج عقد المرابحة ملحق.

الاسلامي من جواز فرض الغرامة المالية كعقوبة على المدين المماطل تعطي للدئن ، ويرى البعض ان تعطى الغرامة المالية لجهة أخرى غير الطرف الدائن كصندوق خاص للتعويضات، أو لجهات خيريه[33]،

رابعا-شرط العربون.ان صورة العربون التي تنص عليها عقود المرابحة هو عربون العدول او مايسمي بضمان الجدية والذي بموجبه يلتزم المشتري بدفع مبلغا من المال يحسب من ثمن المبيع ،اذا تم ابرام العقد وفي حالة عدم ابرم العقد لعدول المشتري يأخذه البائع كثمن لعدول المشتري عن اتمام البيع. وحكم هذه الصورة من العربون كما رئينا اجازة الحنابلة ، وكذلك القانون المدني الاردني ، اما القانون المدني اليمني فلا يجيز هذه الصورة من العربون ويرتب عل هذا الشرط بطلان البيع.وعلى ذلك فان هذ الشرط يعتبر صحيحا في الدول التي تجيزه ويعتبر باطلا في الدول التي لاتجيزه .

خامسا:ا-شرط الاحتفاظ بملكية المبيع:

من الشروط التي تنص عليها بعض عقود المرابحه شرط الاحتفاظ بالملكية ،وتهدف البنوك من هذا الشرط سداد الديون المستحقة لها على المدينين في حال البيع بالتقسيط ،لذلك تضع بندا في البيع بالتقسيط تشترط فيه الاحتفاظ بملكية المبيع إلى أن يتم دفع جميع الاقساط ،وذلك حتى يضمن عدم تصرف المشتري في المبيع قبل وفاء جميع الثمن.ويعتبر شرط الاحتفاظ ابلغ من فسخ البيع بعد ان تكون الملكية قد انتقلت الى المشتري ، واذا تم استيفاء الثمن تعتبر ملكية المشتري مستندة الى وقت البيع أي باثر رجعي.[34]

وحكم هذا الشرط في الفقه لاسلامي انه لايقتضيه العقد ،بل ينافي مقتضاه والاصل في العقود كما يقول القرافي في الذخيرة في اللزوم لأن العقود أسباب لتحصيل المقاصد من ألاعيان والأصل ترتيب المسببات على أسبابها،والبيع لازم بمجرد العقد)

وقد اختلف فقها ءالشريعة في في حكم هذا العقد ،فذهب جمهور الفقهاء إلى أن هذا الشرط يبطل العقد ، لأن من احكام عقد البيع انتقال ملكية المبيع الى المشتري ، وللمشتري ان يتصرف فيه باى نواع من الصرف والاحتفاظ بالملكية يمنعه من البيع.فهو منافي لمقتضى العقد. ، فا لاصل في البيع انه يرتب اثاره فور العقد وهذ الشرط فيه خروج على القواعد العامة التي وضعها الشارع لضبط العقود ويفرغ العقود من مضمونها ، وهو شرط يتنافى مع مقتضى العقد ولايلائمه[35] .

وذهبت هيئة المحاسبة والمراجعة الى القول بعدم جواز مثل هذا الشرط واعتبرته من االشروط التي تنافى مع مقتضى عقدالبيع ،وهو انتقال الملكية، لكنها اجازت إرجاء تسجيل السلعة باسم العميل لغرض ضمان سداد الثمن.

وهذ لايكون الا في الاحوال التي يشترط فيها القانون التسجيل لانتقال لملكية وكثير من المبيعات او االسلع لا يشترط فيه التسجيل لانتقال الملكية.

اما حكم القانون في هذ الشرط فقد اجازت بعض القوانين صراحة تضمين العقود مثل هذا الشرط في البيع المؤجل ،اذ تنص المادة (487) من القانون المدني االاردني على ان (يجوز للبائع إذا كان الثمن مؤجلاإو مقسطا أن يشترط تعليق نقل الملكية الى المشتري حتى يؤدي جميع الثمن ولو تم تسليم المبيع .....) ففي هذه الصورة تنتقل ملكية المبيع الى المشتري معلقة على شرط الوفاء بالثمن، فاذا وفى بالثمن انتقلت الملكية كاملة وان لم يوفي بالثمن انفسخ العقد باثر رجعي.

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[33]-انظر حكم العرامة المالية في الفقه الاسلامي، عصام أنس الزفتاوي،اصدار المعهد العالي للفكر الأسلامي القاهره،دراسات في الاقتصاد الاسلامي (34)1401-1981م.ص14 وما بعدها.

[34]-www:tashreeat.com

[35]-عطبه فياض ، التطبيقات المصرفية لبيع المرابحة في ضوء الفقه الاسلامي، ص164

اما القانون المدني اليمني، فلم ياتي بنص صريح كما ورد في القانون الاردني، وانما جاء بنصين احدهما ينص صراحة على عدم جواز التعليق بالشرط والاخريجيزالبيع بالثمن المؤجل، مما يثور التسأل حول موقف القانون اليمني من جواز شرط الاحتفاظ بالملكية .

فقد نصت المادة (461)من القانون المدني على ان (لايصح تعليق البيع على شرط أو حادث مستقبل ، ولا يصح اضافته إلى أجل)

فهذا النص صريح في عدم جوازتعليق البيع عي شرط مستقبل ويدخل فيه شرط تعليق البيع على سدادالاقساط.وقد راى بعض الفقه اجازة المشرع اليمني شرط ا تأخير نقل بالملكية الى حين سداد كامل الثمن، استنادا الى ما تنص عليه المادة (404)ن نفس القانون التي تقضي "بأنه يصح أن يكون البيع بثمن مؤجل"فذهب الى ان نص المادة461لا يمنع شرط تأخيرانتقال الملكية،اذا اشترط العاقدان ذلك،لوقت معلوم بعد ابرام البيع،وعلل جواز ذلك ان المذكرة الايضاحية للقانون المدني اليمني بررت حكم المادة 461 بان البيع المقترن بالشرط او المضاف الى اجل ينطوي على جهالة قد تؤدي الى الغرر،والفرض الذي يتفق فيه على تأخير انتقال الملكية فرض لاتوجد به اية جهالة ،فالمبيع معين وكذلك الثمن والاتفاق ناجز ولازم.[36]

ولكن ما يظهر لي ان النص صريح في عدم جواز شرط الاحتفاظ بالملكية استنادا الى المادة 461 التي لاتجيز تعليق انتقال الملكية ، لانه منافي لمقتضى العقد، فنص المقنن اليمني صراحة على بطلانه(م...461) ثم ان الفقه الاسلامي الذي يعد مصدرا للقانون اليمني لا يجيز هذا الشرط ويعتبره من الشروط التي تنافي مقتضى العقد، والفقه الإسلامي هو المرجع في تفسير نصوص القانون اليمني كما جاء في المادة (18) من القانون المدني اليمني التي تنص على ان (المرجع في تفسير نصوص القوانين وتطبيقها هو الفقه الاسلامي والمذكرات الإيضاحية والكتب الشارحة الصادرة من الهيئة التشريعة المختصة)

اضافة الى ذلك لو كان المقنن اليمني يريد اجازة هذا الشرط لنص على ذلك صراحة ،كما نص عليه القانون المدني المصري الذي استقى منه المشرع اليمني الكثير من النصوص القانونية.

غير أن المقنن اليمني جاء بنصوص مختلفة في القانون التجاري،حيث تنص المادة 112 من القانون التجاري على أن(1-يجوز للبائع أن يشترط في عقد البيع اعتبار نقل الملكية ألى المشتري موقوفا على استيفاء الثمن كله.2-فإذا تخلف المشتري على الوفاء ببعض الأقساط كان للبائع أن ينفذ بما هومستحق له على الضمان المقدم من قبل المشتري ، ويحل ما يكون متبقيا من الاقساط)

ونصت المادة 113على ان(لايجوز للمشتري أن يتصرف في المبيع قبل وفاء الاقساط باكملها إلا باذن مكتوب من البائع .....) مما يعني ان المقنن اليمني يقيد المشتري في التصرف في المبيع ولا يرتب على البيع بالتقسيط انتقال ملكية المبيع الى المشتري كاملة ،وهذا ينافي مقتضى بيع التقسيط ولايتفق مع احكام االفقه الاسلامي في بيع التقسيط ،والاحكام العامة الواردة في القانون المدني.

سادسا-شرط حلول كافة الاقساط اللاحقة في حال تأخر المدين عن الوفاء بالاقساط في الموعد المحدد..

، الاصل ان يدفع المشتري ثمن المبيع فور العقد ، فاذ اجل دفع الثمن فورالعقد واتفق على دفع ثمن المبيع على اقساط فان ذلك من باب التيسرعلى المشتري ،اذ يجوز للمتعاقدين الاتفاق علي ذلك كونها من القواعد المكملة ولايخالف مقتضى العقد، كذلك الامر في شرط حلول الاقساط في حال تأخر المشتري عن دفع الاقساط. فإذا

[36]-د.جميل الشرقاوي / شرح العقود المدنية (عقد البيع)دار النهضة العربية القاهرة،طبعة أولى1988م،ص162

اشتراط البائع على المشتري حلول جميع الاقساط في حال التاخر عن الوفاء بالاقساط يعد شرطا صحيحا لا ينافي مقتضى العقد،وليس في هذا الشرط مخالفة لمقتضى العقد أو اكل اموال الناس بالباطل ولايؤدي الى الربا، فحلول بقية الاقساط لايرتب على المدين إلادفع مقدار الالتزام الأصلي[37] .

وهذا الشرط لا خلاف بين القوانين في جواز اشترطه ، فقد اجازت القوانين صراحة تضمين عقودها هذا الشرط ،حيث تنص المادة (105) من القانون المدني اليمني على ان(يجوز إشتراط تقسيط الثمن إلى أقساط معلومة تدفع في مواعيد معينة ،وأنه إذا لم يوف القسط في ميعاده سقط الأجل في باقي الثمن إذا عرف المشتري بالمطل وهو قادر)والملاحظ ان المقنن ربط صحة الشرط اذا كان المدين موسرا ومماطلا [38].أما اإذا كان المدين معسرا فلا يسقط الأجل في باقي الثمن.

وقد اجازت هيئة المحاسبة اشتراط المؤسسة على العميل حلول جميع الاقساط المستحقة قبل موعدها عند امتناعه أو تأخره عن أداء أي قسط منها._1/9).

سابعا- شرط البراة من العيب.

اجازا القانونان الاردني واليمني صراحة شرط البراءة من العيب حيث تنص المادة514الفقرة الرابعة من القانون المدني الاردني على ان(لايكون البائع مسؤلا عن العيب القديم في الحالات التالية:.....4-إذاباع البائع المبيع بشرط عدم مسؤوليته عن كل عيب فيه إوعن عيب معين إلاإذاتعمد البائع إخفاء العيب أوكان المشتري بحالة تمنعه من الاطلاع على العيب .

وتنص المادة 549من القانون المدني اليمني على انه"يجوز للمتعاقدين الإتفاق على إسقاط ضمان فوات الوصف وضمان العيب أو انقاصه ويلغو شرط اسقاط الضمان أو انقاصه أذا كان البائع قد إرتكب غشا طبقا لماهو منصوص عليه في المادة(546)من هذا القانون" وتقضي هذه المادة بسقوط الضمان اذا كان المشتري يعلم بوجود عيب بالمبيع وقت العقد، و عدم سقوط الضمان اذ ا اثبت المشتري غش البائع بأن يكون قد أكد له خلو المبيع من هذا العيب او يكون قد تعمد اخفاء العيب.)

ويتضح من ذلك أن المقنن اليمني والاردني قد اجازا شرط البراة من العيب ، اي ان احكام الضمان هنا ،ليست من النظام العام، وعليه يجوز للمتعاقدين ان يضعا باتفاقهما تنظيما خاصا لهم ،ينطبق عليهما بدلا من القواعد التي

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[37]-الشرط الجزائي وأثره على العقود المعاصرةالمرجع السابق ص319

[38])والملاحظ ان المقنن اليمني لم يكن موفقا في صيغة النص فهو اراد ان يفرق بين المعسر والمدين المماطل الموسر ، بقوله (اذا عرف المشتري بالمطل وهو قادر)اذا بمقتضى هذه العبارة ان ننظر الى سلوك الشخص المدين فان عرف عنه المماطلة طبق عليه حكم النص وان لم يعرف عنه المماطلة لا يطبق عليه النص وان كان موسرا او قادارا ___بمعنى انه بمقتضى هذا النص اذا كان من لم يقوم بسداد الاقساط شخص قادر ولكن لم يعرف عنه انه مماطل لايطبق عليه النص والامر هنا يخضع لمعيار ذاتي شخصي، اي النظرالى الشخص فيما اذا كان من المماطلين ام لا وهذه تخضع للاجتها د وتعد مسألة صعبة التطبيق لان الامر هنا يتطلب معرفة السيرة الذاتية للشخص فيما اذ كان معروفا عنه بين الناس انه مماطل ام لا)

(لذا لايقال اذا عرف المشتري بالمطل)وانما اذا ماطل وهوقادر سواء كان معروفا عنه المطل ام لا، فالقادر على الدفع ولا يقود بسداد الاقساط يعد مماطلا سواء اكان معروفا عنه المماطلة ام غير معروف ، وهذ هو مايقول به الفقهاء .فاذا ماطل مليء في سداد الاقساط وترك هذا النص بهذه الصيغة يؤدي الى او يفتح الباب امام للدائنين القادرين على المماطلة بحجة انه لم يعرف عنهم المماطلة .

اوردتها نصوص القانون، المتعلقة بهذا النوع من الضمان وسواءاكان هذا الاتفاق بخفف او يشدد من احكام الضمان، او اعفاء البائع منه اعفاءكاملا[39].د.جميل الشرقاوي

على انه في حالتي الاتفاق على الاعفاء من ضمان العيب ،اشترط القانون عدم علم البائع بالعيب وعدم تعمده اخفاء العيب غشا منه وإلاكان شرط عدم الضمان باطلا (م542 مدني يمني) ، ويجعل النص مثل هذا الاتفاق غيرمشروع ، اي ان الشرط يكون باطلالعدم المشروعية وليس بسبب الغش[40]. فعلم البائع وعد الافصاح للمشتري بوجود عيب في المبيع او اخفائه ففي هذه الحالة لايسقط الضمان ويظل البائع مسؤلا عن العيب.

ويوجب القانون اليمني في حال الاتفاق على الاعفاء ذكر العيوب التي لايضمنها،حيث تنص المادة 214على أن "خيار العيب يسقط اذا تعاقدا على الابراء من جميع العيوب ظاهرها وباطنها ولايسقط اذا تعاقدا على الابراء من جميع العيوب جملة" وارد المقنن من هذا النص ذكر العيوب المفية من الضمان على سبيل الحصر وذلك للحيلولة دون حصول نزاع بين المتعاقدين في حال عدم ذكر العيوب المعفية من الضمان على وجه التحديد.

وذهب بعض فقهاء الشريعة الاسلامية إلى أن البيع بشرط البراة جائز اذا كان البائع لا يعلم بالعيب ، وأماإذا كان عالما به فلا يجوز،روي هذا عن عثمان بن عفان رضي الله عنه ،وهو مذهب المالكية والشافعية.(والحنابلة في رواية [41] وقد استدل اصحاب هذا الرأي ما روي "ان عبد الله بن عمرو رضي الله عنهمابانه باع غلاما له بثمانمائة درهم،وباع بالبراءة من العيب، فقال الذي ابتاعه لعبد الله بن عمر: به داء لم تسمه فاختصما الى عثمان بن عفان فقال الرجل :باعني عبدا وبه داء لم يسمه لى ، فقال عبد الله ابن عمر :بعته بالبراءة ، فقضى عثمان بن عفان على عبد الله باليمين ان يحلف له ،لقد باعه الغلام وما به داء يعلمه ،فأبى عبد الله أن يحلف له ، وارتجع العبد، فباعه عبد الله ابن عمر بعد ذلك بألف وخمسمائةدرهم، رواه البيهقي في السنن الكبرى، فدل قضاء عثمان في هذه الواقعة على صحةاشتراط البراة من العيوب ، إذا كان البائع غير عالم بالعيب ولم ينكر احد من الصحابة على عثمان ماقضى به"[42].

وهذا ما ارجحه ،استنادا الى ماقضى به عثمان ابن عفان ، ولم ينكر عليه احد من الصحابة ذلك،وليس في هذا الشرط وهو البراة من العيب اذا لم يكن البائع عالما به محظور شرعي من غش اوغرر، اذ يفترض بالمشتري ان يكون قد عاين المبيع وتأكد من سلامتة فأن لم يكن لديه القدرة رفض الشرط فقبوله بالشرط البراءة دليل على رضاه بشراء المبيع بحالته سليمة او معيبة.8

ثامنا:شرط المنفعة:

وحكم شرط المنفعة فقد اجاز القانون المدني الأردني هذا الشرط(في المادة () بقوله(.. يجوز أن يقترن بشرط فيه نفع لأحدالعاقدين أو للغير مالم يمنعه الشارع أو يخالف النظام العام أو الاداب..) اما القانون المدني اليمني فلم ينص على حكمه صراحة.ولكنه بحسب الاصل في الشروط فلا يحرمه مادام لايخالف القانون والنظام العام ، وكذلك الأمر في القانون الماليزي بحسب مبداء العقد شريعة المتعاقدين,

وحكم شرط المنفعة في الفقه الاسلامي اختلف فقهاء الشريعة في جوازه وجملة القول فيه، فقد اجازه بعض فقهاء الشريعة الاسلامية وهم المالكية والحنابلة ،فعند المالكية يجوز بيع الدار وشرط سكناها اذا كانت المدة يسيره مثل الشهر او الاسبوع او اشترط حمل المتاع على الدابة الى مكان البائع، لأن هذا شرط فيه منفعة يسيره للبائع ، لا تعود

[39]- شرح العقود المدنية(عقد البيع في القانون المدني اليمني)د.جميل الشرقاوي، دار النهضة العربية .مصر .القاهرة الطبعة الاولى.1988ص 286.

[40]-المرجع السابق 286

[41]-نهاية المحتاج36/4،المغني،المرج السابق ،ص198

[42]-المغي ويليه الشرح الكبير،291/5

في منع التصرف في اصل المبيع، واستدل على جوازهذا بحديث جابر [43] ،اخرجه البخاري ومسلم من حديث جابر رضي الله عنه أنه كان يسير على جمل له قد أعيا فمر رسول الله صلى الله عليه وسلم فضربه فدعا له ، فار مسير ليس يسير مثلهن ثم قال : بعنيه بأوقية ،قلت :لا ثم قال بعنيه بأوقية فبعته واستثنيت حملانه الى اهلي ، فلما قدمنا المدينة اتيته بالجمل ونقدني ثمنه ، ثم انصرفت فارسل على اثري قال:ماكنت لأخذ جملك ، فخذ جملك ذلك فهو مالك. [44]

ففي الحديث دلالة واضحة على جواز اشتراط الانتفاع بالمبيع مدة معلومة ،فلو لم يكن الانتفاع بالمبيع جائزا لمافعله النبي صلى الله عليه وسلم .[45]

ويتفق الحنابلة مع المالكية في جواز بيع الدار مع اشترط السكنى مدة معلومة ، وحجتهم في هذا حديث جابر.[46]

وفيه ان هذا قول الاوزاعي وابي ثور واسحاق وابن المنذر،ويصح كذالك عند الزيديةجاء في التاج(وكذا لوشرط البائع الركوب الى موضع معلوم صح)[47]

وهذا مانميل اليه كونه يتم بالرضاوفيه تيسيرللعاقد المشترط ، وهو شرط يتم برضى المتعاقدين ،

ونخلص من ذلك ان ما تتضمنه عقود المرابحة كما تجريها المصارف الاسلامية، تتفق في كثير منها مع القوانين المدنية وتتعارض مع بعضها كشرط العربون الذي لايجيزه القانون المدني اليمني وشرط الاحتفاظ بالملكية وهي من الشروط المختلف على جوازها في الفقه الاسلامي، على خلاف القانون الاردني الذي يجيز مثل هذه الشروط ،والخلاف بين القوانين لايختلف عما جاء في الفقه الاسلامي ،فهو يرجع الى اختيار المقنن لهذه التشريعات لاحد اتجاهات الفقه الاسلامي.

وموقف العقود التي تقوم ب ولكن هذا الاتفاق نسبي مختلف فيه بين القوانين لذلكان هذه الشروط تعتبر صحيحة لدى بعض القوانين دون البعض الي اعتبرتها غير صحيحة متفقة مع ما ذهب اليه االفقها القائلون بعدم جوازها في الشريعة الاسلامية، كشرط التعويض المالي عن التاخير في سداد الدين والعربون الذي لم يجزه القانون المدني اليمني ويجيزه القانون الاردني والاحتفاظ بالملكية على خلاف القانون الاردني النى اجازه القانون الاردني صراحة..

[43]ابن رشد المرجع السابق 567
[44]انيل الاوطار للامام الشوكاني –باب اشتراط منفعة المبيع وما في معناها م/ مصطفى الباب الحلبي 201/5.
[45]-بداية المجتهد لابن رشد المرجع السابق
[46]-المغي ويليه الشرح الكبير المرجع السابق،281/5
[47]-التاج المذهب.324/3

الخاتمه والتوصيات:

ونخلص من ذلك إلى القوانين المدنية قد وضعت ضوبط للشروط التي تقترن بالعقود والتي تجعل التزامات المتعاقدين صحيحية، و هذه الشروط منها الصحيحة التي يجوز اقترنها بالعقود ومنها الباطلة التي لايجوز اقترنها بالعقود ،و الى ان النظرة العامة في القوانين هو جوازقتران العقود بالشروط وهي غير محصورة بشروط محددة وما ذكرته القوانين من انواع للشروط الصحيحية أو الباطلة هو عبارة عن ضوابط عامة في وضع الشروط الذي يلزم المتعاقدين مراعاتها لتجنب بطلان العقود وما يترتب على ذلك البطلان من اثار ضارة تلحق بالمتعاقدين

وقدخلصنا ايضا الى القول بأن الاصل في الشروط الاباحة وليس الحظر ، استنادا الى نصوص القوانين المدنية الت تناولت أحكام العقود والشروط بصفة عامه . فالشروط تكون صحيحية اذا لم تخالف القواعد الامراة والقواعد المتعلقة بالنظام العام، اضافة الى القواعد القانونية العامة ومبدأ العقد شريعة المتعاقدين والنصوص القانونية .،وهذا ماقال به ابن تيمة من أن الاصل في الشروط الاباحة وذهب اليه الفقهاء المعاصرون.

وبالنظر الى الشروط وتطبيقها في عقد بيع المرابحة في المصارف الاسلامية ،تبين ان البنوك الاسلامية تتفق فيما تضعه من شروط في كثير منها مع الشروط الصحيحة في الفقه الاسلامي والقانون ، كاشترطا التامينات والضمانات ،اما الشروطالمختلف فيها في الفقه الاسلامي كالعربون والتعويض المالى والاحتفاظ بالميكية والبراءة من العيوب ، فالامر يتوقف في صحتها على موقف القوانين المدنية من هذه المسائل الخلافية وبينت الدراسة ان هذه الشروط تعتبر صحيحة لدى بعض القوانين دون البعض الي اعتبرتها غير صحيحة متفقة مع ما ذهب اليه االفقها القائلون بعدم جوازها في الشريعة الاسلامية، كشرط التعويض المالي عن التاخير في سداد الدين والعربون الذي لم يجزه القانون المدني اليمني والاحتفاظ بالملكية على خلاف القانون الاردني النى اجاز العربون والنص صراحة على جواز الاحتفاظ بالملكية .

مما يعني ان صحة الشروط من عدمهاء، يرجع الى موقف القوانين النافذة في الدولة ،فالشروط المختلف فيها من المسائل الخلافية في الفقه الاسلامي، فيجوز الاخذ بها اذا كانت القوانين المدنية تجيزها، عملا براي الفقهاء القائلين بجوازها.

التوصيات:

-الالتزام باحكام الشريعه والقوانين عند صياغة العقود المختلفة. والمصارف الاسلامية ينبغي عليها ان تحرص على مراعاة الشروط الصحيحية في العقود التي تبرمها مع العملا ، وتتجنب الشروط الباطلة لضمان اموالها وحمايتها من الضياع نتيجة ابطال العقود المقترنة بالشروط الباطلة .وهذه الشروط الباطلة هي الشروط التي تتنافى مع مقتضى العقد أو تتعارض مع نصوص القوانين وقوعد النظام العام العام، أو تتعارض مع الشريعة الاسلامية.

-بالنسبة للشروط المختلف فيهاء في الفقه الاسلامي يجب مراعاة القوانين المدنية فيما تضعه من احكام للعقود والشروط، وخاصة القوانين التي تكون مصدرها الشريعة الاسلامية كون القوانين هي المصدر الاول للتقنينات.

-في حال التعارض بين القوانين المدنية التي لا تجعل الشريعة الاسلامية مصدر لتشريعاتها المدنية واحكام الشريعة الاسلامية في اعمال المصارف الاسلامية ،يعمل باحكام الشريعة الاسلامية كون البنوك الاسلامية تلتزم في جميع اعمالها بالشريعة الاسلامية.

-في حال وجود شرط باطل في العقد يتوقف الحكم على العقد والشرط بما نصت عليه التقنينات المدنية او الراي الراجح في الفقه الاسلامي في حال عدم وجود نص قانوي ،اما بالنسبة للانظمة التي لم تجعل الشريعة الاسلامية مصدرا لقوانينهاء فالمرجعيه الهيئة الشرعية للبنوك واحكام الشريعة الاسلامية كما هو الحال في ماليزيا.

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OFF-BALANCE SHEET: LIQUIDITY, LEVERAGE AND DEFAULT RISK OF MALAYSIAN ISLAMIC BANKS

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OFF-BALANCE SHEET: LIQUIDITY, LEVERAGE AND DEFAULT RISK OF MALAYSIAN ISLAMIC BANKS

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ABSTRACT

Off-balance sheet activities have grown massively since 1980s. The existence of off-balance sheet activities in banking associates with many types of risks. This paper studies the impact of off-balance sheet activities towards banking risk; default risk, liquidity risk and capital risk for 15 Islamic banks in Malaysia. The study covers three (3) years period from 2006 to 2008. In utilising General Least Square to bank panel data, the empirical evidences reveal significant relationship between off-balance sheet activities with default risk and capital risk. Increase in off-balance sheet activities reduces capital risk but source to higher default risk. There is no evidence of significant link between off-balance sheet activities with liquidity risk. Islamic banks' liquidity risk is not affected with off-balance sheet activities probably due to its nature of holding and maintains high liquidity position since it began. The findings conclude off-balance sheet management is essential in controlling bank portfolio risks.

JEL Classifications: G21

Keywords: Off-balance sheet, banking risks, Islamic banks

1. INTRODUCTION

1.1 Off-balance Sheet Activities

Off-balance sheet (OBS) activities have started grown massively in the U.S. and elsewhere since 1980s resulted from market deepening and financial innovations. Since then, many issues related to off-balance sheet activities were discussed on the literature.

OBS refers to items or activities which are not recorded on balance sheet. The most common OBS activities in banking include standby letters of credit, loan commitments and loan securitisation. Standby letters of credit and loan commitments is part of bank guarantees to extend credit. It refers to bank guarantee for funds availability to the standby beneficiary on behalf of banks' customer. In the case of contingency, banks have obligation to lend funds at certain time in the future. There is no effect on the balance sheets until the contingency is realised. Standby letters of credit is also notorious as over-the-counter put option which realised until the bank's customer default or the letter of credit expires. Until then, the put option written by bank does not involve any cash flows except fees for the opening and maintaining the credit lines.

Loan commitment is a bank pledge to lend up to certain amount of funds until the committed credit lines mature. Bank charged fee for the commitments to compensate with the potential risks exposure. It is classified into fixed-rate loan commitment and variable-rate loan commitment. For the first type of loan commitment bank have an obligation to fulfil borrowing of predetermined amount at constant fixed rate. In contrast, a variable-rate loan commitment obligates the banks to lend on demand up to maximum amount at the price determined by a previous specific formula, calculated after the

realisation of a future price (Hassan & Sackley, 1994). Apart from initial fees, bank may also earn fees (small fraction of total unused portion) for the unused fund at the end of credit lines.

Loan securitisation or loan sales involve the sales of loan originated by banks to the third party (buyer). It can be either loan sales with or without recourse. Loan participations are loan sales without recourse where bank sell the loan to the buyer at equivalent maturity period. In this type of loan sales, bank transfer the risk to the buyer and in the case of default, buyer will have to bear with the risk. For this reason, loan participations are less popular in practices as compared to loan with recourse or known as loan strip. Loan strip are loan sell to the buyer for a shorter period which are less than the maturity period. In this situation, buyer is not fully exposed to the default risks as long as bank continues to exist.

There are several explanations on the enormous growth of OBS activities in banking. Among other, the most accepted motive is the banks' attempt in minimising regulatory taxes and capital adequacy requirement. Swelling in direct finance and development of secondary market for loans also contribute to growth in OBS activities. Thus, major concern in banking management is to analyse the impact of OBS activities towards bank portfolio risks. Two contradicting thought are either OBS activities are creating banking hazards or to promote market discipline.

The aim of this paper is to investigate the impact of OBS activities in Malaysian Islamic banking towards risk of default, liquidity and leverage. In the next three sections, we will elaborate on the issue of risks, discus on OBS activities in Islamic banking and a brief overview of Malaysian Islamic banking and financial markets. Section 2 reviews

related literature on OBS activities in banking, followed by data and methodology in section 3. The final two sections present the findings and conclusion.

1.2 Risks Associates with Off-balance Sheet Activities

Banking business is very fragile and exposed to many types of risk. It includes liquidity risk, credit risk, capital risk, market risk and operational risk. Due to this reason, bank management have to be extra careful in their decision. In this paper, we will focus on the impact of management decision on holding OBS activities as part of their assets and liabilities.

OBS items may cause to different risks exposure according to the nature of OBS activities the bank involved. OBS commitments could induce default risk and market rate risk to the issuance bank. Default or credit risk arises from the possibility of default by the counterparty and market risk refers to the possibility of adverse movement in market variation. Market risk includes the interest rate risk and exchange rate risk. Other than that, OBS financing may cause to capital risk and insolvency risk. Loan sales, loan strips in particular may invite liquidity risk and default risk to the bank. In addition, standby letters of credit can create liquidity risk, interest rate risk and credit risk for the bank.

There are several hypotheses on the utilisation of OBS activities in banking. Benveniste and Berger (1987) come out with risk-sharing hypothesis (cited in Sharpe & Tuzun, 1997), where if the bank fail, loan sales (standby letters of credit and secured loan with recourse) and bank offering deposit will have similar cash flow characteristics with a senior claim on bank's assets. In this hypothesis, the buyer is unaffected by the default borrower as long as the bank does not fail. Another hypothesis developed in James (1988,

1989) (cited in Sharpe & Tuzun, 1997) is the underinvestment hypothesis. In this hypothesis, bank management may underinvest in new safer asset in order to reduce bank risk out of holding fixed rate long-maturity risky debt. In this case, shareholders lose investment value with suboptimal investment.

Capital avoidance hypothesis is one more explanation on the utilisation of OBS activities in banking. This hypothesis considers banks' motivation of increasing OBS activities is due to regulatory tax and capital requirement. The moral hazard hypothesis occurs due to lower capital requirement on OBS activities. Hence, bank will increase the OBS activities and thus give more risk exposure to the bank. Beginning December 1990, OBS activities were subject to the capital adequacy requirement under U.S. capital adequacy standard (Jagtiani, Saunders, & Udell, 1995).

1.3 Off-balance sheet and Islamic Banking

In present there are numerous Islamic banks operates globally in both Muslim and Western countries including the Europe. Islamic banking emerges and shows massive development since the past three decades. Islamic banks operates in parallel with the conventional banks are exposes to similar banking risks.

The establishment of Islamic banks are bound under Shari'ah law with the basis of interest-free banking and profit and loss sharing principle. The rationale behind Shari'ah principles is the guideline from Quran and Sunnah which demand ethical conduct in banking, mainly to protect each stakeholder in banking. Thus the use of interest rate imposed by conventional banks is totally prohibited in Islam.

Due to this, Islamic banks have to be very creative and innovative in offering products and services to their customers without reliance to the interest earnings. Ahmad and Luo (2010) highlight the attractiveness of non-interest earning products as it has been used extensively in banking industry. Islamic banks in order to appear with product innovation, apply multi-dimensional product differentiation which include horizontal and vertical differentiation. While vertical product differentiation focus on the products quality, horizontal differentiation refer to banks offering other than its main retail product such as loans and deposits by introducing or focusing more on non-interest earning activities. It includes products and services such as assets management, mutual funds, private banking and Islamic money market. The existence of these non-interest earnings activities has increased OBS activities for Islamic banks. Realising this scenario, the examination of OBS activities towards Islamic bank portfolio risk is crucial.

1.4 Malaysian Islamic Banking and Financial Markets

Islamic banking and finance starts it roots in 1963 with the establishment of Pilgrims Fund Board (also known as Lembaga Urusan Tabung Haji) which later followed by the establishment of the first Islamic Bank, Bank Islam Malaysia Berhad (BIMB) in 1983. The market evolves with the introduction of Interest Free Banking Scheme (Skim Perbankan Tanpa Faedah) in 1990s that allow commercial banks to offer Islamic products and financial instruments. The market emerges further with the creation of Malaysian Islamic Interbank Money Market in 1994. The existence of this market facilitates the transactions of Islamic financial instruments.

At present there are 18 Islamic banks under the license issued by the central bank, Bank Negara Malaysia. Table 1 show the list of license Islamic banking institutions in Malaysia. In this paper, three (4) Islamic banks were excluded due to unavailability and insufficient of data.

Table 1
List of Licensed Islamic Banking Institutions in Malaysia

	Name
1	Affin Islamic Bank Berhad (L)
2	Al Rajhi Banking & Investment Corporation (Malaysia) Berhad (F)
3	Alliance Islamic Bank Berhad (L)*
4	AmIslamic Bank Berhad (L)
5	Asian Finance Bank Berhad (F)
6	Bank Islam Malaysia Berhad (L)
7	Bank Muamalat Malaysia Berhad (L)
8	CIMB Islamic Bank Berhad (L)
9	EONCAP Islamic Bank Berhad (L)
10	Hong Leong Islamic Bank Berhad (L)
11	HSBC Amanah Malaysia Berhad (F)
12	Kuwait Finance House (Malaysia) Berhad (F)
13	Maybank Islamic Berhad (L)
14	OCBC Al-Amin Bank Berhad (F)*
15	Public Islamic Bank Berhad (L)
16	RHB Islamic Bank Berhad (L)
17	Standard Chartered Saadiq Berhad (F)*
18	Unicorn International Islamic Bank Malaysia Berhad (F)*

Source: Bank Negara Malaysia as at 1 July 2010.
Note: L = Local owned bank
F = Foreign owned bank
* These banks were excluded from the sample. Bank Kerjasama Rakyat, the Islamic co-operative bank was included in the sample.

2. LITERATURE REVIEW

Risk issue and measurement is one important part in banking literature. The assessment of risk resulted from OBS activities has no consensus findings and appear to be contradicting. In the initial stage, OBS activities are allied with banking hazard issue that

signifies banks with higher risk involvement than on balance sheet activities. Later on, the other side of view relates OBS activities with greater market discipline and diversification benefits that reduce risk.

In early existence of OBS activities, regulator and researchers identify the key motivation of OBS activities is for the purpose to trim down leverage and solving the loan covenant problem (Morrison, 1993). By doing this, firms can increase their short-term survival and tolerate for additional financing. Consequently, further OBS activities cause to inaccurate on balance sheet measurement of leverage. Significant amount of OBS activities direct to the relevant of the inclusion of these activities in capital adequacy guidelines by the Basel Committee on Banking Supervision. Capital adequacy guidelines are designed to cover credit risk in derivative instruments (Breuer, 2002). The author suggests to decompose derivative instruments on OBS activities into own funds and borrowed funds equivalent of the replicating portfolio.

The implementation of capital adequacy requirement towards OBS activities started in 1990 form moral hazard problem of the capital avoidance hypothesis. It because OBS activities allow bank in generating fee income and evade the costs imposed on them by regulatory taxes. Other than bank capital adequacy, cash reserve requirement and moral hazard associated with fixed rate of deposit insurance also contributing to jump up of OBS activities (Sharpe & Tuzun, 1997).

On the other hand, Hassan and Sackley (1994) argue the rational of the loan commitments inclusion in a risk-based capital calculation. The authors find loan commitments may contribute to the overall diversification of portfolio risk and thus reduce bank risk. It also enables in cutting down equity risk, subordinated debt default

risk and implied asset risk. Angbazo (1997) in his study conform the argument of portfolio risk that promote diversification. He finds significant relationship between OBS activities with interest rate risk and liquidity risk. The findings conforms moral hazard hypothesis that OBS activities increase risk. In contrast there is insignificant relationship between OBS activities with leverage and default risk.

How, Karim, and Verhoeven (2005) find mixed results on the relationship of OBS activities towards liquidity risk. Depending on the types of OBS activities the results for commercial bank with Islamic financing in Malaysia varies. The result reveals derivative contracts significantly increase liquidity risk, documentary credits has significant negative relationship with liquidity risk and mortgage loan sold to Cagamas produce significant negative relationship with liquidity risk. In comparison with commercial banks without Islamic financing, commercial bank with Islamic financing have significantly lower credit and liquidity risk but significantly higher interest rate risk.

Hassan (1994) documents there are negative relationship between OBS activities with bank risk but it does not affect systematic risk. He also finds the present of market discipline in OBS banking activities which imply lower risk with the involvement of OBS activities. This is inconsistent with the capital avoidance hypothesis. Another evidence of market discipline is documents in Jagtiani, et al.(1995) where the authors find that better performing and better creditworthiness banks have a tendency to issue more OBS commitments. In contrast to Hassan (1994), Brewer and Koppenhaver (1992) discover standby letters of credit increases the systematic and total risk of bank stock return. The study evidence there is similar risk between standby letter of credit with on

balance sheet lending. The results indicate the subsistence of market discipline by observing investor reactions to OBS risk.

In continuation of moral hazard hypothesis, Sharpe and Tuzun (1997) results consistent with underinvestment hypothesis. The hypothesis specifies riskier bank are predicted to rely more on OBS activities to compensate underinvestment of new low risk assets (which come with lower return). This investment decision forfeits shareholders value thus OBS activities is used as means to mitigate the problem. The authors find highly risky banks with higher proportion of long-term maturity debt will fully utilize OBS activities as compared to low risk bank.

Recent study conduct by Calmès and Théoret (2010) find increase in OBS activities will increase banking system riskiness in Canadian banking sector. They also locate substantial increase in the volatility of banks' net operating revenue growth triggered by OBS activities. At the same time, OBS activities lower down Canadian bank mean accounting return.

3. DATA AND METHODOLOGY

Our aim is to study the impact of off-balance sheet activities towards bank risk of Malaysian Islamic banks. The sample consists of 45 observations on 15 Islamic banks in Malaysia for three years period from 2006 to 2008. The data were obtained from the financial statements of individual banks documented on the International Bank Credit Analysis Bankscope database. Consolidated statements are used only if the unconsolidated statement is unavailable or data is insufficient.

Table 2 and 3 provides summary statistics on key characteristics of the sample banks used in this study. The most significant OBS activities in U.S. bank data constitute of loan commitments (Hassan & Sackley, 1994). Statistic data for Islamic banks in Malaysia are consistent with U.S. bank data as committed credit lines represent huge amount of OBS activities as compared to guarantees and acceptance. Table 4 highlights the proportion of OBS activities relative to on balance sheet activities. The table shows growing proportion of OBS activities since 2006 to 2008. Thus the management of these activities is essential because it may influence bank portfolio risks.

Table 2
Summary Statistic of Off Balance Sheet Items

Off Balance Sheet Characteristic	Mean	Maximum	Minimum	Std. Dev.
Total Off Balance Sheet	2805.883	11108.670	10.000	2762.049
Acceptances Reported OBS	164.775	521.200	1.800	153.163
Guarantees	498.310	851.500	147.570	293.478
Committed Credit Lines	1329.428	5828.000	0.000	1525.903
Other Contingent Liabilities	1979.280	8622.870	7.500	1964.297

Table 3
Summary Statistic of On Balance Sheet Items

On Balance Sheet Characteristic	Mean	Maximum	Minimum	Std. Dev.
Default Risk*	4.3828	16.0800	1.4700	3.5061
Liquidity Risk**	27.9764	211.9000	-2.8000	45.1488
Leverage***	48.8038	79.6400	0.0000	22.1999
Total Asset	10516.1800	41728.4000	131.5000	9606.2230
Total Equity	883.2769	4561.4000	-277.8000	1015.2780
Total Liabilities	8348.5120	37167.0000	0.0000	8785.6560
Total Loans	6266.5450	30135.9000	0.0000	6743.9890

*Default Risk= Loan loss reserve/ Gross loans
**Liquidity Risk = Net Loans/ Total assets
***Leverage = Total Capital Ratio

Table 4
Aggregate Volume of Off-Balance Sheet and Total Assets of Malaysian Islamic Banks (mil MYR)

	2006	2007	2008
Guarantees	251.000	731.247	993.257
Acceptances Reported Off-Balance Sheet	851.500	978.077	661.968
Committed Credit Lines	2051.288	5287.349	21908.780
Other Contingent Liabilities	12139.820	22525.030	32630.670
Total Off Balance Sheet Items	15293.600	29521.710	56196.470
Total Assets	87739.340	123395.900	198995.500
Percentage Of Total Asset	17.431	23.924	28.240

In order to investigate the relationship between the off balance sheets activities and on balance sheet portfolio risk of Islamic banks our study specify the following hypothesis:

H_a: Off-balance sheet activities have significant effect on default risk, leverage and liquidity risk in Islamic banks.

This study employed Pooled Cross-Section and Times-Series econometric technique because this technique allows for simultaneous consideration of intertemporal movement and cross-sectional differences of bank risk[2]. The hypotheses had been test by the following equation:

$$\textit{Bank portfolio risks} = f\ (\textit{Total off-balance sheet activities})$$

$$\textit{Bank portfolio risks} = \beta_0 + \beta_1 OBS$$

Three (3) types of bank portfolio risk being used as dependent variables:

i. Default Risk = Loan Loss Provision / Gross Loans

ii. Liquidity Risk = Net Loans / Total assets

iii. Capital (Leverage) Risk = Total capital ratio

[2] See Hassan (1993).

As for independent variable, total off-balance sheet activities are used. These activities are classified into four (4) items as below:

i. Guarantees

ii. Acceptances Reported OBS

iii. Committed Credit Lines

iv. Other Contingent Liabilities

4. RESULT ANALYSIS

Three (3) equations, one for each bank portfolio risks, were estimated using pooled data of 15 Islamic banks for 3 years. This study has used Pooled Generalized Least Square Estimates (GLS) in identifying the relationship between off-balance sheet activities with the three (3) selected banks portfolio risks; default risk, liquidity risk and capital risk. The following table summaries results of the GLS estimates for the study.

Table 5
Relationship between OBS and Bank Portfolio Risks

	Default Risk	Liquidity Risk	Leverage
Intercept	2.7640 (10.6881)	19.0544 (7.7320)	56.2398 (16.6472)
Total Off-Balance Sheet	0.0004 (5.6196)*	-0.0009 (-1.8177)	-0.0021 (-2.3546)*
Adjusted R-Squared	0.4735	0.0634	0.1149
F-Stat for H_0	31.5801 (0.0000)	3.3041 (0.0781)	5.5442 (0.0244)

* T-statistics are in parentheses and it is significance at 5%.

From the GLS estimates result, the computed F-statistic of default and leverage risk are 31.5801 (p=0.0000) and 5.5442 (p=0.0244) respectively. From the result of F-

statistic, the null hypothesis for default and leverage risk can be rejected. It implies OBS activities have a significant impact to the default risk and leverage risk of Malaysian Islamic banks.

There are positive relationship between OBS and default risk. It indicates an increase of 1 unit in OBS activities will also increase the level of default risk by 0.0004 units. OBS activities such as letters of credit or other similar products may expose banks indirectly to increased in credit or default risk when investors default on reimbursement (Angbazo, 1997).

While for capital or leverage risk, the result indicates negative relationship between the risk and OBS. Hence 1 unit increase in OBS activities will reduce capital risk by 0.0021 units. The result on relationship is consistent with the finding by Angbazo (1997).

For liquidity risk, the GLS estimates results fail to reject null hypothesis of this study at 5 percent significance level. The computed F-statistic is 3.3041 (p=0.0781). Thus, OBS activities do not have significant relationship with the liquidity risk of Islamic banks in Malaysia. An increase in OBS activities does not affect the liquidity level of Islamic banks. This may probably due to the uniqueness of Islamic banks characteristic and due to the Shari'ah compliance issues. Furthermore, Islamic banks in general hold high liquidity level in most of the time (Majid, 2003).

5. CONCLUSION AND RECOMMENDATION

This study uses bank financial statement from Bankscope database for the period of three (3) years from 2006 until 2008, in testing the hypothesis that Islamic bank off-balance

sheet activities will have significant relationship with the level of banks portfolio risks. The results have rejected the null hypothesis for default and leverage or capital risk. It is proved that OBS activities have significant relationship with the level of default and leverage risk of Islamic banks in Malaysia.

While for the liquidity risk, the result fail to reject null hypothesis and in imply that the OBS activities do not have a relationship with the level of liquidity risk of Islamic banks in Malaysia. The results of insignificant relationship between OBS with Islamic banks' liquidity risk could be explained by ample liquidity position held by them due to their nature of operation[3]. The changes in OBS activities of Malaysian Islamic banks do not affect liquidity position.

The findings of this study indicate the importance of OBS management as it may significantly affect bank portfolio risk and survival of the banks. This study tests the relationship between default, liquidity and leverage risk and off balance sheet activities for the period of three (3) years. For future study, the timeframe could be increased with additional variables for the model improvement.

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PENDEDAHAN RISIKO DALAM KALANGAN INSTITUSI PERBANKAN ISLAM DI MALAYSIA: BUKTI EMPIRIK

ABSTRAK

Pendedahan risiko bank merupakan salah satu petunjuk yang digunakan untuk mengetahui tahap ketelusan bank dan kepatuhan bank terhadap disiplin pasaran. Ia juga memberikan maklumat penting kepada pelabur dan pendeposit. Objektif utama kajian ini dilakukan adalah untuk mengkaji secara empirikal faktor yang mempengaruhi tahap pendedahan risiko dalam kalangan institusi perbankan Islam di Malaysia. Kaedah data panel telah diaplikasikan dalam kajian yang mengandungi 72 cerapan data panel tidak terimbang ini yang meliputi 17 buah bank Islam di Malaysia bagi tempoh 2004 hingga 2008. Kaedah penganggaran adalah berdasarkan kaedah Kuasa Dua Terkecil Teritlak (GLS). Hasil kajian mendapati bahawa saiz bank, leveraj, keuntungan dan kecairan bank merupakan faktor yang signifikan mempengaruhi tahap pendedahan risiko perbankan Islam di Malaysia.

ABSTRACT

Risk disclosure is one of indicators used to determine level of banks transparency. Risk exposure plays an important role to investors and depositors to identify the level of transparency and adherence to market discipline banks. The objective of this study is to examine factors influencing level of risk disclosure for Islamic banks in Malaysia empirically. This study employs panel data method based on Generalized Least Squares (GLS). For estimation purpose, 72 observations of an unbalanced panel data comprising 17 Islamic banks from 2004 to 2008 are used. The results show that bank sizes, leverage, profitability and bank liquidity significantly influence level of risk disclosure of the Malaysian Islamic banks.

Kata Kunci **:** Bank Islam, Malaysia, pendedahan risiko.
Jenis kertas kerja **:** Penyelidikan

1. PENGENALAN

Krisis kewangan 1997/98 yang melanda Asia merupakan krisis kewangan yang paling teruk pernah dialami di rantau ini. Krisis ini telah menyedarkan pihak pengawal selia dan penggubal dasar mengenai kepentingan untuk meningkatkan tahap ketelusan dalam laporan kewangan bank terutamanya yang berkaitan risiko (Noraini et al. 2009). Aktiviti bank pada masa kini yang lebih kompleks dan dinamik telah menyebabkan bank terpaksa berhadapan dengan pelbagai risiko yang lebih besar. Pendedahan risiko merupakan salah satu aspek yang penting dalam laporan kewangan tahunan sesebuah bank. Ini kerana maklumat risiko yang terkandung dalam laporan bank membolehkan pihak yang berkepentingan seperti pemegang saham, bakal pelabur, pelanggan, malahan pihak pengwal selia membuat penilaian yang lebih baik tentang keadaan kewangan dan tahap ketelusan sesebuah bank.[1]

Secara umumnya, pendedahan risiko bank mempunyai peranan yang penting kepada ekonomi negara. Dari sudut mikroekonomi, pendedahan risiko berperanan menentukan tahap ketelusan dan prestasi sesebuah bank melalui pengukuran indeks pendedahan risiko bank berdasarkan laporan kewangan tahunan bank. Dari sudut makroekonomi pula, pendedahan risiko yang mencukupi dan berkesan dapat membantu pihak pengawal selia memantau bank dengan lebih berkesan. Krisis kewangan juga dapat dielakkan sekiranya pihak bank mendedahkan risiko yang dihadapi secara berhemah.

Justeru, kajian ini akan menganalisis amalan pendedahan risiko, mengukur indeks pendedahan risiko dan mengkaji faktor yang mempengaruhi amalan pendedahan risiko dalam laporan kewangan perbankan Islam di Malaysia. Kajian ini penting untuk menilai tahap ketelusan dan disiplin pasaran sesebuah bank. Ia membolehkan penggubal dasar mengenal pasti faktor pendedahan risiko yang boleh meningkatkan tahap ketelusan bank dalam laporan kewangan yang dikemukakan pada setiap tahun kepada pelabur dan pendeposit. Selain itu, indeks pendedahan memberikan maklumat yang berguna bagi para pendeposit, pelabur, penggubal dasar serta pengurus bank (keputusan pelaburan, pengurusan risiko, tata urus syarikat dan shariah, disiplin pasaran, piawaian serta peraturan perakaunan). Secara keseluruhan, kajian ini dianggap penting kerana kajian mengenai tahap pendedahan risiko di perbankan Islam Malaysia masih kurang, terutamanya kajian yang mengemukakan bukti secara empirikal.

Kajian ini dibahagikan kepada lima bahagian. Bahagian I membincangkan tentang latar belakang kajian, permasalahan kajian, objektif yang ingin dicapai serta sumbangan kajian. Bahagian II membincangkan kajian lepas yang terdiri daripada konsep asas pendedahan dalam Islam, pendedahan risiko dalam institusi kewangan Islam, risiko perbankan, peruntukan dan peraturan dalam pendedahaan kewangan, teori isyarat dan diikuti oleh kajian empirikal berkaitan pendedahan risiko bank. Bahagian III pula menjelaskan metodologi kajian dengan mengemukakan model kajian dan kaedah penganggaran yang digunakan. Bahagian IV akan membincangkan analisis keputusan penganggaran, manakala Bahagian V memberikan kesimpulan dan implikasi dasar, serta mengemukakan beberapa cadangan untuk kajian pada masa akan datang.

2. KAJIAN LEPAS

[1] Tahap ketelusan bank sering dikaitkan dengan pendedahan risiko yang dilakukan oleh bank.

2.1 Konsep asas pendedahan dalam Islam

Kewajipan untuk mendedahkan kebenaran adalah isu yang sangat penting dalam konteks Islam, dan kewajipan ini berlaku dalam perniagaan. Tugas ini ditekankan dalam ayat Al-Quran iaitu "tidak menutup kebenaran dengan kepalsuan, atau menyembunyikan kebenaran daripada diketahui" (2:42). Enam ayat Al-Quran merujuk pada perkaitan dan makna daripada perkaitan yang dimaksudkan ialah semua fakta pendedahan (Askary & Clarke 1997). Dalam Islam, Allah Maha Mengetahui. Allah berfirman, "Aku tahu apa yang kamu zahirkan dan apa yang kamu sembunyikan" (4:33) dan juga dia (Allah) yang tahu apa yang nyata dan apa yang tersembunyi (87:7). Keperluan mengungkap kebenaran ini adalah penting untuk membantu masyarakat mengetahui kesan daripada seseorang atau suatu perniagaan kepada kesejahteraan. Justeru, umat Islam bertanggungjawab di atas tindakan mereka dan harus mengambil kira tanggungjawab ini terhadap masyarakat yang mana mereka hidup kerana tindakan mereka mempengaruhi masyarakat (AI-Mograbi 1996).

Secara umumnya, terdapat tiga tujuan pendedahan dalam syarikat Islam; (i) untuk menunjukkan pematuhan terhadap prinsip-prinsip Islam, khususnya berurusan secara adil dengan pihak yang berbeza, (ii) untuk menunjukkan bagaimana operasi perniagaan mempengaruhi kesejahteraan masyarakat Islam, dan (iii) untuk membantu umat Islam untuk melaksanakan kewajipan agama mereka. Maklumat yang didedahkan dalam perniagaan dapat menunjukkan pematuhan kepada syariah untuk membantu melaksanakan kewajipan kepada agama.

Menurut perspektif Islam, laporan kewangan bertujuan untuk membolehkan firma menunjukkan kepatuhan terhadap syariah (Baydoun & Willett 1997). Objektif utama pelaporan kewangan dalam ekonomi Barat adalah bertujuan untuk membantu para pembuat dasar dalam membuat keputusan ekonomi. Pandangan mengenai tujuan utama ini diguna pakai oleh AAOIFI dalam menetapkan tujuan perakaunan kewangan bank dan institusi kewangan. Implikasi daripada kedudukan ini ialah perniagaan Islam perlu mendedahkan semua maklumat yang diperlukan untuk memberikan maklumat kepada umat (masyarakat Islam) tentang operasi mereka, bahkan maklumat tersebut akan digunakan juga oleh syarikat itu sendiri. Konsep pendedahan demikian berkaitan dengan konsep akauntabiliti. Dalam konteks Islam, umat mempunyai hak untuk mengetahui bagaimana organisasi dapat mempengaruhi kesejahteraan.

2.2 Konsep pendedahan risiko kewangan

Menurut Basel Committee on Banking Supervision (BCBS 1998), pendedahan risiko ialah "pendedahan maklumat yang mencukupi dan boleh dipercayai bagi membolehkan penilaian dilakukan terhadap prestasi kewangan, profil risiko dan amalan pengurusan risiko yang dilaksanakan oleh bank".[2] Beretta dan Bozzolan (2004) mendefinisikan pendedahan risiko sebagai "pendedahan maklumat yang berkaitan strategi firma, ciri-ciri, operasi, dan faktor-faktor luaran lain yang berpotensi untuk mempengaruhi keputusan yang akan diambil oleh sesebuah firma". Hassan (2009) pula mendefinisikan pendedahan risiko sebagai "pendedahan maklumat kewangan (kuantitatif) dan bukan kewangan (kualitatif)". Dari perspektif

[2] Basel Committee on Banking Supervision (BCBS) adalah jawatankuasa pengawasan penyeliaan perbankan yang ditubuhkan oleh bank pusat dari 10 buah negara pada tahun 1975. Ia melibatkan pengawasan penyeliaan oleh bank pusat masing-masing dari negara seperti Belgium, Kanada, Perancis, Jerman, Itali, Jepun, Luxembourg, Netherlands, Sweden, Switzerland, United Kingdom dan Amerika Syarikat. Ia juga dikenali sebagai *Bank for International Settlements* (BIS) atau ringkasnya, Basel.

perakaunan, pendedahan risiko dikelaskan sebagai item sukarela, iaitu item yang tidak wajib didedahkan oleh bank dalam laporan kewangan tahunan dan bergantung kepada budi bicara bank untuk melaporkannya.

2.3 Kepentingan pendedahan risiko bank

Isu berkaitan pendedahan risiko juga telah dibincangkan oleh BCBS (1998) yang menekankan kepentingan amalan keterbukaan dan ketelusan dalam konteks disiplin pasaran dan pengawal seliaan sistem perbankan. Bank-bank yang menunjukkan prestasi dan menguruskan profil risiko dengan baik boleh mendapat manfaat daripada pendedahan maklumat yang tepat. Bagi memastikan maklumat mengenai risiko yang didedahkan mencukupi, bank perlu mempraktikkan amalan pengurusan risiko yang baik. Kajian yang dilakukan oleh Cordella & Yeyati (1998) dan Rahman (1999) mendapati bahawa pendedahan yang tidak mencukupi akan menyumbang kepada berlakunya krisis kewangan dalam sistem perbankan. Ketidakcukupan pendedahan risiko akan menghalang pelabur dan pendeposit daripada menerima maklumat yang diperlukan untuk membuat pemilihan bank yang baik. Maklumat pendedahan sangat mempengaruhi perilaku dan memperbaiki pengurusan risiko. Secara tidak langsung ia juga memberikan sumbangan terhadap kawalan dalaman dan amalan pengurusan risiko oleh bank di negara-negara yang menghadapi krisis kewangan.

Dari perspektif perbankan konvensional, pendedahan risiko yang mencukupi memainkan peranan penting bagi membantu pelabur dan pihak-pihak lain yang berkepentingan membuat sesuatu keputusan yang lebih baik (Linsmier et al. 2002). Para pelabur dan pendeposit menganggap pendedahan risiko sebagai salah satu unsur penting untuk didedahkan dalam laporan tahunan bank. Pendedahan yang mencukupi dan berkesan dapat membantu bank menilai prestasi dan mengelak daripada berlakunya krisis kewangan. Di samping itu, pendedahan risiko juga dapat mencerminkan tahap pengurusan kualiti dan urus tadbir korporat sesebuah bank. BCBS (2004) mengaitkan pendedahan risiko dengan isu disiplin pasaran yang berlaku dalam industri perbankan.[3] Di samping itu, pendedahan risiko juga membolehkan risiko yang berpotensi memberi kesan kepada bank dikenal pasti dan seterusnya diuruskan dengan cara yang lebih baik. Pendedahan risiko yang mencukupi juga akan mengurangkan kemungkinan bank muflis pada masa akan datang (Rahman 1999).

Dalam perbankan Islam, perbahasan tentang pendedahan risiko telah dibincangkan secara meluas seawal penubuhan Accounting and Auditing Organisation for Islamic Financial Institutions (AAOIFI).[4] Bagi mencapai tahap ketelusan, bank-bank digalakkan untuk mendedahkan lebih banyak maklumat terutamanya yang berkaitan risiko. Dari perspektif perbankan Islam, pendedahan secara menyeluruh mengenai risiko dalam laporan tahunan adalah sangat penting kepada pengguna laporan terutamanya pelabur, penganalisis dan pendeposit (Noraini

[3] Disiplin pasaran merujuk kepada skim berintensifkan asas pasaran yang melibatkan pelaburan dalam liabiliti bank seperti hutang subordinat atau deposit tanggungan.

[4] AAOIFI merupakan sebuah badan korporat Islam antarabangsa yang bukan berasaskan keuntungan yang menyediakan perkhidmatan perakaunan, audit dan piawaian shariah bagi industri dan institusi kewangan Islam. AAOIFI ditubuhkan sesuai dengan Perjanjian dasar yang ditandatangani oleh lembaga kewangan Islam pada 1 Safar, 1410H bersamaan dengan 26 Februari 1990 di Algeria dan kemudiannya telah didaftarkan pada 11 Ramadhan 1411bersamaan dengan 27 Mac 1991di Negara Bahrain.Sebagai organisasi antarabangsa bebas, AAOIFI disokong oleh institusi yang terdiri daripada 200 ahli dari 45 negara, termasuk bank pusat, institusi kewangan Islam, dan peserta lain dari perbankan Islam antarabangsa dan industri kewangan di seluruh dunia (Accounting and Auditing Organization for Islamic Financial Institutions).

et al. 2009). Pendedahan risiko dapat memberikan maklumat yang berguna kepada para pendeposit, pelabur, penggubal dasar serta membantu pengurus bank membuat keputusan pelaburan, menguruskan risiko, mematuhi tata urus syarikat dan shariah, disiplin pasaran, piawaian serta peraturan perakaunan yang telah ditetapkan. Sebagai contoh, kepelbagaian produk perbankan Islam mendedahkan bank kepada pelbagai risiko. Pendedahan bank terhadap risiko ini secara tidak langsung akan mencerminkan tahap ketelusan bank.

2.4 Peruntukan dan peraturan berkaitan pendedahan kewangan

Pendedahan risiko adalah relevan mengikut Teori Isyarat yang mempertimbangkan masalah maklumat tidak simetri dalam pasaran. Teori ini dibina untuk menyelesaikan masalah maklumat tidak simetri dalam pasaran dan bagaimana maklumat tidak simetri ini dapat dikurangkan antara sesuatu pihak dengan isyarat maklumat yang diberikan antara satu sama lain (Morris 1987). Walau bagaimanapun, isyarat maklumat tidak simetri merupakan fenomena yang biasa wujud dalam pasaran. Teori Isyarat menyatakan bahawa bank akan memberi isyarat maklumat yang lebih berkualiti apabila prestasi bank adalah baik. Maklumat ini diharapkan dapat membantu pengguna penyata kewangan dalam membuat keputusan (Watts & Zimmerman 1986).

Pendedahan risiko oleh bank adalah berdasarkan laporan kewangan yang diaudit pada setiap tahun. *International Accounting Standard Committee* (*IASC*), kini dikenali sebagai *International Accounting Standard Board* (*IASB*) telah menerbitkan beberapa piawaian untuk perakaunan firma termasuk bank dan institusi kewangan. *International Accounting Standard* (*IAS 30*) adalah salah satu piawaian yang menentukan pendedahan dalam laporan kewangan bank dan institusi kewangan yang serupa. Namun, piawaian ini tidak membezakan antara perbankan Islam dan perbankan konvensional. Bagi perbankan Islam, *AAOIFI* telah bertanggungjawab dalam menetapkan piawaian perakaunan. Ia telah memperkenalkan rangka kerja bagi institusi kewangan Islam dan menetapkan piawaian bagi pelaporan, audit dan matlamat pentadbiran. Di antara piawaian itu adalah tujuan, konsep dan maklumat umum dan pendedahan dalam laporan kewangan bank-bank Islam dan institusi kewangan.

Di Malaysia, laporan kewangan yang disediakan pada setiap tahun oleh perbankan Islam adalah bagi memenuhi keperluan yang ditetapkan oleh Bank Negara Malaysia (BNM). Dari aspek perakaunan, perbankan Islam perlu mematuhi garis panduan pelaporan kewangan untuk institusi berlesen bagi bank konvensional (GP8) sebelum pengenalan garis panduan pelaporan kewangan untuk institusi berlesen bagi bank Islam (GP8-i) yang dikeluarkan pada bulan Ogos 2003 dan mula diguna pakai pada Oktober 2004.[5] GP8-i menggariskan keperluan minimum pembentangan dan pendedahan laporan penyata kewangan bank Islam serta bertujuan untuk memastikan ketekalan dan kebolehbandingan laporan dan penyata kewangan di kalangan bank Islam dalam mematuhi peruntukan Akta Bank Islam 1983, Akta Syarikat 1965, Malaysian Accounting Standards Board (MASB-i), kehendak syariah serta garis panduan lain yang telah ditetapkan oleh BNM. GP8-i yang dilaksanakan sepenuhnya pada tahun 2005 juga merupakan penambahbaikan selaras dengan IAS bagi mencapai

[5]Pada tahun1997, Bank Negara Malaysia (BNM) telah menetapkan supaya bank yang menawarkan produk dan perkhidmatan perbankan Islam untuk mematuhi garis panduan GP8. Berdasarkan garis panduan ini, kedua-dua bank konvensional dan Islam mematuhi piawaian perakaunan yang sama bagi membolehkan perbandingan secara langsung dibuat di antara bank dan masa (Bank Negara Malaysia 1997).

ketelusan dan menggambarkan risiko operasi perbankan Islam. Keperluan penzahiran ini turut mengambil kira MASBi-1.

Selain itu, bagi tujuan menyediakan satu garis panduan yang efektif dari aspek ketelusan dan disiplin pasaran, *Islamic Financial Services Board* (IFSB) yang ditubuhkan pada 2002 telah memperkenalkan garis panduan yang perlu dipatuhi oleh institusi perbankan Islam.[6] Objektif daripada piawaian ini adalah untuk menentukan prinsip-prinsip utama dan amalan-amalan yang harus diikuti oleh institusi-institusi kewangan Islam yang menawarkan perkhidmatan dalam membuat pendedahan. Hal ini bertujuan untuk mencapai ketelusan dan disiplin pasaran. Piawaian ini ditujukan kepada institusi kewangan Islam dan pihak berkuasa serta pembuat dasar yang relevan. Bagi tujuan ini, cadangan telah dibangunkan untuk satu set pendedahan yang dibezakan mengikut jenis dan kepentingan yang berfokus pada profil risiko dan keadaan kewangan institusi kewangan Islam. Bagi membolehkan pendedahan berkesan dalam mempromosikan disiplin pasaran, mereka perlu mematuhi piawaian antarabangsa untuk perusahaan institusi kewangan Islam yang baik, dan kesediaan komponen infrastruktur lain untuk berfungsi dengan baik dalam pasaran kewangan yang bertindak sebagai keadaan yang diperlukan untuk regim pendedahan yang berkesan. Senarai peruntukan dan peraturan dalam amalan laporan kewangan bank ditunjukkan oleh Jadual 1 di bawah.

Jadual 1 Peruntukan dan Peraturan Pendedahan Kewangan

Sumber	Tahun Berkuatkuasa	Bank Islam	Skim Perbankan Islam (SPI)	Nota
Akta Perbankan Islam 1983	1 Julai 1983	√		
Garis panduan ke atas spesimen penyata kewangan bagi industri perbankan (GP8)	1988		√	Pindaan (1994) GP8 diubahsuai untuk mematuhi prinsip syariah bagi memperbaiki laporan SPI
Garis panduan SPTF 1993	5 Julai 1993		√	Pindaan (1997) Peraturan baru untuk menukar pengiktirafan pendapatan daripada tunai kepada asas terakru
Garis panduan ke atas spesimen bagi industri perbankan (GP8- 1996)	Oktober 1996		√	Pindaan (1996) bagi bank konvensional yang terlibat dalam aktiviti SPTF
Jawatankuasa Piawaian Perakaunan Malaysia – MASB	MASBi-1 (berkuatkuasa pada 1 Januari 2003)	√		MASBi-1 diaplikasikan dalam penyata kewangan institusi

[6] IFSB telah memperkenalkan garis panduan yang perlu dipatuhi oleh institusi perbankan Islam iaitu, "*Disclosures to Promote Transparency and Market Discipline for Institutions Offering Islamic Financial Services (Excluding Islamic Insurance (Takaful) Institutions and Islamic Mutual Funds)* di bawah seliaan BNM pada Disember 2007 (Islamic Financial Service Board).

(Akta Laporan Kewangan 1997)			kewangan Islam
Garis panduan ke atas spesimen penyata kewangan bagi bank Islam berlesen (GP8-i)	Ogos 2003	√	

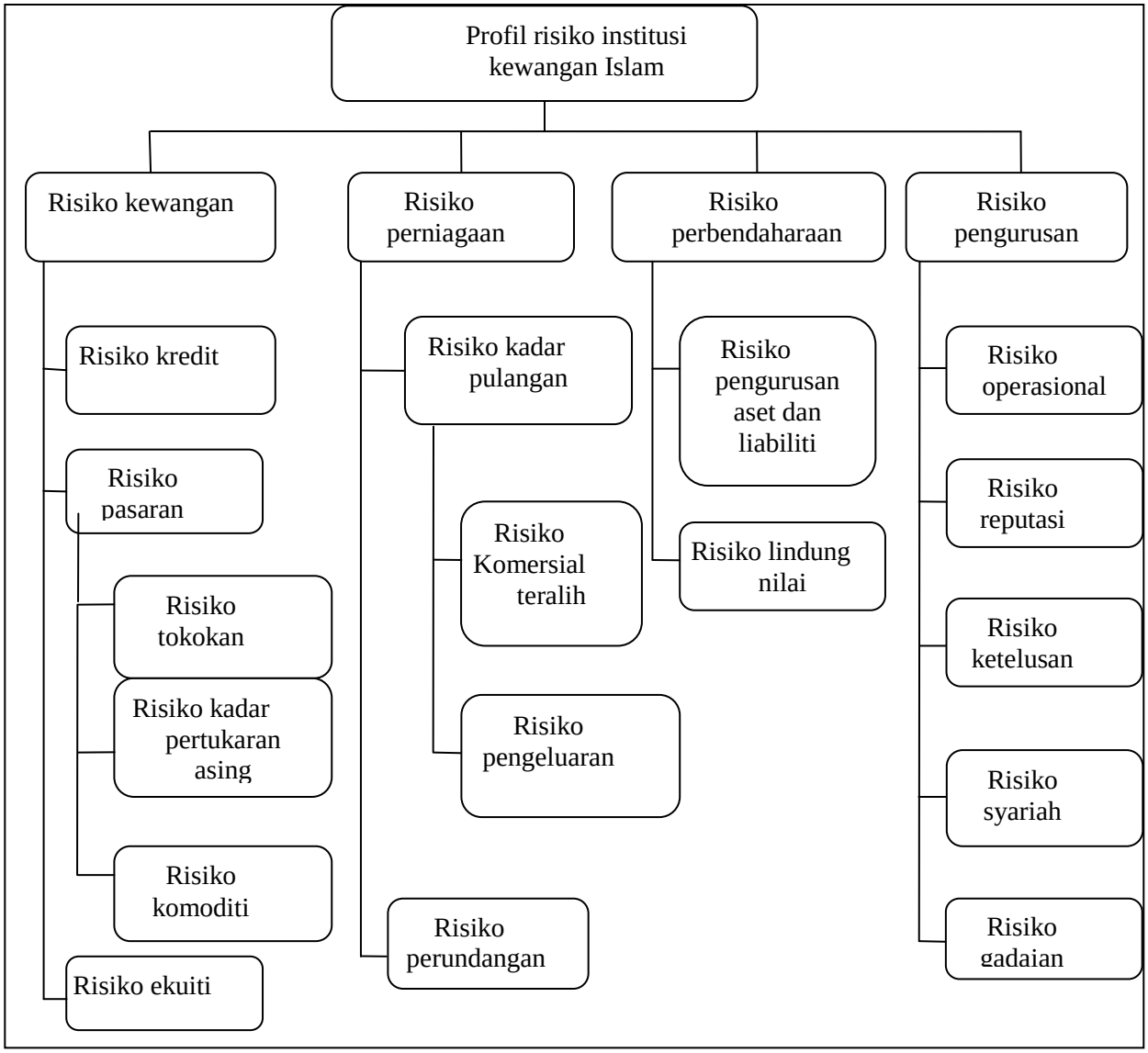
Sumber: Nurul Huda (2005), hal. 5

2.5 Pendedahan risiko dalam institusi kewangan

Pengambilan dan pengurusan risiko merupakan asas yang penting dalam aktiviti institusi kewangan. Oleh itu, ketelusan tentang keadaan dan proses pengurusan risiko sangat penting kepada pelabur, pendeposit, peminjam dan pihak-pihak berkenaan yang lain. Institusi kewangan Islam juga terlibat dengan risiko dalam urusniaga yang dijalankan sebagaimana bank konvensional. Jawatankuasa Basel[7] telah menerbitkan tiga kajian mengenai pendedahan risiko bank atau pendedahan umum oleh bank. (i) hasil tinjauan tahun 2001, pendedahan (2003), (ii) pendedahan umum oleh bank: hasil tinjauan tahun 2000, pendedahan (2002), (iii) pendedahan umum oleh bank: hasil tinjauan tahun 1999, pendedahan (2001). Beberapa pendedahan yang penting dari sudut pandangan pelabur termasuklah proses pengurusan risiko dan kawalan dalaman yang berkaitan dengan kegiatan yang menghasilkan risiko kredit. Pada masa yang sama pendedahan tentang portfolio pinjaman, pelaburan dan pendedahan risiko lain memberikan maklumat penting tentang masa depan sesebuah institusi.

Secara umumnya, institusi kewangan konvensional mendedahkan tiga jenis risiko iaitu risiko kredit, risiko pasaran dan risiko operasi (Schuermann 2004; BCBS 2004; Ariss & Sarieddine 2007). Nafis Alam & Bala Shanmugam (2008) menyatakan bahawa sebahagian besar risiko yang didedahkan oleh perbankan Islam terdiri daripada risiko kredit, risiko kecairan dan risiko pasaran. Khan dan Ahmed (2001) membahagikan risiko yang dihadapi oleh bank kepada risiko kewangan dan risiko bukan kewangan. Risiko pasaran dan risiko kredit dikategorikan dalam risiko kewangan sementara risiko kewangan mengandungi risiko operasi, risiko peraturan, dan risiko perundangan. Iqbal dan Mirakhor (2007) mengklasifikasikan risiko yang dihadapi oleh institusi kewangan Islam kepada empat kategori iaitu risiko kewangan, risiko perniagaan, risiko perbendaharaan dan risiko pengurusan. Profil risiko yang terlibat dalam operasi institusi kewangan Islam ditunjukkan dalam Rajah 1.

[7] Jawatan kuasa Basel adalah jawatankuasa pengawasan dan penyeliaan perbankan yang ditubuhkan oleh bank pusat dari 10 buah negara pada tahun 1975. Ia melibatkan pengawasan penyeliaan oleh bank pusat masing-masing dari negara seperti Belgium, Kanada, Perancis, Jerman, Itali, Jepun, Luxembourg, Netherlands, Sweden, Switzerland, United Kingdom dan Amerika Syarikat. Ia juga dikenali sebagai *Bank for International Settlements* oleh Basel.



Sumber: Iqbal dan Mirakhor (2007), hal. 235

Rajah 1 Profil Risiko dalam Institusi Kewangan Islam

Terdapat juga pengkaji yang mengelaskan risiko perbankan Islam kepada risiko umum dan risiko spesifik. Sebagai contoh, Md Arof (2007) membahagikan risiko yang dihadapi oleh bank dibincangkan seperti Jadual 2 berikut:

Jadual 2 Risiko Umum dan Spesifik dalam Perbankan Islam

Jenis Risiko	Definisi Risiko
A. Risiko Umum	
Risiko kredit	Kerugian yang disebabkan oleh ketidakupayaan atau ketidaksediaan pihak berlawanan untuk membuat pembayaran yang sepatutnya. Pendedahan kepada risiko kredit meningkat daripada pendedahan pemberian pinjaman, sekuriti dan derivatif.
Risiko pasaran	Kerugian yang mungkin timbul akibat perubahan kadar faedah, kadar pertukaran mata wang asing, sebaran kredit, harga ekuiti dan harga komoditi. Perubahan ini boleh menjejaskan nilai instrumen kewangan dan boleh juga menjejaskan hasil berkaitan aliran pelanggan dan hasil perdagangan proprietari.
Risiko kecairan	Kerugian yang timbul apabila bank tidak mempunyai dana yang

	mencukupi untuk menyelesaikan liabilitinya apabila matang. Ini termasuk risiko di mana dana yang dipinjam tidak dapat diperolehi apabila bank memerlukannya atau dana tersebut tidak dapat diperolehi bagi tempoh yang dikehendaki atau pada kos yang berpatutan.
Risiko operasi	Risiko yang timbul daripada proses, manusia dan sistem dalaman yang tidak cukup atau gagal, atau daripada peristiwa luar dalam operasi harian bank, yang dilaksanakan untuk mencapai objektif perniagaannya, yang menyekat atau menghalang objektif tersebut daripada dicapai.
B. Risiko Spesifik	
Risiko ketidakpatuhan syariah	Risiko yang timbul akibat daripada kegagalan bank untuk mematuhi garis panduan dan prinsip syariah yang ditetapkan.
Risiko kadar pulangan	Risiko ini akan mempengaruhi pulangan disebabkan oleh perubahan yang tidak dijangka dalam kadar pulangan.
Risiko komersil teralih	Risiko yang mungkin dihadapi oleh bank akibat tekanan komersil untuk membayar semula melebihi kadar yang telah diterima atas aset yang dibiayai oleh pemegang akaun pelaburan. Bank mendahulukan sebahagian atau seluruh bahagian syer keuntungan dalam mempertahankan pembekal dana dan menghalang daripada penarikan dana mereka.
Risiko ekuiti pelaburan	Risiko yang timbul daripada kemasukan rakan kongsi bagi tujuan perniagaan atau menyertai pembiayaan tertentu atau kegiatan usaha umum seperti yang dinyatakan dalam kontrak, dan saham pembekal kewangan dalam risiko perniagaan. Risiko ini biasanya berlaku dalam kontrak Musharakah dan Mudharabah.

Sumber: Md. Arof Othman (2007), hal. 12 – 16.

2.6 Kajian empirikal berkaitan pendedahan risiko dalam laporan kewangan

Kahl & Belkaoui (1981) telah mengkaji pendedahan secara keseluruhan termasuklah pendedahan risiko ke atas 70 bank tempatan di 18 buah negara. Beberapa pemboleh ubah telah digunakan dalam kajian ini untuk menentukan tahap pendedahan risiko bank. Hasil kajian mendapati bahawa pendedahan yang dilakukan adalah berbeza antara negara yang dikaji. Terdapat hubungan yang positif di antara pemboleh ubah saiz bank dengan tahap pendedahan risiko bank. Hossain (2008) telah mengkaji pendedahan yang terdapat dalam sektor perbankan di India meliputi *Bombay Stock Exchange (BSE)* dan *National Stock Exchange (NSE).* Kajian yang telah dilakukan mengenalpasti tahap pendedahan bank di India melalui item pendedahan sukarela dan wajib. Pengkaji mendapati bahawa tahap pendedahan yang dilakukan adalah signifikan dengan pembolehubah bebas seperti saiz, keuntungan, dan disiplin pasaran. Sebaliknya, pemboleh ubah lain seperti jangka masa bank dan kompleksiti perniagaan didapati tidak signifikan dalam mempengaruhi tahap pendedahan yang dilakukan oleh bank.

Hossain (2001) pula mengkaji tahap pendedahan risiko bagi 25 bank di Bangladesh di antara saiz firma, keuntungan, dan firma audit. Sejumlah 61 maklumat termasuk maklumat sukarela dan wajib dimasukkan ke dalam indeks pendedahan dan kaedah pendekatan skor digunakan dalam kajian ini. Hasil kajian menunjukkan bahawa saiz dan keuntungan bank adalah signifikan dalam menentukan tahap pendedahan risiko bank. Walau bagaimanapun, pemboleh ubah firma audit adalah tidak signifikan dan tidak memberi impak kepada pendedahan risiko yang dilakukan oleh bank.

Manakala Chipalkatti (2002) mengkaji hubungan antara pendedahan risiko dengan pembolehubah-pembolehubah mikro struktur pasaran ke atas 17 buah bank di

India. Pengkaji telah membina skor ketelusan bank (*Bank Transparency Score* - BTS) yang mengandungi 90 butiran maklumat yang mempertimbangkan cadangan-cadangan jawatankuasa Basel dan IAS 30. Kajian itu menunjukkan tiada hubungan yang penting antara tahap pendedahan dan peratusan syer yang dipegang oleh kerajaan dan pemegang-pemegang saham asing. Hasil kajian juga menunjukkan bank-bank yang bersaiz besar lebih bersikap telus dalam pendedahan risiko yang dilakukan. Tidak terdapat perbezaan yang ketara dalam skor pendedahan bank dengan tahap keuntungan sebaliknya leveraj bank menunjukkan skor pendedahan yang tinggi.

Linsley dan Shrives (2005) mengkaji pendedahan maklumat risiko dan ketelusan dalam sektor perbankan. Kajian menggunakan kaedah yang sama walaupun bilangan bank yang ditinjau adalah berbeza pada setiap tahun. Misalnya, pada tahun 1999, 57 buah bank manakala pada 2001 bilangan bank yang dikaji berkurangan kepada 54 buah bank disebabkan berlakunya pengambilalihan dan penggabungan bank. Para pengkaji menganalisis keperluan pendedahan risiko dengan melihat amalan semasa pendedahan bank dalam konteks perbahasan tentang pendedahan risiko. Kepentingan isu pendedahan risiko pada masa depan, keutamaan maklumat dan lokasi pendedahan risiko turut dibahaskan bersama dengan implikasi bagi keperluan risiko yang dicadangkan. Manakala kajian Linsley et.al (2006) dilakukan ke atas laporan tahunan 18 bank di Kanada dan United Kingdom menggunakan kaedah analisis isi kandungan. Hasil kajian mendapati bahawa saiz syarikat konsisten dengan tahap pendedahan risiko.

Selain daripada itu, isu pendedahan risiko juga turut melibatkan firma bukan perbankan. Beretta dan Bozzolan (2004) telah melakukan kajian ke atas laporan tahunan bagi 85 syarikat bukan kewangan yang tersenarai di Itali menggunakan kaedah analisis isi kandungan, regresi dan indeks pendedahan. Pengkaji – pengkaji ini mendapati bahawa sebahagian besar risiko pendedahan berbentuk kualitatif lebih tertumpu kepada risiko-risiko pada masa lalu berbanding risiko pada masa hadapan. Kajian mendapati bahawa terdapat hubungan yang konsisten antara pendedahan risiko dengan pengaruh saiz syarikat.

Lajili dan Zeghal (2005) mengkaji laporan tahunan ke atas 300 syarikat yang disenaraikan di Kanada dengan menggunakan analisis kandungan. Pengkaji ini mendapati bahawa terdapat variasi yang besar dalam pendedahan risiko sukarela yang sebahagian besarnya adalah berbentuk kualitatif. Manakala kajian oleh Mohobbot (2005) dilakukan ke atas laporan tahunan di 125 syarikat yang disenaraikan di Jepun Pengkaji menggunakan kaedah analisis isi kandungan, kaedah regrasi dan indeks pendedahan dalam menilai risiko yang didedahkan. Hasil kajian mendapati bahawa terdapat variasi yang besar dalam pendedahan risiko sukarela dan saiz syarikat berhubungan secara positif dengan pendedahan risiko.

Bagi sistem perbankan Islam, terdapat dua kajian berkaitan pendedahan risiko yang telah dilakukan secara perbandingan antara negara. Kajian pertama, iaitu yang dilakukan oleh Nafis Alam & Bala Shanmugan (2008) agak berbeza kerana menggunakan indeks pendedahan bank. Indeks ini meliputi 22 bank Islam di negara yang menjalankan operasi perbankan mengikut prinsip-prinsip syariah, atau pelopor dalam operasi perbankan Islam. Kajian ini meliputi tempoh perakaunan tahun 2004 dan 2005. Kajian ini mendapati bahawa bank di Malaysia memiliki indeks pendedahan yang tertinggi iaitu Bank Islam Malaysia Berhad (BIMB) adalah yang paling telus mendedahkan laporan kewangan mereka. Sementara bank Islam di negara Sudan mempunyai skor terendah dalam pendedahan laporan kewangan. Dapatan kajian menunjukkan bank-bank Islam perlu lebih telus dalam mendedahkan maklumat

kewangan yang mencukupi bagi meningkatkan imej baik dan kepercayaan lebih ramai para pelabur terhadap mereka.

Manakala kajian kedua oleh Noraini (2009) pula mengkaji isu ketelusan dan pendedahan risiko perbankan Islam melibatkan 28 buah bank Islam di 14 negara menggunakan kaedah soal selidik menerusi temubual dan e-mail. Isu spesifik yang dikemukakan dalam soal selidik terdiri daripada beberapa isu berkaitan (i) ciri-ciri risiko yang didedahkan oleh perbankan Islam, (ii) pengurusan dan pengukuran risiko yang digunakan oleh perbankan Islam, (iii) maklumat yang diperlukan oleh penyelia bank untuk mengawal profil risiko perbankan Islam, (iv) kepentingan ketelusan dan disiplin pasaran dalam perbankan Islam dan (v) kecukupan pelaporan risiko dalam perbankan Islam. Perbankan Islam juga didapati mempunyai kepentingan risiko yang sama dengan perbankan konvensional kecuali risiko tertentu. Berdasarkan soal selidik yang dilakukan, pengkaji mencadangkan supaya pihak bank menyediakan maklumat yang lebih banyak berkaitan risiko sebagaimana yang digariskan dalam piawaian laporan kewangan untuk mengawal risiko bank.

Berdasarkan kajian lepas yang dibincangkan di atas, secara umumnya kajian pendedahan risiko perbankan telah banyak dilakukan oleh pengkaji yang terdahulu. Walau bagaimanapun, kebanyakan kajian ini lebih banyak tertumpu kepada sektor perbankan konvensional di negara-negara Barat berbanding sektor perbankan Islam. Oleh itu, kajian ini akan memfokus kepada pendedahan risiko di sektor perbankan Islam Malaysia melalui pengunaan kaedah analisis yang lebih baik dalam mengukur tahap pendedahan risiko.

3. METODOLOGI KAJIAN

3.1 Sampel kajian

Sampel kajian meliputi 17 buah bank Islam di Malaysia yang terdiri daripada bank Islam penuh, subsidiari Islam dan perbankan Islam di bank konvensional dari tahun 2004 hingga 2008. Tempoh masa yang bermula tahun 2004 dipilih disebabkan kebanyakan bank telah mengalami proses penggabungan dan pengambilalihan. Dalam kajian ini, terdapat beberapa buah bank yang telah diiktiraf sebagai bank Islam penuh (subsidiari Islam) di Malaysia yang beroperasi dari tahun 2007. Kajian mengambil kira tahun 2004 untuk mengelakkan berlakunya berat sebelah (*bias*) disebabkan tempoh masa operasi bank yang berbeza. Tempoh masa yang bermula dari tahun 2004 dianggap sesuai dalam kajian ini bagi mengurangkan jurang tempoh masa antara sampel yang digunakan. Oleh itu, bank-bank ini tetap diambil kira bagi memastikan dan mengekalkan saiz sampel yang optimum dan konsisten serta memperoleh maklumat yang lebih banyak. Di samping itu, tempoh masa yang bermula dari tahun 2004 sehingga tahun berakhir 2008 juga dianggap sesuai untuk mengurangkan jurang tempoh masa antara sampel dan turut mengambil kira jangka masa kajian dilakukan. Senarai bank yang digunakan dalam sampel kajian ditunjukkan dalam Jadual 3.

Jadual 3 Senarai Bank dalam Sampel Kajian

Bil.	Nama Bank	Tempoh cerapan		
		Bank Islam Penuh	Sistem Perbankan Islam (SPI)	Subsidiari Islam
1	Bank Islam Malaysia Berhad	2004-2008		
2	Bank Muamalat Malaysia Berhad	2004-2008		
3	Kuwait Finance House (M) Berhad	2006-2008		

4	Al-Rajhi Bank (M) Berhad	2007-2008		
5	Asian Finance Bank (M) Berhad	2007-2008		
6	RHB Islamic Bank Bhd		2004	2005-2008
7	Maybank Islamic Bank Bhd		2004-2007	2008
8	Standard Chartered Saadiq Bank (M) Bhd		2004-2007	2008
9	Public Islamic Bank Bhd		2004-2007	2008
10	Alliance Islamic Bank Bhd		2004-2007	2008
11	Hong Leong Islamic Bank Bhd		2004	2005-2008
12	EON Islamic Bank Bhd		2004-2005	2006-2008
13	Overseas Chinese Bank Corporation (Malaysia) Islamic Bank Bhd		2004-2007	2008
14	Am Islamic Bank Bhd		2004-2006	2008
15	Affin Islamic Bank Bhd		2004-2005	2006-2008
16	CIMB Islamic Bank Bhd		2004-2005	2006-2008
17	HSBC Amanah (M) Bank Bhd			2004-2008

Sumber: Laporan kewangan tahunan diaudit setiap bank, 2004 -2008.

3.2 Data dan sumber data

Data yang digunakan dalam kajian ini adalah berdasarkan laporan kewangan tahunan bank yang telah diaudit yang diterbitkan oleh setiap bank pada setiap tahun kewangan. Laporan kewangan tahunan setiap bank yang disediakan telah memenuhi keperluan yang ditetapkan oleh Bank Negara Malaysia dalam Garis Panduan bagi Contoh Laporan Kewangan Bank Islam Berlesen (GP8-i) yang dikeluarkan pada bulan Ogos 2003 dan mula diguna pakai bagi tahun kewangan 2004 dan menggariskan keperluan minimum pembentangan dan penzahiran laporan dan penyata kewangan bank Islam.

3.3 Model empirikal

Berdasarkan ulasan literatur, terdapat beberapa pemboleh ubah yang telah dikenalpasti dalam menentukan tahap pendedahan risiko. Pembentukan model empirikal faktor pendedahan risiko bank menjadi asas penganggaran memandangkan kajian bertujuan mengenalpasti factor yang mempengaruhi tahap pendedahan risiko perbankan Islam di Malaysia. Beberapa pemboleh ubah telah diperkenalkan dalam model linear bertujuan mengambil kira ciri khusus bank. Bagi tujuan penganggaran, kajian ini menggunakan kaedah regrasi linear berdasarkan model empirikal berikut:[8]

$$TRD_{it} = \alpha_0 + \beta_1 LTA_{it} + \beta_2 LEV_{it} + \beta_3 ROA_{it} + \beta_4 CAR_{it} + \beta_5 NPA_{it} + \beta_6 LIQUID_{it} + \mu_{it} \quad (1)$$

yang mana, jumlah indeks pendedahan risiko (*TRD*) bagi bank *i* pada masa *t* merupakan pemboleh ubah bersandar. Jumlah skor pendedahan risiko yang diterima oleh setiap bank dalam sampel diambil kira sebagai proksi bagi indeks pendedahan risiko (*TRD*). Manakala enam pemboleh ubah lagi dikategorikan sebagai pemboleh ubah bebas, dan α ialah parameter penganggar dan μ_{it} ialah ralat. Dalam persamaan (1) di atas, pemboleh ubah spesifik bank ditunjukkan oleh β_1 sehingga β_6 iaitu jumlah aset bank (*LTA*), leveraj (*LEV*), keuntungan (*ROA*), disiplin pasaran (*CAR*) dan (*NPA*) dan kecairan bank (*LIQUID*).

Kajian ini menggunakan kaedah penganggaran GLS berdasarkan kaedah kovarians koefisien tekal yang membuat pembetulan ke atas ralat piawai dan

[8] Persamaan penganggaran bagi model yang dibentuk diambil daripada pelbagai kajian lepas (Hossain 2008; Azlan et al. 2009).

kovarians data panel berdasarkan keratan rentas wajaran (*cross-section weights*). Seterusnya, kaedah penganggaran yang mengambil kira terma AR(1) akan digunakan untuk mengawal kewujudan masalah korelasi bersiri. Ini kerana kewujudan korelasi bersiri akan menyebabkan koefisien penganggaran tidak efisien (walaupun masih konsisten) dan ralat piawai yang pincang (Baltagi 2001). Penganggaran dibuat menggunakan data panel tidak terimbang memandangkan terdapat nilai tercicir dalam data bank yang digunakan sebagai sampel kajian.

Pengiraan Indeks Pendedahan (TRD)

Kajian terdahulu menggunakan pendekatan berbeza untuk menganalisis laporan tahunan bagi mengukur tahap pendedahan risiko. Beberapa kajian menggunakan analisis kandungan (Beretta & Bozzolan 2004; Lajili & Ze´ghal 2005; Linsley & Shrives 2006; Abraham & Cox 2007). Sesetengah kajian hanya menfokuskan pada perkembangan indeks pendedahan (Robb et. al 2001; Cabedo dan Tirado 2004; Barako et al. 2006; Aljifri dan Hussainey 2007). Kajian lain terhadap penilaian risiko menggunakan kajian kes untuk menerangkan pendedahan risiko (Linsley dan Lawrence 2007) .

Oleh kerana kajian ini dibuat untuk mencari hubungan antara perbankan Islam di Malaysia dan tahap pendedahan risiko, kaedah indeks pendedahan dilihat sesuai bagi tujuan ini. Indeks pendedahan biasanya digunakan untuk menentukan tahap pendedahan. Para pengkaji seperti Wallace et al. (1994), Cooke (1991 dan 1992), Karim (1995), Hossain et al (1994), Ahmed dan Nicholls (1994), dan Hossain (2000 dan 2001), mengadaptasi prosedur dikotomi di mana satu butiran dianggap satu jika mempunyai pendedahan maklumat dan sifar jika tidak, dan pendekatan ini disebut sebagai indeks tidak berwajaran (*unweigted*).

Salah satu daripada isu-isu penting semasa menganalisis indeks pendedahan adalah haruskah beberapa perkara diwajarankan (*weighted*) daripada yang lain. Dalam penyelidikan perakaunan, perkara yang diwajarankan dan tidak diwajarankan akan diguna pakai. (Cooke, 1989; Marston dan Shrives, 1991; Owusu-Ansah, 1998). Walau bagaimanapun, bagi kajian ini, indeks pendedahan tidak berwajaran (*unweighted*) telah dipilih kerana kajian ini tidak menumpukan pada satu kumpulan pengguna tertentu (Naser et al, 2006). Sebaliknya kajian mengkaji semua laporan tahunan dan tidak memerlukan perbezaan tahap kepentingan pendedahan risiko (Oliveira et al., 2006).

Kandungan laporan tahunan setiap buah bank telah dibandingkan dengan indeks pendedahan risiko oleh Nafis Alam dan Bala Shanmugan (2008). Bagi setiap maklumat yang didedahkan, simbol ‘ / ’ akan diberikan dan kemudiannya akan ditandakan dengan nilai 1. Bagaimanapun, jika butiran tidak didedahkan dalam laporan tahunan, simbol ‘x' akan diberikan dan kemudiannya ditandakan dengan nilai 0. Di akhir proses penandaan, jumlah untuk setiap maklumat akan ditambah untuk mencari skor akhir setiap sampel. Pengkaji mengukur jumlah maklumat yang didedahkan sebagai jumlah pendedahan risiko (*TRD*). [9]

$$TRD = \sum_{i=1}^{n} d$$

[9] Indeks pendedahan bank yang dibentuk adalah berdasarkan rangka kerja pengukuran asal yang dicadangkan oleh Nier (2004).

yang mana,

TRD = jumlah indeks pendedahan risiko
d = 1 jika item didedahkan
i = 0 jika item tidak didedahkan
n = bilangan item

Indeks Pendedahan Risiko

Secara keseluruhannya, sebanyak 19 indeks komposit yang berkaitan dengan risiko kewangan telah dikenalpasti dalam penyata kewangan bank Islam di Malaysia. Ketelusan bank diukur secara langsung berdasarkan berapa banyak maklumat berkaitan dengan profil risiko yang didedahkan oleh bank dalam akaun tahunan mereka. Bahagian kunci kira-kira (aset dan liabiliti) bank secara tidak langsung turut melibatkan pendedahan beberapa kategori risiko dalam urusniaga bank Islam. Analisis jenis risiko terutamanya di bahagian aset memfokuskan risiko kewangan tetapi analisis yang baik turut tidak mengabaikan risiko bukan kewangan yang melibatkan bahagian liabiliti (Iqbal & Greuning 2009).

Pengkaji telah membentuk indeks pendedahan bank dengan mengambil kira 19 kategori yang mungkin sama ada didedahkan atau tidak dalam akaun laporan tahunan mereka (lihat, Nafis Alam & Bala Shanmugam 2008, hal.49). Indeks komposit pendedahan terdiri daripada tujuh kategori maklumat yang didedahkan iaitu (i) tunai dan deposit, (ii) asset pendapatan, (iii) pinjaman, (iv) deposit, (v) lain-lain pembiayaan, (vi) ekuiti dan (vii) penyata pendapatan. Setiap kategori maklumat ini pula dibahagikan kepada beberapa sub-indeks yang mengandungi 19 item pendedahan. Setiap item ini melibatkan pendedahan beberapa kategori risiko utama seperti risiko kredit, risiko pasaran dan risiko-risiko lain seperti yang ditegaskan oleh Jawatankuasa Basel.

Pendedahan risiko perbankan Islam melibatkan bahagian aset dan liabiliti. Bank banyak terdedah kepada risiko terutamanya melibatkan bahagian aset berbanding bahagian liabiliti. Risiko utama yang dihadapi oleh bank terdiri daripada risiko kredit, risiko pasaran dan risiko kecairan. Operasi perbankan Islam yang banyak melibatkan produk secara kredit menyebabkan bank secara langsung terdedah kepada risiko kredit. Bank juga terdedah kepada risiko pasaran, terutamanya apabila ia memberikan pembiayaan di bawah prinsip *salam* dan *istisna'*, atau *murabahah.* Di samping itu, bank juga terdedah kepada risiko kecairan. Walau bagaimanapun, risiko operasi yang terlibat secara tidak langsung tidak didedahkan dalam laporan kewangan tahunan bank.

4. ANALISIS KAJIAN

4.1 Statistik Deskriptif

Ringkasan analisis statistik deskriptif asas pemboleh ubah yang terlibat dalam kajian dapat dilihat dalam Jadual 4. Analisis deskriptif dilakukan bertujuan untuk melihat ciri statistik data yang digunakan sebagai pemboleh ubah kajian iaitu min dan sisihan piawai. Min merujuk kepada nilai purata setiap pemboleh ubah bagi keseluruhan sampel kajian, manakala sisihan piawai menunjukkan variasi (serakan) data dari nilai min. Berdasarkan analisis deskriptif ini, pemboleh ubah bebas seperti *ROA, CAR, NPA* dan *LIQUID* adalah pencong ke kanan kecuali pemboleh ubah bersandar (*TRD*) dan pemboleh ubah bebas seperti *LTA* dan *LEV*. Sebahagian besar data juga bersifat memuncak dengan nilai kepuncakan melebihi tiga kecuali pemboleh ubah bebas *LTA*.

Manakala taburan data adalah tidak normal sebagaimana yang ditunjukkan oleh statisik Jarque-Bera untuk kesemua pemboleh ubah yang signifikan pada aras keertian di antara 1 peratus. Oleh itu, ujian lanjut perlu dilakukan ke atas reja penganggaran u_{it} disebabkan data tidak bertaburan normal dan bagi memastikan sama ada ia bertaburan normal atau sebaliknya. Andaian normaliti bagi u_{it} adalah penting untuk memastikan keabsahan pengujian hipotesis (seperti ujian *t* dan ujian *F*) ke atas keputusan penganggaran. Analisis statistik deskriptif pemboleh ubah ditunjukkan oleh Jadual 4 berikut:

Jadual 4 Statistik Deskriptif Pemboleh Ubah Kajian

Pemboleh ubah	Min	Sisihan Piawai	Kepencongan	Kepuncakan	Jarque – Berra
TRD_{it}	16.8889	2.6673	-2.3153	8.3892	151.4575
LTA_{it}	6.7928	0.3532	-0.3022	2.4874	1.8841
LEV_{it}	2.4847	0.3836	-1.8698	6.9550	88.8796
ROA_{it}	2.8299	0.6540	2.8193	13.7352	441.1138
CAR_{it}	17.7332	13.3103	3.4822	18.1528	834.3294
NPA_{it}	3.7846	5.2679	3.6930	19.6641	996.7349
$LIQUID_{it}$	0.0406	0.0829	6.4636	49.4862	6984.234

Nota: Statistik deskriptif berdasarkan sampel umum statistik menghitung statistik menggunakan siri pembolehubah yang mengandungi data/cerapan yang lengkap sahaja. Statistik Jarque-Bera bagi semua pembolehubah signifikan pada aras keertian 1% kecuali pembolehubah $CAR_{it,}$ NPA_{it} dan $LIQUID_{it}$.

4.2 Analisis Korelasi

Analisis korelasi berdasarkan sampel panel dapat dilihat berdasarkan Jadual 5. Matriks korelasi pembolehubah merupakan kaedah mudah yang digunakan untuk mengesan kewujudan kolineariti berbilang dalam data panel. Peraturan praktikal untuk mengenalpasti masalah kolineariti berbilang apabila korelasi adalah 0.800 (Gujarati 2003; Haniffa & Cooke 2005). Nilai korelasi yang rendah di antara pembolehubah bebas menunjukkan tiada masalah kolineariti berbilang yang wujud dalam kajian. Keputusan ini membuktikan bahawa penggunaan data panel yang lebih informatif mampu meningkatkan darjah kebebasan dan meminimumkan masalah kolineariti di antara pembolehubah bebas serta menambah baik kecekapan penganggaran ekonometrik (Hsiao 2002).

Jadual 5 Matriks Korelasi Pemboleh Ubah Bebas Kajian

	LTA	*LEV*	*ROA*	*CAR*	*NPA*	*LIQUID*
LTA	1.0000					
LEV	0.0807	1.0000				
ROA	-0.0253	-0.9644	1.0000			
CAR	-0.2948	0.1199	-0.1650	1.0000		
NPA	0.0998	0.1292	-0.1183	-0.0441	1.0000	
LIQUID	-0.0846	-0.1836	0.0947	0.5936	0.1485	1.0000

Nota: Korelasi matrik berdasarkan sampel data panel.

4.3 Keputusan Penganggaran

Keputusan penganggaran bagi OLS dan GLS ditunjukkan dalam lampiran A. Walau bagaimanapun, keputusan penganggaran berdasarkan model OLS , model FE dan RE ini tidak akan digunakan untuk tujuan analisis lanjut kerana kaedah OLS tidak mengambil kira wajaran yang berlainan bagi setiap reja. Ia memberikan wajaran yang

lebih kecil kepada ralat piawai yang besar bertujuan meminimumkan jumlah kuasa dua reja, dan sebaliknya. Oleh itu, kaedah penganggaran GLS mengambil kira perbezaan data secara eksplisit dan membolehkannya menghasilkan penganggaran yang *BLUE* akan digunakan dalam kajian ini bagi tujuan analisis.[10]

Kaedah GLS dengan andaian varians semua unit keratan rentas adalah heterogen dengan wajaran keratan rentas digunakan untuk menganggar parameter persamaan (1). Memandangkan implikasi peletakan wajaran ini ialah kewujudan heteroskedastisiti, maka kajian ini akan menggunakan wajaran keratan rentas (*cross-section weights*) yang menganggar spesifikasi GLS dengan terma AR (1) dengan membuat pembetulan bagi kewujudan heteroskedastisiti dalam siri masa dan korelasi umum bagi cerapan di antara (*within*) sesuatu keratan rentas.

Jadual 6 menunjukkan ringkasan keputusan penganggaran kaedah GLS yang mengambil kira terma AR(1). Nilai R^2 terselaras yang mewakili kepadanan model menunjukkan bahawa 99% variasi jumlah pendedahan risiko diterangkan oleh pembolehubah bebas, manakala selebihnya diterangkan oleh pemboleh ubah rawak (μ_{it}). Keputusan ujian korelasi bersiri menggunakan statistik *d* Durbin Watson (1.6866) menunjukkan tiada korelasi bersiri positif darjah pertama pada aras keertian lima peratus. Ujian F-statistik adalah signifikan pada aras keertian satu peratus dalam model yang diambil kira dan hipotesis nol berjaya ditolak. Maka, secara keseluruhan ujian diagnostik menunjukkan keputusan penganggaran berdasarkan kaedah GLS menepati kriteria statistik dan ekonometrik dan boleh digunakan bagi tujuan analisis kajian ini.

Seterusnya, pemilihan di antara model kesan tetap dan model kesan rawak berdasarkan spesifikasi GLS tidak perlu dilakukan sekiranya model telah dibentuk dengan baik (*model is properly specified*) (Mundlak 1978). Penganggar GLS-kesan rawak dikatakan sama seperti penganggar kesan tetap yang bermakna hanya terdapat satu penganggar atau dengan erti kata lain, α_i adalah rawak; iaitu penakbiran dibuat berdasarkan sampel yang dicerap secara rawak. Dalam kajian ini, sampel terdiri daripada 17 buah bank Islam di Malaysia diambil secara rawak daripada keseluruhan populasi. Justeru, wajaran keratan rentas (*cross-section weights*) GLS akan digunakan untuk mewakili model pendedahan risiko perbankan Islam di Malaysia bagi tempoh 2004-2008.

Analisis keputusan kajian berdasarkan kriteria ekonomi adalah penting untuk melihat sejauhmana keputusan penganggaran menyokong hipotesis yang telah dibuat ke atas pemboleh ubah bebas. Sebagaimana yang dibincangkan dalam bab metodologi kajian sebelum ini, kesemua koefisien diandaikan mempunyai tanda positif kecuali CAR_{it} dan NPA_{it} diandaikan mempunyai kedua-dua koefisien sama ada positif atau negatif. Hasil keputusan analisis yang dilakukan mendapati bahawa pemboleh ubah bebas seperti LTA_{it}, LEV_{it}, ROA_{it}, dan $LIQUID_{it}$ adalah signifikan dalam menentukan tahap pendedahan risiko dalam bank Islam, sementara pemboleh ubah bebas CAR_{it} dan NPA_{it} adalah tidak signifikan.

Jadual 6 Keputusan Penganggaran GLS

Pembolehubah	Koefisien
CONSTANT	-20.5556***
	(0.4976)

[10] Menurut Gujarati (2003), suatu model dikatakan sebagai *Best Linear Unbiased Estimators* (*BLUE)* apabila bebas daripada masalah koleanearitи berbilang, heterokedastisiti dan korelasi bersiri.

LTA_{it}	2.3754*** (0.0369)
LEV_{it}	7.7230*** (0.1279)
ROA_{it}	0.7583*** (0.0950)
CAR_{it}	-0.0011 (0.0010)
NPA_{it}	-0.0027 (0.0024)
$LIQUID_{it}$	0.4397** (0.1854)
AR(1)	0.4759*** (0.0619)
Jumlah Cerapan	55
R^2 Terselaras	0.9998
Statistik *d* Durbin Watson	1.6866
Statistik *F*	30867.95***

Nota: Berdasarkan keputusan penganggaran GLS (wajaran keratan rentas), angka dalam kurungan ( ) adalah nilai ralat piawai. Nilai statistic *d* Durbin Watson menunjukkan tiada korelasi bersiri positif darjah pertama pada aras keertian 5%. Tanda *** dan ** bermakna masing-masing pembolehubah signifikan pada aras keertian 1% dan 5%.

Analisis keputusan kajian berdasarkan kriteria ekonomi penting untuk melihat sejauh mana keputusan penganggaran menyokong hipotesis yang telah dibuat ke atas pemboleh ubah bebas sebagaimana yang dibincangkan dalam bab sebelumnya. Kesemua koefisien menunjukkan tanda positif kecuali pemboleh ubah NPA dan CAR. Oleh kerana hipotesis yang dibentuk adalah secara umum yang mana berdasarkan kriteria bank dan institusi kewangan konvensional, maka koefisien yang mempunyai tanda negative berkemungkinan mencerminkan kelemahan perbankan Islam dalam kesemua aspek tersebut.

Pemboleh ubah LTA_{it} mewakili saiz bank dalam sampel. Koefisien bagi LTA_{it} didapati mempunyai hubungan yang positif dan signifikan dengan tahap pendedahan risiko perbankan Islam. Peningkatan seunit jumlah aset akan menyebabkan peningkatan sebanyak 2.38 unit jumlah pendedahan risiko seperti yang ditunjukkan oleh Jadual 4.3. Hal ini disebabkan bank yang besar secara relatif mempunyai jumlah asset yang lebih tinggi berbanding bank kecil. Penentuan saiz bank dengan tahap pendedahan risiko adalah berdasarkan julat yang telah ditetapkan yang mana bank dikategorikan kepada bank besar, bank sederhana dan bank kecil. Kajian ini menunjukkan Bank Muamalat dan Bank Islam Malaysia Berhad mempunyai jumlah aset yang besar dan mendedahkan risiko yang maksimum sebaliknya Al-rajhi bank mempunyai aset yang kecil dan mendedahkan risiko yang minimum. Hal ini jelas membuktikan semakin besar asset semakin tinggi pendedahan risiko oleh bank. Ini kerana bank yang besar akan lebih cenderung dan mempunyai insentif untuk memperbaiki tahap pendedahan risiko mereka bagi mempamerkan kualiti dan tahap ketelusan mereka kepada pelabur dan pendeposit. Dapatan kajian juga didapati menyokong dan mengesahkan Teori Isyarat yang menyatakan bahawa terdapat hubungan yang positif antara saiz firma dengan pendedahan risiko (Craven dan Marston 1999). Hubungan positif antara saiz bank dan tahap pendedahan risiko turut

didapati dalam kajian perbankan seperti Hossain 2001, di Bangladesh, Chipalkatti 2002 dan Hossain 2008, masing-masing di India.

Leveraj bank menggambarkan tingkat hutang yang dihadapi oleh sesebuah bank. Pembolehubah LEV_{it} didapati mempunyai hubungan yang positif dan signifikan dengan tahap pendedahan risiko oleh bank sebagaimana yang dijangkakan oleh hipotesis awal kajian ini. Berdasarkan Jadual 4.3, peningkatan seunit leveraj bank menyebabkan peningkatan sebanyak 7.72 unit pendedahan risiko. Berdasarkan item pendedahan risiko bank, risiko kredit akan muncul apabila berlakunya peningkatan risiko kemungkiran yang disebabkan oleh hutang yang tidak dapat dilangsaikan dalam tempoh yang ditetapkan oleh bank. Dapatan kajian yang diperoleh membuktikan bahawa leveraj sebagai proksi risiko boleh mempengaruhi tahap pendedahan risiko. Hal ini menunjukkan semakin tinggi tingkat hutang, semakin tinggi risiko dan semakin tinggi juga tahap pendedahan risiko yang dilakukan. Hubungan positif antara leveraj dan pendedahan risiko ini juga didapati konsisten dengan kajian yang dijalankan oleh Chipalkatti (2002).

Seterusnya, pemboleh ubah ROA_{it} mewakili tingkat keuntungan bank. Dapatan kajian membuktikan bahawa pemboleh ubah bebas ROA_{it} mempunyai hubungan yang positif dan signifikan dalam mempengaruhi tahap pendedahan risiko bank. Analisis keputusan kajian mendapati peningkatan seunit keuntungan bank menyebabkan peningkatan sebanyak 0.76 unit pendedahan risiko. Maka, dapat disimpulkan bahawa semakin tinggi keberuntungan sesebuah syarikat, semakin tinggi tahap pendedahan maklumat (Inchausti 1997). Namun, berdasarkan hasil kajian yang diperoleh, penulis berpendapat bank bukan hanya akan mendedahkan maklumat ketika mendapat keuntungan yang tinggi sahaja tetapi risiko yang didedahkan juga akan lebih banyak di samping keuntungan yang tinggi kerana bank perlu bersikap lebih telus terhadap pendeposit dan pelabur mereka selari dengan prinsip syariah yang diamalkan dalam urusniaga mereka. Dapatan kajian ini menyokong teori Isyarat yang menyatakan pemilik sesebuah firma disifatkan berminat untuk menyebarkan berita baik kepada pasaran bagi mengelakkan syer terkurang nilai.

Kecairan pula melambangkan keteguhan dan kekuatan sesebuah bank khususnya dalam industri perbankan. Pembolehubah bebas $LIQUID_{it}$ menunjukkan hubungan yang positif dan signifikan dengan tahap pendedahan risiko bank. Analisis keputusan kajian mendapati peningkatan seunit kecairan akan turut menyebabkan peningkatan sebanyak 0.44 unit dalam tahap pendedahan risiko oleh bank Islam. Dapatan kajian yang diperoleh didapati konsisten dengan kajian yang dilakukan oleh Owusu-Ansah (1998) menyatakan bahawa pendeposit, pelabur,peminjam dan pengguna firma yang lain sentiasa mengambil berat tentang status kesinambungan firma. Hal ini telah mendorong firma yang mempunyai kecairan yang tinggi untuk mendedahkan tahap kecairan tersebut melalui laporan kewangan (Owusu-Ansah 1998; Wallace & Naser 1995). Pendedahan maklumat risiko juga boleh dijadikan sebagai satu lambang keyakinan pengurusan dalam keteguhan dan prospek firma pada masa depan (Oyelere et al. 2003).

Walau bagaimanapun, pemboleh ubah bebas yang menggambarkan disiplin pasaran bank berhubung secara negatif dan tidak signifikan dengan tahap pendedahan risiko bank.

5. KESIMPULAN DAN IMPLIKASI DASAR

Isu pendedahan risiko merupakan isu penting dalam pengurusan risiko dan sangat berkait rapat dengan isu ketelusan terutamanya dalam industri perbankan Islam di

Malaysia. Kecekapan dan kejayaan sesebuah bank adalah bergantung kepada sejauh mana bank menguruskan risikonya dengan baik dengan tidak mengabaikan aspek ketelusan terhadap pelabur, pendeposit dan peminjam. Sistem perbankan Islam berhadapan dengan pelbagai cabaran disebabkan perubahan yang pesat dalam industri perbankan di samping persaingan daripada sistem perbankan konvensional dalam negara yang mengamalkan sistem dwi-perbankan. Perbankan Islam tidak terkecuali daripada berhadapan dengan pelbagai risiko baru dalam kontrak urusniaga yang diamalkan. Walau bagaimanapun, sebagai bank yang mengamalkan prinsip syariah, adalah menjadi satu kewajipan bank ini untuk bersikap lebih telus terhadap pelanggan dan pelabur mereka terutamanya dalam aspek pendedahan risiko. Justeru,adalah menjadi satu keperluan yang penting untuk mengenal pasti faktor-faktor yang mempengaruhi tahap pendedahan risiko dalam perbankan Islam.

Penganggaran yang dilakukan telah memberikan bukti secara empirikal berkaitan dengan faktor-faktor yang mempengaruhi tahap pendedahan risiko bank. Daripada enam pemboleh ubah bebas yang dikenalpasti dalam mempengaruhi pendedahan risiko bank, empat pemboleh ubah iaitu saiz bank, leveraj , keuntungan dan kecairan bank terbukti menghasilkan keputusan yang signifikan dengan pendedahan risiko bank. Manakala dua lagi pemboleh ubah iaitu aset tidak berbayar dan nisbah kecukupan modal yang mewakili disiplin pasaran didapati tidak signifikan dalam kajian ini.

Walau bagaimanapun, kesemua pembolehubah yang dikenalpasti menunjukkan hubungan yang konsisten dengan kajian-kajian lepas yang ditemui. Hal ini menunjukkan bahawa kajian yang dilakukan menyokong hipotesis awal dalam analisis kajian. Tiada perbezaan yang ketara didapati dalam faktor-faktor yang mempengaruhi tahap pendedahan risiko di antara sistem perbankan konvensional dan perbankan Islam memandangkan kedua-duanya beroperasi dalam landskap kewangan dan ekonomi yang hampir sama. Apa yang jelas, aspek ketelusan yang cuba ditonjolkan atau dipamerkan oleh bank dapat dibuktikan melalui pendedahan risiko bank.

Analisis amalan pendedahan risiko bank dapat dilakukan berdasarkan laporan kewangan tahunan bank yang mana bank banyak terdedah kepada risiko kredit dan risiko pasaran sebagaimana bank konvensional. Di samping itu, bank juga secara tidak langsung turut terdedah kepada risiko kecairan dan risiko pelaburan. Berdasarkan indeks pendedahan, Bank Islam didapati membuat pendedahan risiko yang paling tinggi berdasarkan laporan tahunan pada setiap tahun. Manakala daripada enam pemboleh ubah yang diambil kira, hanya empat pemboleh ubah sahaja yang didapati signifikan. Maka, secara keseluruhannya kajian yang dilakukan didapati mencapai objektif yang ditetapkan.

Hasil kajian ini menyediakan maklumat yang relevan dan berguna kepada semua pihak. Pengetahuan dan kefahaman mengenai pendedahan risiko penting bagi menangani maklumat tak simetri antara pihak bank dengan pelabur, pendeposit dan peminjam. Aspek ketelusan dan pendedahan maklumat kewangan merupakan ciri utama rangka kerja peraturan dan peruntukan dalam institusi kewangan Islam. Tahap pendedahan risiko yang tinggi dapat mencerminkan tahap ketelusan bank terhadap pendeposit, pelabur dan peminjam. Pendedahan risiko boleh memberikan kesan yang positif kepada kepercayaan dan keyakinan pelabur terhadap pengurusan bank. Ini kerana pendedahan risiko yang dilakukan dapat membantu pelabur membuat penilaian yang lebih baik terhadap profil risiko dan prestasi bank pada masa hadapan.

Beberapa faktor penentu bank telah dipertimbangkan untuk menganggarkan kesan pendedahan tahap pendedahan risiko oleh bank. Pemboleh ubah saiz bank,

leveraj, kecairan dan keuntungan adalah signifikan manakala pemboleh ubah disiplin pasaran (NPA dan CAR) tidak signifikan dalam menerangkan tahap pendedahan risiko. Kesimpulannya, peningkatan pendedahan risiko meningkat apabila bank mempunyai inisiatif untuk meningkatkan ketelusan dan mematuhi prinsip syariah yang ditetapkan oleh penggual undang-undang. Berdasarkan dapatan kajian, beberapa implikasi dasar dapat dikemukakan untuk pendedahan risiko di perbankan Islam.

Pemboleh ubah pertama iaitu saiz aset mempunyai hubungan yang positif dan signifikan dengan pendedahan risiko di perbankan Islam. Kajian yang dilakukan mengambil kira saiz bank sama ada besar, kecil atau sederhana untuk membolehkan perbandingan tahap pendedahan risiko antara bank dilakukan. Hasil kajian mendapati bahawa bank yang memiliki saiz aset yang besar lebih yakin untuk mendedahkan risiko kepada pendeposit dan pelabur. Contohnya Bank Islam didapati memiliki aset yang lebih tinggi berbanding bank-bank lain. Hal ini mendorong bank Islam bersikap lebih telus terhadap pendeposit dan pelabur melaui pendedahan risiko dalam laporan kewangan tahunan bank. Pendedahan risiko yang mencukupi secara tidak langsung akan membantu pelabur menilai dan membuat keputusan pelaburan dengan lebih baik.

Kedua, hubungan yang positif antara pemboleh ubah leveraj dengan pendedahan risiko. Kebanyakan bank menjalankan urusniaga berbentuk hutang. Oleh itu, secara tidak langsung semakin tinggi leveraj, semakin banyak risiko kredit yang terdedah oleh bank. Dalam keadaan ini, risiko pasaran dan risiko kredit akan berlaku dan pihak bank terpaksa mendedahkan risiko ini kepada pendeposit dan pelabur bagi menjelaskan situasi atau keadaan bank pada sesuatu masa. Tindakan bank juga dapat mengurangkan berlakunya maklumat yang tidak simetri antara pihak bank, pelabur dan pendeposit.

Ketiga, hubungan positif di antara keuntungan atau pulangan ke atas aset dengan tahap pendedahan risiko. Pendedahan risiko sewaktu bank memperoleh keuntungan agak sukar dilakukan sekiranya bank tidak bersikap telus terhadap pendeposit dan pelabur. Hubungan secara langsung antara keuntungan dan pendedahan risiko bank menunjukkan bank tidak menyembunyikan risiko yang dihadapi walaupun bank memperoleh keuntungan.

Keempat, hubungan positif di antara kecairan bank dengan tahap pendedahan risiko. Semakin tinggi kecairan yang dimiliki bank, semakin tinggi risiko kecairan yang terdedah dalam laporan kewangan bank. Pendedahan kepada risiko kecairan bank dapat mengurangkan maklumat tidak simetri di antara pihak bank, pelabur dan pendeposit. Di samping itu, kecairan bank dan pendedahan risiko yang tinggi juga mencerminkan bahawa bank dapat memenuhi tanggungjawab atau tuntutan terhadap liability semasa. Hal ini juga akan menambahkan keyakinan pelabur terhadap kedudukan kewangan bank

Secara keseluruhannya, hasil kajian ini penting kepada penggubal undang-undang dan bank dalam meningkatkan pendedahan terutamanya berkaitan risiko. Setiap institusi kewangan Islam di Malaysia mesti membuat pendedahan dalam laporan kewangan tahunan mereka berdasarkan garis panduan yang telah ditetapkan. Pematuhan kepada garis panduan yang ditetapkan diharapkan dapat meningkatkan tahap ketelusan dalam pelaporan risiko. Bank juga diharapkan dapat menyediakan pendedahan yang mencukupi terutamanya berkaitan risiko agar dapat mengelakkan krisis perbankan pada masa depan. Hal ini kerana, salah satu punca berlakunya krisis perbankan di Asia adalah disebabkan kurang ketelusan dalam laporan tahunan bank.

Oleh itu, Bank Negara Malaysia sebagai bank pusat yang menyediakan garis panduan dan piawaian kepada bank-bank di Malaysia perlulah menilai tahap

ketelusan laporan risiko dalam perbankan Islam dan mengemukakan garis panduan baru bagi pelaporan risiko. Secara umumnya, penulis percaya bahawa penemuan dalam kajian ini mempunyai implikasi yang penting kepada penyediaan piawaian laporan risiko dan peningkatan ketelusan bank.

Secara keseluruhannya, dapatan kajian ini dapat memberikan informasi yang berguna mengenai tahap pendedahan risiko perbankan Islam khususnya di Malaysia. Pendedahan maklumat risiko dianggap suatu tindakan yang penting terutamanya dalam perbankan Islam. Hal ini kerana melalui pendedahan risiko yang dilakukan, bank Islam yang mengamalkan prinsip syariah dapat menonjolkan tahap ketelusan mereka dalam menjalankan urusniaga. Memandangkan amalan pendedahan risiko oleh bank ini bukanlah suatu pendedahan yang diwajibkan, maka faktor-faktor penentu bank perlu dikaji untuk melihat keberkesanan faktor penentu ini secara keseluruhan. Dari perspektif pelabur, maklumat pendedahan risiko adalah penting bagi membolehkan mereka membuat penilaian terhadap profil risiko, prestasi dan keadaan

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REALIZING MAQASID Al SHARIAH IN ISLAMIC FINANCIAL PLANNING

Abstract

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Maqasid Al Shariah is the guiding principle in determining any Islamic laws that widely used in areas revolving around Muslim's way of life. The major objective of Shariah is to achieve maslahah and to uphold the interest of the public at large in this world and the hereafter. It deals with the prioritization in Islam in safeguarding the purity of religion, mental, life, property and offspring of mankind. In facing or solving current issues either directly or indirectly touching the aspects of social, economics, politics and finance, the application of Maqasid Al Shariah is an important element that needs to be incorporated by most Muslim. This paper will cover the definition, objective, classification of Maqasid Al Shariah. It will examine the ways of realizing the noble objectives of Shariah in all aspects of wealth planning i.e wealth creation, wealth generation, wealth purification, wealth protection and wealth distribution. It will also be looking at the implementation of these scopes in the current practice in Malaysia. Understanding or application of this principle is not to determine what is "halal" and what is "haram" but to ultimately achieve al falah – to be successful in this life and the hereafter.

Objectives of the Research

To understand the concept of MAQASID AL SHARIAH and the application towards Islamic Financial Planning in Malaysia from the aspects of:

- Definition of the concept
- Objective of the concept
- Classification of the concept
- Current Practice of Islamic Financial Planning in Malaysia
- Application of the concept in Financial Need Analysis Process

Key words: Maqasid Al Shariah, Daruriyyat, Hajjiyat, Tahsiniyyat, Islamic Financial Planning, Wealth and financial need Analysis Process.

Table of Content

1. Introduction

2. Definition of *Maqasid Al Shariah*

3. Objectives of Maqasid Al Shariah

4. Classification of Maqasid Al Shariah

4.1. The Essentials (Al-Daruriyyat)
    4.1.1. Protection of Al-Din
    4.1.2. Protection of Life (al-Nafs)
    4.1.3. Protection of Dignity or Lineage (al-'Ird)
    4.1.4. Protection of the Intellect or Mind (Al-'Aql)
    4.1.5. Protection of Property (al-Mal)
4.2. The Complementary (al-Hajjiyat)

4.3. The Embellishments (al-Tahsiniyyat)

5. Islamic Financial Planning – *Current Practise in Malaysia*
    5.1. Wealth Creation
    5.2. Wealth Generation
    5.3. Wealth Purification
    5.4. Wealth Protection
    4.5. Wealth Distribution

6. Application of the Concept in Financial Need Analysis Process

Conclusion

References

INTRODUCTION

When people talk about the reasoning and rationale of certain action in Islam, for example paying of zakah or prohibiton of riba, most of the answers to the rational justifications are provided by "*Maqasid al Shariah*" i.e the goals and the objectives of the Islamic rulings. Every ruling comes with a purpose. In paying of zakat, the goal is to purify or to cleanse one's wealth and the rationale of it is to distribute wealth to others.
Indeed, maqasid al-Shariah reflects the holistic view of Islam which has to be looked at as a whole and not in parts as Islam is a complete and integrated code of life. At all times, its goal encompasses the individual and society; for the good in this world and the Hereafter.

1.0 DEFINITION OF *MAQASID AL SHARIAH*

The term "*Maqsid*" (plural : Maqasid) refers to a purpose, objective, principle, intent, goal. Maqasid include the wisdoms behind rulings, the objectives of certain actions and the good ends to achieve certain means. As for the term "*Shariah*", some scholars define the word as following strictly the injunctions of Allah or the way of Islam (din). It contains law, rules, regulations, commands, obligations, principal, ideology, faith and behavior aiming to protect the interest of human life in all aspects and in all segments of life on earth.

Many jurists have tried to explain the aims and the objectives of Shariah upon which it is established. Among these the outstanding figures are the Malikite Abu Ishaq al-Shatibi, the Shafite al-'Izz ibn 'Abd aI-salam, and the Hanbalite Ibn Qayyim al Jawiziyyah. According to Imam Al Ghazali *"The objectives of the Shariah is to promise the well-being of all mankind, which lies in safeguarding their faith (din), their human self(nafs), their intellect('aql), their posterity (nasl) and their wealth (mal). Whatever ensures the safeguard of these five serves public interest and is desirable."* (Chapra 2000a, p 118).
Al –Shatibi approves al-Ghazali's list and sequence, hereby indicating that they are the most preferable in terms of their harmony with essence of Shariah.

2.0 OBJECTIVES OF *MAQASID AL SHARIAH*

The concept of compassion and guidance are part of Shariah's objectives which are declared in the Quran, "*We have not sent you but a mercy to the world"*- (21:107) and "*A healing to the (spiritual) ailment of the hearts, guidance and mercy for the believers (and mankind)*" – (10:57). It seeks to establish justice, eliminate prejudice and alleviate hardship. It promotes cooperation and mutual support within the family and society at large. This ensues the preservation of public interest (maslahah) as the objective of the Shariah which Islamic scholars considered that all the intents and purposes synonymous with compassion. Shariah identifies three areas which constitute the component part of Rahman, namely; promoting maslahah to people, educating individual[1] and establishing justice.

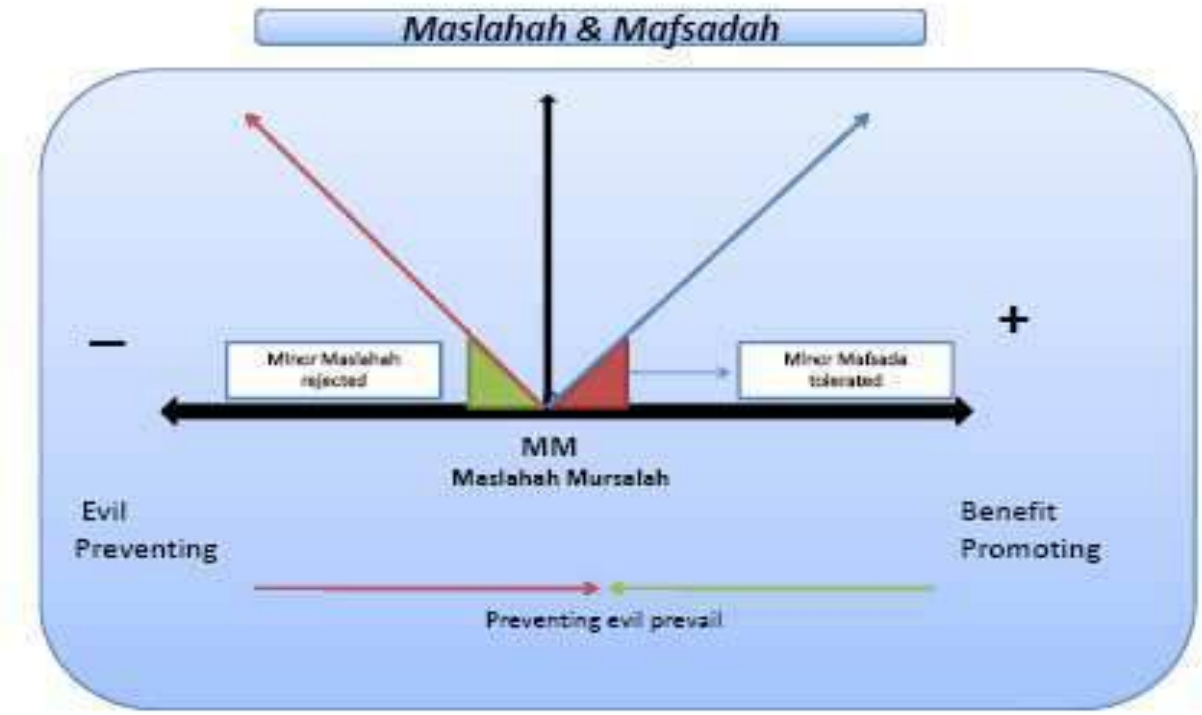
[1] Muhammad Hashim Kamali, *Principles of Islamic Jurisprudence*, p 334

The objectives and the rationale of the Shariah in promoting maslahah (benefits) to the people, concerning to their affairs both in this world and the hereafter. Also it aims at preventing people against mafsadah eg: corruption and evil. This statement can be illustrated from the following verse: "*And perform al salat. Verily, al salat prevents from al-fahsha (ie great sins of every kind, unlawful sexual intercourse, etc) and al-munkar (ie disbelief, polytheism and every kind of evil wicked deeds, etc).*. – (Al Ankabut:45). ***Please refer to diagram below for the explanation of maslahah and mafsadah.***

It shows that the rational objective of prayer is to act as a shield for those who perform it as a protection for the believers from committing all kinds of evil. Every ruling in Shariah comes with reasoning and with a purpose, which is to protect and preserve public interests (maslahah) in all aspects and segments of life.[2] It is to be noted that in an event there are conflicts arise between promoting benefit and prevention of evil and none appears to be preferable, then prevention of evil takes priority over the realization of benefit.[3]

Educating individuals is also an important objective of Shariah in order to inspire them with faith and taqwa in achieving social goals. A trustworthy and righteous individual can become an agent of benefit to others and carrier of the injuctions of Shariah related to ibadah, muamalah[4] and jinayah[5].And the last objective of the Shariah is in the social sphere, i.e upholding the principle of justice or 'adl. It is to establish a balance by way of fulfilling rights and obligations and by eliminating excess and disparity in all spheres of life which include individual justice, social justice and international justice regardless in dealing with friends or foes, Muslim or non-Muslim, personal or public. (Akram, pg 33). Evil conducts and crimes are reprimanded and punished to prevent injustice as it is unacceptable and contradicts with the teaching of Quran and the objective of the Shariah.

[2] Ibn al-Subki, Al-Ibhaj, 3/52; Al-Shatibi, Al-Muwafaqat, 2/2
[3] Cf. Yusof al-Qardawi, al-Madkhal li Dirasat al-Shariah al-Islamiyyah (Cairo: Maktabah Wahbah, 1411/1990) 70-71
[4] The injunctions of Shariah governing the relationship between man and man and other creatures of Allah
[5] The injunctions of Shariah related to criminal matters



Source: Dr Ahcene Lahsasna – Lecture on Maqasid al Shariah

3.0 CLASSIFICATION OF MAQASID AL SHARIAH

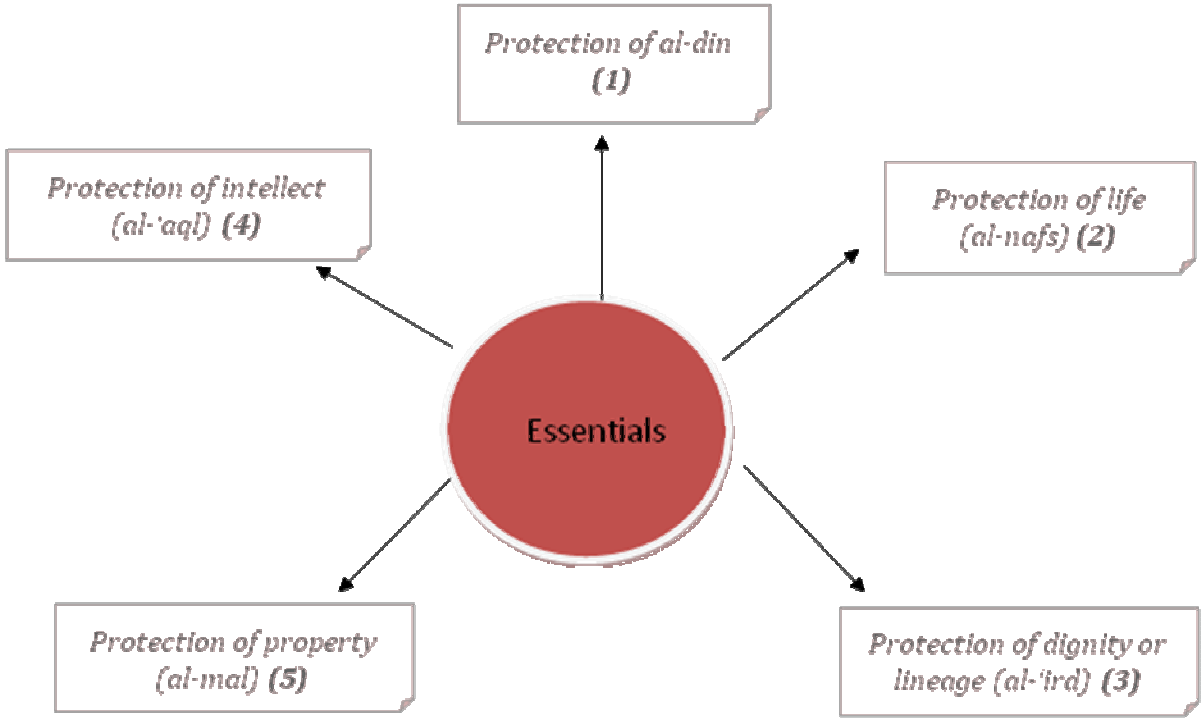
The objectives of Shariah can be divided into three levels of necessities:



3.1 The Essentials (Al-Daruriyyat)

The essentials are the matters that are needed and considered as basic for the establishment of welfare in this world and the world hereafter, in the sense that if they are neglected, the whole

society will be in disorder and there will be disruption to the functionality of the society which will lead to total collapse. Hence, an obvious loss (al-khursan al-mubin) in the hereafter.
The essential interests necessary to human life are enumerated at five, namely:



The protection of the five values are essential to ensure normal order in society as well as to the survival and spiritual well-being of individuals, so much so that necessary measures are needed to remove all the obstacles that will obstruct the realization of these values. The Shariah seeks to protect and promote these values and validated measures for their preservation and advancement. A guiding principle has been enacted to ensure the values are protected.

3.1.1 Protection of Al-Din[6]

Al-Din is a comprehensive way of life of a Muslim person which is guided by the teaching of Quran and Sunnah. It is the most important values that must be protected at personal level and also at others such as at the public and regulator's level. Shahadah, salah, zakah, fasting and hajj are the elements to be observed at personal level to increase the iman of a person, which will protect the person from committing sin and indulging in any action that will obliterate his *din*. At a wider scope, Allah has enacted the law of Jihad and commanded that Muslims to defend their faith particularly if they are attacked by the enemy of Islam. (*Were mentioned in the Al-Baqarah: 190 and Al-Taubah: 36*) This is because, if the din is not protected, then it will definitely lead to an evil and destruction of the religion.

[6] Al-din is a comprehensive way of life which is guided by the teaching of Quran and Sunnah

3.1.2 Protection of Life (al-Nafs)

Protecting one's life is important and obligatory to each and every individual and societies regardless of his/her status, race, and religion. The Shariah has enacted severe punishment in order to protect life. Law of Equality in punishment or *Qisas* had been implemented to give punishment for those who kill innocent human being. Such punishment will deter others from committing this crime and also making sure fairness prevail to the inflicted family.

3.1.3 Protection of Dignity or Lineage (al-'Ird)

Dignity is one of the important values that need to be protected. It includes the protection of individual rights to privacy and not exposing or accusing of others of misbehaviors. And also, ensuring the relationship between men and women are guarded to prohibit any immoral behaviors. Family Law has been enacted to protect the dignity of mankind. For example, severe punishment has been imposed for those who commit adultery, for a married person the punishment is stoning to death. This is to prevent social problems from spreading which will jeopardize the society as a whole.

3.1.4 Protection of the Intellect or Mind (Al-'Aql)

Al-Aql is a great gift given by Allah to mankind and it differentiates man from animals. Using the 'aql for the benefit of all by expressing views and opinions that conform to Shariah to serve the interest of Islam and Muslims. Protection of the mind requires safeguarding it from anything that might harm the ability and function of the brain, for example consumption of liquor or drugs that will disrupt the function of the brain. Punishment has been imposed to prevent the spread of the habit and to deter others from doing the same mistake.

3.1.5 Protection of Property (al-Mal)[7]

Property is wealth and acquiring them has become the necessities of mankind. Islam encourages the Muslim to acquire properties justly but has enacted punishment for those who acquire the property unlawfully (of others without legitimate reasons and without proper contract). Among the punishment includes chopping off the hand of a thief for those who steal the properties of

others. And for those who steals from the orphans, the Quran has warned "*Verily, those who unjustly eat up the property of orphans, they eat up a fire into their bellies, and they will be burnt in the blazing Fire!" – An Nisa: 10.* Accumulating wealth has to be through halal transaction and Shariah has provided guidelines to ensure that the financial activities are conducted in a lawful manner.

3.2 The Complementary (al-Hajjiyat)

In Islam, removing severity and hardship of individuals and community are considered as the aims of Shariah. This is to ensure that people have smooth life and there will be no disruption to their normal life. A great deal of rukhsas[8] that the Shariah has granted in regards to ibadah, for the travelers and the sick, they are allowed to perform jamak and qasar. In muamalat, contract

[7] Ibid, vol. 2, p. 10
[8] Concessions/legal excuses

such as bai salam, ijarah are validated, and all these are to facilitate the life of mankind in this world.

A definition provided by Ibn Ashur about *hayjiyyat* is that: "it consists of what is needed by the community for the achievement of its interest and the proper functioning of its affairs. If it is neglected, the social order will not actually collapse but will not function well. Likewise, it is not on the level of what is indispensable *(daruri).*

3.3 The Embellishments (al-Tahsiniyyat)

The embellishments refer to interests which provide improvement in the society and lead to a better life. The Shariah encourages cleanliness of body and attire for purpose of prayer, giving charity and avoiding extravagance, and in ibadat, it recommends supererogatory prayers. The purpose of all these are the attainment of beauty and perfection in all areas of human conduct. However, without these luxuries the society will still function and normal life process will not be interrupted. The examples of this category are: voluntary *(sadaqah),* and ethical and moral rules, and others.

Al Ghazali defined the complementary by saying: "They function as embellishing elements facilitating the achievement of the virtues and fine ways in manners and dealings".
According to Ibn Ashur, the complementary comprises what leads to the perfection of the community's condition and social order so that it leads a peaceful life and acquires the splendor and beauty of human society in sight of the other nations".

4.0 ISLAMIC FINANCIAL PLANNING – *CURRENT PRACTISE IN MALAYSIA*

Islamic Financial Planning is a new concept being introduced in Malaysia beginning 2001 by the group effort of Shariah advisors and practitioners. It came about due to the growing awareness of the need for intermediaries due to proliferation of Islamic Financial Services and the greater demand from public for alternative on conventional products.
Financial planning is define as an effort to render professional service to individuals, their families and their businesses, to provide impartial assistance in analyzing and organizing financial affairs in order to achieve financial and lifestyle goals. It would involve the process of determining life goals, gathering relevant financial information, examining current financial status and later proposing a strategy and plan to handle the current situation.

However, Islamic Financial Planning is a process whereby a holistic plan is develop to accomplish the financial objectives and goals of an individual that conform to Shariah. The crux of an Islamic financial planning practice is the planning itself whereby the planners need to analyze, organize and implement the financial affairs of clients with the objectives to achieve Al-Falah and Hayatan Toyibba. Being attributed by Shariah, the drawing up of the financial plan should be embedded with Islamic values and principles.

Planning for one's life whether for material gains or spiritual is considered as an Ibadah in Islam. A similitude of this is revealed in the Quran, in the story of Yusof, the Quran relates a fifteen-year economic plan that was put in action in facing a potential economic crisis and thwart disaster thus, "*Ye shall sow seven years as usual, but that which ye reap, leave it in the ear, all save a little which ye eat. Then after that will come seven hard years which will devour all that ye have prepared for them, save a little of that which ye have stored. Then, after that, will come a year when the people will have plenteous crops and when they will press (wine and oil).*" It was the planning and storage of wheat and the keeping of fine seeds and good stalks of wheat that kept the country going during the seven-year drought leading to the abundant harvest in the fifteenth year. The keeping of good 'stalks' of wheat can be likened to the keeping of good 'stocks' with strong 'fundamentals'. The 'value' seeds and stalks were 'preserved' in the first and second seven-year cycle and 'reinvested' to generate the abundant returns in the fifteenth year.

This ayat shows that we need to work in order to earn, to spend wisely what is being earned and finally to save some for future. Planning is a continuous and life long process and not an ad-hoc affair. Muslims are encourage to plan for their life and put efforts to achieve the goal setting then ask help from Allah. The final stage is tawakal for what the result will be and takes it as the destiny bestows by Allah.
In Islam, financial planning is not just merely a process of acquisition and accumulating wealth but it has a broad definition which relates to the concept of vicegerent (*khalifa*). Allah has given His "bounties" to all mankind, an as a trustee man has to administer this trust properly. Earning and spending should be in compliance with His covenants.

Allah affirms:
'For Allah is He Who Gives (all) sustenance……
(Al-Dhariyat 51:58)

The concept of Allah's bounty is considered very important in Islam as a good Muslim is required to have a proper balanced between the fulfillment of his spiritual and worldly obligations.

The Prophet stated;
'A Muslim should prepare himself for the next world as if he is going to die tomorrow, but at the same time work hard to improve all his worldly comforts as if he is going to live forever., (Narrated by Al-Dailami)

As a Muslim, we are not discouraged from acquiring wealth but we must know how to earn and spend it in accordance to the Islamic principles. Wealth must be managed in a highly responsible manner to benefit not only its owner but the Muslim community as a whole. Wealth should not be abused or misused as Allah SWT has laid down very clear injunctions on how wealth is to be acquired and spent. All above, wealth is a form of trial by Allah SWT towards His servants whether they follow His injunctions regarding wealth acquisition and disposal and as such the owners are to be fully accountable on the Day of Judgment for what they do with their wealth.
The financial planning dimension in Islam covers five areas. They are wealth creation, wealth generation, wealth purification, wealth protection and wealth distribution.



4.1 Wealth Creation

Wealth in Islam is "*rizq*" that connotes subsistence or means of living. This means of living is not necessarily as an outcome of man's effort. It is indeed an endowment or a gift from Allah. Because He is the one who sustains mankind's life. The effort of mankind is considered as a process, which will consequently lead to either positive or negative result. Everything on earth has been created for mankind, even in the Quran, time and again we are told that God is the real owner.

> *"… and God has made for you in your homes and abode, and has made for you tents out of the hides of cattle for dwelling which you find so light and handy when you travel and when you stay; and of their wool, fur and hair furnishings and articles of convenience and comfort."*

The above verses show us that the creation of wealth is not due to our effort but that God is the one that makes it possible. Upon the availability of resources available, Muslims are encouraged to earn their living through halal income and with these income, they should be able to provide not limited to basic necessities only but encompasses all aspects of our needs that would make our life in this world more comfortable.

> *"God is He Who created the heavens and the earth and sends down rain from the sky and thereby brought forth fruits as provision for you; and He has made ships to be of service to you, that they may sail through the sea by His command; and He has made rivers to be of service to you. And He has made the sun and the moon both in their orbit to be of service to you and He has made the night and the day orbit to be of service to you."*

With all these availability of wealth, Muslims are encouraged to utilize this wealth with full responsibility and be accountable in generating more wealth.

4.2 Wealth Generation

In conventional planning, the word accumulation is widely used to describe amassing of wealth or creation of additional wealth. In Islam, the word accumulation is replaced with the word generation as it is more akin to Islamic concept that implies that wealth is already there and just utilizes it to bring more wealth.

Regarding wealth accumulation, the Quran say, *"They who accumulate gold and silver and spend it not in the way of God, unto them give tidings of a painful doom. On the day when it will (all) be heated in the fire of hell, and their foreheads and their flanks and their backs will be branded therewith (and it will be said unto them): Here is that which ye accumulated for yourselves. Now taste of what ye used to accumulate."*

Wealth generation is very much encouraged by Islam. There are many verses of the Quran and Hadith that shows this to be the case. Among others the Quran says, *"Give not unto the foolish (what is in) your (keeping of their) wealth, which Allah hath given you to maintain; but feed and clothe them from it, and speak kindly unto them."* This verse was revealed to remind those who are the guardians of orphans to manage the assets of their wards properly and efficiently.

According to some of the mufassirin (interpreters of the Quran), the Quran uses the Arabic word *fiha* and not *minha* to indicate that the wealth must be invested to generate more wealth for the orphans. According to Islam, wealth should be lawfully generated and lawfully spent.
In a hadith, the Prophet told us to use five before five, and one of it is about the use of wealth before poverty. The use of wealth before poverty means to use one's wealth to generate enough income (through investments) to face harder times ahead.

In Islam, wealth must not be kept idle, but should be invested. Hoarding of money is not allowed in Islam. For example, if gold is kept idle, one must pay zakat on the idle gold. In a hadith the Prophet said, "*Whoever develops an idle land, it belongs to him*". (Sahih Bukhari). Islam has laid down clear injunctions on how Muslim should generate their wealth through Shariah compliant products with key principles are to avoid riba, maisir and gharar at all times.
Being wealthy is not against Islamic teachings; in fact Islam teaches us to cultivate and generate wealth through economic activities but muslim must earn his wealth honorably and without oppressing others. Without wealth one will be unable to live comfortably and to perform all the religious rituals like paying zakat, performing hajj, doing charity. We need wealth to achieve a good life as well as to be successful in hereafter.

4.3 Wealth Purification

The third aspect of Islamic financial planning is wealth purification. Wealth needs to be purified for two reasons; one may unknowingly earn illegal income that need to be cleansed and to giving part of one's wealth to others (8 asnafs). In Islamic terms this is called zakat or compulsory alms. The Quran says, *"Take alms of their wealth, wherewith thou mayst purify them and mayst make them grow, and pray for them. Lo! thy prayer is an assuagement for them. Allah is Nearer, Knower."*

Wealth purification is very important in the overall financial planning as the Prophet said, "*Whoever is made wealthy by Allah and does not pay the Zakat of his wealth, then on the Day of Resurrection his wealth will be made like a baldheaded poisonous male snake with two black spots over the eyes. The snake will encircle his neck and bite his cheeks and say, 'I am your wealth, I am your treasure*.'"

Payment of zakat is the third pillar of Islam and it is considered an obligatory charity upon the Muslim. It is often said the return given by Allah SWT for giving zakat is huge indeed, a 70,000% return on one's investment. In this respect the Quran has this to say. *"The likeness of those who spend their wealth in the way of God, is as the likeness of a grain of corn; it grows seven ears, and each ear has a hundred grains. God gives manifold increase to whom He wills."*
Zakat helps the poor and the needy to live and it is useful for the development of economy. The sharing of wealth with others will create harmony, love and unity among the Muslim society.

4.4 Wealth Protection

In conventional practice, wealth protection relates to mitigating risk through insurance. While in Islamic Financial Planning, wealth protection is being done through participating in a Takaful scheme. T*akaful* is a way to reduce the financial risk of loss due to accident and misfortunes.

Takaful literally means mutually guarantee and solidarity. The effect of takaful scheme is that, the client will be able to protect the ability to earn or to generate wealth if any untoward events occur. Takaful can create an instant estate to provide families with financial security against premature death and disability.

Managing risk is encouraged in Islam especially in trying to reduce risk against loss and calamities. It is illustrated in a hadith related by Tirmidhi: One day Prophet Muhammad SAW noticed a Bedouin leaving his camel without tying the animal. He asked the Bedouin, *"Why don't you tie down your camel?'* The Bedouin answered, *"I put my trust in Allah SWT"*. The Prophet SAW then said, *'Tie your camel first, then put your trust in Allah"*. Tying the camel is risk reduction. The urging of the Prophet on the Bedouin to tie down the camel clearly demonstrates the Islamic position on risk management.
Takaful industry is all about co-operating to guarantee each other against a defined loss; it is about risk sharing and not about transferring risk to an insurer for the price of a premium.

4.5 Wealth Distribution

Wealth distribution deals with what a Muslim leaves behind upon death and how he should plan his estate according to Shariah. Proper planning will help Muslim to distribute his wealth according to his wishes. One-third of his estate can be distributed according to his wishes while the other two-third would have to be distributed according to Hukum Faraid. Wealth distribution in Islam has its own rules that must be followed. The law is obligatory for the Muslim to follow, especially by the heirs of the deceased Muslim.

The salient features of the Islamic law of distribution are[9]:

1. A son's share equal to two daughters.
2. The following Quranic heirs are entitled to the following shares.

Quranic Heir	Shares	Condition
Husband	1/2	If the wife does not leave children
	1/4	If the wife leaves children
Wife	¼	If the husband does not leave children
	1/8	If the husband leaves children
Daughter (s)	½	If she is the only child
	2/3	If there are two or more daughters & no sons
Mother	1/3	If the parents are the only survivor
	1/6	If there are spouse & children
Father	1/3	If the parents are the only survivor
	1/6	If there are spouse & children

[9] Azman Ismail, Islamic Financial Planning - Module 5

It is being mentioned in one hadith that it is not right for a Muslim who has some property to bequest that he should pass two nights without having his will written down. Having a will is highly recommended for Muslims due to the complexity of estate administration laws in Malaysia. The process is very time consuming and this can be burdensome to dependents – especially if it involves infant, elderly parent or disable child. Distribution of estate for Muslim will involve the settlement of all funeral expenses, debts, any claims of Matrimonial Assets and disposition of one-third assets to non-heirs. Upon completion of these settlements, only the division of the residuary estate in accordance to Faraid principle being implements.
Proper planning will eliminate hardship and ensure the continuity of dependant's livelihood without any disruption.

5.0 APPLICATION OF THE MAQASID AL SHARIAH IN FINANCIAL NEEDS ANALYSIS

One of the most important aspect/process in developing a holistic financial plan is the Financial Needs Analysis process. It is the core area where we analyze the data gathered from the individual and then determine the suitability of the goals according to priority. Individual has to muhasabah his existing financial conditions before trying to achieve other financial needs and objectives. Through this process, not only we can verify on the sources of income acquired but also on how one spends one's wealth. Muslim's wealth has to come from halal sources, while spending has to be guided by Islamic injunctions.

Financial goals and objectives of a Muslim must be in consistent with Shariah. In addition, they must be Specific, Measurable, Attainable, Realistic and with Time frame (SMART). Assessing one's existing financial position will assist the financial planner to chart whether the clients financial aspirations can be achieved within an allocated time frame.

In classifying and prioritizing the needs of Muslim in their financial plan, the concept of Maqasid Al Shariah should always be upheld. The needs should not transgress the dictates of Islam. The satisfaction of these needs should adhere to the teachings of the Al-Quran and the Sunnah, thus gaining God's blessing and barakah as mentioned in the Al-Quran "*..and we revealed to thee from the Quran as a form of healing and mercy to mankind in all facets of their lives…*".

All Muslim regards that life on earth as temporary and that life in the hereafter is the everlasting one. A good Muslim is required to have a proper balance between the fulfillment of his spiritual and worldly needs. Nevertheless, whilst

we are here on earth, the need to be able to provide one's financial requirements is a responsibility on all Muslim especially so for Muslim men/husbands and fathers. In deciding which important needs to be fulfilled, the level of necessities provided by the Maqasid Al Shariah has to be observed at all times.

The ESSENTIALS are the most fundamental where it is vital for the survival and spiritual well-being of an individual and his family's basic needs eg. food, clothing, shelter and education. Hence, when deciding which financial needs to be realized, these five values need to be considered and to be prioritized accordingly:

Protection of Al-Din
A Muslim has to strengthen his faith in Allah by observing different kind of needs in Ibadah to increase his Iman. For example paying of zakat is much more divine than giving sadaqah or the need to perform Hajj is more desirable than performing Umrah or to go for vacation elsewhere. Settling of debt should also be looked at upon fulfilling financial needs because debt if it is not paid, it will trigger debtor's soul hanging in the hereafter and will not be accepted by God. All non-shariah compliant products (conventional banking/insurance) are to be avoided at all times.

Protection of Life (al-Nafs)
Diseases and illnesses can directly affect human well-being and in some cases the presence of life itself. Therefore they are considered threats to life and so it is of great importance for a Muslim to take care of their health by leading healthy life styles. The need for takaful coverage for dread diseases and hospitalization is indeed desirable so as to receive the best medical care if one has to face deadly disease.

Protection of Dignity or Lineage (al-'Ird)
When you have found a suitable life partner, it is obligatory for you to proceed with the marriage over buying a house or buying a car. This is to prohibit any immoral activities and to preserve dignity of the individual. Islam encourages marriage to complete one's need and to proliferate mankind. It also helps in curbing social problems that will jeopardize the Muslim's society.

Protection of the Intellect or Mind (Al-'Aql)
Islam has always regarded the quest for knowledge as one of the top priority for all Muslim. If one is to decide between the need to save for retirement or to save for children education, then the latter prevails. Providing good education to his children is more encouraged because education is the pillar to achieving good life in this world and the hereafter. Prophet SAW once said, "A*ny one who wants this worldly life, he should have knowledge, and any one who wants the life of the hereafter, he should have knowledge, and who wants both this life and next hereafter, he should also have knowledge*". Furthermore when the prophet's son in law, Ali bin Abi Thalib compared the two dimensions of wealth, he once said, "knowledge will take care of you while you will protect your property".

Protection of Property (al-Mal)
Acquiring property is one of the necessities of mankind. It can be done through trade and investment. However, the acquisition has to be legitimate and does not contradict to the Islamic laws. In order to make sure that the property is halal, one has to make sure that the transaction activities in generating wealth are according to the Shariah principle. Prohibition of riba has to be observed at all times. Another way to protect property is by taking takaful scheme if in case of theft or damage to property for reasons such as fire or other calamities. Takaful can create an instant indemnity to the damaged property.

A Muslim can have varieties of needs at different life stages but focusing on the needs that follows the objectives of Shariah are highly desirable. These needs not only give benefits during this life time but also received blessing from Allah SWT to live in the hereafter.

Upon completing the ESSENTIAL needs, man can now looked at fulfilling his complementary as well as embellishment needs. For Muslims are allowed to enjoy the fruits of their labor subject to moderation and compliance of Shariah injunction at all times.

CONCLUSION

This paper has deliberated on the concept of Maqasid Al Shariah and its application in the area of Islamic Financial Planning in Malaysia. Maqasid Al Shariah entails the commitment of individuals to achieve Hayyattan Toyyiba and Al Falah by promoting brotherhood, justice and social welfare. The concept focused on fulfilling three level of necessities i.e essentials, complementary and embellishment. They are vital to ensure normal order in society as well as the survival of individuals. In developing a holistic financial plan for a Muslim, the needs have to be analyzed carefully to determine the suitability according to Shariah's objectives. Consideration has to be given in terms of preserving the five important values: religion, life, lineage, aql and property. Once the needs are met, the benefit to be received is not only during the lifetime but also for the hereafter.

MANKIND PLAN AND EXECUTE, WHILE HE WHO DECIDES ON THE RESULT!

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THE REALIZATION OF MAQASID AL SHARI'AH IN FAMILY TAKAFUL

Nor Haziah Hashim

Abstract

Islamic law or Shariah provides rules and regulations for Muslims in conducting their daily life, whether in the matters relating to aqidah, ibadah, akhlak and muamalat. The main objectives of shariah also known as maqasid shariah is to protect the five important things that are closely related to the existence of human beings, namely religion, life, lineage, intellect and property. Given the importance of wealth in human's life, Shariah further outlined five aspects of maqasid in the protection of wealth. Takaful, an Islamic insurance instrument engineered based on Shari'ah principles that are free from riba, maisir and gharar can be an effective tool to facilitate Muslims in realizing the five maqasid matters mentioned. In light of the above issue, the paper will address how takaful can be an effective tool to help realize all the maqasid al shariah, especially in relation to wealth protection. The paper will also present the basic concept and central ideas of both maqasid shariah and takafu

Keywords: Maqasid al shariah, family takaful, wealth management

1.0 INTRODUCTION

Islamic law or Shariah encompasses every aspect of human activities and it is suitable for application since its revelation till the Day of Judgment. It has provided the rules that governed and protect the human life and making life itself easy and enjoyable. One of the important needs in life is the need to acquire and spend one's wealth. Wealth is part of the signs of Allah's bounty to His servants. Islam puts emphasis on the importance of wealth management and protection to ensure that wealth are acquired and spent in accordance to Shariah. There are many Quranic ayah that provide proof that Islam acknowledges wealth or materials as part of important needs of human life. Allah says:

> *"Do not hand over to those of weak understanding your properties which Allah has made a mean to support you."*
>
> *(Surah Al Nisa': 5)*

In modern terms, wealth is very much related to properties, either physical or financial. In order to transform activities of acquiring these wealth into positive activities, the Shariah comprehensively outlined several aspects of maqasid al shariah for mankind in pursuing their economic activities. Ibn Ashur, a prominent scholar in the maqasid al shariah study, has outlined five aspects of maqasid in protecting wealth or properties. Takaful, an Islamic insurance based on Shariah principles, can be used as an effective tool to facilitate Muslims in this matter.

Therefore, this paper would discuss the definition, concept and classifications of maqasid al shariah, followed by its classifications. The five aspects of maqasid in protection of wealth will also be covered. The paper will also describe the underlying concept of takaful and the

products and models as practiced in Malaysia. Finally, the paper will analyze how the application of family takaful can help realize the maqasid al shariah, especially with regards to wealth protection.

2.0 DEFINITION AND CONCEPT OF MAQASID AL SHARI'AH[1]

The phrase Maqasid al Shariah comprises two separate Arabic words: maqasid and shariah. Maqasid trilateral root word is qasada with various meanings as to intend, to mean. Another derivative from qasada is qasd which means intention (niyyah), purpose, aim, end, goal and objective (ghayah). Meanwhile, the terms shariah is also an Arabic word derived from its trilateral sha-ra-'a. Shara'a fi thus means to begin, to start, to commence, to go into, to enter upon. But sharra'a has an elementary meaning of 'creating' like to enact. Thus, the word shariah is understood as law (qanun) or code. Hence, al-Shariah al Islamiyyah is translated as Islamic law or law of Islam. The use of shariah in the context of Islam always refers to 'Islamic shariah either in the sense of Islamic law.

Hence, when the two words are combined, maqasid al-shariah is variously translated as the objectives of Islam law, goals of Islam and so on. There are many other definitions provided by the Islamic scholars of Maqasid (objectives of Shariah) and among these definition is the definition provided by the Ibn Ashur. Ibn Ashur defined maqasid based on two aspects, namely:

- The general aspect which is the purpose and wisdom behind the enactment of all or most of the shari'ah ruling. This definition is more related to the general objective of shari'ah.

- The specific aspect, which is related to specific objectives that are designed to achieve specific benefits to people in their daily activities,

As mentioned by Hashim Kamali (2007) the Shariah is generally predicated on the benefits to the individual and the community, and its laws are designed so as to protect these benefits and to facilitate the improvement and perfection of the conditions of human life on earth. The Quran is expressive of this when it singles out the most important purpose of the Prophethood of Muhammad:

> *"We have not sent you but as a mercy to the worlds"*
>
> *(al-Anbiya' , 21:107)*

This can also be seen in the Quran's characterisation of itself as "a healing to the (spiritual) ailments of the hearts" and "a guidance and mercy" for the believers and mankind (Yunus, 10:57). Undoubtedly, the shariah of Islam as a complete way of life and a universal call to all mankind has objectives and aims. These objectives revolve mainly around the interest and

[1] Definition of maqasid al-shariah is quoting from Hazizan Md. Noon in his paper entitled 'A Preliminary Exploration into The Relevance of Maqasid Al-Shariah Principles in the Social Science: The Case of Sociology presented in Internationao Conference on Islamic jurisprudence and the Challenges of the 21st Century.

well-being of man in this world and in the hereafter. In fact, the core interest of shariah lies in its attempt to remove hardship and mischief on man and bring ease and benefits to his life. Put clearly, the shariah stands for whatever thing that falls within man's interest and happiness.

3.0 CLASSIFICATIONS OF MAQASID AL SHARI'AH

The different injunctions of shariah aimed at protecting the interest of mankind and preventing evil from them. The objective of shariah can be divided into three categories, namely the essentials (dharuriyyat), the complimentary (hajiyyat) and the embellishments (tahsiniyyat). All the different injunctions of shariah aim at realization of one or the other kinds of the above objectives (Nyazee, Imran, 2000).

3.1 The Essentials (al-Daruriyyah)

The essentials refers to the matters on which the religion and worldly affairs of the people depend on them, their neglect will lead to total disruption and disorder and it could lead to evil ending. These must be protected and all measures that aim at safeguarding them must be taken, whether by the individual, or by government authorities. These values include the five fundamental matters in life.

3.1.1 Protection of al-din

Protection of al-din at personal level is achieved through the observance of the different kind of ibadah, where all the six pillars must be protected. Protection of al-din at the wide scope involves defending Islamic faith particularly if it is attacked by the enemy of Islam (Nyazee, Imran 2000).

3.1.2 Protection of life (al-nafs)

The protection of nafs (human soul) is very important and this is the reason why it is placed at the second level of necessity. There are many verses in al-Quran which emphasized that killing someone is forbidden.

3.1.3 Protection of dignity or lineage (al-'ird)

Protection of lineage includes the protection of individual rights to privacy and not exposing or accusing others of misbehaviours. Islam has also regulated the relationship between man and women in order to protect their dignity. The prohibition of adultery in Islam is manifestation of the protection of dignity and lineage. Punishment for those involves in false accusation and adultery is meant to protect dignity.

3.1.4 Protection of intellect (al-'aql)

An intellect is a great gift from Allah s.w.t to mankind and it is one of the capacities that differentiate man with animals. The manifestation of the protection of intellect is obvious when Islam provide the right to freedom of expression, encourages its followers to acquire knowledge, and forbids them from any activities detrimental to mind. In addition, punishment for those who involve in activities detrimental to mind also supports this principle.

3.1.5 Protection of property or wealth (al-mal)

Property is one of the necessities of humankind and it should be acquired in legitimate ways. To protect wealth, Allah has revealed severe punishment for those who obtain property illegally. Islam encourages doing business, such as buying and selling, avoiding of the laziness and tawakul (hoping without any trial) and any injustice to business, such as riba and gharar. Apart from that, Islam has provided guideline that must be observed in financial activities.

3.2 The Complementary (al-Hajiyyah)

The complimentary interest or *al-hajiyyah* on the whole supplement to the five essential interest and it refers to kind of interests whose neglect leads to hardship of the individual or the community. The neglect, however, does not lead to the disruption of normal life. The actions will make human life easier and to solve some difficulties. In ibadah for example, performing the solat jama and qasar for the musafir is one of the hajiyyat in Islam. In muamalat, the permissibility of trading and other kind of transactions such as lease (ijarah), mudharabah, salam etc.

3.3 The Embellishments (al-Tahsiniyyah)

The embellishments or *al-tahsiniyyah* refers to interests whose realization leads to improvement and the attainment of that desirable. The disappearance of it will not interrupt the normal life; however, it might lead to the lack of comfort in life. Example of such in muamalat includes the prohibition of selling items that has no value and selling of public properties etc.

4.0 CONCEPT OF MAQASID AL SHARIAH IN PROPERTY OR WEALTH MANAGEMENT

As we have seen in the above section, Shari'ah had established the five basic needs of human protected by the Shari'ah; the religion, life, lineage, intellect and wealth or properties. Thus, it can be concluded that the protection of the wealth or properties is part of the ultimate goals of Shariah. Given the importance of wealth in the people's life, Islam has laid down the principles and guidelines on how to deal with things that fall under the category of wealth, such as money and properties. These guidelines and principles are imperative, especially in the context of managing and administering wealth for the benefit of the masses.

Ibn Ashur in his book, 'Maqasid al Shariah', further explained the maqasid of shariah in wealth or properties and divided it into five aspects, namely:

1. Wide Circulation of Wealth
2. Preservation and Protection of the Wealth

3. Transparency in Wealth Management
4. Certainty of the Ownership of the Wealth
5. Justice in the Circulation of Wealth

4.1 Wide Circulation of Wealth

The circulation of wealth is one of the great objectives of Shariah. The circulation and marketability of the wealth has been precisely mentioned as one of the primary objective of maqasid shariah in business transaction by Ibn Ashur. Ibn Ashur defined the circulation of the wealth as 'implies the fair circulation of wealth in the hands of as many people as possible'. This means that the properties should be circulated among the public and actively transferred from one hand to another in the form of expenditures and investments.

It is very important for maqasid al shariah perspective to keep the circulation of the wealth and avoid all types of monopoly of monetary in the hands of few people (Ahcene Lahsasna, 2009). Thus, it is not allowed in Shariah to purposely keep properties in all its form idle. Allah says:

> *"And for those hoarding gold and silver and do not spent them in the way of Allah, announce unto them a most grievous penalty."*
>
> *(Surah At Taubah :34)*

For this purpose, Shariah allowed many forms of financial transactions, such as contract of sales, lease, partnership, forward contract (salam) and many more to facilitate proper circulation of property ownership among the public. In addition to that, Shariah has also allowed minor gharar in business transaction as an exception to the general rule, based on the need and necessity of the public (Ahcene Lahsasna, 2009).

4.2 Preservation and Protection of the Wealth

Preservation and protection of the wealth is one of the primary maqasid in Shariah. It can be considered as the whole aspects of the concept of maqasid shariah in wealth. This objective was clearly stated in the Holy Quran:

> *"O you who have attained faith, do not devour one another's possessions wrongfully not even by way of trade based on mutual agreement, and do not destroy one another"*
>
> *(4:29)*

The Prophet (pbuh) has also stated that:

> *"No Muslim's property should be allowed to be taken from him without his own accord"*

The above text are very strong and clear statement indicating the importance and the value of protection of the wealth, whether for individual people or for the community and society. It also shows that it is a great sin of any aggressive action against the wealth of property of the community.

4.3 Transparency in Wealth Management

This aspect requires that all financial transactions must be conducted in a manner that all parties are clear about all the important facts of the transactions by avoiding all causes of disputes, clashes or damages to any party. It was for this reason that the Quran recommended the Muslims to write down all future obligation transaction to be kept as a record. The purpose of writing down the debt transactions is to make all information and facts of the transactions clear and transparent in terms of subject matter, obligations and rights of all parties as a source of reference in cases of disputes in the future. This in particular is very relevant to the modern financial transactions which are always in the form of formal contracts duly signed by the related parties (Akhtarzaite Abd Aziz, 2006).

In addition to the above, Shariah also required security in some business transaction such as loan and mortgage or guarantor upon a transaction. Specific example of transparency in Islamic financial transaction would be as follows:

Musharakah

The transparency in musharakah can be observed in the ratio which is fixed and predetermined and is made known to all parties involved in advance. The profit and loss will be shared in the exact proportion of the two parties according to total investment capital of the contracting parties.

Mudharabah

In mudharabah contract, it is a requirement for the validation of the contract that the two contracting parties to agree on the proportion of the actual profit to which each of them are entitled.

Account audit, sound finance management, declaration of ownership are among the tools that could be used in order to achieve the transparency in finance. These tools can play important

role in making the finance and wealth in the business activities transparent, so that dispute could be avoided and corruptions could be reduced.

4.4 Certainty of the Ownership of the Wealth

The purpose of this aspect is that the rights of a party or parties to the ownership of the wealth or properties must be certained and there should be no doubt to the rights, unless there is certain public interest which could prevent individual privilege ((Akhtarzaite Abd Aziz, 2006). Ibn Ashur outlined that the rights implies three elements:

i. Individual's or Individuals' right to ownership

ii. Freedom of disposal of property within the boundaries of Shariah requirements

iii. Guarantee over the privilege of ownership and prevention of encroachment against the rights without the owner's consent.

The holy Quran guaranteed the right of ownership whereby Allah says:

> *"O you who believe do not take the properties among you by illegal means unless by way of trade and mutual consent."*
>
> *(Surah Al Nisa:29)*

This provides an evidence that it is an objective of the Shariah to guarantee the freedom of ownership and there is no way that the right can be transferred to others unless by contract of exchange or charity by the consent of the owners.

4.5 Justice in the Circulation of Wealth

Islam sees justice as a very general and comprehensive concept. It is a primary requirement in all aspect of human life. In terms of justice in wealth or in financial transaction, justice means putting the properties in their proper places as it was meant by the Creator and commanded by Him. It starts with the right to acquire the property, to perform all the responsibilities related to the properties and to find the wisest manner to spend or invest the properties (Akhtarzaite Abd Aziz, 2006).

5.0 UNDERLYING CONCEPT OF TAKAFUL

Insurance in Islam, according to the Muslim jurists should be based on the principles of mutuality and cooperation. These principles embody the elements of shared responsibility, joint indemnity, common interest and solidarity. Thus, in consonance with the above elements, the jurists resolved that the Islamic system of insurance should be found on the three concepts, namely al-takaful, al-Mudharabah and tabarru'.

Al-Takaful

Takaful derived from an Arabic word which means joint guarantee. It is where a group of members or participants agree to jointly guarantee among themselves against a defined loss. Should any member or participant suffer a loss, he would receive a certain sum of money from a fund to help meet the loss. In other words, the basic objective of takaful is to pay for a defined loss from a defined fund with each member mutually helping the needy.

Al-Mudharabah

As an insurance system, the operation of takaful is confine within the 'Tijari' (commercial sector). Therefore, the transactional aspect of the commercial activity of takaful must be subject to the Islamic contractual laws in order to ensure its compliance with the Shariah. Thus, the contract of takaful is based on the Islamic commercial profit-sharing principle of al-Mudharabah[2].

There are two parties involved in a Mudharabah contract, takaful operator (al-Mudharib), acting as the fund manager and participants (Sahib-ul-mal), the fund provider. The operator will accept takaful installments or contributions (premium) from the participants and manages the fund in trust on behalf of the participants. The contract between the participants and the operator is governed under the contract of Mudharabah (profit-sharing). The contract specifies how the profit (surplus) from the operations of takaful, managed by the operator is to be shared. The sharing of such profit may be in a ratio of 5:5, 6:4 or 7:3 as mutually agreed by both contracting parties.

Tabarru'

In order to eliminate the element of uncertainty in the takaful contract, the concept of tabarru' is incorporated in it. Tabarru', means donation, gift or contribution. Participant in takaful schemes agrees to relinquish, as a donation, a certain proportion of the contribution into a takaful fund to assist other participants faced with difficulties. It embraces the elements of shared responsibility, joint indemnity and mutual protection.

5.1 Features Of Takaful

Under the Islamic teachings, an insurance practice must possess certain fundamental characteristics before an insurance contract can be considered valid. The fundamental characteristics could be classified into four main categories (Maasum Billah, 2007):

[2] BIMB Institute of Research and Training Sdn Bhd. 1996. Takaful (Islamic Insurance) Concept & Operational System From The Practitioner's Perspective

5.1.1 Sincerity

Every transaction should be entered into with with sincerity and pure intentions in order to achieve the desired result from Allah (s.w.t).

He (swt) says:

> *...And they have been commanded no more than this to worship Allah (swt), offering him sincere devotion.*
>
> *(Al-Quran,Surah al- Bayyinah 98:5)*

Parties transacting in a takaful contract must be sincere and not to make personal gain, but to be bound by the transaction based on the principles of mutual co-operation, solidarity and brotherhood towards rescuing one from unexpected losses and damages. This is because Allah (swt) never looks at material gains, but the sincerity in the hearts of His creatures.

In addition to that the transacting parties in a takaful contract must put all their trust and faith in Allah (swt) in order to get His protection from any consequential unpredicted loss. This is because the operator is not liable to guarantee the ultimate protection, but merely compensating the participant against loss or damage. It is Allah (swt) that has the absolute power to protect.

5.1.2 Absolute shari'ah principles

The Takaful Act 1984 provides that a takaful policy is enforceable if its aims and operations do not involve any element which is not approved by the Shariah. Hence, it is a pre-requisite for the validity of a takaful contract that none of its aspects should contravene any express or implied Shariah ruling.

5.1.3 Moral attributes

Takaful participants must conform to moral sanctions which include the principles of utmost good faith, honesty, disclosure and truthfulness. These principles could be justified by the following sanction of the Holy Quran. Allah (swt) commands:

> *...Do not misappropriate your property among yourselves in vanities...*
>
> *(Al-Quran, Surah an-Nisa, 4:29)*

The contracting parties should not be greedy to gain something, but should instead build their purposes and aims based on the principle of mutual co-operation and rescuing a person from unexpected loss or disaster.

6.0 PRODUCTS AND MODELS OF TAKAFUL IN MALAYSIA

Similar to its conventional counterparts, takaful operators offer both general takaful and family takaful products. General takaful is the alternative to general insurance, whilst family takaful is the alternative to life insurance (Engku Rabiah Adawiah & Hassan Scott, 2008).

6.1 General Takaful Products

General takaful are basically contracts of joint-guarantee on a short-term basis (normally one year), between groups of participants to provide mutual compensation in the event of a defined loss. The schemes are designed to meet the needs for protection of both the individuals and corporate bodies in relation to material loss or damage resulting from a catastrophe or disaster inflicted upon properties, assets or belongings of participants.

There are many types of general takaful products. Examples of general takaful products offered in Malaysia are Fire Takaful, Motor Vehicle Takaful and Miscellaneous Takaful, which includes Personal Accident Takaful, Workmen Compensation Takaful, Fidelity Guarantee Takaful and etc.

The paper provides only a brief explanation on general takaful and focuses more on family takaful as it is the latter plan that the paper is trying to describe as the mean to realize the maqasid al shariah.

6.2 Family Takaful Products

Family takaful scheme can be said to be similar to the coverage provided by life insurance policies, offered by the conventional insurance. It is a long term saving and investment program with a fixed maturity period. It provides mutual financial assistance among its participants through a financial program that pools efforts to help the needy in time of need due to untimely death and other mishaps resulting in personal injury or disablement. Basically family takaful products in Malaysia can be divided into two main plans, which are The Individual Plan and The Mortgage Takaful (Engku Rabiah Adawiah & Hassan Scott, 2008). Examples of individual family takaful plans are endowment plans for education, retirement and for specific purposes.

In family takaful, each contributions paid by the participant is normally credited into Family Takaful Fund which is then divided into two separate accounts, Participant's Account (PA) and Participants' Special Account (PSA). Most of the contribution will be credited into the PA, which is for the purpose of savings and investment. The balance is credited into the PSA, as donation (tabarru') or risk, for the company to pay takaful benefits to other participants who may suffer a loss.

In takaful contract, the participant knows how much he/she will get back from each account should he/she die or when the policy matures.
If the participant dies, his /her beneficiary will get:-
a) the contribution (premium) paid
b) any profit credited into his/her PA
c) remaining monthly contribution he/she would have paid if he/she had lived, from the PSA

If the participant is still alive when the policy matures, he/she is entitled to:
a) all contributions (premium paid)
b) any profit credited into his/her PA
c) proportionate surplus, if any, arising from the PSA

6.3 Family Takaful Models

The earliest model for family takaful in Malaysia is the mudharabah model. In practice, takaful schemes in Malaysia normally use pure mudharabah or wakalah model for PA, while the modified mudharabah or modified wakalah is used for PSA (Engku Rabiah Adawiah & Hassan Scott, 2008).

Under the pure mudharabah model, the participants contribute to the Family Takaful Plan for two main purposes, which are saving/investment and donation. The saving/investment portion will be credited into the PA, whereas the donation portion is credited into the PSA. The PA belongs to the participants and the PSA belongs to the family takaful risk fund. Both PA and PSA will be invested in Shariah compliant investments by the takaful operators. If there are any profits, it will be shared between the participants and the operator based on a pre-agreed profit sharing ratio. The PSA will be used to pay claims, retakaful and reserves and if there is any net underwriting surplus, it will be returned to the participants.

Diagram 6.1 illustrates the transaction structure for a family takaful operation based on a pure mudharabah model.

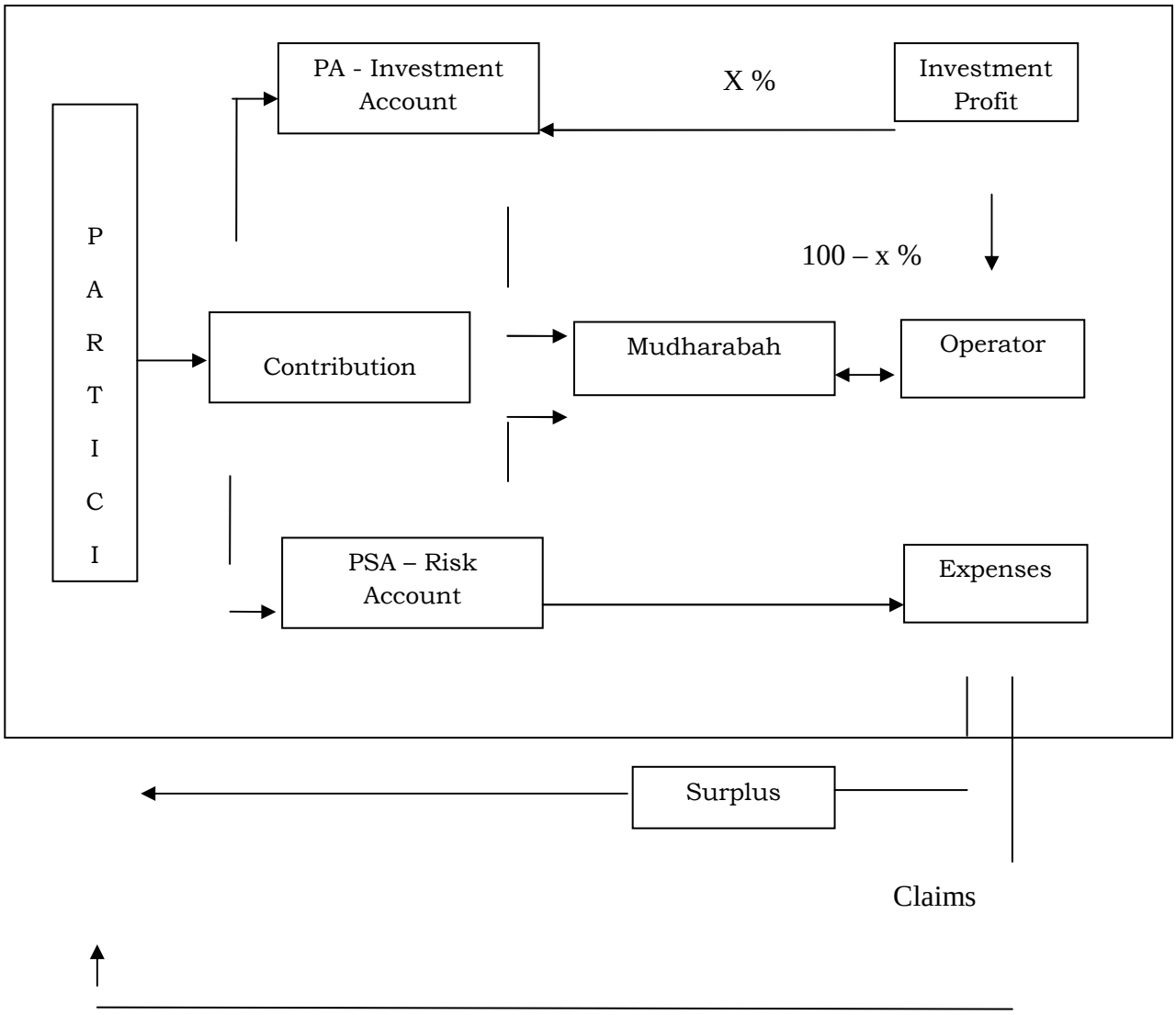

PA - Investment Account
X %
Investment Profit
P A R T I C I
100 – x %
Contribution
Mudharabah
Operator
PSA – Risk Account
Expenses
Surplus
Claims

Diagram 6.1: Family Takaful Operation Based on Pure Mudharabah Model

Source: Engku Rabiah and Hassan Scott, 2008

In a family takaful operation that uses the wakalah model, the participants still contribute to the Family Takaful Fund for the two main purposes, namely saving/investment and donation. Similar to the mudharabah model, the saving/investment portion will be credited into PA and the donation portion will be credited into the PSA. However, the takaful operator will charge a fee on the basis of wakalah (as agent or wakil) for managing the Family Takaful Fund. Under this structure, all underwriting surplus and investment profits belong to the participants with charges inclusive of investment management fee being taken as income to the operator.

Diagram 6.2 illustrates the transaction structure for a family takaful operation based on a pure mudharabah model.

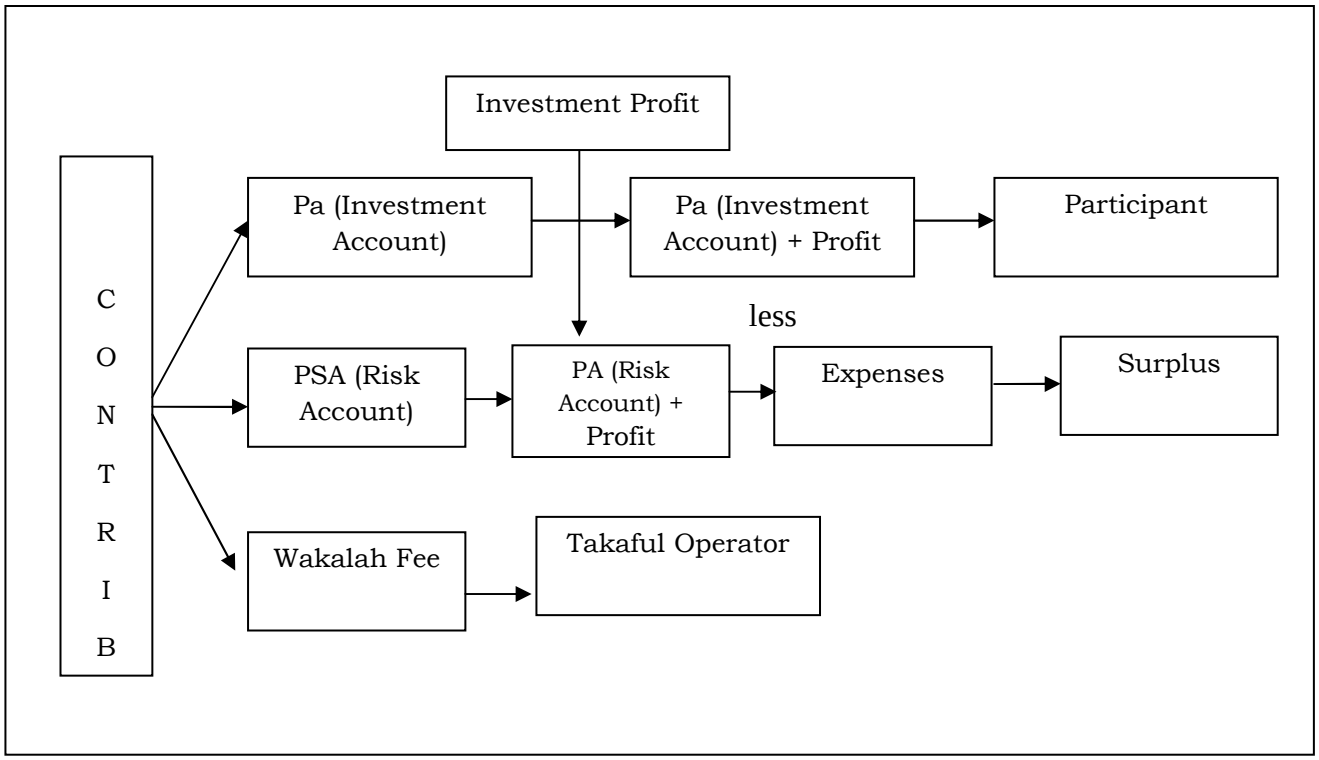


Diagram 6.2: Family Takaful Operation Based on Wakalah Model

Source: Engku Rabiah and Hassan Scott, 2008

7.0 TAKAFUL AS A MEANS TO REALIZE THE FIVE MAQASID

The above sections have discussed the principles of takaful, its products and benefits and the concept of maqasid al-shari'ah in property management. To relate takaful to the doctrine of maqasid al-shari'ah in property management, we must first clarify whether takaful benefits can be classified as one's property.

Muhammad Daud Bakar (2002) stated that mal or property can be classified into three types, namely:
a) Tangible assets like landed property, present items and stock including Islamic bonds that are asset-based such as ijarah, musyarakah and mudarabah bonds.
b) Intangible assets, such as copyright and royalty, trade name, trademarks, industrial design, etc.
c) Financial rights, such as rights to receive (receivable) that include Islamic bonds, deferred dowry and maintenance, right to damges, the right to takaful compensation, etc.

From the above explanation. It can be concluded that in the modern application, takaful benefit is also treated as property (mal).

This section will explain how takaful, especially family takaful can be used to realize the five maqasid al shari'ah in property management. All the five maqasid could be realized by way of:

- the objectives of family takaful schemes provided,
- the issuance of a cover note (temporary document),
- the concept of 'Utmost Good Faith'
- the process of underwriting and
- the distribution of takaful benefits.

7.1 The Objectives of Family Takaful

Family takaful is an alternative scheme for conventional life insurance. It mainly has three objectives and through the application of these objectives that the first maqasid of shariah in wealth, which is the wide circulation of wealth can be realized. The scheme enables its participants to save regularly by paying specified contribution, to avail the takaful proceeds to

the legal heirs and dependents in the case of premature death and to invest the savings with the intention to gain profits in Shariah compliant investment avenues. Investment activities, as we know, will necessary render that wealth being circulated in the society. Lastly, even if the participant wants to surrender the policy, he is still entitled to receive the surrender benefits, which is the proportion of his paid contributions credited into the Participant Account (PA) plus any profits made from the paid contribution. All the above arrangements are the means to realize the purpose of wide circulation of wealth.

In addition to the above, one of the main objective of any takaful plan, be it family or general takaful is the protection of the benefit of properties in case of loss or damage. As we know, the protection of property is one of the five fundamentals in life. The importance of property in life may be either of essential necessity (darurah), without which people cannot survive, or of a general need (hajat) which is quite akin to the essential needs; or of complimentary needs which make life more comfortable and pleasant (Muhammad Daud Bakar, 2008).

7.2 Issuance of Cover Note @ Temporary Policy

A cover note is a temporary document issued by the takaful operator before the issuance of the certificate, especially in the case of general takaful. The cover note can be used as a proof to make a fair claim against the risk if it occurs before the permanent takaful certificate is issued. This arrangement and stipulation can be observed as the means to realize the purpose of transparency in wealth, certainty of the wealth's ownership and justice in the circulation of wealth.

7.3 The Concept Of 'Utmost Good Faith'

The concept of utmost good faith specifies that the participants of a takaful scheme must disclose the truth of the facts or the matters affecting the policy. It is also stated in the Takaful Act 1984, under section 28 that the participants are under the duty to disclose in the proposal form fully and faithfully all the facts which they know or ought to know, otherwise the policy may be void. It is therefore, the duty of the participants to disclose all the material facts affecting the contract to avoid the possibility of benefiting from the tabarru' funds fraudulently at the expense of other participants. This requirement can achieve the purpose of transparency in wealth management and justice in the circulation of wealth.

7.4 The Process Of Underwriting

Underwriting is the process by which takaful operators consider and decide whether to accept the participation of cover made by a proposer and also the terms to be imposed. The purpose is to maintain equity among the participants, whereby each participant should contributes according to the expected loss probabilities that he might transfers to the tabarru' fund. The takaful operator should estimate the potential loss exposure presented by the participant and charge a rate attributed to the tabarru' fund which commensurate with that exposure (Ahmad, Syed Wassem, 1991). This arrangement is an effective means towards the purpose of achieving the transparency in wealth management and justice in the circulation of wealth.

7.5 The Distribution of Takaful Benefits, Profits and Contribution

n the case death of the participant before the maturity, the takaful benefit or compensation shall be distributed on the basis of Islamic law of inheritance, as it is considered as part of the participant's estate. The nominees in the policy are considered as a mere trustee to administer

the distribution of the takaful benefit after the participant's death. The stipulation to administer the takaful benefit in accordance to the Islamic law of inheritance is in no doubt in parallel with the maqasid of certainty of the ownership of the wealth. This ensures the deserving parties rights to the inheritance as prescribed by the Holy Quran and Sunnah after one's death.

In addition to the above, the takaful operation is also free from the element of gharar, especially when it comes to the segregation of participants' contribution and the distribution of profits from the investments between the participants and the operator. For family takaful, as mentioned in the previous section, the contribution is divided into two separate accounts, Participant's Account (PA) for the purpose of savings and investment and Participants' Special Account (PSA as donation (tabarru') or risk. This ensures the principle of transparency is carried out. Furthermore, depending on the model adopted by the operator, remuneration for the operator who managed the takaful fund can also be specified. Under the mudharabah model, profit from the investment undertaken will be shared by the participants and the operator based on a pre-agreed ratio. No management fee will be charged on the service provided by the manager. On the other hand, if it is the wakalah model being used, then a management fee will be charged on the takaful fund for the service provided by the operator. The operator may (wakalah with performance fee model) or may not have a share in the underwriting surplus, if any.

The above transparent activities being practiced in the takaful operation not only ensure transparency in managing the wealth, but it also provides clear certainty of the ownership and justice in the circulation of wealth.

8.0 CONCLUSION

The general maqasid of shari'ah is to protect the five elements essentially needed for every human, namely: religion, life, lineage, intellect and property or wealth. The inclusion of wealth protection shows the importance of wealth in human life. Given the importance of wealth to human, Islam through the maqasid al shari'ah, outlined five aspects to protect wealth, which are wide circulation of wealth, preservation and protection of the wealth, transparency in wealth management, certainty of the ownership of the wealth and justice in the circulation of wealth. The paper has analyze how family takaful, an Islamic life insurance, engineered based on the shari'ah principles is able to realize the five maqasid. Through a well structured plan, takaful by way of objectives of the schemes, the issuance of a cover note, the concept of Utmost Good Faith, underwriting process and the distribution of takaful contribution, profits and benefits are able to materialize all the five aspects of maqasid in wealth protection.

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The Importance of Training and Development in Initiating Human Capital Relevancy for the Sustenance and Development of Islamic Banking and Finance: An Overview

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ABSTRACT

The fascinating development and the point of discussion in recent years, is the rapid growth and expansion of the Islamic financial services industry. It is no more a rhetoric but Islamic finance has been accepted as a viable and competitive mode of financial intermediation, not only in Muslim countries but also beyond the Muslim world, which offers a wide range of financial products and services to meet the highly differentiated demands of the new economy. Against these rapid evolving of Islamic financial industry globally and in Malaysia significantly, human capital has become the defining factor in sustaining the performance and competitiveness of the Islamic financial industry. Thus, it is very important to place a strong focus on human capital development in embarking Islamic financial services encompassing the basic foundation that is education. This is a prerequisite requirement for highly talented and skilled labour force essential for the future in maximizing the opportunities presented by the evolving economic environment. The objective of this study to illustrate how training and development will embark and equip Islamic financial institutions with human resources that can practice with good strong comprehension in Shariah, products knowledge, and knowledge in banking procedures both competency and technical. Parts of the findings will show how training and development form the basic development of human capital as a contributing factor to financial institutions towards positive attitude, knowledge and skillful workers, so as to gain competitiveness in Islamic financial products and services.
Keywords: *Training and Development, Islamic Finance, Human Capital*

INTRODUCTION

Islamic financial service is one of the fastest growing industries in Malaysia today and has now been accepted as a viable and competitive mode of financial intermediaries. Islamic banking has come a long way over the past three decades, however, it cannot

be denied it also faces a number of challenges that need to be addressed in order to provide a sound base for its future path (Khan, 2007). With the accelerating pace of financial integration, financial institutions are presented with prospects to expand beyond domestic borders to capture opportunities from regional and global markets (Zeti, 2007).

THE CHALLENGES AND THE FUTURE

Notwithstanding the encouraging data, the fact still remains that the industry is too small compared to the size of its potential market. However the encouraging success shown by many of the local banks clarified that Islamic financial do demand for more accelerating expansion and will become a popular choice among the public. The emergence of this new player creates more challenges among Malaysian commercial banks not only to compete among themselves but they have to compete with the new competitors which offer Islamic principles (Haron et al, 1994). The continued progression in the economic and financial landscape has presented many opportunities for the new products, services and innovation (Zeti, 2007). With this changes and further capability of Islamic financial services proof that an alternative to conventional banking transactions will no longer be disputed. Given this slow but encouraging progression of Islamic banking it also faces a number of challenges that needs to be addressed in order to provide a sound footing for its future path.

One of the challenges mentioned in a report jointly initiate by Islamic Research & Training Institute Islamic Development Bank (IRTISDB) and Islamic Financial Services Board (IFSB) is the challenges imposed to fulfill human resource requirements (Khan, 2007). Zeti further retreated that the rapid evolving Islamic financial industry and the growing significance of Islamic financial institutions

globally, is that human capital should be the focus in sustaining the performance and competitiveness of Islamic financial services industry (Zeti, 2006). Responding to this common view give an important correlation of human capital as a main factor for business surviving in today's competitive environment. Successful companies are those that understand the importance of managing and organizing the use of its human capital (Gordon, 2006). According to Gordon, one of the many ways to improve human includes education and training that can ensure performance, having qualified people, and motivate employees (ibid).

Therefore organizations continue the search for innovative approaches to increase their competitive advantage in this era which is defined by the utilization of people's talent (Brooks et al, 2006). Thus in realizing this strategic value, organization has to device an effective and workable human capital initiative that can be utilizes as a long term planning. In fact, it is human capital, rather than physical or financial capital, that distinguishes the leaders in the market (Saudah et al, 2005). Consistently effective organizations are those that having superior strategies for managing and developing people, focus on individual capability and organizational capability, measure people as assets as well as well as cost and able to resist the short-run pressures that cause chronic under-investment in people (Picket, 2005). The aim of this paper is to explore the role of training and development in the contemporary personnel/human resource function. It form the basic development of human capital as a contributing factor to Islamic financial institutions in question towards positive attitude, knowledge and skillful workers, so as to gain competitiveness in Islamic financial products and services.

LITERATURE REVIEW

In today's competitive business environment people plays an important role in determining the survival of any business organizations. The organisation's human resources or human capital are now seen as one of the major contributors to competitiveness and every organisation should take the human resource dimension into account before making strategic decisions and implementing a new corporate strategy. (Morrow,2001). For many, sidelining this important element can sound disaster to which not only losing competitiveness but also crippling the process of production. Therefore, human resources or capital may be regarded as the most valuable asset of any enterprises. In continue to confirm the relevancy of company's human resources or human capital their skills, knowledge, commitment and motivation are the prime factors that does require encouragement and enhancement. In this context they need to be developed and, therefore, continuous training plays a very important role. (Vermeulen & Crous, 2000)

What does human capital really mean? General Accounting Office (GAO) (2002) simply stated, human capital means people. First, people are assets whose value can be enhanced through investment. As with any investment, the goal is to maximize value while managing risk. Investment in people includes not only in terms of providing training and development, but also the rewards and benefits offered to them. The term human capital (Fong & Yorston, 2003) was first used by Nobel Laureate, Theodore w. Schultz, in the 1961 American Economic Review Article, 'Investment in HC'. The term is now most frequently used to refer to a combination of skills, experience and knowledge. From the human capital perspective, employees are viewed as a capital resource that requires investment. (Ramayah et al, 2004). According to Chartered Institute of Personnel and Development (CIPD) human

capital is the knowledge, skills, abilities and capacity to develop and innovate possessed by people in an organization (CIPD, 2007).

On a more economic definitive meaning of human capital, Wikipedia refers it to the stock of productive skills and technical knowledge embodied in labor. Many early economic theories refer to it simply as labor, one of three factors of production, and consider it to be a fungible resource -- homogeneous and easily interchangeable. Other conceptions of labor dispense with these assumptions. Quratulain Aziz further redefine human capital that incorporates all human intellect labor, workforce, and human strengths in the form of employees, customers, business partners and competitors (Aziz,2007). As an investment, Thomas Davenport, a management consultant, has combined several these definitions to come up with his human capital investment which can be achieved through ability, knowledge, skill, and talent in addition to behaviour (Fong &Yorston, 2003). Quality human capital therefore provide for a competent workforce that ensure competency of performing the jobs, training and development has for many decades proven the main initiative enrolled by human resource division of an organizations.

In today's global competitiveness and technological development require the creation of new knowledge which is communicated to employees and which leads to continuous innovation(Horwitz,1999). Improving product and service quality may require devolution of authority and responsibility to employees at lower levels. Integrated systemic changes in organisational design, with delayered structures, flexible work practices including task/functional flexibility and multi-skilling, have created new challenges for HRD (Horwitz,1999). According to Snyder and Cummings (1998), cited by (Reed &Vakola, 2006) organisations' abilities to change are necessary for survival. This capacity of change is associated with organizational

learning since organisations have to be able to learn from past experiences, effectively use “lessons learnt” correct errors and disseminate this knowledge within the organisation if they are to change and adapt themselves to the continuously changing market. Increased need for improved performance requires more efficient ways to identify, recruit, measure, and improve the training and education of the workforce (Berge et al, 2002).

If people are to do things better, they must not only want to do things differently, they must have the skills and knowledge to do so (Vermeulen, & Crous, 2000). Human resource development is a process of developing and/or unleashing expertise through organization development (OD) and personnel training and development for the purpose of improving performance (Swanson, 2001 as cited by Arif Hassan ,2007). This view is supported by Antonacopoulou (1999) as cited by David Robotham(2004) who, from an extensive review of the management development literature, concluded that learning is an integral part of the development process. This added up to Ashton and Felstead (1995) cited by Morrow (2001) acknowledge the widespread consensus that training and development should be encouraged. The best way to institute quality into an organisation, particularly a bank, is to train employees to do their jobs better. For example, First Interstate Bancorp has demonstrated its confidence in employee training by initiating credit training programmes for those employees involved in the analysis, recommendation, approval or review of commercial credits (Spagnola and Spagnola, 1993, as cited by Vermeulen & Crous, 2000).

This has also been underscored by the rise of human resource management (HRM) with its emphasis on the importance of people and the skills they possess in enhancing organisational efficiency. Morrow(2001) such HRM concepts as

"commitment" to the company and the growth in the "quality" movement have led senior management teams to realise the increased importance of training and development or so logic would suggest. One common notion of training and development is not just enhancing knowledge also incorporating skills enhancement. Skills problems fall into the domain of training. The aim of training is to change the way a trainee does something, i.e., create a change in his/her knowledge or skill level (Prioritysky, 2007). In order to maintain job effectiveness in a changing information environment and to meet the demands put upon them by the society, information professionals need to continue to learn up-date and refresh their knowledge. Individuals need to learn new knowledge to prevent the onset of professional alienation in his or her performance and to adjust to the culture and changes prevalent in a new information environment. (Odini, 1999).

The importance of effective education and training is emphasized by many authors who were surveyed. Bird (1993) sees training as important in order to give employees the necessary knowledge to bring about quality improvement across the company. Batten (1992) describes the importance of education and training by the following words: "Train, Train, Train!" (Vermeulen,& Crous, 2000). Mcdonnel (1994), Schonberger (1992) and Riley (1993) all regard training as fundamental in transforming the workforce so that it can function in the demanding TQM environment (Vermeulen, & Crous,2000). Companies should also be looking more inwardly – training and developing existing employees rather than buying in appropriately qualified and experienced workers Morrow (2001). In addition training and education is for everybody in the enterprise. Although the training contents may differ, it is essential that everybody should be able, with the aid of the necessary

training, to make a vast contribution to the improvement of total quality in an organization. (Vermeulen, & Crous, 2000).

METHODOLOGY

A set of questionnaires is developed which consist of 31 questions and 4 parts. All questions are based on Likert scale which ranked between 1 to 5 with 1 as strongly agree and 5 as strongly disagree. The set of questionnaires is distributed to practitioners in one of the local Islamic bank in Klang Valley. A total of 140 set of questionnaires is being distributed and 60 of them was returned.

The questionnaire has been divided into four sections which are to identify the issues and the elements related to human capital which includes the role of training and development in reducing the gap to enhance human capital skills and knowledge.

All the data collected is subjected to the statistical process of normality testing, validity testing and reliability testing. A Principal Component Analysis is then being performed to all the questions in order to extract the relevant factor for Pearson correlation analysis and Multiple Linear Regression.

FINDINGS

Reliability, normality and validity testing was separated for the first objective and second objective. A preliminary reliability testing on all of the question is being performed which can be refer to *Table 1* for the first objective i.e. to validate the issue of human capital which is required in order to strengthen Islamic banking practices in Malaysia. *Table 2* for the second objective to identify the elements of human capital that needs to be improved in order to strengthen Islamic Banking practices in Malaysia. The overall Cronbach Alpha shows a value of 0.522 and 0.958 which is

considered to be acceptable. A Principal Component Analysis result in *Table 3* is performed to extract the relevant factor that contributes to the limitations of human capital based on reduction of data. *Table 4* is Principal Component Analysis performed to extract factors in human capital management that is requires to improve Islamic banking growth as perceived by respondents.

Table 5 shows the result of correlation analysis between identified issues which contributed to Islamic Banking growth. The correlation result supported that there is positive relationship between knowledge and skills related to Islamic banking to the growth of Islamic banking at confidence level of less than 5%. This can be interpreted the importance of knowledge and skills to Islamic banking growth for practitioners and employees of the financial institutions. *Table 6* and *Table 7* shows the result of Multiple Linear Regression of human resources elements which is significant to be address in order to improve the growth of Islamic banking in Malaysia. The model R square is at 0.749 with F test of less than 0.05. Based on the coefficients of 0.413 and 0.463 and significance level of less than 0.05, the human resource elements which need to address is on training and development (TD) and career development (CD).

DISCUSSION

Looking again at the four key policy goals of HRM, the three operational goals of commitment, flexibility and high quality are all intrinsically linked to training and development. Employees who are highly trained and whose career development is effectively managed by the company show high levels of commitment, are flexible, invariably multi-skilled and can make significant contributions to the quality of goods or services the company offers, regardless of the level at which they operate

(Morrow,2001). Thus the roles of training comprehend the required and acceptable level of competencies which enable organizations to compete. In the mid-1990s a team of researchers from Charles Sturt University and from the University of Technology, Sydney carried out two major projects examining the determinants of employer training. The research confirmed the growing strength of the link between training and organization development (Smith, 2006).

The research confirmed the increasing strength of the link between the three classic elements of human resource development – individual career development, organizational development and training (McLagan, 1989 cited by Smith, 2006). Today many organizations were shaping their training towards the fulfillment of individualized needs in order to enhance performance (Smith, 2006). Through training and development with proper execution and monitoring, the wealth of human capital which consisting of skills, knowledge and positive attitude is inculcate progressively. The outcome of this not only generated capable workforce or quality human capital but open a wide spectrum of career enhancement in which employer has to honour. Today's many organizations such as the banking sector has imposed and ensures that a certain percentage of their total employee gross salary is budgeted for training. Moreover, on the part of the employee fulfilling certain number of hours of their job commitment towards training is part of their performance indicators.

In the case of Malaysia, the formation of Islamic Banking and Finance Institute (IBFIM), International Centre for Education in Islamic Finance (INCEIF), Malaysian International Islamic Centre (MIFC) and Shariah Knowledge Center which exist in most Islamic banks and Commercial banks are the indicators and the initiatives toward realizing and supporting the importance of training and development for the growth of Islamic finance. The fast growth of Islamic based

financing and the diligent on the part of government in supporting financial institutions to adopt and practice section of their banking services on Islamic principals sees the role of training becoming more critical in familiarizing and understanding the concepts and practices.

SUMMARY

The study is being performed with the involvement of practitioners in order to venture the insight view of Islamic Banking environment in Malaysia after it is being extensively promoted and supported by the government. However, despite the aggressive action taken by Malaysian government in promoting Malaysia as the Islamic banking and financing hub, Malaysia still require skills human capital or expertise to enhance and nurture the industry. It is concluded in this paper, that one of the urgent and consistent action require for Malaysian Islamic banking industry is the generation of its human capital or expertise in the aspect of Islamic banking operation which is thinly adaptation of the conventional banking operation..

The lingering observation of limited sound Shariah knowledge expertise, the limited knowledge on Islamic banking product of employees and the lack of capability and skills to develop Islamic banking product itself thus require a prompt intervention through training initiatives. Further, the current training and development initiated by financial institutions need to be intensive and revamp for their employees to be fluent in Islamic banking may it be in term of operation, Shariah knowledge and product. Due to this, for Islamic banking industry in Malaysia to be able to grasp the opportunity in this evolving industry, actions need to be taken in the area of training and development especially apart from promising career development of human

resources in order to solve the issues above by means of extensive, comprehensive and continuous training apart from offering of lucrative career pathway.

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APPENDIX

Table 1: Reliability testing of first objective

Reliability Statistics - Preliminary

	Cronbach's Alpha	Cronbach's Alpha Based on Standardized Items	N of Items
BOK	.607	.611	2
SK	.522	.522	2
IPK	.667	.668	2
IPDS	.788	.789	2
ISSUES	.691	.691	2

Table 2: Reliability testing of second objective

Reliability Statistics - Preliminary

	Cronbach's Alpha	Cronbach's Alpha Based on Standardized Items	N of Items
RP	.915	.916	3
TD	.954	.954	9
RB	.839	.840	3
CD	.958	.958	3
ELEMENTS	.821	.831	3

Table 3: Principal Component Analysis of Issues that Contributes to Islamic Banking and Financing Growth

Total Variance Explained

Component	Initial Eigenvalues			Extraction Sums of Squared Loadings		
	Total	% of Variance	Cumulative %	Total	% of Variance	Cumulative %
BOK	1.440	71.990	71.990	1.440	71.990	71.990
SK	1.353	67.668	67.668	1.353	67.668	67.668
IPK	1.502	75.077	75.077	1.502	75.077	75.077
IPDS	1.651	82.549	82.549	1.651	82.549	82.549
ISSUES	1.528	76.407	76.407	1.528	76.407	76.407

Extraction Method: Principal Component Analysis.

Table 4: Principal Component Analysis of Elements that Improve Islamic Banking and Financing Growth.

Total Variance Explained

Component	Initial Eigenvalues			Extraction Sums of Squared Loadings		
	Total	% of Variance	Cumulative %	Total	% of Variance	Cumulative %
RP	2.569	85.649	85.649	2.569	85.649	85.649
TD	6.664	74.045	74.045	6.664	74.045	74.045
RB	2.276	75.869	75.869	2.276	75.869	75.869
CD	2.768	92.276	92.276	2.768	92.276	92.276
ELEMENTS	2.243	74.781	74.781	2.243	74.781	74.781

Extraction Method: Principal Component Analysis.

Table 5: Pearson Correlation Analysis

Correlations

		Issues in IBF	Operation Knowledge	Shariah Knowledge	Islamic Product Knowledge	Islamic Product Development
Pearson Correlation	Issues in IBF	1.000	.649	.652	.416	.700
	Operation Knowledge	.649	1.000	.735	.618	.780
	Shariah Knowledge	.652	.735	1.000	.730	.694
	Islamic Product Knowledge	.416	.618	.730	1.000	.595
	Islamic Product Development	.700	.780	.694	.595	1.000
Sig. (1-tailed)	Issues in IBF	.	.000	.000	.001	.000
	Operation Knowledge	.000	.	.000	.000	.000
	Shariah Knowledge	.000	.000	.	.000	.000
	Islamic Product Knowledge	.001	.000	.000	.	.000
	Islamic Product Development	.000	.000	.000	.000	.

Table 6: Regression Analysis of Elements to Improve Islamic Banking

Model Summary[b]					
Model	R	R Square	Adjusted R Square	Std. Error of the Estimate	Sig. F Change
1	.866[a]	.749	.730	.53341131	.000

a. Predictors: (Constant), Career Development, Remuneration Benefits, Recruitment Policy, Training & Development

b. Dependent Variable: HR Elements

Table 7: Coefficient of Regression Analysis

Coefficients[a]

Model		Unstandardized Coefficients		Standardized Coefficients	t	Sig.
		B	Std. Error	Beta		
1	(Constant)	.006	.071		.082	.935
	Recruitment Policy	-.136	.116	-.135	-1.173	.246
	Training & Development	.413	.180	.406	2.289	.026
	Remuneration Benefits	.175	.091	.175	1.921	.060
	Career Development	.463	.154	.462	3.015	.004

a. Dependent Variable: HR Elements

ANALYSIS OF THE ISLAMIC BANKS' DEPOSITORS BEHAVIOR IN INDONESIA: A VARIANCE AUTO REGRESSIVE APPROACH

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Abstract

Basically, Banks as practiced are defined as intermediary institution, including Islamic Banks. Islamic Banks are operationalised through Shariah principle and Islamic approach. Perhaps, that is one of the cause of the significance growth of Islamic banks are. So that, Islamic banks are expected to save their performance in order to keep and maintain the trust and interest to them. Deposit instrument is considered as one of Islamic Banks products that the purposive is to service their customer as loan and financing and also assert Islamic Banks as source of society development. Therefore, Islamic deposit is able to be utilized as the measurement to gauge the Islamic Banks performance.
Furthermore, the main purpose of this study is to quantify the purported link between the level of deposit of Islamic Banks in Indonesia and its measurement determinant, such as rate of return, interest rate, and stock market return. In spite of the level of deposit is highly influenced by conventional rate, Islamic Banks should put more attention on this matter by keeping and also improving their efficiency in order to remain competitive. Stock market return is apparently considered as external factor that indirectly has been creating the public preference in putting their money in. Therefore, this paper is attempting to convey the Islamic Bank's behavior within the conventional banks policy issued-by changing in interest rate policy-, and capital market behavior-by looking at the return- monthly. Variance Auto Regressive (VAR) approach is then trying to implement and VAR approach is expected able to show the dynamic behavior and finally trying the answer whether there are short and long long-run relationship between those variables observed. Finally, having known that phenomenon, Islamic banks are able to minimize the commercial risk emerged as the conduct of conventional and stock market behavior.

Keywords: Islamic Banks, Interest Rate, Stock Market, and VAR approach

Introduction

Islamic banks are considered as one of Islamic financial institution which has recorded as tremendous growth for last two decades. Indonesia as the largest Muslims Population regard the growing fast of Islamic banks as an opportunity as well as challenge to optimalize the potential resources owned, both in the basis of wealth and also in the name of faith, Islam. Interestingly, since it was established in 1992, Islamic banking sector has been enormously grown at compounded annual growth rate above 65% in the last five tears, and also targeted to have 15% share in the asset penetration of the total national banking system on 2015 (Bank Indonesia, 2008).

Bank Indonesia as monetary authority in Indonesia has shown the greatest attention in regulating and supervising the run of Islamic Banks. Several policies has been issued to ensure that Islamic Banks have well-structured and well organized. Bank Indonesia has mandated National Shariah Board (NSB) for example as single authority in issuing fatwa on Islamic Institution instrument, and also pointed out Shariah Supervisory Board (SSB) as a shariah government to ensure an Islamic bank operation satisfy and comply with shariah requirements. In addition, Bank Indonesia has made and arranged Islamic Banking Development Program as stage to establish Indonesia Financial System Architecture (ASKI). Hence, Islamic banks which are positioned as part of Indonesia financial system are able to run in line to national economic objective, such as enhancing economic growth, poverty alleviation, and reducing unemployment.

Naturally, financial institution, including Islamic banks generally have single objective, is that, as intermediary institution which pooled any potential fund and then circulated into economy through financing instruments. Islamic banks supposedly have to be different and should be outside the common activities which have been done extensively by conventional banks. The underlying reasons, Islamic banks are positioned in the area not only standing as financial services but also established to uphold the truth of Islam faith, through financial services. Thus, Islamic banks in reality are able to be really helpful and open-handed in serving the needs of people, notably Muslims Ummah.

In valuing the Islamic performance, we are able to evaluate that Indonesia Islamic banks have successfully performed well and marvelous. Those can be observed from the indicators published by Bank Indonesia over 7 years, whereby generally speaking, Islamic bank has continued to show strong performance and reached the business volume USD 4, 77 billion with accounting for 2, 13% share of the national banking industry. Indirectly, it has described that Islamic banks have been really respond well and very welcome by Indonesian citizen. Again, it represents that Islamic economic has been positioned as the central basis by Muslims in Indonesia.

Table 1.1.
Islamic Banking Indicators, 2002-2008

	2002	2003	2004	2005	2006	2007	2008 Aug
A. Islamic Bank Channel							
Full-fledged Islamic Bank (BUS)	**2**	**2**	**3**	**3**	**3**	**3**	**3**
Shariah Business Unit (UUS)	**6**	**8**	**15**	**19**	**20**	**26**	**28**
Number of Office (BUS & UUS)	**146**	**253**	**355**	**415**	**531**	**594**	**650**
Number of office channeling	**-**	**-**	**-**	**-**	**456**	**1,195**	**1,394**
Islamic Rural Bank (BPRS)	**83**	**84**	**88**	**92**	**105**	**117**	**128**
B. Indicators							
Total Asset (RpT)	**4.05**	**7.86**	**15.31**	**20.88**	**26.7**	**36.5**	**44,3**
total asset of SB to banking industry	**0.36%**	**0.74%**	**1.20%**	**1.42%**	**1.55%**	**1.84%**	**2.15%**

Deposit Fund (RpT)	**2.92**	**5.72**	**11.86**	**15.58**	**20.67**	**28.01**	**36.6**
Financing (RpT)	**3.28**	**5.53**	**11.49**	**15.23**	**20.44**	**27.94**	**32.4**
FDR	**112.3%**	**96.9%**	**96.9%**	**97.8%**	**98.9%**	**99.8%**	**113.02 %**
NPF (gross)	**4.1%%**	**2.3%**	**2,4%**	**2.8%**	**4.8%**	**4.1%**	**4.04%**
ROA	**1.6%**	**0.7%**	**1.4%**	**1.4%**	**1.6%**	**1.78%**	**1.76%**
ROE	**10.3%**	**7.0%**	**24.8%**	**26.7%**	**36.9%**	**54.0%**	**64.67%**

Source: Bank Indonesia, Various Reports

However, some economists argue that Islamic banks in Indonesia actually can growth more as compared with which have been achieved until today. They continue to argue that it is because of the Muslims in Indonesia do not really put in their money and save their accounts in Islamic banks. Hence, the lack of deposit in Islamic banks have been causing the limitation of movement and enlarging the share in their assets and operations. Some reasons also come up, for example Nyimas, 2006 has found that the behavior of depositors in Indonesia are still not Islamic. She asserted that they are still considering profit rather that the beneficial behind that. This evidence is supported by Haron and Shanmugam (1995) had done research which looked at the strength of the relationship between the total deposit of Islamic banks and its profit rate. They found that there is inverse effect between the rate of profit and the level of deposits. It implies that Islamic bank customers are being considered the profit rate given on deposits rather that the spirit behind. Moreover, according to the research conducted by Kotler 1998, et all, stated that the current challenge of each institution which are growing up, is that, the ability to compete and survive, including banks which are not only competing among each other, but also with non-bank financial institution. It means the consumers awareness should be laid in the center position.

As far as concerns, the awareness of Islamic bank consumers can be evaluated through their behavior in depositing their financial assets. In financial economics, we have known that assets are divided into two types, cash money and bonds (investment assets). The willingness of consumers in investing their wealth depends on their level of transaction and the return rate of financial instrument offered. In the context of wealth allocation, Islamic banks need to manage their profit rate and maintain its competitiveness, mainly to the movement in the interest rate of conventional banks.

Therefore, this paper are trying to analyze whether the behavior of Islamic banks consumers Islamic, and also which macroeconomic indicators which are closely correlated in influencing the movement of Islamic banks deposited. This paper comprises of five chapters, are that, chapter 1 describes the introduction and background of the study. Chapter 2 contains the literature review of the study, chapter 3 could be methodology of research, chapter 4 and 5 are considered as findings and conclusions.

LITERATURE REVIEW

2.1 Islamic Banking definition, Principles, and Products

Banking refers to a system of banking which is considered consistent with the principles of Islamic law (sharia) and its application through the development of Islamic economics. Islamic banking principles are totally avoided and prohibited any transaction which is committed to Riba. It means, any transaction that intentionally or unintentionally have an excess, increase, and addition in principle without mutual consent and creating of nothing.

In the case of principles, Islamic banking has totally different of conventional banking. However, in terms of the purpose is no different, is that, optimize the fund deposited to productive activities. In accordance with the rules, Islamic banking is really based on Shariah, known as Fiqh al-Muamalat (Islamic rules on transactions). Furthermore, the basic principle f Islamic banking is the sharing of profit and loss and the prohibition of riba (usury). Common terms used in Islamic banking include profit sharing (mudharabah), safekeeping (Wadiah), joint venture (Musharakah), cost plus (Murabahah), and Leasing (Ijarah).

Having mentioned above that one of Islamic Banking transaction is mudharaba instrument. Mudharaba (joint venture with capital) is an arrangement or agreement between two or more partner, whereby one partner provides funds to be used in venture. Any profits generated from partnership are shared between the partners according to a pre-agreed ratio. In the case of Islamic banking, the level of deposit can be measured by total of mudharaba investment which is including 1, 3,6,12 month investment deposit, both in Rupiah or valas. The mudharabah investment deposit is positioned as the main type of deposit in Islamic banks which capture more that 50% (Bank Indonesia, various sources).

2.2. Determinant of Islamic Banks Deposit

Several researches and empirical studies conducted in looking at the relationship between the Islamic bank's deposit and its determinants. Haron and Norafifah (2000) had tried to examine the effects of profit rate and interest rate on funds deposited in Islamic banks in Malaysia. Then, the result provided clearly information that the rate of profit has

strong positive impact on Islamic bank's deposits. Interestingly, the interest rate generated by conventional banks has strong negative relationship. Similarly, the research was accomplished Sukmana and Roslin (2005) attempted to look into the relationship between the rate of return on Islamic bank's deposits, conventional interest rate, and the amount of saving deposits in Islamic banking. They found that interest rate remained to be a significant variable in determining people to deposit in Islamic bank. They also underlined that as long as an economic system is implementing dual banking system, it probably occurs the pulling effect between Islamic and conventional rate of return. Due to the fact that the products of both two types of banks are considered as substitutes rather than complements which the up and down of the return in Islamic banks will be inversely responded by conventional banks. A recent study also attempted to convey which employed several macro economic variables to measure the link between the levels of deposit of Islamic banks in Malaysia. They finally come out with the suggestion that Islamic bank's deposit are seemly sensitive upon the movement in financial variables, such as Base Lending Rate, Kuala Lumpur Composite Index, consumer Price Index, money supply, and Gross domestic product. They also remained in exploring a conclusion that Islamic banks should also put into accounts in terms of the ability in overlooking not only the profit rate given but also to unpredictable or movement in the interest rate generated by conventional banks.

Based on those empirical studies above, we are coming up with the notion that commercial risk may happen in the case of rate return is lower than conventional rate offered. This is quite rational and normal in spite of Islamic banks are part of our national banks which is also noted as part of the national saving of a country. However, the phenomenon of shifting out in saving behavior can be avoided if the consumers, particularly Muslims consumers have looked in Islamic banks as part of Ibadah and obedience in terms of wealth bestowed by Almighty God. Hence, profit motive which is commonly taken into economic transaction is able to diminish or even abolish.

2.3. Islamic Bank's Depositors Behavior

Having investigated the deposit bank's determinants, we simply move to take a look the determinant the behavior of Islamic bank's depositor in investing or depositing their funds. Several studies have been done in knowing how the response will be call back in the cases that Islamic banks announce to issue policies concerning the level of profit distributed in a certain period of time.

Erol and El-Bdour (1989) tried to examine the motive of customers toward Islamic banks in Jordan. The interesting result showed that the religious motive is not their desire in putting their funds, but tended to pursuit the profit motive. Therefore, they asserted to withdraw their funds from Islamic bank's deposit in the basis they decided not to distribute their profits. Unlike Erol and El-Bdour, study done by Gerrard and Cunningham expounded that Muslim customers are not influenced whether Islamic banks will share or distribute their profits, so will the Muslims. However, the important issues that need to be noted, is that, both Muslims and Non-Muslims likely remain in keeping their funds since they are more urged in banking services, such as a various type of services provided, bank's reputation, and also the reliability of bank's performance.

Furthermore, Metawa and Almossawi (1998), Haron, Ahmad, and Planiek (1994), and Nasel, Kamal, and Al-Khatib (1999) indicated a findings that customers chosen Islamic banks in spite of profit, religious, facilities offered, and also location.

Finally, we are able to justify that we can determine precisely and correctly whether Muslim customers are more "Islamic" than Non-Muslims. There is no enough evident that the main motive of Muslims put their funds in spite of the religious desire. It indicates that Muslims are still viewing Islamic banks objectives as the same as conventional do. Thus, we are not surprised when the depositors are fast in shifting out their funds since the change of policy announced both in the side of Islamic banks and conventional banks.

METHODOLOGY

3.1. Data and Variables

In this chapter, we discuss data and methodology that utilized in measuring the data distribution. In answering the question raised on chapter one, this paper will implement a quantitative approach which intentionally employ several selected indicators to be analyzed further. In general, we identify several variables which are considered significantly effect to the bank's deposit behavior. Accordingly, to ensure that the measurement of bank's deposit behavior are correctly identified, a model need to be developed. This paper is attempting to follow a model introduced by Shrestha and Chowdhury (2005), the model is written as follows:

$$LMSA_t = \beta_1 + \beta_2 RRM_t + \beta_3 SMR_t + \beta_4 DRC_t + e_t \quad \text{.....(3.1)}$$

where : LMSA is the Mudaraba saving account deposit in Islamic banks (in log form), RRM is the rate of return for 1-month mudaraba-investment in Islamic banks, SMR is the stock market rate of return in Jakarta Stock Index, and DRC is the discount rate issued in conventional banks.

The level of deposit is measured by using the total of mudaraba investment deposits in Islamic banks. And then we use rate of return in Mudaraba investment to measure the return may be gotten by consumers at the end of period. Thus, the relation between the rate of return and the level of deposit is estimated to be positive. The increase in rate of return would push up the level of deposit, vice versa. Then, we also utilize conventional rate which is generated from discount rate in conventional banks. The link of discount rate to deposit would be negative relationship. Hence, the increase of conventional rate will affect on the preference of consumers in funds allocation, whether

remain in Islamic Banks or shift out to conventional (displaced commercial risk). Accordingly, we also employ stock market return which is taken from Jakarta Composite Index. According to loan able fund theory, the investors will look for several investment instruments which potentially restore and give better return in the future, based on the value of money hold today as compared with the future expectation of wealth holdings. Thus, presumably, stock market return will be inversely correlated with the level of deposits in Islamic Banks.

The analysis of Islamic banks behavior considers the interactions mudaraba saving accounts and 3 selected macroeconomic variables. The data are monthly for the period from January 2003 to December 2009.

3.2. Research Methodology

We try to employ vector auto regression approach whereby it takes several steps and stages, such as testing stationary data. Since our data used is identified as time series data which is consisted of stochastic term. Thus, stationary data needs to ensure that our data have the same mean, and variance over period of observation. Table 1 report the ADF test without a time trend. The upshot tends to suggest non-stationary in level of the variables but stationary in their first difference (I(I)). So, we proceed by contending that all variables belong to the I(1) process.

Table 3.1: ADF Results

Variables	t- Test	Probability
MSA	-8.222757***	0.0000
RRM	-9.287996***	0.0000
SMR	-10.39280***	0.0001
DRC	-4.259934***	0.0010

Note : Significance at a = 1%

Source: Eviews. 4.1

Since the variables are noted to be I (1), there exists the possibility that they share a long run equilibrium relationship. To test this, we apply multivariate co integration test of Johansen (1968); Johansen and Juselius (1990) and report the trace statistic and maximal eigenvalue statistics from these tests at particular lag length

TABLE 3.2.
JOHANSEN-JUSELIUS COINTEGRATION TESTS

Null Hypothesis (Lag 1)	Trace	Max. Eigenvalue
r=0	81.27343**	38.28263**
r<1	42.99080**	21.16253
r<2	21.82827*	14.82860
r<3	6.999668**	6.999668**

*(**) denotes rejection of the hypothesis at the 5 %(1%) level

Source: Eviews 4.1.

The other approaches used to explain the results, we specify a dynamic model using VAR framework by generating variance decomposition and impulse response functions to examine short-run dynamic interactions among variables. Again, we also examine the direction among variables in the system by using Granger causality test. We intend to convey whether granger interpreted as unidirectional causality, feedback/bilateral causality or independence.

FINDINGS

4.1 Islamic Bank Performance in Indonesia

Tragically, although the Muslim population in Indonesia reaches more than 70%, the establishment of Islamic banks was relatively late as compared to the neighboring country, Malaysia. The first Islamic bank namely Bank Muamalat Indonesia (BMI), which was established in November 1 1991, was gained highly supported by the then President of Indonesia, Suharto. Unlike Malaysia, up to current time, Indonesia does not have an Islamic Banking Act. The existing Islamic banks are under the revision of the conventional banking act which mentions that the banks have been allowed to operate other system instead of using interest. Besides Islamic banks, there existed also the Islamic Rural Banks and Islamic Banking Unit.

Eight years after the establishment of the first Islamic bank, the second was established, the Bank Syariah Mandiri. It was a conversion of the conventional bank, Bank Susila Bakti. In the same year, Islamic Banking Unit was established. It is a unit

within conventional bank which offer Islamic banking product. However, the difference between Malaysia and Indonesia is that Malaysia uses Islamic window, whereby within the office of conventional banks, there exists a different counter for Islamic banking product. In Indonesia, conventional banks should have a separate building as well as separate management.

After two decades, Indonesia's government evaluates that Islamic Banks record the furnish growth, and it has push up the government finally to moderate in establishing many Islamic banks. In 2000, there were only three Islamic banking units namely: Bank IFI syariah, Bank Jabar Syariah, Bank BNI Syariah. The third Islamic full fledged bank was established in 2004, the Bank Syariah Mega Indonesia. At the end of 2007, as many as twenty-six Islamic banking units were established (Sukmana, 2009).

TABLE 4.1
NUMBER OF ISLAMIC BANKING IN INDONESIA

Year	Islamic Bank	Islamic Banking Unit
1992	1	0
1993	1	0
1994	1	0
1995	1	0
1996	1	0
1997	1	0
1998	1	0
1999	2	1
2000	2	3
2001	2	3
2002	2	6
2003	2	8
2004	3	15
2005	3	19
2006	3	20

2007	3	26

Source: Syariah Banking Report 2007

Bank Muamalat performed well in the early years of its commencement. In the second year of its existence, deposit increased from 20,800 million Rupiah in 1992 to 60,320 million in 1993. Similarly, Financing also increased very significantly, from 32,650 million Rupiah to 92,000 million Rupiah in the subsequent year (Table 2.10 below). The following years, BMI was able to maintain good performance. However, the Asian crisis in 1997 created damage to the banking system. Not only the conventional banks suffer, Islamic Banks were also affected. Table 2.10 shows that in 1998, Islamic banking assets, financing and deposit were declining very significantly. Growth of those three indicators shows contractions of 18.3%, 30, 5%, and 15, 4% respectively.

At that time Bank Indonesia had to increase interest rate in a significant rate to prevent further deterioration of the Rupiah due to capital flight. Consequently, this high interest rate was enough to attract customers to withdraw their funds from Islamic banks to conventional banks. This is called the displacement commercial risk which had to be faced by Islamic banks. It is the risk whereby depositors withdraw their money from Islamic banks and put it in the conventional banks due to more attractive interest rates given by their conventional counterparts. Nevertheless, in 1999, Islamic banks were able to recover. Asset, Financing and Deposit increased to 44.5%, 8.05% and 34.7% respectively.

The growth of Islamic banks in Indonesia, although increased significantly in the nominal term, did not in terms of the percentage share of the total banking asset. In 2000, total Islamic banking asset was Rp 1,790,168 million and that amount accounted for only 0.17% of total banking assets. 2004 marked the year in which the proportion of Islamic banking assets out of total banking asset reached beyond 1% (Monthly Statistical Bulletin, August 2004). Comparing the percentage share of the total banking asset between Malaysia and Indonesia, Malaysia is still far ahead of Indonesia. Currently, Islamic banking asset in Malaysia is over 10% out of total banking assets whereas in Indonesia is around 2%. This is of no surprise given the fact that Islamic banking in Malaysia was established ten years earlier than that of Indonesia.

TABLE 4.2
PERFORMANCE OF ISLAMIC BANKING IN INDONESIA

Year	Asset	Financing	Deposit	Growth (%)		
				Asset	Financing	Deposit
1992	120,880	32,560	20,800			
1993	166,960	92,000	60,320	38.12	182.56	190.00

1994	246,080	188,800	132,880	47.39	105.22	120.29
1995	394,400	285,920	275,680	60.27	51.44	107.47
1996	515,200	310,480	396,560	30.63	8.59	43.85
1997	586,720	456,160	463,440	13.88	46.92	16.87
1998	479,200	317,040	391,920	-18.33	-30.50	-15.43
1999	692,800	342,560	528,080	44.57	8.05	34.74
2000	1,790,168	1,271,162	1,028,923	158.40	271.08	94.84
2001	2,718,770	2,049,793	1,806,366	51.87	61.25	75.56
2002	4,045,235	3,276,650	2,917,726	48.79	59.85	61.52
2003	7,858,918	5,530,167	5,724,909	94.28	68.78	96.21
2004	15,325,997	11,489,933	11,862,117	95.01	107.77	107.20
2005	20,879,874	15,231,942	15,582,329	36.24	32.57	31.36
2006	26,722,030	20,444,907	20,672,181	27.98	34.22	32.66
2007	36,537,637	27,944,311	28,011,670	36.73	36.68	35.50

Source: Bank Indonesia Annual Report Various Issues & harahap and Basri (2003)

In terms of the economic sectors which were financed by Islamic banks, there existed two sectors which dominated the Islamic bank financing portfolio. These sectors are: business services sector and trade, restaurants and hotels sectors. The former sector accounted for about 30% and 30.15% in 2005 and 2007 respectively. Meanwhile the trade, restaurant and hotels sector as the second biggest sector financed by Islamic banks accounted for 11.24% and 14.86% in 2005 and 2007 respectively. The sector which was least financed by the Islamic banks was the utilities sector which accounted for 0.43% in 2005 and.59% in 2007.

TABLE 4.3
ISLAMIC BANK FINANCING BY SECTOR IN INDONESIA (%)

Sectors	2005	2006	2007
Agriculture, forestry and agricultural facilities	4.5	3.40	3.00

Mining	2.59	1.83	1.83
Manufacturing	6.11	4.60	4.91
Water, gas and electricity	0.43	0.08	0.59
Construction	10.14	8.01	8.48
Trade, restaurants and hotels	11.24	14.87	14.86
Transport, cargo storage and communication	8.26	5.70	5.61
Business services	29.49	26.69	30.15
Social services	7.91	7.12	6.81
Others	19.33	27.66	23.76

Source: Indonesian Shariah Banking Statistics. Various Issues

In terms of the types of financing contract in Islamic banks, it has been dominated by the buy and sell concept or *murabahah*. This figure is more or less same with what has existed in Malaysia. *Murabaha* in Indonesia accounted for more than 60% out of the total financing in 2000 (see Table 2.10) whilst the profit sharing concept which uses of musyarakah and *mudharabah* achieved more than 30%. Interestingly, over the last four years, the composition mix has changed in that while the trend of the proportion of *murabahah* showed a decrease, the profit sharing concept showed an increasing trend. This is because Islamic banks have been able extend the use of the profit sharing concept to the koperasi (cooperative societies) eventhough they extend the funds to their members using the *murabahah* concept. Although it is shariah compliance, the murabahah concept is almost similar to that of conventional banking lending. Hence in order for Islamic banks to be differentiated from conventional banks, they should use more on the profit sharing concept.

TABLE 4.4
ISLAMIC FINANCING BASED ON TYPE OF CONTRACT

Type of Contract	2000	2001	2002	2003	2004	2005	2006	2007
Musyarakah	0.025	0.026	0.018	0.055	0.111	0.125	0.114	0.158
Mudharabah	0.298	0.196	0.152	0.144	0.179	0.205	0.199	0.200
Murabahah	0.610	0.693	0.709	0.715	0.665	0.623	0.617	0.592

Salam	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000
Istishna	0.059	0.082	0.067	0.054	0.027	0.018	0.016	0.013
Qardh	0.000	0.000	0.000	0.000	0.009	0.008	0.000	0.000
Others	0.008	0.002	0.053	0.032	0.009	0.021	0.053	0.038

Source: Annual Indonesian Shariah Banking Development Report, 2006 and 2007

4.2 Empirical Findings

4.2.1. VAR Estimation

According to the stationary and co integration test, we found that the system has indicated that there is a long run relationship among variables. The co integrating vector representing the long run relationship represented by equation below:

MSA = 0, 02627 + 0, 00310 DRC + 0, 0056 RRM + 0,000448 SMR

The equation above construes that all variables gather together in influencing the level of mudharaba investment in Islamic Banks during the period of observation. F test shows 28,73 which signify all variables simultaneously influence the mudaharaba investment in 1% level. Interestingly, based on the equation, the signs show the positive relationship. Despite the rate of return both in conventional banks and stock markets are higher that Islamic banks return, it still implies the positive impact to mudaraba investment. Thus, we can justify that investment in Islamic banks are more interesting and profitable rather than in the other financial instruments. It also identifies that customers are aware and not solely seeking for profit, but religious aspect seems to be inculcated and penetrated into the soul of Muslims in Indonesia. Those reasons mentioned actually support the empirical studies that previsiously done by Haron, Ahmad, and Planisek (1994), Gerrard, and Cunningham (1997), and Metawa and Almossawi (1998), which firmly argue that the important factors for both Muslims and non-Muslims in viewing Islamic banks were fast services, friendliness, and confidentiality, bank's reputation as well. The most important reasons were Islamic banks transact and apply shariah principles. Similarly, the customer's view that the motive of them are in terms of the location which is considered closed to their habitats.

TABLE 4.5.
Variance Decomposition and Impulse Response

Variance Decomposition	Periods	MSA	RRM	SMR	DRC
MSA	1	96.27894	0.016086	0.870178	2.834798

	6	93.61359	0.178488	4.321547	1.886379
	12	92.59621	0.195219	5.707859	1.500709
	24	92.10325	0.203245	6.382590	1.310912
RRM	1	0.000000	99.98827	0.000000	0.011726
	6	0.094957	99.85523	0.047475	0.002342
	12	0.108822	99.82239	0.067509	0.001276
	24	0.115864	99.80600	0.077367	0.000767
SMR	1	0.000000	0.008918	91.54536	8.445724
	6	0.451065	0.626231	87.55359	11.36911
	12	0.546448	1.079176	83.41117	14.96321
	24	0.707518	1.851875	76.23740	21.20320
DRC	1	0.000000	0,0000	0,0000	100,00
	6	0.269513	0.073248	4.426953	95.23029
	12	0.294261	0.080924	5.428198	94.19662
	24	0.303631	0.083848	5.826542	93.78598

Source: Eviews 4.1.

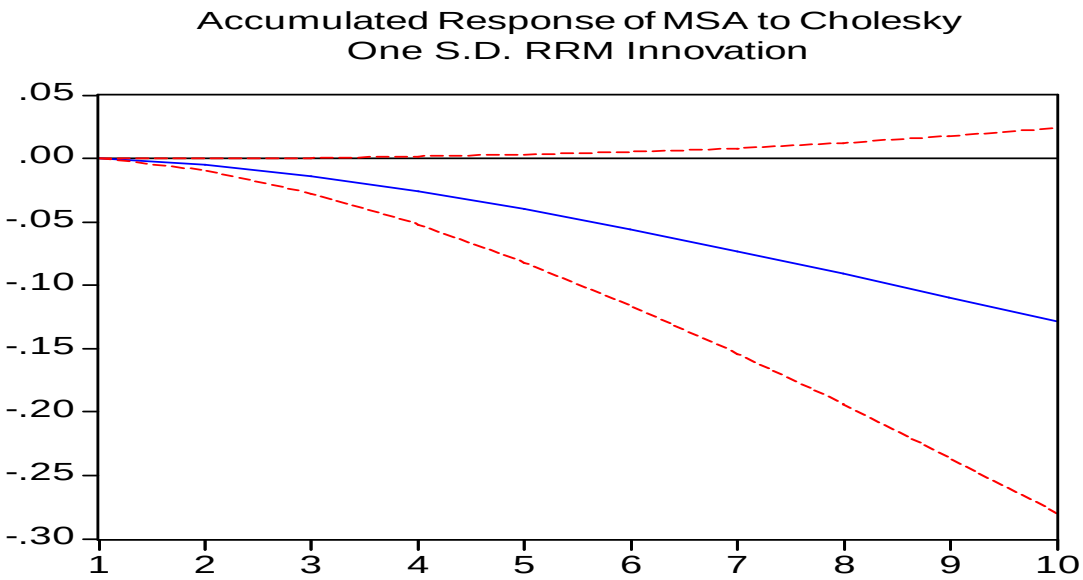
Variance decomposition (VC) contributes in establishing a different method to describe dynamic system of VAR. Thus, VC is able to measure in the cases of upcoming

shocks into system. In application, VAR is generally used to predict on contribution of percentage in each variable in spite of the change a certain variable in VAR system as response on current shocks into variable. According to table above, we clearly see that in terms the change of MSA variable is influenced strictly on innovation (change) in variable SMR (stock market return), which records 6,8% in the 24 periods. It also indicates that the movement of Mudharabah Investment variable (MSA) is merely depended on how far the stock market return is up or down, although the 6, 8% is accounted for in a little percentage. In terms of rate of return mudharabah investment variable (RRM) is not too significant affected by the innovations of the other variables. It means, RRM is moving without closely tied on the both conventional and stock market return. Therefore, in the case of Islamic banks, the customers who are going to invest their funds are not solely motivated by profit motive agenda. In terms of Stock market return (SMR), it provides clearly information that Discount rate of Conventional (DRC) is the only one which significantly affect to SMR movements. It supports the theory which is explained concerning the loan able funds in financial market, whereby rational investors will diversify their investment portfolio in order to mitigating risk and optimalize the rate of profits. However, both the rate return and mudharaba investment are not influenced by its movement, so we can conclude that the Islamic banks separately operate and detach their funds which is not considered as shariah complaints activities. Similarly, in the case of discount rate of conventional banks (DRC) is only influenced by the innovation of stock market return.

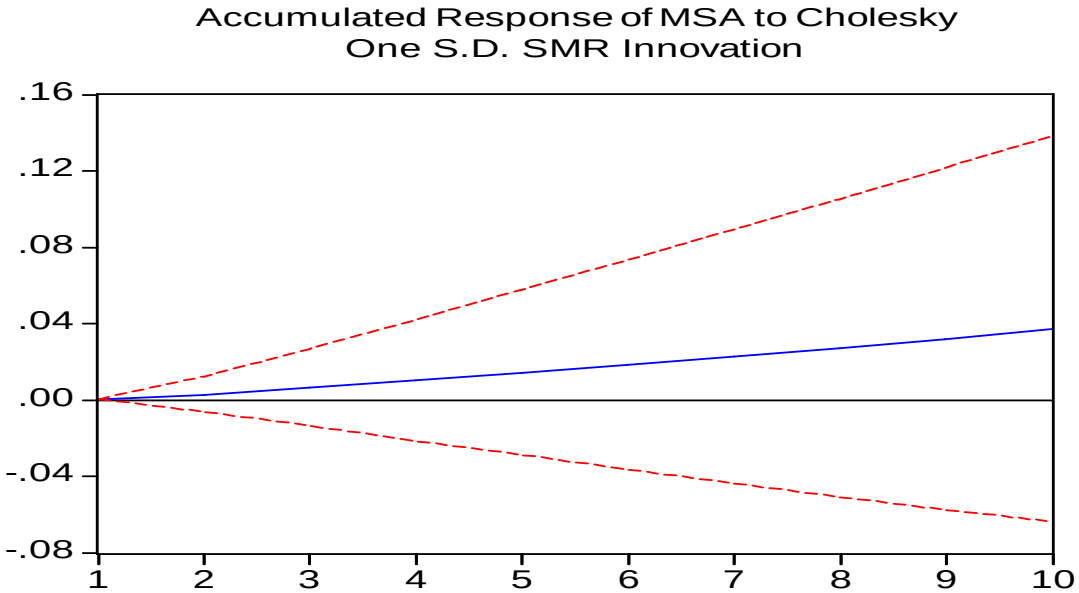
4.2.3. Impulse Response Function

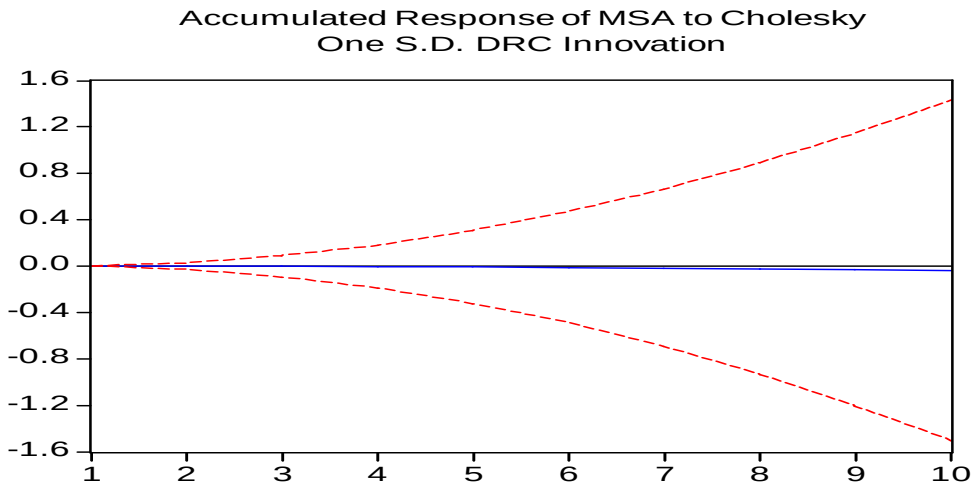
Plotting the impulse response function is a practical way to represent the behavior the various shocks of the variables in a certain period of time. Again, IRF is used to trace the respond occurred from endogenous variables in VAR system. In other words, IRF are attempting to trace any responds because of shock or any changing in disturbance variables.

In terms of the Mudharabah Saving Account (MSA) response, any changes or innovations on rate of mudaraba return are apparently depicted in picture below. The picture above shows the response may be given if any shock are incurring in VAR system. It also clearly shows that any shocks occurred whereby rate of return in Mudharabah Investment Account (RRM) will be response negatively by Mudharaba Investment. In the case of Islamic banks mean that any shocks incurred concerning the variable movements seemly do not enhance the level of deposits, and the MSA tends to download sloping to the right meanwhile RRM is moving far away toward MSA line. Generally speaking, it firmly signifies that customers are not too responsive in viewing greater rate of return or seeking profit in motivating their investment action.



The impulse response function also can be drawn in Stock Market Innovation (SMR) upon MSA response. According to picture below, we can construe that the increase of stock market return will be response similarly and also tend to upswing. It indicates that Islamic banks eager to compete in attracting consumers investment by tyring to response the raise of stock market return positively. Therefore, the strategy which probably should keep in mind, is that, Islamic banks remain competitive and minimalize the commercial risk that may occur in spite of the widespread between both return investment assets.





In terms of the impulse response function MSA on any innovation of Discount rate of Conventional (DSC) is depicted on picture above. Interestingly, any innovation or shocks on conventional rate do not shift out the level of mudharaba investment, even MSA remains in constant level. It represents two indications, firstly, Islamic banks behave like that after investigate deeply that customers are more religious enough and conducting investment actions not solely motivated by profit even higher rate of return. Secondly, Islamic banks are compensating the higher of interest in conventional banks by offering an excellent service during, and post service of Islamic banks transactions. Thus, Islamic banks expect much that those efforts enable to tie up and satisfy them in applying Islamic banks facilities. Therefore, any increase of conventional rate is not too much worrying on any commercial risk, such as decreasing the level of deposits investment put by customers. In summary, despite conventional banks are trying to move up or down its rate, the level of mudaraba will be not shifted out significantly, or less-influenced since the Islamic bank has established, such as credibility, reputation, and also customers motive under lied behind.

4.2.3. Granger Causality Test

Generally, it is used to analyze relationship among variable observed in the system in the short run. Furthermore, granger causality will be applied in investigating, and setting the direction may occur when some variables are interacting each other and finally can be identified whether those variables are closely moving in the same direction. Basically, in granger equation we are familiar with the classification in terms the directional signs that may emerge. Gujarati, 2003 have tried to interpret the function and purpose granger to be Un-directional causality, feedback/bilateral causality, and independence. In the case of our research, the results as follows:

TABLE 4.6.
VARIANCE DECOMPOSITION RESULTS

Null Hypothesis:	Obs	F-Statistic	Probability
MSA does not Granger Cause DRC	83	1.33534	0.25130
DRC does not Granger Cause MSA		0.69658	0.40642
RRM does not Granger Cause DRC***	83	7.12364	0.00921
DRC does not Granger Cause RRM		1.93953	0.16758
SMR does not Granger Cause DRC***	83	9.11596	0.00340
DRC does not Granger Cause SMR		0.24939	0.61887
RRM does not Granger Cause MSA**	83	4.07907	0.04677
MSA does not Granger Cause RRM		0.14266	0.70665
SMR does not Granger Cause MSA	83	0.07920	0.77912
MSA does not Granger Cause SMR		0.76585	0.38412
SMR does not Granger Cause RRM	83	1.2E-05	0.99722
RRM does not Granger Cause SMR*		3.09604	0.08231

Source: Eviews: 4.1.
***, **,* = significant at 1%, 5%, and 10%

According to table above, we can evaluate that RRM (Rate return of Mudaraba) has one directional causality to DRC (Discount rate of Conventional). It means, statistically RRM simply can cause the movement of DRC, so does SMR (Stock market rate) to DRC. In the case of the investment preference, customers are observing and coming up with a conclusion that rate of return both in Islamic banks and stock markets are being marked more interesting and profitable as compared with conventional banks.

Similarly, RRM also has causality relationship to MSA (Mudaraba Investment account) and SMR (Stock market return). It indirectly implies that statistically RRM seems to be an important variable in playing important role, specifically to specify and

drive ups the potential movement and change in MSA and SMR. Therefore, in regarding the important of RRM in creating and transmitting a potential change in MSA, SMR, even DRC, Islamic banks need to maintain and keep their competitiveness by monitoring, and enhancing their performance.

Conclusion

Islamic bank's deposits behaviour play an important role in the context of Islamic banks growth and competitiveness. Religious and motive aspects are still colouring and affecting the level of preference in depicting the investment behaviour. However, Islamic banks over last two decades have been recording furnish growth, whereby in 2004 the assets accumulation is 0, 17% share from total assets in Islamic banks industry. Islamic banks are realizing that to enhance their portion, they need to attract and push up the flows of deposit circulated into Islamic banks by customers, such as by intensifying the Mudaraba investment account. Nevertheless, the level of mudaraba investment (MSA) are affecting by factors outside and inside the Islamic banks its self, such as Mudarabah Rate of Return (RRM), Stock Market Return (SMR), and Conventional Interest rate (DSC). Furthermore, in synthesizing and also analyzing into details, VAR approach are being utilized, which are also supported by applying the impulse response function, variance decomposition, and granger causality test.

The results show that MSA is positively influenced by the changes in SMR, DSC, and RRM simultaneously. Since the VAR system is co-integrated, it implies that there is long run relationship among dependent and independent variables. Accordingly, the variance decomposition indicates that MSA shock is only contributed by the innovation of stock market return. Any changing in stock market may create higher implication to the preference of customers in investing their funds into investment mudaraba. Similarly, the impulse response function also construes interesting findings. In the case of rate of return, Islamic banks tend to not too responsive and pay more attention in decreasing RRM. Islamic banks are response negatively in regarding small percentage of RRM distributed among customers. In terms of stock market return (SMR) shows that the increasing of SMR will be response positively by Islamic banks. Then, in terms of conventional rate, Islamic banks remain in constant response despite conventional banks are increasing their rate. Customers awareness and Islamic banks improvement, such as service facilities are parts of main consideration not too response excessively on the increasing conventional rate. Later on, by implementing granger causality test, we finally get to know that SMR and RRM cause the movement of DRC, and basically RRM causes the movement of SMR and MSA. Literally meaning based on this research, rate of return is seen to be influential indicator in enhancing Islamic banks performance, particularly in the context of competiveness, it is used to as main reference in pushing the innovations of SMR in stock markets and DRC in conventional banks. Therefore, in brief, we may take to conclude that depositor's behaviour in Islamic Banks are not solely motivated by seeking profit and short run interest. Nevertheless, religious awareness and Islamic spirit seem to be the main conduct to deal with any facilities as well as services offered by Islamic Banks.

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COMBINATION OF SUKUK, *ZAKAT* AND *WAQF*

THE ROLE OF ISLAMIC FINANCE TO ALLEVIATE POVERTY AND REDUCTION OF UNEMPLOYMENT IN INDONESIA

BY: M. IMAN SASTRA M

TABLE OF CONTENT

ABSTRACT	**3**
INTRODUCTION	**3**
THE ISSUE OF POVERTY AND UNEMPLOYMENT	**5**
BARRIERS IN THIS PROJECT	**10**
THE SOURCES OF FUND	**11**
DEVELOPMENT OF SUKUK, *ZAKAT* AND *WAQF* IN INDONESIA	**14**
THE STRUCTURE OF THIS PROPOSAL	**18**
CONCLUSION	**22**
REFERENCE	**23**

Combination of *Sukuk, Zakat* and *Waqf*

The Role of Islamic Finance to Alleviate Poverty and Reduction of Unemployment in Indonesia

By: M. Iman Sastra Mihajat[1]

ABSTRACT

Global financial crisis has affected the prosperity of Muslims' majority worldwide, especially in Indonesia. At the same time unemployment and poverty has increase significantly from time to time. The issue of unemployment has been attacked all countries which affect GDP, export and import competitiveness. Therefore, we need a great idea and solution to overcome the current issues that might be benefited to all elements of society not only for a part of people. The main objective of this paper is to propose to a local government to build super market, hospital and soon which can absorb the employment and support the creativity of local player to improve their production skill by using *zakat* fund and the idle land of *waqf*. If the fund is still not enough, we can issue *sukuk* certificates and sell it to the investors, locally or internationally, to increase the capital by using the *waqf* land as underlying asset. The role of Islamic banking in this project is as an SPV and agent of trading the *sukuk* certificates. In this paper, I will show the structure of project how it is work.

Keywords: Sukuk, *Zakat*, *Waqf*, Islamic Bank, Poverty, Unemployment

INTRODUCTION

The issue of poverty and unemployment are the big issues faced by many countries worldwide and considered as a big challenge to cater this problem and need special intention, a wonderful idea, a deep thinking and an appropriate structure how to alleviate these two. Proper management and good governance in conducting this project also needed to achieve the greatest success in poverty alleviation and unemployment reduction. Although we cannot ignore that to cater these two issues is not a simple, need a support from many sides of society in conducting this project especially from local

[1] M. Iman Sastra M, Master Student in Finance at International Islamic University Malaysia (IIUM) and Researcher of ISEFID 2010.

government who has authority to legalize this proposal and from society driven is another important element that can force government to do this kind of proposal.

There are many elements involved in this project especially the role of Islamic banking and finance that can channel the idea to investor if the fund for this project needs to be injected. Therefore, the role of Islamic banking here as the entity that can help this project in selling the *sukuk* certificates to the investors and channel it to this project. All Islamic banking in Indonesia should participate in promoting this project in order to achieve success and known by investors, locally or internationally. I believe (as a good Muslim) that if this project can be done properly and has a good management and good governance, the middle-eastern investor who basically aware about Islamic investment that can assist reduction poverty and reduction unemployment in Muslim countries they will invest their fund in this project, two things that he can benefited from this project, first, a competitive return from the real Islamic investment without any afraid that whether it is *shariah* compliant or not, because we apply a real profit sharing by giving them full rights and obligations as the capital provider in profit and loss sharing concept. Second, the issue of transparency in this project is far from fraud because we provide all transaction in balance sheet, not off balance sheet. Therefore, the investors can evaluate the work and management of this project, and how Islamic this project from financial statement and performance.

There are four elements that the author wants to analyze, first, the issue of poverty and unemployment in Indonesia. Second, discussing what are the barriers that this project going to face. Third, the sources of fund in Islam that can be used for business as capital injection, basically *zakat, sadaqah* and *waqf*, as the main sources of this project and what is the main issue of these three why its not well-done managed by government, second sources is from the investors who want to invest their fund in *shariah* compliant project and pooled it to this project namely *sukuk*. Fourth, how to channel this fund into a good project and business activity that can generate profit and can reduce unemployment and alleviate poverty in this country by proposing a structure that can be utilized for this project. At the end of this paper, we summarize it and give a conclusion.

THE ISSUE OF POVERTY AND UNEMPLOYMENT

The issue of poverty and unemployment has been always become an enemy to the society worldwide. These two issues always become logo for presidents' candidates and head of the state who wants become a leader have to take care these two in order to get sympathy from majority of people, because if these two issues settled, all the people become happy and indicate that his/her leadership success.

In Indonesia, this two elements from my humble understanding, observation, and analysis increase year by year, even though the government claim it decrease depend on how much the income per month they measure to decide whether this family poor or not. According to BPS (Badan Pusat Statistik), the data of poverty in Indonesia decrease from 1998 by 24.23% to 2005 by 15.97%, and increase a bit in 2006 by 17.75% and decrease in 2007 16.58 and 2008 by 15.42%. (Look at table 1.1)

Table 1.1

A Number and Percentage of Poverty in Indonesia By Region, 1996-2008						
Year	**A Number of Poverty (million)**			**Percentage of Poverty (million)**		
	Urban	**Rural area**	**Urban and Rural Area**	**Urban**	**Rural area**	**Urban and Rural Area**
(1)	**(2)**	**(3)**	**(4)**	**(5)**	**(6)**	**(7)**
1996	9,42	24,59	34,01	13,39	19,78	17,47
1998	17,60	31,90	49,50	21,92	25,72	24,23
1999	15,64	32,33	47,97	19,41	26,03	23,43
2000	12,30	26,40	38,70	14,60	22,38	19,14
2001	8,60	29,30	37,90	9,76	24,84	18,41

2002	13,30	25,10	38,40	14,46	21,10	18,20
2003	12,20	25,10	37,30	13,57	20,23	17,42
2004	11,40	24,80	36,10	12,13	20,11	16,66
2005	12,40	22,70	35,10	11,68	19,98	15,97
2006	14,49	24,81	39,30	13,47	21,81	17,75
2007	13,56	23,61	37,17	12,52	20,37	16,58
2008	12,77	22,19	34,96	11,65	18,93	15,42

Source: Badan Pusat Statistik (BPS), No. 43/07/Th. XII, 1 Juli 2009.

The development of a number of poverty in Indonesia on March 2008 is 34.96 million people (15.42%) compare to poverty on March 2009 decrease by 2.43 million or 32.53 (14.15%). The number of poor people in rural area decrease significantly compare to urban area, from March 2008-March 2009 poor people in rural area reduce by 1.57 million people but in urban area only reduce by 0.86 million (Look at table 1.2).

Table 1.2

Poverty Line, Quantity and Percentage of Poor people According by Region March 2008-March 2009					
Region/Year	**Poverty Line (Rp/Capita/Month)**			**Quantity of Poor People (Million)**	**Percentage of Poor People**
	Food	**Non-**	**Total**		

		Food			
(1)	(2)	(3)	(4)	(5)	(6)
Urban					
March 2008	143 897	60 999	204 896	12,77	11,65
March 2009	155 909	66 214	222 123	11,91	10,72
Rural					
March 2008	127 207	34 624	161 831	22,19	18,93
March 2009	139 331	40 503	179 835	20,62	17,35
Urban+Rural					
March 2008	135 270	47 366	182 636	34,96	15,42
March 2009	147 339	52 923	200 262	32,53	14,15

Source: Badan Pusat Statistik (BPS), No. 43/07/Th. XII, July first 2009.

The Indonesian battles are to reduce unemployment and poverty, many programmes and actions has been done by government to reduce these two, such as giving BLT (*bantuan langsung tunai*) to the poor people even though this action from

my opinion its not the right way, we have another way that we can do such as combination of *Sukuk*, *zakat* and *waqf* that I want to proposed in this paper on doing project and business activity that can generate income for local government and increase GDP for national income.

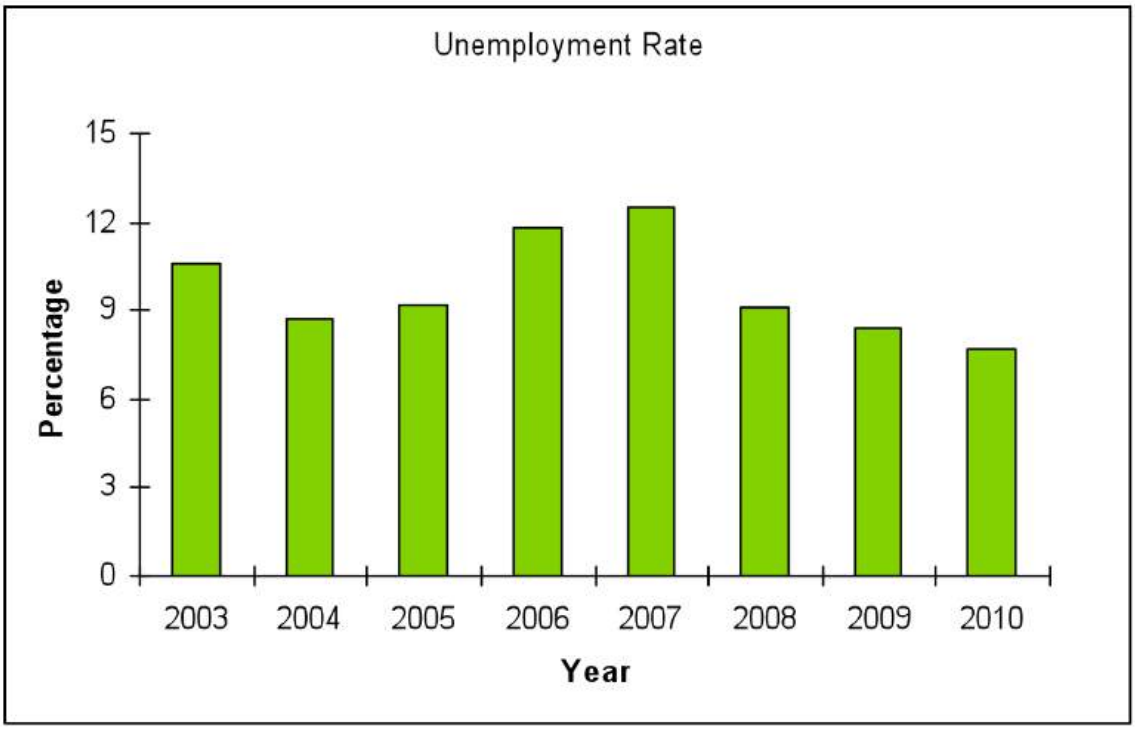
Base on CIA World Factbook data, the unemployment rate in Indonesia from 2006 is 12.50% and decrease in three years in 2010 is only 7.70%.[2] (Look at table 1.3 and chart 1.1)

Table 1.3

Year	Unemployment Rate	Rank	Percent Change	Date of Information
2003	10.60	92		2002 est.
2004	8.70	111	- 17.92	2003 est.
2005	9.20	82	5.75	2004 est.
2006	11.80	121	28.26	2005 est.
2007	12.50	133	5.93	2006 est.
2008	9.10	115	-27.20	2007 est.
2009	8.40	115	-7.69	2008 est.
2010	7.70	80	-8.33	2009 est.

Chart 1.1

[2] See on www.indexmundi.com/indonesia/unempyment_rate.html, access on 10/04/2010.



At the other hand, there is good intention from our president (SBY) who has planning namely the five-year development plan *Pelita* in reducing poverty and unemployment, many economists' expert doubt this programme to be achieved. At the same time national economic development growth is only 7% per year, lower than the threshold of poverty to 8%, reduce unemployment rate to 5%, so it is not easy to achieve the objective of this programme. To realize this programme, a summit On October 29 and 30 has been held in Jakarta organized by the Chamber of Commerce and Industry, attended by over 1000 people, a summit with the theme "*Making a Prosperous, Judicious and Democratic Indonesia*". It brought together financial experts, businessmen, government officials and officers leading the country. During the opening ceremony, SBY emphasized that "any hurdles to boost economic performance should be seriously tackled." This statement to show how serious he is in alleviating poverty and reducing unemployment (Asianews.com, October 2009).[3]

[3] www.asianews.com, saturday, october 31, 2009, access on 9/04/2010.

Therefore, the main objective in this paper to help and proposed a scheme in Islamic perspective to the government in catering these two issues (unemployment and poverty) that basically bring in to a social problem in the society.

BARRIERS IN THIS PROJECT

This proposal basically a kind of a new idea in constructing the project and business activity in the economy and well-organized structure if it is done in appropriate manner whereby no corruption by a naughty local officers or other people involved in this project. Otherwise whatever has already proposed it just nothing; therefore we need all the aspects that could contribute in succeeding this proposal. There are two main ideas that can deter this project;

First, the issues of corruption has been attacked Indonesian economic growth and caused many problems in all sectors of industry. The issue of trust to the government has been eliminated a little by little from society, especially in current case of Gayus in tax department. Many critics from all elements of society to the department of tax in the government of Indonesia, after this issue come to the public, many employees in the street shouted as 'a thief', 1 million facebookers say no to pay tax has been created. Therefore, in order to have a good project the issue of corruption should be eliminated by giving awareness of the dangerous of corruption, its implication to society, economy and punishment in hereafter. In Islam adversity or *dharar* should be eliminated based on legal maxim "*al-dhararu yuzal*" and *mashlahah* should be preferred as far as this scheme of this project being concern that can generate benefit to society.

Second, the issue of bad governance, the governance is the second issue after having a good scheme in proposing on a specific project, otherwise the project that we proposed will result fail and unsuccessful. In Islam, good governance is encouraged due to how importance this element. Apparently, the issue of CG has started to figure prominently in public domain in the wake of increasing notorious mismanagement scandals involving different types of corporations including financial institutions like default of project, run a way of developer from his responsibility and so on. One example in financial institutions that collapse, The collapse of Ihlas Finance House

(IFH) of Turkey in 2001 provides an example how weakness in CG practice entails negative repercussion for soundness and sustainability of an Islamic financial institution (Dusuki, 2009).

THE SOURCES OF FUND

The sources of fund in Islam that from my understanding as a whole idea of economic development (the fairness of equality) that still not properly used by many Islamic institutions such as Islamic banking and government to create a big project which can help and assist the local government in reduction of unemployment in the country and alleviate poverty which basically increase over the year. Even though some times the government claim that poverty has reduced by a several percentage, at the other hand we cannot denied the reality of poverty and unemployment in Indonesia. Since the price of goods and oil have been increased over the last decades, from this time the poverty has become a big issue that should be settled and need solution to cater.

From this urgent problem, we need a wonderful idea and proposal on how to create jobs opportunity and absorb employment so that poverty can be reduced and alleviated. The major reason why poverty comes to the picture is because less education and skill, from education people will have a skill, people will think on how to creates job opportunities by him self without depending on other people jobs. Second one, even many people has achieve education until degree, the issue here many people do not know how to utilize the knowledge that they get from university to be applied in the real world.

1. *Waqf* (Cash *Waqf* and *Waqf* Land)

Imam Syafi'i define *waqf* as to keep the wealth that can give benefit and keep it remaining in the same form while the original owner cannot consume it (al-Qarafi, 1998:111). According to Hanafi's view *waqf* is to preserve and upkeep the original wealth that belonged to someone else and give the profit to the needy (Amin and Abidin, 1983:362).

Waqf can be used for investment in some project to increase its value and develop the economic and increase the prosperity of Muslim *ummah* worldwide. *Waqf* can help the needy, family members, guests and person in travel and so on. *Waqf* can provide them to go on with their lives with more happiness, calmness, like the rest of society. *Waqf* not only distribute the wealth but also loan distribution of healthy, food, libraries, schools, universities, hospital, welfare house for guests and person who is in travel and infrastructures. These concepts of course provide calmness and tranquility for the nation and coincidently cohere with Islamic concept (Yalawae and Tahir 2008).

Therefore, to achieve these all we have to have a new proposal and scheme how to utilize and benefit from this *waqf* fund and land which, I will explain in detail at the end of paper.

2. Zakat

Zakat is the third pillar in Islam and obligatory to Muslim people who able to pay. According to Imam Syafi'i, *zakat* is the name of a specific wealth, a specific portion, and distributed to a specific of people. *Zakat* not only give benefit to the payers but also to all elements of society, if half of Muslim in Indonesia paid *zakat* it will collect billions of rupiah that can contribute in alleviating poverty, reduction unemployment and create prosperity to the society.

Since *zakat* is obligatory upon every Muslim, it create other advantages (Riyadh, 2008):

1. Meets the needs of the poor of the society
2. Strengthens the good relation between the rich and the poor
3. Cleanse and purify the wealth
4. Promotes open-handedness, generosity and sympathy in a Muslim towards the needy person
5. Draws Allah's blessing; causes increase in wealth and replacement of spent wealth as promised in the Quran *"And whatsoever you spend of anything (in Allah's cause), He will replace it. He is the Best of those who grant Sustenance*."(34:39).

Zakat fund can be used for investment in a certain project that can generate income, increase its value, economic stability, and create opportunity of employment to the society not only for direct distribution without any responsibility to repay. In many cases they just use fund for consumption only without any cent given for business purposes which basically can increase their prosperity in their life, increase the economic, and increase GDP of the country at large.

3. Sadaqah

Sadaqah is a charity given by someone to help the needy for the purpose of helping the others who in need. The charity given by many Muslim in Indonesia we can use also for the purpose of investment that basically indirectly helping economic of the poor by giving them jobs opportunity from the firs project constructed until the project accomplished.

When the first project constructed we need people to work in assisting developer to build super market for instance. When the project accomplished, we need people to work as a teller, security and so on and we can analogize it with other project that can absorb employment and minimize the poverty.

4. Sukuk

Sukuk in Arabic term known as *"Shukuk"* from the word *Shad Kaf Waw and Kaf*, plural of *"Shakkun"* Sakk *"Shad and Kaf"*, "legal instrument, deed, check, paper" is the Arabic term for a financial instrument or financial certificate or we can call it as an Islamic equivalent of bond. The Sukuk is represents ownership of an asset or its usufruct. The most important point in Sukuk is the claim embodied in Sukuk is not a claim of cash flow but a claim of ownership of the asset, anything happened to this investment, the investors cannot claim to the capital of investment plus profit, but he can take over the asset and sell it in the market. Those elements will differentiates Sukuk from conventional bonds as the latter proceed over interest bearing securities, whereas Sukuk are basically investment certificates consisting of ownership claim in a pool of assets (Nisar, 2008).

Sukuk can also be termed as "equity bonds". Equity Sukuk ought to be representatives of equity[4] while their modus operandi in floatation is that of the bonds as above and accompanied by an offering prospectus and their rate of return is usually related to the LIBOR or JIBOR benchmarks. The two contrasts of equity and bonds are fused together through an intricate mechanism, which also described in the prospectus in wordy legal terminology (Zohra, 2008).

Sukuk can be used as one instrument to attract more fund if needed from Muslim community and non-Muslim who basically wants to a real investment by sharing the loss and profit according to the agreement or '*aqd* generated from this investment such as Sukuk *ijarah*, Sukuk *mudharabah* and *musyarakah*.

From above discussion, actually we have a bounty of sources of fund that can be utilized for constructing a specific project and business activities such as building a market, traditional or modern market (super market and so on) that can absorb employment and create business opportunities to the society. Since we do have a lot of sources of fund, we need a proposal scheme how to take advantage from this bounty of sources. Therefore, the idea of this paper is to propose a scheme to local government or Islamic institutions such as Islamic bank how they can take a role and how to utilize these sources.

DEVELOPMENT OF SUKUK, *ZAKAT* AND *WAQF* IN INDONESIA

The development of Islamic economic, banking and finance in Indonesia in the last decades grow significant and still will grow in the future. This growth can be seen in three aspects:

First, the collection of *zakat*, *infaq* and *sadaqah* (ZIS) grow more than 50% around 2002-2009. The peak growth of ZIS is in 2005-2007 which more than 95% percent or Rp 295.32 billion and 740 billion per annum (The National Board of Zakat, 2009).[5] The significant growth by 100% caused by disaster of Tsunami in Aceh that push Muslim to pay *zakat*, *infaq* and *Sadaqah* (Beik, 2010). For 2009, *zakat*, *infaq* and

[4] According to Moody's Investors Service.

[5] See www.baznas.or.id, access on 10/01/2010.

sadaqah will absorb Rp 1.2 trillion. The more *zakat*, *infaq* and *sadaqah* can be collected, the more efficient in poverty alleviation. (Look at Table 1.4)

Table 1.4

National Zakat, Infak, and Sadaqah (ZIS) Collection 2002-2009		
Year	Total Amount of Zakat (Billion Rupiah)	Annual Growth* (%)
2002	68.39 (USD 7.20 m)	-
2003	85.28 (USD 8.98 m)	24.70
2004	150.09 (USD 15.80 m)	76.00
2005	295.52 (USD 31.11 m)	96.90
2006	373.17 (USD 39.28 m)	26.28
2007	740.00 (USD 77.89 m)	98.30
2008	920.00 (USD 96.84 m)	24.32
2009	1,200 (USD 126.32)	32.61

Source: The National Board of Zakat (2009).

According to ministry of religion of Indonesia,[6] a number of *waqf* lands in Indonesia is around 268,653.67 hectare, which spread in 366,595 regions in Indonesia. If we look in the aspect of resources capital, a number wealth of *waqf* in Indonesia is the

[6] See www.depah.go.id access on December 25th 2009.

larger in the world. Therefore, the big challenge is how to utilize this asset in appropriate way, so that the *waqf* land can prosper the all *ummah*. Currently we have cash *waqf* that can help for business activities that can generate profit and create job opportunity to the society.

Second, the growth of Islamic finance has been increased over last decades, even though the size is still small that not achieves 5% from the total asset of banking in Indonesia, but still showed its prospect in the future. The average growth of Islamic banking in Indonesia is around 30% per annum. According to Direktorat Perbankan Syariah Bank Indonesia 2009, the total of Islamic bank network is 1,186 where in 2005 is only 550 networks. The employment can be absorbed by Islamic finance is 20,104 people. (Look at table 1.5)

Table 1.5

Islamic Bank Statistics					
	2005	2006	2007	2008	2009*
Islamic Bank Network (offices)	550	637	782	1,024	1,186
Number of Islamic Rural Bank	92	105	114	131	138
Islamic Bank Workers	5,996	7,376	8,685	11,752	20,104
Total Assets	20,880	26,722	36,538	49,555	59,679

(Million rupiah)					

Source: Islamic Bank Statistics, Bank Indonesia.

In 2008 and 2009, the government has issued Sukuk (SBSN) four times with total amount is Rp 19.8 billion. In the first quarter of 2009, government has been issued Sukuk retail with serial SR 14 for global Sukuk amount $4.7 billion US dollar, at the same time corporate Sukuk has been issued in 2009 amount Rp 2.070 trillion which, increase 34.94% compare to 2008 amount Rp 1.543 trillion. High demand of Sukuk globally it will help in developing national's infrastructures and economic growth. (Look at table 1.6)

Table 1.6

No	Name	Issuing Year	Name of Issuer
1	SBSN Seri IFR0001	2008	Government RI
2	SBSN Seri IFR0002	2008	Government RI
3	Sukuk Retail Seri SR-0001	2009	Government RI
4	Sukuk Global SNI 14	2009	Government RI

Source: Bank Indonesia.

Third, in terms of Legal Act, Sukuk act has been issued last year that will increase the possibility of investors' trust to pool their money in Indonesia. In term of *zakat*, currently Komisi VIII DPR RI has been issued the decision that Badan Amil Zakat Nasional (BAZNAS) become an official partner and followed by a promise to

amend *zakat* Act in Program Legislasi Nasional (Prolegnas) 2010 (Beik, 2009).

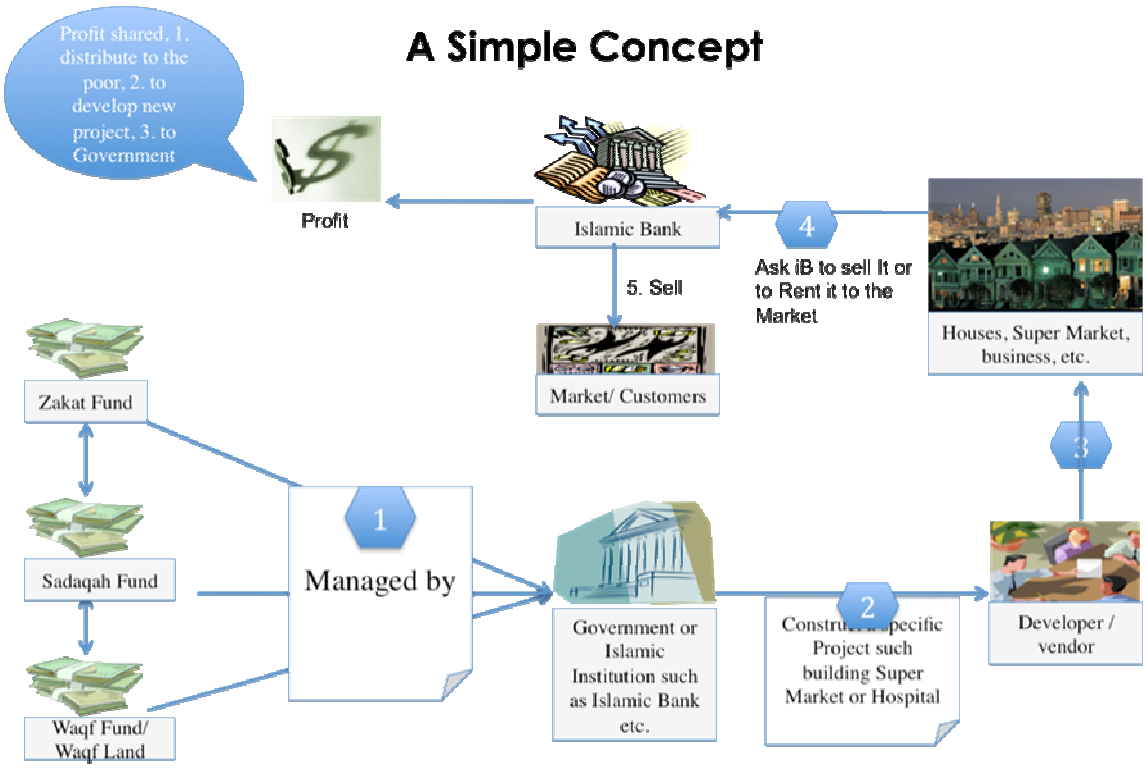
From the data above, we can summarize that the prospect of Islamic finance, ZIS (*Zakat, Infaq and Sadaqah*), and Sukuk is very good potential for the future economic development and growth. However, an appropriate well management is substantial needed here to promote the prosperity of Muslim *ummah*.

THE STRUCTURE OF THIS PROPOSAL

A major concern of this project is to propose to the government and Islamic finance to be involved and take a role to alleviate poverty and reduce unemployment rate in Indonesia. Government can use their ability to govern their employees to pay *zakat, infaq* and *sadaqah*, or advice them to give *waqf* either cash or property, from a million number of people who work in government it will collect billion of rupiahs that can be utilized for funding a specific project.

In diagram 1.1, I will explain a basic concept of this paper without involving Sukuk as an extra instrument to attract fund from investor if let say the fund to mobilize this project its enough, so that we do not need external sources of fund to finance this project.

Diagram 1.1



Stage 1

First, *Zakat* fund, *Sadaqah* fund, and *Waqf* fund are given to government or Islamic Institutions.

Second, government or Islamic institutions manage the fund and organized it to construct a specific project such as build Super Market, traditional market, hospital, apartments, houses and so on that can generate profit, absorb employment, and alleviate poverty rate in the country.

Third, government or Islamic institutions give the fund to developer to construct this project.

Stage 2

First, at the end of accomplishment of project, the vendor transfers the asset to the government or Islamic institution that manage the fund.

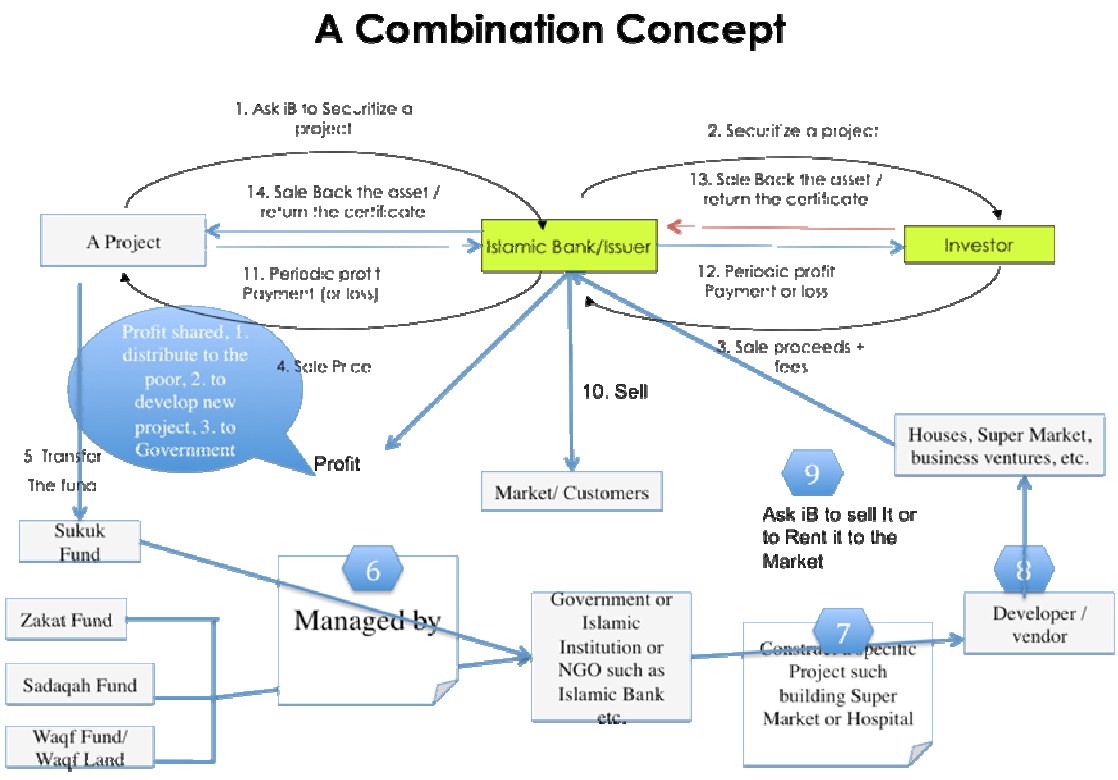
Second, if this project is houses or apartments, the government can sell this houses or

apartments to the market, if it is super market or hospital, it can be used for investment and business activities this super market and hospital can absorb employment and increase economic development and growth. The Islamic bank can be sell the house or apartment to customers.

Third, any profit from this project can be utilized for construction other project and business activities or part of it can distribute to the needy.

Second type of this structure when the fund is not enough to construct a specific project, so we need other sources of fund (external sources) to inject and attract the fund from investors to facilitate the project. In diagram 1.2 explain detail how this structure works.

Diagram 1.2



Stage 1

First, transfer *Waqf* land to Islamic bank whom in charge or chosen for this project to

securitize and issue Sukuk. *Waqf* used as underlying asset.

Second, the Islamic Bank as an SPV such as Bank Muamalat securities or Mandiri Securities issues Sukuk *Ijarah* and sells it to the investors.

Stage 2

First, investors give the price of *waqf* land / sale proceeds to the Islamic bank plus fees and appoint the Islamic bank as an agent to lease back the land to the government or Islamic institutions.

Second, Islamic bank transfer sale price to the government who in charge for this project or any Islamic institutions and lease the asset.

Third, this additional fund from Sukuk can be used for business activities that can generate return, such as build super market, hospital and so on.

Stage 3

First, every period (let say monthly) government pay periodic rental to the investors through Islamic bank.

Second, at the end of maturity agreement, investors sell back the asset to the government or Islamic institution who in charge in this project.

If the second project is Sukuk *musyarakah* or *mudharabah* (equity based Sukuk), the government just appoints Islamic bank securities to issue Sukuk and sell it to the investors. Any profit generated from this business activities will be shared according to the agreement. Any losses regarding to this project, if it is *musyarakah* will be shared among the capital providers, if it is *mudharabah*, will be born by investors. We cannot guarantee the capital plus profit, otherwise it is just the same as conventional instruments that allowed *riba* for their business activities and project regardless this project or investment generate profit or losses.

Since the sources of fund for this project taken from *zakat, infaq* and *sadaqah*, the agreement (‘*Aqd*) should be Islamic as well, otherwise we put *halal* and *haram* at

the same ‘plate’ that will cause this project not Islamic or non-*shariah* compliance activities.

CONCLUSION

This paper has presented the structure in detail how to use the bounty sources of fund by proposing a new scheme to the government to increase economic growth of the country. Not only that but also can alleviate poverty, reduce unemployment, and encourage people to do business and production that can benefit to society and prosperity of the *ummah*. The two structures above describe the basic concept without Sukuk and the concept with Sukuk if the project need capital injection, any profit generated from this can be shared among the investors based on out front agreement. The government can utilize the profit from this project to construct another project or distribute part of the profit to the needy.

Since we do have now a new scheme and a good proposal, it just nothing if there is no action from element related (government and Islamic institutions). After action, we have to have an appropriate management, good governance, and should be always monitored to avoid any misuse or mismanagement or corruption from the parties who are do not have any responsibility’s feeling in their self.

Islamic banking and finance can take a role in succeeding this project as an SPV (special purpose vehicle) and can benefit from this transaction by getting fees from the investors. Since the growth of ZIS has been increased last decades and will continue in the future as well as Islamic banking and its products, this project will help to promote how Islam encourages people to produce, increase economic growth, and promote the fairness of equality.

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DETERMINING FACTORS IN PAYING ZAKAT ON BUSINESS INCOME: AN EXPLONATORY STUDIES

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Supiah Salleh
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ABSTRACT

Zakat is synonym with purification. Purifying wealth is an obligatory to the Muslims through the payment of zakat. Unfortunately nowadays muslims are not aware on the obligation in contributing zakat especially zakat on business income. Previous study shows the collection of zakat for individual income is greater than zakat for business income. Most of the muslims company committed to pay tax which is an obligation as Malaysian citizens but lacking in paying zakat which is an obligation in Islam. This study attempt to look on the factors that contributes to the payment of zakat on business income. From the analysis, this study reveals that there is a relationship between compliance of zakat on business with muslims as Board of directors and majority shareholders.

Keyword : zakat on business income, wealth, obligatory

1.0 INTRODUCTION

The obligation of Zakat comprises one of the five pillars of Islam. It is the third pillar of Islam and therefore it is an act of Fardhu Ain. Zakat means both 'purification' and 'growth'. An individual wealth and possessions are purified by setting aside a proportion for those in need. So, the act of giving zakat means purifying one's wealth to gain Allah's blessing to make it grow in goodness.

Islam requires Zakat to be collected from qualified contributors payers i.e. who own wealth, regardless of whether they are Zakat recipients or not. It is a religious obligation not requirement.

Firman Allah s.w.t., Surah Adz Dzariat: 19
" And in their wealth there is a due share fro the beggar and the deprived".

Another firman Allah s.w.t. in Surah Al Baqarah: 267
"O ye who believe! Give of the good things which ye have (honourably) earned, and of the fruits of earth which We have produced for you…."

Therefore we know that Zakat is obligatory to every Muslim who fulfills its conditions. One of the economic implications of Zakat is equitable distribution of income and wealth (Nik Mustapha, N.H., 2007). Zakat collection will be distributed among the needy so that each individual can be assured of a minimum standard of living. However, Islam imposes that every able Muslim needs to work for his livelihood. Zakat transfers are only to supplement the incomes of the poor.

Another implication of Zakat is it will enhance the consumption level of community since the marginal propensity to consume among the lower income level is higher than the upper income level. This positive change would boost the domestic aggregate demand and simultaneously will boost Malaysian economy.

To achieve both implications above, the effectiveness of the Zakat collection is very important. As we know, business is one of the activities that are most encouraging by Rasullullah s.a.w.. According to Rasullullah s.a.w., business provides 99% of the wealth in this world. If Zakat can be collected from all business with Muslim equity in Malaysia, than both important implication of Zakat discussed above can be easily be achieved.

According to the data by Pusat Pungutan Zakat, Wilayah Persekutuan, collection of Zakat on Business in Kuala Lumpur for year 2008 is only 14% from total collection from Pusat Zakat Wilayah Persekutuan compared to Zakat on Income is 67%. Given that business provides 99% of the wealth in the world, than the collection for Zakat on business should be more than Zakat on Income.

1.1 PROBLEM STATEMENT

Zakat collection in Malaysia is still facing difficulties especially collection for Zakat on Business. Even though Zakat is a religious obligation and not requirement for muslims, the collection performance are still lack to help poor people in Malaysia.

From the collection of tax in Malaysia, business taxes are the main component for our country's tax income. However, it is not aligned with the Zakat on Business collection. As an example in year 2004, Lembaga Hasil Dalam Negeri (LHDN) reported tax from businesses contributed more than 50% from the total tax amount collected (Ahmad Radzuan, 2006). The result is contradicted with the report from Pusat Pungutan Zakat, Majlis Agama Islam Wilayah Persekutuan (PPZMAIWP) in 2005. In Wilayah Persekutuan, collection from Zakat on Income is 3 times or 381% more compared to collection of Zakat on Business. This scenario should not happen since Zakat on Business's commandment comes directly from Al Qur'an and thus, have more potential of collection (Abdul Rahim, 2005) as compared to Zakat on Income that only based on fatwa.

How this could happen in Malaysia? The Census in year 2000 shows approximately 60.4 percent of the total population are Muslims in Malaysia. Therefore the level of awareness

of Muslims in paying zakat on business income should be high since 60.4% of the populations are Muslims. However, referring to the result from PPZMAIWP above, literally the awareness in paying zakat on business income is still low.

Although we know that law enforcement on tax is more powerful compared to Zakat, thus this study tends to dig what are the factors that will leads to Zakat payment on business income. This study also attempts to verify the factors which affect the payment of Zakat on Business income made by the companies. The hypotheses predict that:

$H_{1\,(1\text{-}5)}$ There is a linear relationship between payment of Zakat on Business income and Board of Directors, shareholders, profit, industry and size of the company.

2.0 LITERATURE REVIEW

Allah makes it lawful for Muslims to engage in business and to make profit; provided that they do not indulge in trading in commodities that are prohibited in Islam and that they observe ethical values in their transactions such as honesty. Since practicing trade is lawful, that is why Islam prescribes Zakat from the wealth of any nation used in trade and business exchange (Yusuf Qardawi, 1999).

Islamis jurisprudence explained the details of Zakat on business. Business goods are called by them 'urud at-tijara' which means anything obtained for the purpose of trade for profit, except liquid monetory assets. This definition includes machinery, furniture, clothing and land. Some jurists define as anything that one buys in order to sell for profit. Muslims who own business goods equal to the nisab of money or more at the end of zakat year must pay its due zakat. This zakat is levied on the principal and increments accruing above the principal. (Yusuf Qardawi, 1999). Details of this will be discussed in the method of calculation.

The following are the evidences of obligation towards Zakat on business (Yusuf Qardawi, 1999).

a. From Sunnah - Abu Daud from Samura Ibn Jundub, " The Prophet used to order us to pay sadaqa from what we have for sale". To 'order' implies 'to oblige' and it is clear that the word sadaqa means zakat.

b. From Ijma' – Abu Ubayd reports from Abdul-Qari, "I was appointed treasurer at the time of Umar Ibn Al-Khattab. When he paid stipends, he used to calculate the assets of merchants, both present and absent assets and they collect zakat on them all out of the assets that were presented.

There are 6 conditions that would make zakat on business is compulsory to on a person according to PPZ (Pusat Pungutan Zakat), MAIWP (Majlis Agama Islam Wilayah Persekutuan):

i. Islam – The zakat payer must be a muslim.
ii. Full ownership of assets
iii. Nisab – minimum zakatable amount is more than or equivalent to the current price of 85 grams of gold.
iv. Haul – passing of a complete year over the wealth.
v. Independent – free not a slave.
vi. Business intended – intention to gain profit from activities done.

When a person fulfills all the above conditions, the person must (wajib) pay zakat on business. Zakat on business rate is 2.5% of the zakatable asset when nisab and haul is reached.

If the owner of sole proprietor business is a muslim then the business must (wajib) pay zakat. However, for a company where the equities shared between muslims and non muslims, the zakat is only charged towards muslims portion only. Therefore, the calculation on muslim equity must be calculated first prior to the calculation of zakat amount.

There are two method to calculate Zakat on business as explained by PPZ (Pusat Pungutan Zakat), MAIWP (Majlis Agama Islam Wilayah Persekutuan):

i. Method 1 – using Working capital, where
(Current Assets – Current Liabilities) x Muslim equity portion x 2.5%

ii. Method 2 – using Growth model, where
(Owner's equity + Long term liability – Fixed Assets – Non Current Assets) x Muslim equity portion x 2.5%

According to the book "Panduan Zakat di Malaysia" published by The Department of Islamic Development Malaysia (JAKIM) in 2001, the said methods above are highly recommended methods to compute business zakat. However, most of the states use adjusted working capital method. The adjustments are deduction from current assets (such as non-permissible item, limited ownership), addition to current assets (such as donations for charitable purposes) and addition to current liabilities (such as non operation procedure payable and overdraft).

Summarized from the above, all companies in Malaysia with muslims portion of equities must (wajib) pay Zakat on business. Some companies argue that they do not have to pay zakat on business because majority of the Board of Directors or shareholders are non muslims. This statement is not acceptable although Company's Act, 1965 determined that management of the company is under the Board of Directors; written in the Subject 76 Fourth Schedule of Company's Act, 1965. This is because; the power of Board of Directors is still subject to the shareholders' power that can voice out their right during

Annual General Meeting (Aisyah, B., 2002). For that reason, if the companies have muslims portion in the equities, they must (wajib) pay zakat on business. The action of payment must be voice out by the muslims shareholders supported by muslims Board of Directors.

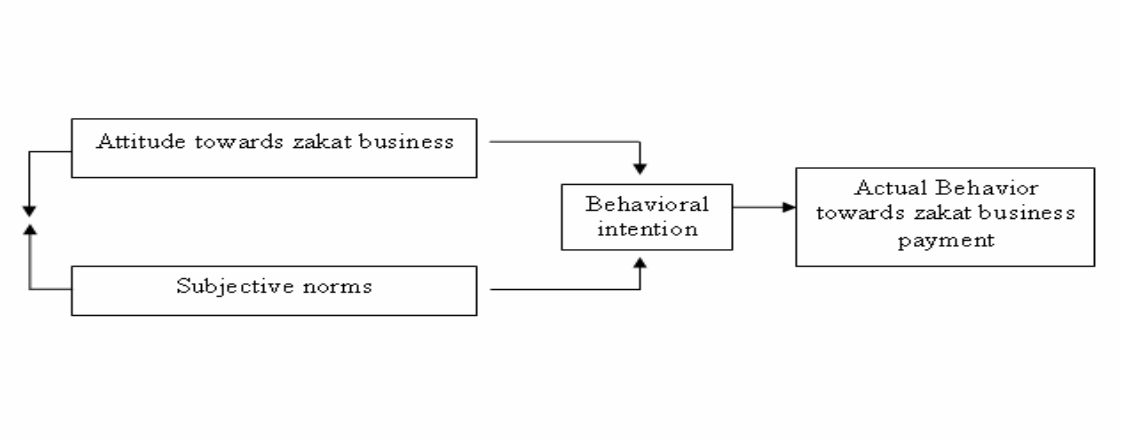
The Board of Directors who has given the trust by the shareholders and members to run the business are responsible to take the initiative to pay zakat on business. Should the Board of Directors do not have the mandate to use company's fund for zakat payment, a motion should have to be presented in the Annual General Meeting to obtain approvals from the shareholders or members to pay zakat.

3.0 RESEARCH METHODOLOGY

To achieve the objective, the model that will be used to test whether there is a relationship between zakat payment with member of Board of Directors, shareholders, corporate governance compliance, profit, industry, size and location of headquarters of the company exist or not is based on the model introduced by Ajzen and Fishbein, 1980 and developed by Ram al Jaffri and Kamil, 2007. This model is known as Theory of Reasoned Action.

The following is the model framework developed by Ram al Jaffri and Kamil, 2007 that will be used in this study:

Figure 3.1: Model Framework by Ram al Jaffri and Kamil, 2007



Independent variables

The specific related variables are chosen from the attitude towards zakat on business and subjective norms that lead to behavioral intention and directly will affect the actual behavior towards zakat on business payment.

We selects the following independent variables referred to the variables that are normally use in the corporate governance disclosure from the previous studies such as studies done by Sh. Norhafiza et.al (2005) and Klapper and Love (2002). For the purpose of this study, we had agreed to choose the following as variables:

Attitude towards zakat on business:

a. Board of Directors – how many percentage of muslims directors in the company. The category of the percentage is dividing into 4 i.e less than 25%, 25-50%, 51-75% and more than 75%.

b. Shareholders – who are the majority shareholders of the company? This study divides them into three categories whether majority is held by company, individual-non muslims or individual muslims. Majority is considered as more than fifty percent (50%)

Subjective norms:

c. Industry – The Company is under which industry in the syariah listed company.

d. Size – Three category of size i.e small, medium and big company is based on the amount of total assets in the company.

e. Profitability – Is the company making profit or not in the financial year. Although, irrespective whether the company making profit or not, the company is still obliged to pay zakat on business. According to Zahri Mamat (2009), if the business is having positive working capital they must pay zakat on business no matter whether they are making profit or not in the financial year. However, we still choose profit as variable, because the company might not pay zakat on business because they have short of money if the company is not making any profit.

The dependent variable is payment of zakat on business income; whether the company paid zakat on business income or not. The information whether the company paid zakat on business income are based on three sources, namely Income Statement of the company, advertisement in newspaper or business magazines and zakat administrators. Since most of zakat administrators do not disclose directly which company that already paid zakat on business income, the bulletin issued by them are referred to.

3.1 DATA COLLECTION

The data was collected through content analysis (annual report) by retrieving from the Bursa Malaysia's website.

Our population is all syariah listed companies, listed on both Main and Second Board. As reported by the Syariah Advisory Council of the Securities Commission Malaysia in November 2009, there are 846 companies listed as Syariah Compliant Securities.

Syariah Advisory Council of the Securities Commission had approved a list of securities that can be classified as securities that syariah compliance. In order to classify the security as syariah compliance, Securities Commission will gather information of the company from a few sources such as annual report of the company, responses from the survey to get full information and from the interview with the management of the company. Securities Commission through Syariah Advisory Council will always monitors all the activities by the companies listed in Bursa Malaysia in order to determine the status from syariah perspectives.

Based on the population of syariah listed companies, our sample size will be 281 companies. We used systematic sampling selection where every 3rd company listed was selected. This sample size is derived based on the table suggested by Bartlett, Kotrlik, & Higgins (2001) whereby it has a 95% confidence level and a confidence interval of 3.

4.0 FINDINGS AND ANALYSIS

The data is analysed using Statistical Package for Social Science (SPSS) version 14.0. In order to meet the objectives of the study, descriptive statistics was initially employed. The use of descriptive statistics and also mann-whitney test are important to describe the phenomena of zakat on business payment. Logit regression analysis is also applied to achieve the objective of the study. The model used in this study is named as Zakat on Business Model is explained as follows:

Zakat on Business Model

$$\text{Loq } y = b + ax_i + bx_{ii} + cx_{iii} + dx_{iv} + ex_v$$

where:

x_i = Percentage of muslims directors in the company

x_{ii} = Majority shareholder in the company

x_{iii} = Type of industry.

x_{iv} = Profitability of the company

x_v =Size of the company

This section discusses the findings of the study and provides some conclusions based on descriptive statistical analysis on the data collected from the annual reports.

4.1 Descriptive analysis on dependent variables (whether company paid zakat business or otherwise)

Table 4.1: Summary of overall data

Payment

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	yes	47	16.7	16.7	16.7
	no	234	83.3	83.3	100.0
	Total	281	100.0	100.0	

Table 4.1 above shows the list of sample companies that either pays zakat or not. Our sample, as explained in the previous chapter consists of 281 companies listed in the syariah approval board. They are assumed to represent all syariah listed companies.

Zakat on business income model is estimated based on the dichotomous dependent variable whereby companies that pay zakat on business are coded as one (1), otherwise coded zero (0). By referring to Table 2, only 16.7% pay zakat business and 83.3% did not involve in paying zakat on business income. It indicates that the percentage of the awareness or knowledge on zakat business income is very low.

The result is aligned with the statement by Minister in Prime Minister Department, Dato' Dr Abdullah Md Zin, there are 80% of muslim bumiputera company's did not pay zakat on business. Only 20% company owned by muslims that registered with Registrar of Company (ROC) performed the responsibility to pay zakat.

4.1.1 Descriptive analysis on independent variables.

Table 4.2: Summary of Independent variables

INDEPENDENT VARIABLES		**Frequency**	**Percentage (%)**
Board of Directors (percentage of muslim directors)	Less than 25%	122	43.4
	25-49%	89	31.7
	50-74%	40	14.2
	More than 75%	30	10.7
Shareholder (majority	Company	210	74.7

shareholder)	Individual – non Muslims	65	23.1
	Individual – Muslims	6	2.1
Type of Industry	Consumer	43	15.3
	Industrial Product	91	32.4
	Constructions	15	5.3
	Services	57	20.3
	Properties	25	8.9
	Plantation	12	4.3
	Technology	35	12.5
	Infrastructure	2	0.7
	Finance	1	0.4
Company's making profit or loss	Profit	182	64.8
	Loss	99	35.2
Size of company	Small	20	7.1
	Medium	118	42
	Big	143	50.9

As outlined in the previous chapters, one of the objectives of this study is to determine the factors influencing the company to pay zakat on business. Table 4.2 summarizes our key independent variables.

The above table explained that 43.4% of the companies have less than 25% muslim as Board of Directors. 31.7% of the sample has 26-50% of muslims as Board of Directors. 51-75% of muslims directors only exist in 14.2% of the company and lastly only 10.7% of the company have muslims directors more than 75%. It concludes that the percentage of muslim as a directors in the company is very low in Malaysian scenario.

For majority shareholders, 74.7% from the sample belongs to company whereas 23.1% from the majority of the shareholders belongs to non-muslim. Only 2.1 % of the sample belongs to muslims.

In terms of industry, 15.3% of the sample is from consumer's industry, 32.4% is industrial product industry, 5.3% from construction industry, 20.3% from services industry, 8.9% from properties industry, 4.3% from plantation industry, 12.5% from technology industry, 0.7% from infrastructure industry and only 0.4% from finances industry. This shows that most of the company listed in the syariah approval list comes from consumer and services industry.

From the total sample, the head office of the companies is predominantly registered at Kuala Lumpur (37.4%). 33.1% head office of the companies located at Selangor. The rest is located at other states. Zakat Administrator should aggressively promote on the importance of zakat on business income. This is because previously only little promotion is being done which leads to lack of awareness among the companies. The collection of zakat on business income should be more than what they have been received. Hence, with a greater promotion it will leads to a greater collection in zakat on business income and increase the level of awareness of zakat on business income among the companies.

In terms of profit or loss incurred, 64.8% of the sample shows that most of the companies are making profit. Only 35.2% of the samples show otherwise. Furthermore, 7.1% of the sample is categorized as small size, 42% is considered as medium category and 50.9% is being categorized as big. Given these two independent variables, most of the company from the sample is large and making profit and hence the collection of zakat on business is expected to be more. However, what happen in reality is not as expected. Even though most of the company is a big company and earning greater profit, but the payment of zakat on business income is still poor.

Table 4.10: Relationship on independent variables between company that pay zakat or not

Mann-Whitney Test

	BOD	**Shareholder**	**Industry**	**Profit**	**Size**
Mann-Whitney U	922.000	5006.000	4474.500	4998.500	5149.500
Wilcoxon W	28417.000	6134.000	31969.500	5986.500	32644.500
Z	-9.585	-1.284	-2.066	-1.523	-.772
Asymp. Sig (2-tailed)	.000	.199	.039	.128	.440

A Mann-Whitney test is used to determine if there are any significant differences between these independent variables for company that contribute zakat on business income or not. This test is used because the data distribution is not normal and ordinal in nature.

Table 4.10 shows that there is significant differences for only 2 independent variable which are muslims as the Board of Directors and industry. The company with higher percentage of muslims directors and industry have stronger response towards zakat payment. Perhaps the most plausible reasons can be proposed to explain the attitude on the payment of zakat on business income is because of board of director has the right and power in making decision in the company and environment of the industry could expose the company towards zakat payment.

4.2 LOGIT REGRESSION

Before looking at the empirical results of this study, it would be best to highlight again the research question in this study. The question is:

"What are the factors associated with the payment of zakat business income of a company?"

In answering the above question, logit regression analysis is used to test the theoretical model in the equation discussed earlier. As the dependent variable is a dichotomous, a logit regression analysis was carried out to maximum likelihood estimating procedure where it applies a logarithmic transformation to the dependent variable. To test statistically whether compliance of zakat payment are influenced by muslims directors, majority shareholders, type of industry, profitability and size of the company, the logit zakat on business model was employed. The result is presented in Table 4.11.

Table 4.11: Summarizes of variables in the equation

Variables in the Equation

		B	S.E.	Wald	df	Sig.	Exp(B)
Step 1[a]	BOD		.362	49.427	1	.000	.078
	Shareholder	.793	.492	2.595	1	.107	.452
	industry	-167	.132	1.597	1	.206	1.181
	profit	-.222	.511	.188	1	.664	1.248
	size	-.662	.383	2.985	1	.084	1.939
	Constant	-6.604	2.018	10.705	1	.001	738.057

a. Variable(s) entered on step 1: BOD, Shareholder, CG, industry, HO, profit, size.

Therefore, zakat on business income model can be written as follows:

Zakat on Business Model:

$$\text{Loq } y = -6.604 + 2.546x_i + .793x_{ii} + -.167x_{iii} + -.222x_{iv} \; -.662x_v$$

where:

x_i = Percentage of muslims directors in the company
x_{ii} = Majority shareholder in the company
x_{iii} = Type of industry.
x_{iv} = Profitability of the company
x_v =Size of the company

The above summarizes the determinants of payment in zakat on business income of company in Malaysia. The majority shareholders, type of industry, profitability and size

of the company (x_{ii} - x_v) shows that the p-value is more than 0.05 which is considered as not significant. Thus, we cannot prove statistically that all these variables have impact on zakat on business income of a company.

However, the position of muslims directors as Board of Directors, x_i is the only independent variable that significant and positively related to the payment in zakat on business income of a company. Indeed, there is a strong support to reveal that the larger percentage of muslims directors in a company, the more likely to pay zakat on business income.

5.1 CONCLUSIONS

Zakat on business is zakat that is obligatory to be paid on business property whether it is based on production, mining, fishing, shipping, supplying, and agriculture or service providing. Islam viewed business activities as important but considers necessary for the company to contribute back to the society in terms of zakat. The company that pays zakat on business wealth indicates their commitment to promote social justice and fulfill its social accountability to Allah s.w.t (Abdul Rahman, 2003). However, the current scenario in Malaysia shows that the collection of zakat business is still poor. Collection on zakat on income is normally more than collection for zakat on business in any zakat administrators in Malaysia.

This sample study is 30% from the total population (846 companies) of all syariah compliance listed companies. By using the systematic sampling, 281 companies were chosen. Cross-tabs analysis was conducted to look at the correlation matrix among the variable with the company that pay zakat on business or not. Next, mann-whitney test is done to look at the significant of the variables. Lastly, logistic regression analysis was conducted to examine whether the Muslims directors, majority shareholders, type of industry, profitability and size of the company are associated with payment of zakat by company or not.

From the analysis, this study reveals that there is a relationship between compliance of zakat on business with muslims as Board of directors, majority shareholders, profitability and size of company. The analysis enlighten that the compliance of zakat on business increased when there is an increase of muslims as board of directors in the company. Furthermore, as there are more muslims shareholders in the company, the tendency of the company to pay zakat business is very high. Lastly, when there is an increase of

company's size, more company will tend to pay zakat on business. Other independent variables such as industry and profitability of the company have no relationship with zakat on business payment.

With regards to the determinants of zakat on business collection, this study found that muslims directors and type of industry have a significant relationship with payment in zakat on business income. Further, logistic regression analysis was conducted to examine whether the independent variables are associated with the compliance of zakat on business by the companies or not. The empirical evidence proved that only Board of Directors has significant relationship with zakat on business payment. However, this study found that there is no significant relationship between zakat business payment and other independent variables; namely majority shareholders, type of industry, profitability and size of the company.

MENGUKUHKAN PELAKSANAAN SISTEM LESEN TUMPANG SEMENTARA PERTANIAN DI NEGARA BRUNEI DARUSSALAM MENERUSI KHIDMAT KEWANGAN ISLAM

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1. Pengenalan Sistem LTS Pertanian di Negara Brunei Darussalam:

1.1 Sejarah Pelaksanaan Sistem LTS Pertanian:

Tarikh permulaan pelaksanaan Sistem LTS pertanian di Negara Brunei Darussalam tidak dapat dipastikan dengan tepat, lebih lagi ketika ketiadaan catatan lengkap dan jelas mengenainya. Sesetengah berpendapat bahawa sistem ini mula diamalkan sekitar tahun 60-an[(1)]. Namun pendapat ini tidak dapat dibuktikan kesahihannya kerana tiada sebarang catatan rasmi yang menyokongnya.

Sesetengah pula berpendapat sistem ini diamalkan sejurus Undang-Undang LTS diperuntukkan dalam Undang-Undang Tanah Brunei 1909[(2)]. Namun pendapat ini masih boleh dipersoalkan kerana terdapat catatan rasmi yang membuktikan bahawa peraturan yang mengawal penggunaan tanah kerajaan secara LTS dan borang permohonan menduduki tanah kerajaan secara LTS hanya mula diwartakan dan diedarkan pada 23hb Disember 1948 oleh Kerajaan British yang memerintah Brunei

pada waktu itu[3]. Lantaran itu, penyelidik lebih cenderung mengatakan realisasi pengamalan Sistem LTS pertanian di Negara Brunei Darussalam hanya dapat dipraktikkan sekitar awal tahun 1949 dan bukannya pada tahun 1909 sebagaimana yang dikatakan.

1.2 Ciri & Definisi Sistem LTS Pertanian:

Idea pengamalan Sistem LTS dipercayai berasal daripada sistem pengurusan tanah dalam Islam yang disebut sebagai Sistem *al-Iqṭō*. Kepercayaan ini timbul setelah penyelidik mendapati ciri-ciri Sistem LTS mempunyai banyak kesamaan dengan ciri-ciri Sistem *al-Iqṭō*. Ringkasnya, kesamaan ini dapat dilihat menerusi jadual berikut:

JADUAL (1):

CIRI KESAMAAN ANTARA SISTEM LTS DAN SISTEM *AL-IQṬŌ*

KAWALAN
Kedua sistem ini berada di bawah pengawasan dan terikat dengan peraturan yang ditetapkan oleh pemerintah
PENGGUNAAN TANAH
Kedua sistem ini memperuntukkan penggunaan tanah hanya untuk kegunaan pertanian dalam tempoh tertentu (sementara) sahaja
OBJEKTIF
Objektif yang hendak dicapai melalui kedua sistem pengurusan tanah ini ialah “pembangunan” dalam istilah ekonomi moden atau “imarah” dalam istilah Fiqh
PERATURAN
Kedua sistem ini menguatkuasakan peraturan berikut: 1. Individu yang ingin membangunkan tanah mestilah mendapat kebenaran daripada pemerintah atau wakil pemerintah terlebih dahulu. 2. Individu yang diberi kebenaran membangunkan tanah akan diberi surat kebenaran / lesen pendudukan sementara. 3. Pemohon hendaklah terdiri daripada penduduk negeri yang berkemampuan dan serius untuk membangunkan tanah tanpa mengira bangsa, agama, individu atau berkumpulan. 4. Tanah yang tidak dibangunkan atas sebab pengabaian akan ditarik balik dan kebenaran membangun tanah / lesen dibatalkan. 5. Sewa tanah (*al-Kharrāj*) ditentukan oleh pemerintah berdasarkan keluasan tapak yang dibangunkan.

Dalam hal ini, penyelidik menolak keras jika ada pendapat yang mengatakan bahawa Sistem *al-Iqṭō* ialah cedokan daripada Sistem LTS. Kenyataan tersebut tidak dapat diterima kerana Islam memiliki cirinya tersendiri yang berkonsepkan ketuhanan, kesucian, dan kesempurnaan. Berasaskan keluhuran Sistem *al-Iqṭō* ini, penyelidik lebih cenderung mengatakan bahawa idea pengamalan Sistem LTS pertanian sekarang ialah berasal daripada Sistem *al-Iqṭō* yang diperuntukkan dalam Fiqh Islam.

Jika demikian hakikatnya, maka Sistem LTS pertanian dapat didefinisikan sepertimana definisi Sistem *al-Iqṭō* iaitu: "Satu sistem pengagihan tanah terbiar – yang tidak dimiliki oleh sesiapa – dilakukan oleh pemerintah atau wakilnya kepada pemohon tempatan berseorangan atau berkumpulan dengan kadar keluasan yang bersesuaian dengan kemampuan pemohon untuk membangunkannya secara sementara dalam suatu tempoh yang ditetapkan(4)".

1.3 Senario Pelaksanaan Sistem LTS Pertanian:

Hasrat kerajaan menjadikan tapak LTS pertanian lebih berdaya saing menghasilkan tanaman dengan jumlah yang lebih besar dan boleh dikomersilkan telah mendorong perubahan corak pengusahaan tapak tersebut daripada diusahakan secara bersendirian kepada pengusahaan berkelompok menerusi koperasi ladang komunal. Perubahan corak pengusahaan ini berlaku dalam sekitar tahun 1994 yang diletakkan di bawah "Program Kemajuan Pertanian Luar Bandar" (KPLB)(5). Sehingga kini sebanyak empat puluh (40) buah kawasan luar bandar dengan keluasan 1,908.7 hektar telah diagihkan kepada koperasi– yang berdaftar – untuk dibangunkan sebagai tapak LTS

pertanian di bawah Program KPLB. Berikut ialah agihan tapak LTS pertanian di seluruh Negara Brunei Darussalam berdasarkan daerah:

JADUAL (2):

AGIHAN TAPAK LTS PERTANIAN PROGRAM KPLB

NEGARA BRUNEI DARUSSALAM

Daerah	Jumlah Kawasan LTS	Keluasan Tapak LTS
Brunei Muara	12	423.0
Tutong	20	660.6
Belait	3	317.0
Temburong	5	508.1
Jumlah	**40**	**1,908.7**

Sumber: Buku Panduan Program KPLB, Daerah Tutong, 2008.

Dianggarkan 49% daripada keluasan tapak LTS pertanian program KPLB sedia ada tidak diusahakan dengan sewajarnya sehingga menjadi tanah terbiar. Hasil pertanian juga tidak memberangsangkan sebagaimana yang ditunjukkan dalam Jadual (3):

JADUAL (3):

PERATUS PEMBANGUNAN TAPAK LTS PERTANIAN PROGRAM KPLB

Daerah	Jumlah Kawasan LTS	Keluasan LTS (Hektar)	Keluasan Aktif (Hektar)	Kawasan Aktif (%)	Keluasan Tidak Aktif (Hektar)	Kawasan Tidak Aktif (%)
Brunei Muara	12	423.0	174.0	41	249.0	59
Tutong	20	660.6	548.0	83	112.6	17
Belait	3	317.0	148.0	47	169.0	53
Temburong	5	508.1	113.0	22	395.1	78
Jumlah	**40**	**1,908.7**	**983.0**	**51%**	**925.7**	**49%**

Sumber: Buku Panduan Program KPLB, Daerah Tutong, 2008.

Jadual (4) pula memperincikan hasil keluaran pertanian di kesemua tapak LTS:

JADUAL (4):

PENGELUARAN HASIL TAPAK LTS PERTANIAN PROGRAM KPLB

Daerah	Keluasan LTS (Hektar)	Pengeluaran Hasil (mt)	Anggaran Nilai (BND)	Purata Hasil (Hektar)
Brunei Muara	423.0	500	835,000	1.19
Tutong	660.6	248	434,000	0.38
Belait	317.0	141	196,000	0.45
Temburong	508.1	99	184,000	0.20
Jumlah	**1,908.7**	**988**	**1,649,000**	**1 ha = 0.52mt**

Sumber: Buku Panduan Program KPLB, Daerah Tutong, 2008.

2. Masalah Pelaksanaan Sistem LTS di Negara Brunei Darussalam:

Kajian mendapati tatacara pengurusan yang lemah daripada pihak kerajaan dan juga daripada pihak koperasi, di samping wujudnya masalah kekurangan peruntukan kewangan membiaya aktiviti pertanian di tapak LTS merupakan faktor utama kegagalan pelaksanaan Sistem LTS pertanian Program KPLB ini.

2.1 Pengurusan Pihak Kerajaan:

Jabatan Tanah, Kementerian Pembangunan diberi kuasa untuk mengeluarkan LTS kepada koperasi untuk mengusahakan tapak pertanian(6). Ia juga berperanan membuat pemantauan kerja pertanian, menghulurkan bantuan yang diperlukan oleh koperasi, membuat pemeriksaan, dan membatalkan lesen jika mendapati tapak diabaikan atau diusahakan tetapi tidak menepati peraturan yang telah ditetapkan(7). Walau bagaimanapun, Jabatan Tanah menghadapi masalah kesukaran untuk menjalankan tanggungjawabnya memantau kerja pertanian kerana tidak memiliki tenaga pakar. Tambahan pula, jabatan juga tidak mempunyai peruntukan khas untuk membiayai Program KPLB untuk menghulurkan bantuan kepada koperasi(8).

Untuk penyelesain masalah ini, ada baiknya jika tapak LTS pertanian digezetkan di bawah penguasaan dan kawalan Jabatan Pertanian, Kementerian

Perindustrian dan Sumber-Sumber Utama kerana jabatan tersebut mempunyai tenaga pakar dalam hal ehwal tanaman dan berpengalaman luas dalam mengurus hal ehwal perladangan. Selain itu, kerajaan Brunei juga menyediakan peruntukan kewangan yang besar kepada Jabatan Pertanian dalam setiap tempoh lima (5) tahun untuk merangsang aktiviti pertanian dan mempelbagaikan industri agri-makanan dalam negara[(9)]. Dengan peruntukan yang ada, urusan pemantauan, pemeriksaan, dan agihan bantuan akan dapat dilakukan dengan lebih berkesan.

2.2 Pengurusan Pihak Koperasi:

Lazimnya tapak LTS pertanian yang diagihkan oleh pihak kerajaan kepada koperasi akan dipecahkan kepada bahagian yang lebih kecil untuk dibangunkan oleh setiap orang peserta yang mendaftar dalam koperasi tersebut. Setiap orang peserta bertanggungjawab mengurus dan membangunkan tapak masing-masing tanpa campur tangan daripada pihak koperasi. Kaedah pengurusan seumpama ini dilihat tidak wajar berlaku kerana ia mengundang pelbagai kesan negatif terhadap perlaksanaan Sistem LTS pertanian di negara ini. Antaranya ialah:

a. Kegagalan koperasi mencapai kemajuan kerana usaha membagunkan tapak LTS hanya dilakukan secara bersendirian dengan berbekalkan modal yang kecil.

b. Kegagalan peserta koperasi menguasai alat teknologi moden. Kajian mendapati 91% daripada peserta masih berada dalam takuk lama mengusahakan tapak mereka dengan cara tradisional iaitu menggunakan kapak dan cangkul sahaja.

c. Kegagalan peserta koperasi mengawal masalah alam semulajadi seperti serangan binatang perosak, penyakit tanaman, tanah susur, dan sebagainya.

d. Menimbulkan perasaan tamak di kalangan peserta untuk menguasai tapak LTS sepenuhnya. 76% daripada responden mengakui tujuan mereka menyertai koperasi ialah untuk mendapatkan tapak dan untuk suka-suka.

Kesan negatif yang terhasil daripada corak pengurusan di atas secara langsung mencetuskan masalah pengabaian tapak LTS dan kurangnya hasil pertanian kerana tapak tidak dapat diusahakan dengan maksima yang juga menyebabkan kurangnya pendapatan. Oleh itu, pihak koperasi mesti berusaha mewujudkan suasana kerja baru yang lebih berwibawa bagi tujuan meningkatkan sarana produktiviti yang meliputi aspek teknikal, pengurusan, kemahiran, dan prestasi kerja. Ke arah mewujudkan suasana kerja yang kondusif, prinsip "perkongsian" (*al-Mushārakah*), "bekerjasama" (*al-Ta□āwun*), dan "pembahagian tugas" (*al-Taqsīm*) dilihat mampu untuk merealisasikannya.

Melalui perkongsian modal akan dapat membentuk satu kuasa yang kuat untuk melaksanakan projek baru atau peluasan projek sedia ada(10). Dengan perkongsian juga tidak akan timbul perasaan rakus, memperalat, atau diperalatkan oleh sesiapa kerana kesemua peserta sama-sama terlibat dalam kegiatan bercucuk tanam, sama-sama menanggung risiko kerugian dan juga menikmati keuntungan(11). Dengan adanya kerjasama, koperasi mempunyai keupayaan untuk membeli mesin, peralatan, bekerjasama menangani masalah alam semulajadi, mengurangkan kos penyediaan di samping meningkatkan penghasilan dan menjualnya dengan kerjasama pada harga yang lebih rendah daripada harga pasaran biasa, sekaligus membantu meningkatkan pendapatan dan keuntugan di kalangan ahli koperasi(12). Sementara dengan pembahagian tugas pula akan dapat meningkatkan tahap kecekapan dan meningkatkan kadar pertumbuhan penghasilan(13).

3. Pengukuhan Aktiviti Pertanian Menerusi Khidmat Kewangan Islam:

3.1 Peranan Institusi Kewangan Islam Memajukan Sektor Pertanian:

Toleransi dan kerjasama yang erat daripada institusi kewangan Islam dilihat dapat mengurangkan beban yang ditanggung oleh kerajaan dalam memajukan sektor pertanian negara. Ini disebabkan institusi berkenaan mempunyai kekuatan fisikal yang luar biasa kerana dianggotai oleh pelbagai lapisan masyarakat dari pelbagai latar belakang, seperti peniaga, pelabur, pengilang, pengusaha, pengurus enterprise kecil dan sederhana (SMEs) dan sebagainya. Untuk mengukuhkan sektor pertanian negara, institusi kewangan Islam disarankan supaya lebih agresif menawarkan pelbagai khidmat perbankannya dan mempelbagaikan lagi mod pembiayaannya kepada para petani, antaranya ialah;

3.2 Menawarkan Khidmat Penanaman dan Penjagaan Tanaman:

Khidmat penanaman dan penjagaan tanaman ini dapat direalisasikan melalui kontrak *al-Muzāra□ah* dan kontrak *al-Musāqāh*;

a. *Al-Muzāra□ah*:

Iaitu "satu kontrak perkongsian dalam aktiviti pertanian di mana pemilik tanah menyerahkan tugas penanamannya kepada pihak kedua. Hasil tanaman yang diperolehi akan dikongsi bersama antara keduanya dengan pembahagian nisbah seperti ½, ¼, atau 10%, 20% dan sebagainya mengikut persetujuan[(14)]". Kontrak ini boleh dilakukan menerusi perjanjian di antara dua (2) pihak, iaitu; pertama diwakili oleh bank sebagai pihak yang menyediakan pembiayaan, kedua diwakili oleh pemilik tanah atau petani yang memerlukan dana. Menerusi kontrak ini, bank akan turut serta

dalam urusan pengusahaan tanah berkenaan iaitu dengan menyalurkan input pertanian yang diperlukan oleh petani. Untuk menjamin kesungguhan petani melakukan tugas penanaman, mereka juga dikehendaki turut sama menyediakan sebahagian daripada input yang diperlukan. Pembahagian keuntungan antara keduanya dapat dilakukan berdasarkan nisbah modal yang dikeluarkan oleh masing-masing, dan keuntungan yang selebihnya diserahkan kepada pemilik tanah. *Al-Muzāra□ah* juga boleh diaplikasikan melalui pengambil-alihan pemilikan tanah oleh bank samada dengan cara penyewaan atau pembelian, seterusnya bank membuat kontrak dengan para petani dan menyalurkan sebahagian atau keseluruhan input pertanian(15).

b. *Al-Musāqāh*:

Iaitu "satu kontrak perkongsian dalam aktiviti pertanian di mana pemilik tanah menyerahkan tugas penyiraman dan penjagaan tanam-tanaman kepada pihak kedua. Hasil yang diperolehi akan dibahagikan berdasarkan nisbah yang dipersetujui seperti ½, ¼, atau 10%, 20%, dan sebagainya seperti yang dipersetujui(16)". Kontrak *al-Musāqāh* boleh dilakukan menerusi perjanjian di antara dua (2) pihak, iaitu; pihak bank atau syarikat yang membiayai projek pengurusan air atau projek penjagaan tanah pertanian, dan pemilik ladang ataupun petani yang menjalankan tugas penyiraman dan penjagaan tanaman. Melalui kontrak ini, bank atau syarikat berkenaan melakukan projek penghantaran air, atau penggalian sumber air, atau projek penyulingan air sungai untuk diedarkan ke ladang yang sukar didapati sumber air. Khidmat tersebut akan diberi pulangan daripada hasil jualan pertanian seperti yang dipersetujui.

3.3 Mempelbagaikan Mod Pembiayaan Pertanian:

Selain daripada menawarkan khidmat penanaman dan penjagaan tanaman, institusi kewangan Islam juga dilihat perlu kreatif dalam mempelbagaikan mod pembiyaannya dalam usaha mengukuhkan aktiviti pertanian. Antaranya ialah;

a. *Al-Sharikah al-Mutanāqisah* (*Decreasing Partnership*):

Iaitu "satu bentuk perkongsian pelaburan antara bank dengan pelanggan. Pihak bank memberi kebenaran kepada pelanggan untuk mengambil-alih kedudukannya sebagai rakan kongsi pelaburan samada sekaligus ataupun dilakukan secara berperingkat mengikut perjanjian awal(17). Untuk pengambil-alihan projek tersebut, pelanggan dikehendaki memulangkan kos pembiayaan kepada bank secara *lump sum* ataupun secara ansuran. Setiap bayaran ansuran yang dibuat akan mengurangkan syer bank terhadap projek tersebut sehinggalah ia dimiliki sepenuhnya oleh pelanggan(18)". Melalui pembiayaan ini, institusi kewangan Islam bukan sahaja berperanan sebagai pembiaya projek, bahkan juga berperanan sebagai rakan kongsi pelaburan bersama pelanggan. Ia boleh diaplikasikan oleh institusi kewangan Islam melalui pembiayaan membeli jentolak, pembajak, dan sebagainya dengan mengenakan sayarat bayaran ansuran mudah dan munasabah.

b. *Al-Ijārah al-Tamlīkīyah* (*Lease Purchase*):

Gambaran praktikalnya ialah, institusi kewangan Islam berperanan membeli barangan tertentu dan disewakan kepada satu pihak (penyewa) untuk tempoh tertentu dengan bayaran sewa yang mungkin lebih tinggi dari kadar sewa biasa(19). Setelah tamat tempoh penyewaan, pemilikan barang tersebut akan berpindah kepada penyewa secara pemberian percuma (*hibah*) atau dijual dengan nilai simbolik daripada bayaran

sewa terakhir. Sekiranya penyewa gagal membayar sewa bulanan, maka terbatallah kontrak *al-Ijārah al-Tamlīkīyah* dan bertukar menjadi kontrak *al-Ijārah* (sewa biasa)[(20)]. Mod pembiayaan ini bukan hanya sesuai digunakan dalam pelaburan sektor perniagaan dan perindustrain sahaja, bahkan juga sesuai digunakan untuk merangsang pelaburan sektor pertanian seperti pembiayaan mesin, alat, dan sebagainya.

c. *Al-Murābahah al-Murakkabah* (*Murābahah li al-Āmir bi al-Shirā*):

Gambaran praktiknya ialah, para pelanggan memohon bantuan daripada bank untuk membeli suatu barangan dengan memberikan spesifikasi tertentu seperti kuantiti, jenama, sifat, dan sebagainya. Bank akan membeli barang yang dipohonkan seperti yang diterangkan dengan syarat pelanggan berjanji untuk membelinya. Barang dijual pada harga asal dan dicampur dengan kos pembelian serta kadar keuntungan yang dimaklumkan. Bank menetapkan cara pembayaran dengan mengenakan syarat bayaran pendahuluan (*deposit*) kepada pelanggan sebagai jaminan. Bayaran seterusnya dilakukan secara ansuran dalam tempoh dan pada tarikh tertentu[(21)]. Sungguhpun mod pembiayaan ini pada lazimnya digunakan untuk membiaya aktiviti jangka masa pendek, ia juga dilihat sesuai diaplikasikan untuk membiaya aktiviti pertanian melalui pembiayaan peralatan dan keperluan lain. Dengan pembiayaan pendahuluan yang dihulurkan oleh bank ini akan dapat memudahkan urusan petani mengusaha ladang dan memperoleh hasil.

d. *Al-Bai□ bi al-Taqsīṭ*:

Iaitu “menyerahkan barang jualan kepada pembeli dengan bayaran tertangguh. Pembeli dikehendaki membayar samada sekaligus pada tarikh tertentu atau secara berperingkat dalam jangka waktu tertentu(22) dengan nilai jualan yang lebih tinggi berbanding dengan bayaran tunai semasa”. Melalui pembiayaan ini, seseorang yang tidak mempunyai sumber kewangan akan dapat memiliki dan menggunakan suatu keperluan dengan segera. Melihat betapa mudah dan efektifnya amalan mod pembiayaan ini, ada baiknya jika institusi kewangan Islam juga menawarkan mod yang sama untuk membiaya barangan konsumatif dan non-konsumatif seperti baja, benih, racun rumpai, dan sebagainya untuk kegunaan aktiviti pertanian. Untuk menjadikannya satu realiti, bank Islam perlu memiliki kedai sendiri supaya penduduk setempat boleh terus datang mendapatkan keperluan masing-masing dan mendapat kemudahan yang lain.

e. *Al-Salam*:

Al-Salam ialah: “penyerahan barang jualan tertangguh yang dijamin keberadaanya pada waktu tertentu dengan mendapat bayaran segera(23)”. Disebabkan kriteria *al-Salam* yang memperuntukkan penyerahan barang secara tertunda, maka sangat sesuailah jika ia diaplikasikan untuk membiaya aktiviti pertanian. Bank Islam juga boleh menetapkan supaya aset pertanian seperti tanah, jentera, dan lainnya dijadikan jaminan jika berlaku sebarang penipuan atau kecuaian yang disenghajakan oleh petani(24). Bank boleh menggunakan kontrak ini pada musim buah-buahan atau musim menuai. Setelah tiba waktunya, para petani dikehendaki menyerahkan hasil pertanian mereka seperti yang dipersetujui sebelumnya. Bank seterusnya melakukan penjualan

hasil tersebut dengan harga yang lebih tinggi untuk mendapat keuntungan[(25)]. Selain menjualnya sendiri, bank juga boleh menggunakan kaedah berikut[(26)]:

- Mewakilkan pihak lain untuk memasarkan hasil tani dengan bayaran upah mendatar (*flat wages*) atau upah komisyen (*commission*), atau upah berdasarkan peratusan untung jualan.

- Setelah tamat kontrak antara bank dan petani, bank mewakilkan petani memasarkan hasil dengan diberi upah atau tanpa upah berdasarkan persetujuan.

- Menjual semula hasil tani (setelah memilikinya) kepada petani dengan jualan harga semasa kerana berkemungkinan petani mempunyai pelanggan tetap yang memudahkan urusan pemasaran.

- Membuat perjanjian terbuka dengan pihak ketiga untuk menjual hasil tani. Walau bagaimanapun, bank tidak boleh menerima sebarang bayaran daripada pihak tersebut sehinggalah bank menerima hasil tani daripada petani.

4. Kesimpulan:

Sungguhpun Negara Brunei Darussalam telah mempraktikkan sistem pertanian berkelompok melalui pengagihan tapak pertanian secara Lesen Tumpang Sementara (LTS) kepada koperasi ladang komunal untuk tempoh yang panjang, ia tetap dilihat sebagai satu sistem yang lemah dan tidak berfungsi dalam memajukan industri sektor pertanian negara. Masalah pengabaian tapak pertanian terus berlaku mengakibatkan hasil pertanian kekal pada tahap yang rendah. Antara punca timbulnya masalah ini ialah disebabkan sistem pengurusan yang tidak cekap dan tidak mempunyai peruntukan kewangan yang cukup. Oleh itu, perubahan drastik terhadap kaedah pengurusan daripada pihak kerajaan dan pihak koperasi ladang komunal dilihat perlu.

Selain itu, keperluan semasa juga mendesak supaya institusi kewangan Islam turut campur tangan dan terlibat secara langsung merangsang aktiviti pertanian negara. Ke arah merealisasikan hasrat ini, institusi kewangan Islam perlu lebih kreatif dan inovatif dalam menawarkan perkhidmatan baru di samping mempelbagaikan lagi mod pembiayaannya kepada para petani. Semoga dengan adanya bantuan secara langsung daripada institusi kewangan Islam ini akan dapat mengukuhkan pelaksanaan Sistem LTS pertanian di Negara Brunei Darussalam.

Sungguhpun institusi kewangan Islam dilihat berupaya untuk menawarkan khidmat dan mod pembiayaan pertanian, namun sudah tiba masanya Negara Brunei Darussalam mencontohi negara luar untuk menubuhkan sebuah institusi kewangan pertanian yang diurus secara Islam dan berperanan secara langsung membantu dan memberi khidmat kepada masyarakat luar bandar memajukan ladang pertanian dan mengembangkan industri agri-makanan serta pemasaran hasilnya di dalam dan di luar negara.

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(3) Brunei Land Code 1909. *Notification 123/48*. 23 December, 1948.
(4) Lihat: Wizārah al-Awqāf al-Majlis al-A□lā li al-Shuūn al-Islāmīyah. n.d. *Mausū□ah al-Mafāhīm al-Islāmīyah*. (CD-Rom). Mesir. Lihat: Akbar, Jamāl □Abd al-Qādir. 1995. *□Imārah al-Arḍ fī al-Islām: Muqāranah al-Sharī□ah bi Anẓimati al-□Umrān al-Waḍ□īyah*. □Ammān: Dār al-Bashīr. p. 58. Lihat: Al-Shazlī, Hasan. 1979. *Al-Iqtiṣād al-Islāmī: Maṣādiruhu wa Ususuhu*. n.pl: Dār al-Ittihād al-□Arabī. p.152.
(5) Basza Suriyawati binti Haji Basri. *Interview*. 21st November, 2007.
(6) Lihat: Surat Dato Setiausaha Tetap Kementerian Pembangunan Kepada Setiausaha Tetap Kementerian Perindustrian & Sumber-Sumber Utama. n.d. p.2.
(7) Basza Suriyawati binti Haji Basri. *Interview*. 21st November, 2007.
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(11) Lihat: Al-Damūhī, Hamzah al-Jamī□ē. 1985. *□Awāmil al-Intāj īi al-Iqtiṣād al-Islāmī*. n.pl: Dār al-Tauzi□ wa al-Nashr al-Islāmīyah. p.322.
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SBBA Transaction: Shariah Issues and Implications

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Abstract

SBBA is an Islamic instrument used by Islamic banks to enhance liquidity and hence enables Islamic banks to remain competitive in the market. However, some Shariah issues related to the underlying principle of SBBA have been raised such as the issue of *wa'ad mulzim*. Since there is no unanimous view on the legality of *wa'ad mulzim*, the Shariah status of SBBA becomes controversial and debatable among the scholars. Therefore, this paper aims to discuss the Shariah issues surrounding the SBBA such as *wa'ad mulzim* and *bay' al-'inah* to see whether or not the controversial Shariah concepts embedded in SBBA plays a vital role to serve the *maqasid al-Shari'ah* or otherwise. For that purpose, the implications of SBBA are also analysed to comprehend the role of SBBA in facilitating liquidity management for Islamic banks. It is found that the *wa'ad mulzim* is instrumental in SBBA as it serves as an alternative mechanism to overcome sale with condition which is considered illegal. *Wa'ad mulzim* is also a form of *makharij* which is thereafter subject to Shariah parameters for the application of *makharij* in Islamic finance. In this regard, SBBA is found to have been in compliance with the parameters especially in the actualization *maqasid al-Shariah.* Library method as well as analytical method is employed in this study to understand the nature of SBBA and the juristic views on *wa'ad mulzim.*

Keywords: Sale and Buy Back Agreement (SBBA), *wa'ad mulzim*, *maqasid al-Shariah*, bilateral promise

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Introduction

The central bank (or simply written as the Bank) has several options to choose on the monetary policy tools.[4] One of these tools is known as SBBA or repurchase agreement. SBBA can be defined as a sell and buy back agreement which is an Islamic money market transaction entered into by two parties in which a seller sells Islamic financial instruments to a buyer at an agreed price, and subsequently both parties enter into a separate agreement in which the buyer promises to sell back the said financial instrument to the seller at an agreed price[5].

The Bank may use SBBA to withdraw or neutralize cash in the banking system. For example, a recent report produced by Bloomberg, the Bank may conduct a tri-party reverse repurchase agreement with agency mortgage securities to test one of the tools for an eventual withdrawal of the Bank's unprecedented monetary stimulus.[6] The eligible collateral for this SBBA, which includes for the first time agency mortgage backed securities.[7] The aggressiveness of using this tool was due to the failure of the Bank to withdraw the more than USD1 trillion they have pumped into the financial system to combat the deepest recession since the 1930s through the Bank cut its benchmark interest rate to as low as zero in December 2009.

The introduction of Islamic banking system in Malaysia raises the question on the lack of instruments to be utilized for the purpose of enhancing liquidity in the Islamic interbank money market and providing additional avenue for the later participants to source their funding requirements. Hence, sale and buy back agreement (SBBA) was introduced as an Islamic financial instrument. The Bank also issued the Guidance Notes on SBBA on August 2002. It seems that the Bank also has the choice to use this instrument as monetary policy tools. Islamic banks use this instrument in managing their liquidity.

In recently concluded Muzakarah Penasihat Syariah Kewangan Islam, KLIFF 2010, the shari'ah issues of SBBA or Islamic Repo had been scrutinised again.[8] Shari'ah scholars such as Dr. Aznan Hasan, Dr. Shamsiah Mohamad and Ahmad Suhaimi Yahya argued that the use of SBBA may raise several shari'ah issues such as i) muwa'adah: promise to buy and re-sell at a pre-agreed price in the future and ii) the presence of *bay' al-inah* element in the structure of SBBA. Although the Shariah Advisory Council of Central Bank of Malaysia has already determined that the transactions of *bay' 'al-Inah* in the money market between Islamic banks are permissible[9], there is still room for revisiting other shariah issues that surrounding the SBBA.

The name of this instrument shows that both contracting parties promise to buy or re-sell the collateral in future. The shariah scholars agree that the purpose of this instrument is essential for cash line financing in the interbank money market.[10] It raises two *Shari'ah* issues: what is the status and legal effect of a promise in a contract? And whether it is permissible in the *Shari'ah* to stipulate a condition to buy or re-sell the same asset in a contract of sale? However, from a prudential point of view and risk management perspective, it is important to understand the value of *Wa'ad* in *Shari'a*. This issue has given rise to interesting legal and *Shari'a* discussions which have repercussions on structures that use the *Wa'ad* concept.

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4 Refer to Ismail (2010) Tools for Controlling Monetary Variables in the Islamic Banking System. ISRA Research Paper No 13.

5 http://www.klse.com.my/website/bm/regulation/rules/bursa_rules/downloads/bm_bonds_ch-1.pdf

6 As announced on 3rd August 2010. Refer to http://www.businessweek.com/news/2010-08-03/fed-to-conduct-reverse-repo-tests-as-part-of-readiness-program.html

7 Before this, the collateral was limited to Treasuries and direct agency securities.

8 This muzakarah was held on 2nd August 2010 at Nikko Hotel Kuala Lumpur.

9 Shariah Resolutions in Islamic Finance, 1st edition, Bank Negara Malaysia, 2007, page 26.

10 Refer to the National Shariah Council decision at 13th meeting, held on 10th April 2000 / 5th Muharram 1421. The council resolved that *wa`d* in the sale and buy-back agreement is permissible, provided that *wa`d* is not stipulated as a condition for the sale and purchase of the asset. Refer to http://www.isra.my/fatwas/treasury/interbank/murabaha/152-sale-and-buy-back-agreement-repo.html

This paper is aimed to revisit those issues in the light of *wa'ad mulzim* that embedded in the SBBA transaction. The remaining discussion of this paper will be divided into three main sections; the features of SBBA, the Shariah issues surrounding the development of sound and the efficient SBBA markets and the implications on risk and accounting treatment. The final section contains concluding thoughts and summary of this paper.

2. Features of SBBA (Sale and Buy Back Agreement)

The introduction of sale and buy back agreement (SBBA) as an Islamic financial instrument is aimed to enhance the liquidity in the Islamic Inter-bank Money Market (IIMM) and provide additional avenues for the IIMM participants to source their funding requirements. The rapid development of the Islamic banking system has necessitated the need to create additional instruments for IIMM to address the expanded requirements of Islamic banking participants.

SBBA transactions involve the following steps: (i) Commitment by a party to sell Islamic securities and the other to purchase the Islamic securities, and both parties subsequently promise to perform the reversal at a future date; and (ii) Results in transfer of ownership of the transacted Islamic securities under SBBA. The SBBA is similar to the repurchase (repo) agreement and has been modified to comply with shariah principles.

Securities that are sold by a seller to a buyer at an agreed price, and subsequently, both parties enter into a separate agreement in which the buyer promises to sell back the said asset to the seller at an agreed price. Conditions to buy back will make sales and repurchases null and void but promises will not invalidate them.

The basic elements of SBBA transactions are summarized as follows:

i) Basis of Trading
SBBA transaction shall be traded based on price.

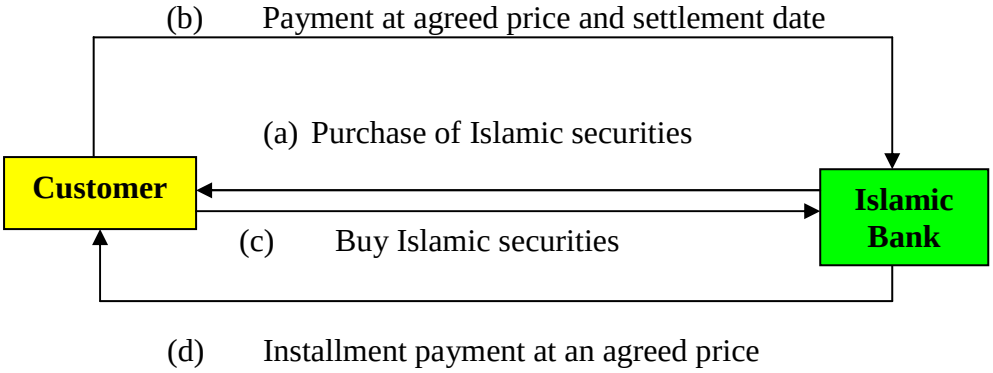
ii) Transfer of Ownership
Ownership of the Islamic securities sold under SBBA shall be transferred from the seller to the buyer.

iii) Dealing in SBBA Transaction
Transacting parties may conduct SBBA transactions via the money brokers or through direct dealing. Both parties shall negotiate the terms of SBBA and agree among others on the type of Islamic securities, SBBA price, tenure and settlement date. The various aspects of risk assessment shall be given due consideration prior to concluding the SBBA transaction.

iv) SBBA Agreements, as shown in Diagram 1:
The parties shall enter into two separate agreements as follows:

a) First agreement – the SBBA seller sells outright Islamic securities to the SBBA buyer at an agreed price and settlement date.
b) Second agreement – the SBBA buyer promises to sell back the Islamic securities to the SBBA seller, who shall also promise to buy back the instrument at an agreed price and at a future settlement date.
The undertaking made by both the SBBA buyer and SBBA seller to sell and buy back the instrument respectively at the maturity date of the SBBA shall be based on promise. To maintain market, integrity and ensure the smooth operation of the IIMM, the parties should be mindful to perform their obligations as promised.

Diagram 1: SBBA Transaction



v) Initiation of SBBA Transaction
On value date, the SBBA seller may initiate the SBBA transaction where specified securities are sold and transferred to the SBBA buyer for an agreed cash consideration. Ownership of the securities shall be transferred to the SBBA buyer upon conclusion of the first agreement on the SBBA.

vi) Matured SBBA Transaction
On maturity date, the SBBA buyer shall perform the reversal of the initial SBBA transaction by selling back specified Islamic securities to the SBBA seller for an agreed cash consideration as promised.

The proceeds shall be calculated based on specific Islamic securities. The rules on Bond Information and Dissemination System (BIDS) provide references for the formula applied on certain scripless Islamic securities and calculation of proceeds for SBBA transactions respectively. BIDS provide the information on BNM's indicative price and last traded price. While the money broker's quote will take the following form: bid and offer price; last traded price; mid price of bid and offer price; and indicative price.

However, in SBBA transactions where the market price cannot be obtained or the available market prices are not sufficiently reliable, then benchmarking will be used. Benchmarking could be done against: private debt securities indicative Yield-to-Maturity (YTM) in BIDS; government securities YTM in BIDS; BNM's indicative prices in BIDS; market value of other comparable instruments; and cost of funds plus margin.

With the above features, SBBA (which is similar to repurchase agreement or repo in conventional transactions) can act as instrument for monetary policy operations. The Bank can specify monetary policy operations either as the SBBA or as collateralised financing (pledge) or both of them.[11] Therefore, the SBBA can be an important source of collateral for monetary policy operations and facilitates the circulation of collateral between market participants. As a result, the quoted rates of the SBBA market are a key source of information on the short-term benchmark rate and allow monitoring the financing conditions in the inter-bank market (spreads repo rate-klibor). Hence, it contributes to the circulation of the Bank liquidity and to the transmission of monetary policy. In addition, the question arises on the Bank commitment towards fostering the integration of the financial system among the Islamic financial centres has a particular relevance in the case of the SBBA market (link between various market). The initiatives of the Bank towards the integration of the SBBA market need: (i) the support of the harmonization of shariah rulings of the SBBA

[11] The financing operations have to be based on adequate collateral, in order to protect the financial system from financial losses.

transaction; (ii) the broad range of securities accepted as collateral which might facilitate the expansion of SBBA market; and (iii) the definition of standards by the AAOIFI in the fields of clearing and settlement.

3. Shariah Issues Surrounding the Development of Sound and Efficient SBBA Markets

Based on the features of SBBA, several key issues in shariah will be discussed here. The aim is to rectify the legal aspects in Islamic finance which represent an important connection between the governing shariah principles and the practice of Islamic finance. The application of shariah principles in the light of the governing laws and regulations in each Islamic financial transaction are interpreted through legal advice, in legal documentation of the financial transactions, and dealing with disputes. In documenting financial transactions based on specific shariah principles that underlie a financial product, the legal documentation reflects the tenets of shariah and that it is in full compliance with the laws and regulations governing the financial transactions. Varying interpretations of shariah in particular between countries adds to the complexity when cross-border transactions are involved.

Therefore, the shariah issues surrounding the SBBA markets will be linked to the underlying contracts, namely *wa'ad*. In the following discussion, we will highlight the shariah issues related to *wa'ad* as promise.

The *Wa'ad* is an Arabic word which literally means "a promise". For example, in *Murabahah* transaction, where the purchaser promises the seller to buy a certain asset from the seller in the event the seller buys this asset from a third party. [12] As a promise, shariah scholars have different views on the legality of this concept. Scholars such as Syeikh Mustafa al-Zarqa, Dr. Yusuf al-Qaradawi and Dr. Hasan al-Shadhli[13] agree that a *Wa'ad* related to a commercial transaction is binding under Sharia'h. However, this was not the case for the traditional Islamic jurists, such as Abu Hanifah[14] and al-Shafi'i[15]

The Islamic Fiqh Academy (in short "the IFA") has decided that the *Wa'ad* is "obligatory not only in the eyes of God but also in a court of law" when:

- it is made in commercial transactions;
- it is a unilateral promise; and
- it has caused the promissee to incur liabilities;

It is also a requirement that the actual sale - if the promise was in respect of selling a certain asset - to be concluded at the time of exchange of the offer and the acceptance (during *Majlis Al Aqd*) and not at the time of the *Wa'ad*. The IFA also agrees that the promissee also has the possibility to claim actual damages from the promissor, if the promissor backs out on a *Wa'ad*. Therefore, some versions of *Wa'ad* remain voluntary while others are obligatory.

The AAOIFI have not issued a standard governing the *Wa'ad*, nevertheless, it is referred to in many of the Standards (see for example paragraph 8 of standard No 9 of the AAOIFI *Shari'a* standards - *Ijarah and Ijarah Muntahia Bittamleek*). Also, some forms of *Wa'ad* are prohibited.[16] The AAOIFI provides some guidelines, below are a few example:

- "...a bilateral promise to purchase and sell currencies is forbidden if the promise is binding ..." (paragraph 2/9 of Standard No. 1 of the AAOIFI *Shari'a* Standards - Bilateral promise to purchase and sell currencies).

[12] For more details about the *Murabaha* to the purchase orderer, please refer to Standard No 8 of the AAOIFI *Shari'a* Standards (2008), paragraph no. 2/3.

[13] Rafiq Yunus al-Masri (2001), *al-Iqtisad al-Islami, Majallah Jami'ah al-Malik 'Abd al-'Aziz*, 28th October 2001

[14] Kamal Ibn al-Humam (t.t), *Fath al-Qadir*, v.3. Beirut: Dar al-Fikr, pg: 173

[15] Al-Nawawi (1997), *al-Adhkar min Kalam Sayyid al-Abrar*, v. 2. Riyad; Maktabah Mustafa al-Baz, pg: 376

[16] For example, the separate document proofing a promise of sale contingent on a particular event should be independent of the contract of *Ijarah Muntahia Bittamleek* and cannot be taken as in integral part of the contract of *ijarah*.

- "…a binding promise is binding on one party only, while the other party must have the option not to proceed…" (paragraph 8/2 of standard no 9 of the AAOIFI *Shari'a* Standards – Transfer of the ownership in the leased property in Ijarah Muntahia Bittamleek).

The reason behind the prohibition is that the bilateral promises between the same parties in respect of the same asset are equivalent to a contract, where both countervalues are deferred. Such contract is prohibited under *Shari'a*.

Other views on how a *Wa'ad* can operate can be seen in the following example:

- "...the document of promise to buy should include a bilateral promise which is binding on both parties.." (Paragraph 2/3 of standard no 8 of the AAOFI *Shari'a* Standards – The promise from the customer)

The main points from the above examples are as follows:

i. the bilateral promise is permissible whenever it includes an option to cancel the promise. This option may be given to both parties or to one of them (Paragraph 2/3/3 of Standard No 8 of the AAOFI *Shari'a* Standards);
ii. it is possible to change the terms of the promise if both parties agree to such change. No party can solely change the terms of the promise. However, such a change cannot be effected if the parties have executed their obligations under the *Murabaha* (or the relevant agreement) (Paragraph 2/3/4 of Standard No 8 of the AAOIFI *Shari'a* Standards).

The conclusion is that changes to the *Wa'ad* are only valid as long as the parties did not enter into the agreement referred to in the *Wa'ad*. However, if one of the parties insists on changing the terms of the promise, then the changes will constitute a new promise granted by this party to the other - the *Wa'ad* is a standalone agreement. It is not supposed to be embedded in any underlying agreement. For example paragraph 8 of standard No 9 of the AAOIFI *Shari'a* Standards (*Ijarah and Ijarah Muntahia Bittamleek)* states that "*…the method transferring the asset to the lessee must be evidenced in a document separate from the Ijarah contract documents…*" and that "*… the separate document evidencing a promise.. should be independent of the contract of Ijarah Muntahiya Bittamleek and cannot be taken as an integral part of the contract of Ijarah'*[17].

It should be noted that a *Wa'ad* cannot be used as a mechanism to circumvent *Shari'a* prohibitions. Scholars do not lack the means of prohibiting such structures where each agreement taken separately is *Shari'a*-compliant but when read jointly the structure seems to be less *Shari'a*-compliant. Clause 3 of *Majallah Al Ahkam Al Adliah* (the *Shari'a* Codification by the Ottomans) provides that "*the real reason of contracts is for the objectives and not for the literal wordings*".

The above discussion also signifies that *wa'ad* has been used as a Syariah tool to legalize the so called *'inah* contract embedded in SBBA. The *'inah* contract is rendered null and void if it is contracted on the condition that the securities will be repurchased by the seller. In this regard, *wa'ad* is used as a measure to free the *'inah* contract from stipulation of condition. Since *'inah* contract itself is a form of legal trick to circumvent riba as argued by some jurists such as Ibn Qayyim[18], the application of *wa'ad* in SBBA must be looked into from the Shariah perspective of the application of *hilah* and *makharij* in Islamic finance. A majority of scholars divided *hilah* into two classifications namely permissible *hilah* and impermissible *hilah*. However, scholars who legalize *hilah* under certain circumstances such as al-Shatibi[19] and Ibn Qayyim al-Jawziyyah[20] prescribed some conditions to be fulfilled in the usage of *hilah*. The conditions include consideration of *ma'lat al-af'al* which takes the form of *qasd al-Syari'*[21] and the motive of *mutahayyil* which is termed as *qasd al-mukallaf*.

[17] See also paragraph 2/3/2 of Standard No 8 of the AAOIFI Shari'a Standards.
[18] Ibn Qayyim al-Jawziyyah (1973), *'Ilam al-muwaqqi'in 'an Rabb al-'Alamin*, Beirut, Dar al-Jayl, V. 1, pg 288.
[19] Al-Shatibi (2003), *al-Muwafaqat fi Usul al-Syari'ah*, v. 2. Beirut: Dar al-Kutub al-'Ilmiyyah, pg: 93
[20] Ibn Qayyim al-Jawziyyah (1973), *'Ilam al-muwaqqi'in 'an Rabb al-'Alamin*, v. 3. Beirut: Dar al-Jayl, pg: 335
[21] *Qasd al-Syari'* is defined by al-Amidi as securing benefit or avoiding harm or both of them. See al-Amidi (2003), *Al-Ihkam fÊ Usul al-Ahkam*, v. 3. Beirut: Dar al-Fikr, pg: 183, al-Ghazali defines it as preservation the five essential aspects of human life namely religion, life, intellect, lineage and property. See AbË ×amÊd al-

Therefore, *wa'ad* as a form of *hilah* and *makharij* must be examined based on the guidelines of permissible *hilah*. According to the guidelines, the application of *wa'ad* in SBBA should be able to meet the *qasd al-Syari* or *maqasid al-Shariah* in the sense that it does not violate any of the *maqasid* which is of important priority such as *maqasid kulliiyyah*[22], *maqasid 'ammah*[23], *maqasid asliyyah*[24] and *maqasid daruriyyah*[25].

It is worthy to specify in the first place the status of *wa'ad* from the perspective of *maqasid al-Shariah* as to which level of *maqasid al-Syari'ah* it belongs. It is believed that *wa'ad* in this regard assumes the highest level of the above-mentioned *maqasid al-Shariah*. This is because the previous discussion sheds light on the fact that SBBA is instrumental to facilitate liquidity management for Islamic banks. It is also commonly known that liquidity is very significant for the survival of Islamic banks without which the Islamic banks will be in trouble. Therefore, a special Syariah treatment is necessary to overcome the problem of liquidity or to facilitate it to the extent that Islamic banks can be competitive in the market. *Wa'ad* can play a vital role in SBBA to ensure that *'inah* which serves as the underlying contract for SBBA is practiced accordingly.

However, if it is proven that *wa'ad* in SBBA does not actualize the *maqasid al-Shariah* as it serves as a mechanism to satisfy the interest of certain group (*maqasid juzi'yyah*)[26] at the expense of the highest level of *maqasid al-Syari'ah*, then *wa'ad mulzim* in this case is considered impermissible despite that some jurists especially contemporary jurists argue that *wa'ad mulzim* is permissible. In other word, the juristic view on the prohibition of *wa'ad mulzim* in financial transactions is applicable. This is in line with the principle of *maqasid al-Shariah* laid down by al-Shatibi as follows:

[27]

"If a general principle is established on the basis of *istiqra'* then comes a Syariah text on a specific ruling which contradicts the general principle in any form of contradiction that it may take, both must be reconciled because *Syari'* does not prescribe a specific ruling except with preservation of the general principle."

GhazzÉlÊ (t.t), *al-MustaÎfÉ fÊ 'Ilm al-UÎËl*, v. 1. Beirut: DÉr IÍyÉ' al-TurÉth al-'ArabÊ, pg: 216, al-Shatibi defines it the preservation of necessities, needs and refinements. See al-Shatibi (1421H), *al-Muwafaqat fi usul al-Syari'ah*, v. 3. Jumhuriyyah Misr al-'Arabiyyah: Dar Ib 'Affan, pg: 24

[22] *Maqasid Kulliyyah* refers to the objective of Shariah intended for the whole of ummah ( ) or for a large group of the ummah. See Ibn 'Ashur (1998), *Maqasid al-Syariah al-Islamiyyah*, T.T.P: al-Basai'r li al-Intaj al-'Ilmi, pg: .220

[23] *Maqasid 'Ammah* refers to the general objective of Shariah which includes the wisdom of Shariah and the secrets intended by Shariah in all Shariah rulings or most of them. This comprises the nature of man ( ), tolerance ( ), simplicity ( ), avoiding difficulty ( ) and harm ( ). See Ibn 'Ashur, *op.cit.*, pg: 171

[24] *MaqÉÎid AÎliyyah* refers to the objective of Shariah intended from the very beginning ( ) of the imposement of Shariah ruling. Allah prescribes this objective for the *mukallaf* without considering their situations as priority. The priority is given to the preservation the necessities (*daruriyyat*) for the sake of their survival. See al-Shatibi (t.t), *al-Muwafaqat fi usul al-Syari'ah*, v. 2. pg: 176-177

[25] It is defined as the objective of Shariah that must be protected to secure maslahah in worldly life and hereafter. It assumes the highest level of *maqasid al-Syari'ah* because its absence will ruin the human system of life. See Al-Shatibi (1991), *al-Muwafaqat*, j. 2. Beirut: Dar al-Kutub al-'Ilmiyyah, h. 7

[26] *Maqasid Juzi'yyah* refers to any interest, benefit or good secured for certain individuals or small group of the *ummah*. See Ibn 'Ashur (1998), *op.cit.*,pg: 220

[27] Al-Shatibi (t.t), *al-Muwafaqat*, j. 3, Beirut: Dar al-M'arifah, h. 9

He further said:

[28]

"The second (*dalil*) which is the probable (*dalil*) supported by definitive evidence, using it is prevalent"

Al-Shatibi's argument indicates that a disagreeable Syariah ruling which is based on probable evidence and against another Shariah ruling can be applied if it serves the *maqasid al-Shariah* or the general principle of Shariah.

4. Implications on Risk and Accounting Treatment

The following describes the common underlying risks in SBBA and some commonly adopted risk management techniques.

(a) Risk

(i) Legal Risk

Legal certainty of transactions: SBBA are undertaken on the basis of a title transfer. Under this approach, funds and securities are transferred against an obligation of the transferee to return the funds and equivalent securities on the maturity of the contract. Like any contract, SBBA may be unenforceable because the counterpart lacks the capacity or authority to enter into repo agreements, or the counterparty may be subjected to certain restrictions imposed on their capacity or authority to engage in SBBA. The use of SBBA may run the risk that a court will re-characterise the transaction as a collateralised loan if documents supporting the transactions were not carefully crafted. Standard legal agreements or master agreements have been developed to address the various legal aspects of SBBA, and clarify the roles and responsibilities of the participants and the legal framework in a particular jurisdiction.

Master agreements: A master agreement is a legal document that specifies the terms that apply to all transactions between parties, or a defined subset of transactions, including remedies in the event of counterparty default. Subsequent transactions between the same parties are consequently subjected to the master agreement through the use of confirmations that supplement the master agreement.[29] The master agreement also reduces the burdens associated with negotiating legal and credit terms on a transaction-by-transaction basis. The PSA/ISMA Global Master Repurchase Agreement (GMRA) is commonly used for SBBA.

The following are normally included in master agreements:

- Capacity of the parties, either as agents or principals
- Authority of the parties to purchase or sell securities
- Absolute transfer of legal title
- Market risk management such as mark to market, margin percentages, substitution or re-pricing
- Arrangements for delivery/receipt of securities
- Treatment of dividends payments and timing of payments
- Default procedures and the consequential rights and obligations of the counterparties, including rights of set-off
- Governing law of the agreement

[28] Al-Shatibi (t.t), *al-Muwafaqat*, j. 3, Beirut: Dar al-M'arifah, h. 15

[29] An example of master agreement can be seen in http://www.sifma.org/services/stdforms/pdf/95globalrepo.pdf

Set-off of mutual debts: (*Muqassah*)The legal enforceability of the right of set-off in the event of an insolvency, is essential in a contract under title transfer due to the obligation of the transferee to return the fund or equivalent securities at maturity. The mutual set-off in the case of a counterparty default is generally recognised. SBBA participants with multiple transactions with each other may seek to enter into a single master agreement that provides for the close-out netting of obligations under all contracts made under the agreement in the event of a default of either counterparty.

Custody: In the custody and management of securities assets, custody risk may arise when the practices and management of securities under custody and the roles and responsibilities of the agent and the principal are unclear. It is beneficial, both for the principals and agents to avoid ambiguities by specifying the rights and obligations of the agent and the principal in the legal agreements. Some custodian agents grant indemnity to compensate for damages or loss. A fairly standard practice is for agent banks to offer the principal indemnification against losses arising from counterparty default.

(ii) Market Risk

Credit evaluation: Participants of SBBA may be exposed to counterparty risk in the event of a counterparty default. Prior to conducting any repo transactions, participants would conduct formal credit evaluations and impose a credit limit on their counterparties. A formal credit evaluation involves participants acquiring comprehensive financial information about the counterparty in order to understand the financial capacity, risk profile and risk management strategy of the counterparty. Formal credit ratings from rating agencies may be used by participants to ensure their counterparties' creditworthiness. Generally, participants set differing limits based on the credit evaluation of their counterparties.

Marking-to-market (re-pricing): A decline in the market value of the securities sold in SBBA creates a credit exposure for the repo buyer, as the value of the securities asset is now lower than the cash value. To mitigate this exposure, marking-to-market is practiced to revalue SBBA using current market prices. The value of all SBBA are usually marked-to-market (or re-priced) on a daily basis to reflect changes in market prices and to re-calculate exposures. Without proper re-pricing, exposure arising from price movements may not be immediately recognised. Mark-to-market margining allows repo buyers to call for additional cash or securities assets from the seller. Notification and settlement of margin calls should be timely and damages for nonperformances of margin calls should be established in legal agreements.

Liquidity: Liquidity risk is the risk that the counterparty cannot settle an obligation for the full value when it is due, but would be able to settle on some unspecific date thereafter. The reason for the counterparty's inability to settle is usually temporary, for example, from a demand for large quantities of securities or funds that renders the counterparty unable to meet its obligations when due. Another reason could be the counterparty's inability to unwind its short outright position. One way to manage the overall liquidity is through the use of buffer securities or reserve cash. The size of buffer may be determined partly by the seller's willingness to sell, and partly by the participant's own risk management policy, for example, a higher buffer for less liquid issues. Some sellers manage their overall liquidity by selling not more than three days' worth of the underlying security's turnover.

(iii) Operational Risk

Trading and settlement procedures in the SBBA market may give rise to operational risk and lead to the occurrences of settlement fails. The following are some common measures used to mitigate operational risk:

- Maintaining a high degree of separation of duties for trading, operations, accounting, client services, marketing, asset/liability and risk management, legal services and compliance.
- Ensuring trades fall within credit limits for counterparties and overall trading limits.

- Ensuring that details of trade confirmation are complete and properly issued and that transactions are accurately recorded in internal systems
- Applying appropriate haircuts and margin call practices
- Emphasising management's role in measuring, monitoring and controlling credit and market risks
- Setting appropriate fail clauses in legal agreements to ensure that the technical (temporary) inability to deliver securities does not give rise to a formal default.

(b) Accounting, Tax and Zakat Treatment of Securities in SBBA

(i) Accounting

According to the accounting standards prescribed by the Council on Corporate Disclosure and Governance,[30] parties to a SBBA transaction should recognise the economic benefits rather than the legal nature of the transaction. However, under the Shariah principles, securities that are sold outright under the SBBA shall cease to form part of the seller's investment portfolio. While, the obligation of the SBBA seller to perform its promise to buy back the securities at maturity of the transaction should be treated as contingent liability. [31]Therefore, the SBBA seller is not entitled to receive all return and other income payment made by the issuer, it has lost the economic benefits of the securities.

(ii) Taxation

The income tax treatment of qualifying SBBA transactions is detailed in the Inland Revenue Board Malaysia (IRBM) on Tax Guidelines on Securities Borrowing and Lending (SBL) published by the Inland Revenue Board Malaysia[32]

In essence, the tax treatment outlined in the guide is based primarily on the principle that, and hence will apply only if, the economic ownership of the transferred securities remains with the SBBA seller, even though the SBBA seller does not retain legal title to the transferred securities.

On this basis, the transfer of securities under a qualifying SBBA transaction will not be regarded as a disposal by the SBBA seller. Likewise, the transfer back of equivalent securities will also not be regarded as a re-acquisition of the securities. Accordingly, for income tax purposes, no gain or loss will be recognised by the SBBA seller as a result of the transfer of securities. Conversely, the recognition of gains/losses for income tax purposes in the case of the SBBA buyer is also spelt out in the IRBM Guide.

In addition, specified payments under any qualifying SBBA transactions are exempt from tax.[33] In other cases, specified payments may be subject to tax in Malaysia unless specific tax exemption is granted.

(iii) Zakat

The calculation of zakat-able assets may be subtracted from the various debts as of that date. Because, zakat is not obligatory on wealth that one owes to others. The debt will be deducted from the total wealth of the one who is responsible of paying it off. Thus, on the day of calculation, if seller decides to sell the securities (regardless of whose securities is used), then each one of seller/buyer may deduct the relevant amount from their total wealth. If one of seller/buyer takes full responsibility of paying

[30] In particular, Financial Reporting Standard (FRS) 39 Financial Instruments: Recognition and Measurement, which states that "an enterprise should recognise a financial asset or financial liability on its balance sheet when, and only when, it becomes a party to the contractual provisions of the instrument" and "derecognise a financial asset or a portion of a financial asset when, and only when, the enterprise loses control of the contractual rights that comprise the financial asset (or a portion of the financial asset)".

[31]Refer to Guidance Notes on Sell and Buy Back Agreement - BNM/RH/GL/007-7

[32] See, Income Tax (Exemption) (No. 30) Order 1995 - Revised 2008 (http://www.hasil.gov.my/lhdnv3e/index.jsp?process=17000&menu=0&sp=4&pg_title=Tax%20Publications)

[33] Specified payments" means any of the following: (a) lending fees; and (b) the residence status of the seller.

the debt off, then the debt will only be deducted from the total wealth of the seller/buyer taking this responsibility.

In a nutshell, it is not necessary that the debt be deducted from the wealth of the seller/buyer whose securities are used, rather, one of seller/buyer can pass on this responsibility to the other and the other can accept it. If this is the case, each one of seller/buyer will be deducting the percentage of debt that that they taken the responsibility of repaying.

5. Conclusions

In conclusion, SBBA is found to be instrumental in liquidity management for Islamic banks to be competitive in the market. However, this Islamic instrument gives rise to some Syariah issues related to its legality one of which is the issue of *wa'ad mulzim* embedded in the contract. It aims to avoid stipulation of condition that may render the contract null and void. In this regard, *wa'ad* serves as a form of *makharij* whose validity is subject to total adherence to the specific guidelines for the application of *makharij* in Islamic finance. This study found that if the application of *wa'ad* can serve the highest level of *maqasid al-Shariah* which lies in the banks' ability to manage liquidity through SBBA, then the wa'ad can be considered in conformation with Syari'ah and vice versa. Instead, it is suggested that the SBBA should be used temporarily for the purpose of achieving the *maqasid al-Shariah* and at the same time, effort must be multiplied to find another Islamic instrument for liquidity management which is free from controversial element. Further study need to be conducted to identify whether or not the SBBA actualized the *maqasid al-Shariah* in Islamic finance as the result of the study will have a great impact on the status of its legality.

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أسباب الأزمة المالية الاقتصادية العالمية

من وجهة نظر إسلامية

The Causes of World Financial Crisis From The Islamic Point of View

إعداد:

الدكتور/ أنيس الرحمن منظورالحق

الأستاذ المساعد للفقه المقارن بكلية العلوم الإسلامية

جامعة المدينة العالمية بماليزيا

أسباب الأزمة المالية الاقتصادية العالمية من وجهة نظرإسلامية

الحمد لله رب العالمين, والصلاة والسلام على النبي الكريم المبعوث رحمة للعالمين, و على آله وأصحابه أجمعين، ومن تبعهم بإحسان إلى يوم الدين, أما بعد:

يمر الاقتصاد العالمي منذ عام 2008 بأزمة مالية اقتصادية, انهارت مؤسسات مالية اقتصادية عديدة من بنوك, وشركات التمويل العقاري, و شركات التوريق, وشركات التأمين, وشملت تداعيتها أسواق المال والبورصات العالمية، وامتدت آثارها إلى جميع أنحاء العالم في صورة ركود, وانخفاض حاد في معدل النمو.

في هذه الورقة محاولة من الباحث تحقيق مفهوم الأزمة, وبيان أنواعها, وسرد نبذة من الأزمات المالية الاقتصادية العالمية للمقارنة بينها وبين الأزمة الراهنة, وتشخيص الأزمة المالية الاقتصادية العالمية الراهنة,وهو مفتاح العلاج الموضوعي السليم؛لأن تصوير الشئ تصويرا موضوعيا دقيقا هو جزء من تقديم الحل الموضوعي الدقيق الرصين، واستخراج أسبابها, ومن ثم تحليل تلك الأسباب, وتكييفها من منظور إسلامي من خلال دراسة الأساليب والممارسات التي نتجت عنها أسباب الأزمة, وتكييفها على أحكام شرعية.

مفهوم الأزمة المالية الاقتصادية:

كلمة "الأزمة" مشتقة من (أزم)، وهي: الضيق والشدة، وجمعها: أزمات[1].

[1] راجع:المعجم الوسيط (16/1/أزم), ومحمد فريد وجدي: دائرة معارف القرن العشرين (225/1)

تحقيق معنى الأزمة:

أصل معنى كلمة " الأزمة" "crise"في اللغة الفرنسية تنحدر من اللاتينية:"crisis" التي تنحدر بدورها من اليونانية"kpiois", وتكتب عادة"krisis"وفق الحروف اللاتينية. ويمكن ربطها بالفعل اليوناني "krineim" الذي يترجم بـ الحكم بأنه حاسم.

ومعنى كلمة الأزمة الأصلي في الفكر اليوناني يدلّ على معنيين:

الأول: لحظة أو فترة حاسمة يقع فيها تغيير ما.

الثاني:القرارات والاختارات من أجل التغلب على المصاعب.

وعلى الرغم من تداول مفهوم الأزمة في الوسط الأكاديمي إلا أنه لا يعرف في أغلب الأحيان، ولها العديد من المعاني, ومن أبرزها:

– تغير عنيف, تفاقم مفاجئ، مرحلة فاصلة وخطرة، اضطراب وعائق مؤقت.

– تفاقم مفاجئ, اختلال في التوازن بين الإنتاج والاستهلاك, والذي يتميز بتراجع الطلب، والإفلاس،

والبطالة.

– نقص أو قلة في شئ معين كالقول بأزمة العقار, وأزمة السكن.[2]

[2]- راجع:د. عبد الرزاق بلعباس: معنى الأزمة (ص/5) وما بعدها.

ويعرف الأزمة المالية بأنها: اختلال عميق واضطراب حاد ومفاجئ في بعض التوازنات الاقتصادية، يتبعها انهيار في المؤسسات المالية, ومؤشرات أدائها, ويمتدّ آثار ذلك كله إلى القطاعات الأخرى.[3]

ويعرف الأزمة الاقتصادية بأنها: مرحلة تباطؤ للنشاط الاقتصادي تأتي بعد مرحلة توسُع اقتصادي، و تتميّز عادة بانخفاض عنيف للإنتاج ولمعدّل النمو، وبارتفاع معدّل البطالة.

فالأزمة الاقتصادية بالمعنى الدقيق هي: المرحلة المحددة التي يقع فيها تقلب عنيف للوضع الاقتصادي، والتي تنبئ بنهاية مرحلة التوسع الاقتصادي.[4]

أنواع الأزمات المالية:

تتنوع الأزمات المالية, وتسمّى بحسب السبب الذي حدثت منه. يقول محمد فريد وجدي:"و تسمى الأزمات المالية بحسب السبب الذي حدثت منه, فإن حلت من اكتظاظ السوق بكميات كثيرة من المصنوعات سميت الأزمة صناعية, وإن حدثت لعدم الحكمة في المتاجرة سميت أزمة تجارية, وإن نتجت عن النظامات المالية سميت أزمة مالية, وإن حدثت عن النقود سميت أزمة نقود, وهذه الأنواع من الأزمات وإن اختلفت أسماؤها ولكنها مرتبطة بعضهابعض, فالأزمة المالية مرتبطة بالتجارة؛ لأن المال قوام التجارة, وكذلك أزمة النقود مرتبطة بالصناعة؛ لأنه

[3]- راجع:د.عبدالله شحاته:الأزمةالمالية:المفهوم والأسباب (ص/3), والأستاذقدي:الأزمةالاقتصاديةالأمريكية وتداعياتهاالعالمية (ص/8), ود.الجوزي جميلة:أسباب الأزمة المالية وجذورها (ص/1), ود. فريد كورتل: الأزمة المالية العالمية وأثرها على الاقتصاديات العربية (ص/2-3).

[4]- راجع:د.عبد الرزاق بلعباس:معنى الأزمة (ص/14,15)

إذا وجدت كميات عظيمة من صنف من الأصناف, وكان الطلب قليلا؛ فإن سبب ذلك هو قلة النقود في أغلب الأحيان, فليس من مانع أن نتبع "جونس" في تسمية تلك الأزمات أزمة اقتصادية".[5]

لذلك يفرق الاقتصاديون بين الأزمات الزراعية, والأزمات الصناعية, والأزمات الاقتصادية, و الأزمات والأزمات المالية, والأزمات النقدية.

تبرز ثلاثة أنواع من الأزمات, وهي:

الأول:الأزمات المصرفية, لها شكلان:

أ- أزمة السيولة: عادة يقوم البنوك التقليدية بإقراض معظم الودائع لديها, وتحتفظ بنسبة معينة لمواجهة طلبات السحب اليومي, وعند ما يفاجئ بنك ما بزيادة كبيرة في طلب سحب الودائع, وتخطت تلك النسبة, ولم يستطع الاستجابة لطلبات المودعين تحدث الأزمة, وإذا امتدت إلى بنوك أخرى تصبح تلك الحالة أزمة مصرفية.

ب- أزمة الائتمان:عندما تتوافر الودائع لدى البنوك, وترفض منح القروض خوفا من عدم قدرتها على الوفاء بطلبات السحب فتحدث أزمة ائتمانية.

الثاني: أزمات أسواق المال: عندما ترتفع أسعار الأصول بحيث تتجاوز قيمتها العادلة على نحو ارتفاع غير مبرر, وهو يحدث عندما يكون الهدف من شراء الأصل هو المضاربة على سعره,

[5]- راجع: دائرة معارف القرن العشرين (1/226-227)

وحينما يكون اتجاه قوي في الأسواق لبيع الأصول تبدأ أسعارها بالهبوط, فتنهار الأسعار, ويمتد أثر انهيارها نحو أسعار الأصول الأخرى, فتنهار الأسواق.

الثالث: أزمات العملات:لما تتخذ السلطات النقدية قرارا بخفض سعر العملة نتيجة عمليات المضاربة, مما يؤثر بشكل كبير على قدرة العملة على أداء مهمتها كوسيط للتبادل أو لمخزن للقيمة يكون هذا التدهور أكثر من الحدود المعقولة التي يتم اعتبارها في الغالب ما فوق25%, وهناتحدث أزمة العملات.[6]

نبذة تاريخية عن الأزمات المالية الاقتصادية العالمية:

مر الاقتصاد العالمي بأزمات مالية اقتصادية عرفها التاريخ الاقتصادي, من أهمها:

1 – أزمة عام 1866: حين تعرضت عدد من البنوك الإنجليزية للإفلاس مما أدى إلى أزمة مالية عصفت باستقرار النظام المالي البريطاني.

2 – أزمة الركود أو الكساد الكبير عام 1929: هي أشهر الأزمات المالية الاقتصادية شهد ها الاقتصاد العالمي.

3 – أزمة الديون البولندية: وقعت عدّة أزمات في الستينات من القرن العشرين, منها البولندية هذه.

[6]- راجع:د.الجوزي: أسباب الأزمة المالية وجذورها (ص/2)

4 – أزمة الديون العالمية مع بداية الثمانينات من القرن العشرين.

5 – انهيار بورصة لندن في اكتوبر 1987 .

6 – أزمة الدول الآسيوية المالية عام 1997 التي عصفت ببلدان شرق آسيا.

7 – أزمة فقاعات شركات الإنترنيت عام 2000: شهد العالم نوعاً جديداً من الأزمات المالية.

8. أزمة ما حدث بعد 11 سبتمبر في الولايات المتحدة الأمريكية .

من السرد التاريخي الموجز للأزمات الاقتصادية يتضح أن السبب الرئيس المشترك هو الدين المبالغ فيه.[7]

9. أزمة الرهون العقارية الراهنة.

تشخيص هذه الأزمة:

إن الاقتصاد العالمي يواجه في الفترة الراهنة أزمة مالية اقتصادية حقيقية, عصفت بالأسواق المالية الدولية, وأثرت على البنوك والمؤسسات المالية. وبالرغم من أن الأزمة الحالية لم تظهر بشكل واضح إلا في أواخر سنة2007م, غير أنها بدأت تتكون داخل الاقتصاد الأمريكي منذ سنة 2000م.وتعود بداية الأزمة إلى أغسطس/آب عام2007م, سميت بـ"أزمة الرهن العقاري"أو"القروض السيئة ذات الفائدة القابلة للتغيير".

[7]- راجع:د.عبد الله شحاته:الأزمة المالية:المفهوم والأسباب, ود. الجوزي جميلة:أسباب الأزمة المالية وجذورها (ص/2-3)

حينما انخفضت أسعار الفائدة بشكل كبير سعى كثير من الأسر الأمريكية إلى قروض لتمويل شراء المنازل والعقارات, وتوسعت البنوك وشركات التمويل العقاري في منح قروض لعدد كبير من الأسر من ذوي الدخول المنحفضة لتمويل شراء المنازل, والعقارات بلغت 11 تريليون دولار. ثم قامت هذه المؤسسات المالية ببيع هذه القروض إلى شركات التوريق، و أعادت إقراض ما حصلته في تمويل عقاري جديد مرات متتالية.

وقامت شركات التوريق بإصدار سندات بقيمة هذه القروض, وطرحتها للتداول في الأسواق بأسعار أكثر من قيمتها الاسمية.

وقام المقترضون أصحاب المنازل والعقارات بإعادة رهنها بعد تقييمها بمبالغ أكثر من قيمتها الأصلية، وحصلوا على قروض جديدة من مؤسسات أخرى، وهي بدورها باعت هذه القروض إلى شركات التوريق التي أصدرت بموجبها سندات، وطرحتها للتداول في البورصات. هذا من جهة.

ومن جهة أخرى قامت البنوك وشركات التمويل العقاري بالاتفاق مع مشترى العقارات والمنازل بالتأمين على سداد القروض، و بالاتفاق مع حملة السندات بالتأمين على سداد قيمة السندات لدى شركات التأمين.

وخلال ذات الفترة تم إصدار أدوات مالية جديدة تسمى بـ (مشتقات مالية) للمضاربة على فروق أسعار هذه السندات.

ولما تشبع السوق العقاري وقل الطلب انخفضت أسعار المنازل, والعقارات، وفي ظل ارتفاع أسعار الفوائد وتزايدها، وعدم قدرة أصحابها على إعادة بيعها، أو رهنها توقفوا عن سداد

أقساط القروض وفوائدها, فبدأت أسعار السندات في الانخفاض مع انخفاض أسعار العقارات.

علما بأن هذه القروض من ودائع عملاء آخرين، ولما بدأوا بسحب جماعي لأموالهم فعجزت المؤسسات المالية عن مواجهة السحب، فأعلنت إفلاسها، وعجزت شركات التأمين عن توفيرالسيولة اللازمة لدفع التعويضات فدخلت في التعثر والإفلاس, و هكذا استمر انهيار المؤسسات المالية.[8]

وفي ضوء هذا التشخيص يمكن دراسة أسباب الأزمة من وجهة نظر إسلامية .

أسباب الأزمة المالية الاقتصادية العالمية من وجهة نظر إسلامية:

إن دراسة أسباب الأزمة من وجهة نظر إسلامية تعني بأن الأسباب ناتجة عن أساليب وممارسات محرمة من وجهة نظر إسلامية

تحليل أسباب الأزمة وتكييفها على أحكام شرعية:

[8]- راجع:د.محمد عبد الحليم :قراءة إسلامية في الأزمة المالية العالمية (ص/2-3), و الأستاذ قدي:الأزمة الاقتصادية الأمريكية وتداعياتها العالمية (ص/11-13), ود.الجوزي:أسباب الأزمة المالية وجذورها (ص/2-3), ود.فريدكورتل:الأزمة المالية العالمية وأثرها على الاقتصاديات العربية (ص/8-10), ود.عطية فياض:أزمة الائتمان العالمية في ضوء الشريعة الإسلامية (ص/2).

1- الرهن العقاري: يتم العقد ثلاثيا يقوم المالك ببيع العقار للمشتري بمبلغ معين, ويدفع المشتري جزءا من الثمن(10%مثلا), ويقوم الممول بدفع باقي الثمن للبائع مباشرة معتبرا إياه قرضا بفائدة مقابل رهن العقار له, ويسدد القرض علي أقساط طويلة الأجل, ويسجل العقار باسم المشتري باعتباره مالكا له.

تكييفه: إن الطريقة التي تسلكها البنوك وشركات التمويل العقاري هي الإقراض بفائدة, وطريقة محرمة من وجهة نظر إسلامية؛ لما فيها من التعامل بالربا. وفيه صدر قرار مجمع الفقه الإسلامي الدولي رقم 6/1/52 في دورته السادسة المنعقدة في آذار(مارس) 1990ما يلي:

"إن السكن من الحاجات الأساسية للإنسان, وينبغي أن يوفر بالطرق المشروعة بمال حلال, وإن الطريقة التي تسلكها البنوك العقارية والإسكانية ونحوها من الإقراض بفائدة قلت أو كثرت هى طريقة محرمة شرعا؛ لما فيها من التعامل بالربا, وهناك طرق مشروعة يستغني بها عن الطرق المحرمة لتوفير المسكن بالتملك".

2-إعادة بيع أو رهن العقار: عنما يرتفع سعر العقار المرهون, كثيرا مايقوم المشتري بتقييمها بمبالغ أكثر من قيمتها, وبيعه أورهنه مقابل قرض جديد بفائدة.

تكييفها: هذه المعاملة تشتمل علي قرض جديد بفائدة, وهي الربا, وهو محرم شرعا.

3-بيع الدين: صورته: يقوم البنوك وشركات التمويل العقاري ببيع هذه القروض إلي شركات التوريق.

تكييفه: لايجوز بيع الدين المؤجل من غير الدين بنقد معجل من جنسه أومن غير جنسه؛ لإفضائه إلي الربا, كما لايجوز بيعه بنقد مؤجل من جنسه أو من غير جنسه؛ لأنه من بيع الكالئ بالكالئ المنهي عنه شرعا.

وفي شأنه صدر قرار مجمع الفقه الإسلامي الدولي التابع لمنظمة المؤتمر الإسلامي رقم11/4/92في دورته الحادية عشرة في نوفمبر1998ما يلي:

"ولايجوز بيع الدين المؤجل من غير الدين بنقد معجل من جنسه أو من غير جنسه ؛ لإفضائه إلى الربا, كما لايجوز بيعه بنقد مؤجل من جنسه أو من غير جنسه ؛ لأنه من بيع الكالئ بالكالئ المنهي عنه شرعا, ولافرق في ذلك بين كون الدين ناشئا عن قرض أو بيع آجل".

4- التوريق: هو: إصدار سندات بقيمة هذه القروض بقيمة اسمية لكل سند, وطرحها للتداول بقيمة أكثر، وأقل من القيمة الاسمية .

تكييفه: لايجوز توريق الديون بحيث تكون قابلة للتداول في سوق ثانوية؛ لأنه في معني حسم الأوراق التجارية, كما أنه لايجوز التعامل بالسندات الربوية إصدارا أو بيعا؛ لاشتمالها علي الفوائد الربوية.

وفي ذلك صدر قرار للمجمع الفقهي الإسلامي التابع لرابطة العالم الإسلامي في دورته السادسة عشرة المنعقدة في يناير2002م ما يلي:

"لايجوزالتعامل بالسندات الربوية إصدارا، أوتداولا، أوبيعا؛ لاشتمالهاعلى الفوائد الربوية.ولايجوز توريق(تصكيك) الديون بحيث تكون قابلة للتداول في سوق ثانوية؛ لأنه في معنى حسم الأوراق التجارية؛ لما فيه من بيع الدين لغير المدين على وجه يشتمل على الربا".

5- فوائد القروض: إن عمليات التمويل العقاري وتوابعها تقوم علي الفوائد علي القروض.

تكييفها: إنها ربا محرم نصا من الكتاب والسنة, وإجماعا من المسلمين.

مما لاشك فيه أن الربا أشد الذنوب التي حذر منها القرآن الكريم بعد الشرك بالله سبحانه, حتى هدد القرآن العزيز المرابي إذا لم ينته عن أكل الربا بالحرب, وقد توعد الله سبحانه مرتكبيه بأكثر من عقوبة, وهذا التهديد والوعيد يدل على أن الربا بالغ الأثر على النشاط المالي والاقتصادي, وعلى المجتمع بأسره:

1- التخبط:قال الله تعالى:(الذين يأكلون الربوا لايقومون إلا كما يقوم الذي يتخبطه الشيطان من المس).{البقرة:275}يقول ابن كثير:"أي لايقومون من قبورهم يوم القيامة إلا كما يقوم المصروع حال صرعه وتخبط الشيطان له, وذلك أنه يقوم قياما منكرا. وقال ابن عباس:آكل الربا يبعث يوم القيامة مجنونا يخنق. رواه ابن أبي حاتم".[9]

هذا في الآخرة, وأما في الدنيا فيلاحظ أن الأزمات المالية تتسبب أزمات نفسية لأكلة الربا من الخوف والفزع, والاكتئاب والحزن, والاضطراب وغير ذلك من الأمور النفسية.

فهو أقرب وصف لحال الاقتصاد القائم على نظام الفائدة, حيث يظل باستمرار عرضة للأزمات المالية,والهزات الاقتصادية.

2- المحق: وهو ذهاب البركة, وهلاك المال: يقول تعالى:(يمحق الله الربوا ويربي الصدقات). {البقرة:276} يقول الآلوسي:"أي يذهب بركته, ويهلك المال الذي يدخل فيه.أخرج أحمد وابن ماجه وابن جريج والحاكم وصححه عن ابن مسعود عن النبي صلى الله عليه وسلم قال:"إن الربا وإن كثرفعاقبته إلى قل".[10]

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[9]- راجع:تفسير القرآن العظيم (708/1)

[10]- راجع:روح المعاني (51/3)

3- الحرب من الله ورسوله: يقول جل جلاله:(فإن لم تفعلوا فأذنوا بحرب من الله ورسوله){البقرة: 279}.

هذه الحرب في الأزمة الراهنة هى جزاء وعقوبة دنيوية وشاملة في صورة إعصار مالي عالمي على جميع المؤسسات المالية, والمتعاملين معها, والقائمين عليها.

4- الخلود بالنار:يقول جل شأنه:(وأحل الله البيع وحرم الربوا فمن جاءه موعظة من ربه فانتهى فله ما سلف و أمره إلى الله ومن عاد فأولآءك أصحاب النار هم فيها خالدون).{البقرة:275}

وصح عن النبي صلى الله عليه وسلم أنه قال:"إذا ظهر الربا والزنا في قرية فقد أحلوا بأنفسهم عذاب الله".[11]

6- التأمين: صورته: يقوم البنوك وشركات التمويل العقاري بالاتفاق مع مشتري العقارات, والمنازل بالتأمين علي سداد القروض, وبالاتفاق مع حملة السندات بالتأمين علي سداد قيمة السندات لدي شركات التأمين.

تكييفه: انه عقد من عقود المعاوضات المالية, وهو ينطوي علي الغرر الفاحش؛ لأن المستأمن لايستطيع أن يعرف مقدار ما يعطي وما يأخذ, وأنه ضرب من ضروب المقامرة ؛ لما فيه من المخاطرة في المعاوضات المالية. وفي الحديث:ان رسول الله صلى الله عليه وسلم"نهى عن بيع

[11]- صحيح الجامع الصغيررقم (679)و(5634)

الغرر"[12].ولما فيه من أخذ مال بلا مقابل, وهذا من قبيل أكل المال بالباطل نص علي تحريمه القرآن الكريم:(ولا تأكلوا أموالكم بينكم بالباطل...). {البقرة:188}.[13]

7- المشتقات المالية: عرفت بأنها:"عبارة عن عقود فرعية تبنى أو تشتق من عقود أساسية لأدوات استثمارية(أوراق مالية,عملات أجنبية,سلع)لينشأ عن تلك العقود الفرعية أدوات استثمارية مشتقة"[14]. و تتنوع إلي عدة أنواع من أهمها:

أ- العقود المستقبلية: عرفت بأنها:"عقود تعطي لحاملها الحق في شراء أوبيع كمية من أصل معين بسعر محدد مسبقا, على أن يتم التسليم والتسلم في تاريخ لاحق في المستقبل"[15].

والقصد من إبرامها: المضاربة على فروق الأسعار من خلال وجود المضاربين على الصعود والهبوط, فلا غرض لهم في محل العقد, وإنما غرضهم اغتنام فرصة وجود تغيرات سعرية ليقوموا بالبيع أوالشراء بهدف تحقيق الربح.

وتصدر أدوات مالية بهذه العقود, ويتم تداولها في السوق, فهنايتضح أن ما يتم أنه في الحقيقة بيع توقع ارتفاع أوانخفاض الأسعار فقط.

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[12]- مسلم(3787-4/1513)

[13]- راجع: قرار المجمع الفقهي الإسلامي التابع لمنظمة المؤتمر الإسلامي في دورته الأولى المنعقدة في10شعبان1398هـ

[14]- راجع:د. مبارك آل سليمان:أحكام التعامل في الأسواق المالية المعاصرة (ص/917),ود.محمد عبد الحليم:قراءة إسلامية في الأزمة المالية العالمية (ص/8)

[15]- راجع:د. مبارك آل سليمان:المرجع السابق (ص/922)

تكييفها: في هذه العقود يتم تأجيل تسليم الثمن والمثمن, وهذا لايجوز؛ لأنه من بيع الدين المجمع على تحريمه [16].وفي ذلك صدر قرار المجمع الفقهي الإسلامي في دورته السابعة المنعقدة في ربيع الآخرة سنة

1404هـ ما نصه:

"أن العقود الآجلة بأنواعها التي تجرى على المكشوف،أي على الأسهم والسلع التي ليست في ملك

البائع، بالكيفية التي تجرى في السوق المالية (البورصة) غير جائزة؛ لأنها تشتمل على بيع الشخص ما

لايملك اعتمادا على أنه سيشتريه فيما بعد، ويسلمه في الموعد. وهذا منهي عنه شرعا لما صح عن رسول الله صلى الله عليه وسلم أنه قال:"لاتبع ما ليس عندك"، وكذا ما رواه الإمام أحمد وأبوداد بإسناد صحيح عن زيد بن ثابت- رضي الله عنه-: أن النبي صلى الله عليه وسلم نهى أن تباع حيث تبتاع، حتى يحوزها التجار إلى رحالهم".

وفي قرار مجمع الفقه الإسلامي الدولي التابع لمنظمة المؤتمر الإسلامي رقم7/1/65في دورته السابعة عام1422هـ الموافق 1992 ما يلي:

"الطريقة الرابعة أن يكون العقد على تسلم سلعة موصوفة في الذمة في موعد آجل ودفع الثمن عند التسليم دون أن يتضمن العقد شرط أن ينتهي التسليم والتسلم الفعليين بل يمكن تصفيته بعقد معاكس،وهذا هو النوع الأكثر شيوعا في أسواق السلع، وهذا العقد غير جائز أصلا".

[16]- راجع:د. مبارك آل سليمان:نفس المرجع السابق (ص/811-814)

ب- الخيارات أو الاختيارات: عرف عقد الاختيار بأنه:اتفاق بين طرفين يمنح بموجبه أحدهما للآخر الحق- وليس الالتزام- في شراء، أوبيع أصل معين, أوأداة مالية معينة بسعر محدد خلال فترة معينة[17].

توضيح مفهومه: أنه عقد على حق مجرد يخول مشتريه حق بيع أو شراء أسهم معلومة نص عليها في العقد, فالمعقود عليه هو الاختيار نفسه, لا الأسهم المنصوص عليها في العقد.

تكييفها: إن المعقود عليه في عقود الاختيارات ليس مالا، ولا منفعة، ولاحقا ماليا يجوز الاعتياض عنه, ولما فيه من القمار في الحالات التي تنتهي بالتسوية النقدية بين الطرفين, فهو عقد غير جائز[18].

وفي نفس القرار السابق لمجمع الفقه الإسلامي ما يلي:

"إن عقود الاختيارات- كما تجري اليوم في الأسواق المالية العالمية- هي عقود مستحدثة لاتنضوي تحت أي عقد من العقود الشرعية المسماة.

وبما أن المعقود عليه ليس مالا، ولامنفعة، ولاحقا ماليا يجوز الاعتياض عنه فإنه عقد غير جائز شرعا.

وبما أن هذه العقود لاتجوز ابتداء فلايجوز تداولها".

[17]- راجع:د- مبارك: أحكام التعامل في الأسواق المالية المعاصرة (ص/1006)

[18]- راجع:د. مبارك: المرجع السابق (ص/1048-1063)

8- المعاملات العاجلة أو قصيرة الأجل: هى تقوم على توقعات المضاربين بتغير الأسعار في الفترات القصيرة لكسب فروق الأسعار, وزيادة حجم التعامل بإتاحة التعامل لمن لايملك مالا، أوأوراقا مالية, ويتم ذلك من خلال عدة آليات, منها ما يلي:

أ- البيع على المكشوف: عرف بأنه:بيع أوراق لايملكها البائع عند إتمام عملية البيع, ويتم التسليم الفعلي بواسطة أوراق مالية مقترضة من وكيله[19].

والهدف الأساسي منه هو:المضاربة على فروق الأسعار من أجل تحقيق الربح في الأجل القصير.

تكييفه: ان بيع الأسهم من قبيل بيع المعين, أوما في الذمة, فإنه لايجوز أن تباع قبل أن تملك, وفيه بيع ما لايملك البائع, والقرض بالفائدة إذا اشترط إقباض الثمن للسمسار لينتفع به بإيداعه بفائدة للحصول على مقابل الإقراض.[20]

وقد صدر قرار مجمع الفقه الإسلامي الدولي في دورته السابقة:"لايجوز أيضا بيع سهم لايملكه البائع, وإنما يتلقى وعدا من السمسار بإقراضه السهم في موعد التسليم؛لأنه من بيع ما لايملكه البائع, ويقوي المنع؛إذا اشترط إقباض الثمن للسمسار لينتفع به بإيداعه بفائدة للحصول على مقابل الإقراض".

ب- الشراء بالهامش: يراد به: أنه يقوم المستثمر بدفع جزء من ثمن الأسهم التي يريد شراءها من أمواله الخاصة, ويقوم السمسار بدفع الجزء الباقي من أموال مقترضة, وذلك عن طريق إقراضه بضمان الأوراق المالية المشتراة مقابل فائدة أعلى.

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[19]- راجع:د. مبارك: أحكام التعامل في الأسواق المالية المعاصرة (ص/743)

[20]- راجع:د. مبارك:المرجع السابق (ص/760)

تكييفه: انه شراء السهم بقرض بفائدة يقدمه السمسار، أوغيره للمشتري لقاء رهنه؛ فإنه غير جائز؛ لما فيه من القرض الربوي وتوثيقه بالرهن, وهما من الأعمال المحرمة شرعا[21].

جاء في قرار مجمع الفقه الإسلامي الدولي السابق:"لايجوزشراء السهم بقرض ربوي يقدمه السمسار أو غيره للمشتري لقاء رهن السهم؛ لما في ذلك من المراباة وتوثيقها بالرهن, وهما من الأعمال المحرمة بالنص على لعن آكل الربا وموكله وكاتبه وشاهده".

9- عدم الترابط بين الاقتصاد المالي والحقيقي: ان الاقتصاد المالي نشأ لخدمة الاقتصاد الحقيقي, ولكن ما حدث هوالانفصام والانفصال بينهما, وأضحى يتم التعامل في النقود والتمويل ذاته بيعاوشراء من خلال المداينات والائتمان أضعاف أضعاف الاقتصاد الحقيقي, مما أدى إلى خلل في التوازن بينهما هذا من جانب.

ومن جانب آخر أن الاقتصاد المالي يستند إلى الديون المركبة بعضها فوق بعض في توازن هش, فإن وجود أى خلل في إحدى حلقات الديون المركبة كما حدث في التمويل العقاري حيث توقف المقترضون عن سداد القروض, فانهار البناء المالي بكامله,وحدثت الأزمة الراهنة.

وبالمقابل فإن الاقتصاد الإسلامي يربط في التعامل بين الاقتصاد المالي والحقيقي ربطا محكما.

10- الجوانب السلوكية غير السوية: للمتأمل في أحوال المتعاملين في المؤسسات المالية يتضح جليا أن من أهم أسباب الأزمة الحالية هو السلوكيات غير السوية من جانبهم مثل الطمع, والجشع, والكذب, والاحتيال, والخيانة,

[21]- راجع:د. مبارك:أحكام التعامل في الأسواق المالية المعاصرة (ص/695)

والمعلومات المضللة, والفساد الإداري لتحقيق مزيد من الأرباح على حساب آخرين.

وأما الاقتصاد الإسلامي فإنه في جميع المعاملات المالية يربط بينها وبين القيم والأخلاق الحسنة ربطا محكما.[22]

[22]- راجع:د. محمد عبد الحليم:قراءة إسلامية في الأزمة المالية العالمية(ص/12-15), ود.سامي إبراهيم السويلم:الأزمات المالية في ضوء الاقتصاد الإسلامي.

خلاصة البحث

كلمة "الأزمة" مشتقة من (أزم)، وهى: الضيق والشدة، وجمعها: أزمات.

وهى: فترة حاسمة يقع فيها تغيرما.

الأزمة المالية هي: اختلال عميق واضطراب حاد ومفاجئ في بعض التوازنات الاقتصادية، يتبعها انهيار في المؤسسات المالية, ومؤشرات أدائها, ويمتدّ آثار ذلك كله إلى القطاعات الأخرى.

ويعرف الأزمة الاقتصادية بأنها: مرحلة تباطؤ للنشاط الاقتصادي تأتي بعد مرحلة توسُع اقتصادي, وتتميّز عادة بانخفاض عنيف للإنتاج ولمعدّل النمو، وبارتفاع معدّل البطالة.

أسباب الأزمة المالية الاقتصادية العالمية من وجهة نظر إسلامية:

إن دراسة أسباب الأزمة من وجهة نظر إسلامية تعني بأن الأسباب ناتجة عن أساليب وممارسات محرمة من وجهة نظر إسلامية.

بعد دراسة الأزمة الراهنة وتشخيصها وهو مفتاح العلاج الصحيح السليم؛ فإن تصوير الشئ تصويرا موضوعيا دقيقا هو جزء من الحل الموضوعي الدقيق الرصين- برزت أسباب الأزمة الحقيقية التالية:

1- الرهن العقاري: يتم العقد ثلاثيا يقوم المالك ببيع العقار للمشتري بمبلغ معين, ويدفع المشتري جزءا من الثمن(10%مثلا), ويقوم الممول بدفع باقي الثمن للبائع مباشرة معتبرا إياه قرضا بفائدة مقابل رهن العقار له, ويسدد القرض علي أقساط طويلة الأجل, ويسجل العقار باسم المشتري باعتباره مالكا له.

2- إعادة بيع أو رهن العقار: عنما يرتفع سعر العقار المرهون كثيرامايقوم المشتري بتقييمها بمبالغ أكثر من قيمتها, وبيعه أورهنه مقابل قرض جديد بفائدة.

3- بيع الدين: صورته: يقوم البنوك وشركات التمويل العقاري ببيع هذه القروض إلي شركات التوريق.

4- التوريق: هو: إصدار سندات بقيمة هذه القروض بقيمة اسمية لكل سند, وطرحها للتداول بقيمة أكبر وأقل من القيمة الاسمية .

5- فوائد القروض: إن عمليات التمويل العقاري وتوابعها تقوم علي الفوائد علي القروض.

6- التأمين: صورته: يقوم البنوك وشركات التمويل العقاري بالاتفاق مع مشتري العقارات, والمنازل بالتأمين علي سداد القروض, وبالاتفاق مع حملة السندات بالتأمين علي سداد قيمة السندات لدي شركات التأمين.

7- المشتقات المالية: عرفت بأنها:"عبارة عن عقود فرعية تبنى أو تشتق من عقود أساسية لأدوات استثمارية

و تتنوع إلي عدة أنواع من أهمها:

أ- العقود المستقبلية: عرفت بأنها:"عقود تعطي لحاملها الحق في شراء أوبيع كمية من أصل معين بسعر محدد مسبقا على أن يتم التسليم والتسلم في تاريخ لاحق في المستقبل".

ب- الخيارات أو الاختيارات: عرف عقد الاختيار بأنه:"اتفاق بين طرفين يمنح بموجبه أحدهما للآخر الحق- وليس الالتزام- في شراءأوبيع أصل معين, أوأداة مالية معينة بسعر محدد خلال فترة معينة".

8- المعاملات العاجلةأوقصيرة الأجل: هى تقوم على توقعات المضاربين بتغير الأسعار في الفترات القصيرة لكسب فروق الأسعار, وزياة حجم التعامل بإتاحة التعامل لمن لايملك مالا، أوأوراقا مالية, ويتم ذلك من خلال عدة آليات,منها ما يلي:

أ- البيع على المكشوف: عرف بأنه:"بيع أوراق لايملكها البائع عند إتمام عملية البيع, ويتم التسليم الفعلي بواسطة أوراق مالية مقترضة من وكيله".

والهدف الأساسي منه هو:المضاربة على فروق الأسعار من أجل تحقيق الربح في الأجل القصير.

ب- الشراء بالهامش: يراد به: أنه يقوم المستثمر بدفع جزء من ثمن الأسهم التي يريد شراءها من أمواله الخاصة, ويقوم السمسار بدفع الجزء الباقي من أموال مقترضة, وذلك عن طريق إقراضه بضمان الأوراق المالية المشتراة مقابل فائدة أعلى.

9- عدم الترابط بين الاقتصاد المالي والحقيقي: ان الاقتصاد المالي نشأ لخدمة الاقتصاد الحقيقي, ولكن ما حدث هو الانفصام والانفصال بينهما, وأضحى يتم التعامل في النقود والتمويل ذاته بيعا وشراء من خلال المداينات والائتمان أضعاف أضعاف الاقتصاد الحقيقي, مما أدى إلى خلل في التوازن بينهما

10- الجوانب السلوكية غير السوية: للمتأمل في أحوال المتعاملين في المؤسسات المالية يتضح جليا أن من أهم أسباب الأزمة الحالية هو السلوكيات غير السوية من جانبهم,مثل البطمع، والجشع، والخيانة، والكذب، والاحتيال, والمعلومات المضللة, والفساد الإداري لتحقيق مزيد من الأرباح على حساب الآخرين.

بعد تحليل أسباب الأزمة وتكييفها علي أحكام شرعية:

تبين أن الأسباب ناتجة عن أساليب وممارسات مالية، وهي محرمة من وجهة نظر إسلامية؛ لذاك توصي هذه الورقة للمؤسسات والمصارف المالية الإسلامية بتجنب الأساليب والممارسات المالية التي تمخضت عنها أسباب الأزمة، والتي حرمها الإسلام ومنعها وحذر منها، حتى تسلم من الوقوع في الأزمة في المستقبل.

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ملاحظة:أكثر البحوث موجودة على الإنترنت.

Data Management Challenges to selected Financial Sectors in Malaysia: Tools and Practices

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ABSTRACT

This paper presents an analysis of current data management challenges, tools, and practices in selected financial institutions developed (i.e. United kingdom) and developing (i.e. Malaysia) countries. The paper attempts to explore how SAS tools were used to tackle those challenges and the benefits gained by implementing SAS software. Also, the paper examined the business data management tools and practices used by the selected organization to propose alternative technologies for improvement and best practice.

***Keywords**: Data management; financial institutions; SAS; tools; practice.*

INTRODUCTION

The importance of data management (DM) in the 21st century economy is indispensable. The effective management and utilization of the diverse data and information obtained from financial transactions today is critical to enterprise governance and customer relations management. Several technologies/tools are being employed to help manage the vast amount of data at all levels in the financial sector. The challenges in managing and exchanging data in real time within and outside financial institution requires the use of sophisticated tools and practices for reliable and efficient financial transactions. Financial institutions today combine a wide range of product and service offerings, across banking, insurance and asset management firms in global cross border markets (Teodoru, 2009). Their sizes had gone beyond their corporate buildings and countries, with increasing collaborations with investors, suppliers, and customers both online and face-to-face. Creating more sophisticated

products and services for the relentlessly competitive marketplace. Those who automate and streamline their operations and services most effectively and efficiently will gain significant competitive advantage and build greater market share (Teodoru et al 2009). As such, financial institutions are generally confronted with ever-increasing data, information, and knowledge which force them to accumulate vast amount of data daily for processing and warehousing. The management and processing of these vast financial data is no longer feasible manually, and so the need to employ and implement data management technologies across branches and departments. Data management is defined as the planning, execution and oversight of policies, practices and projects that acquire, control, protect, deliver, and enhance the value of data and information assets (Mosley et al. 2009). Nowadays, there are advance data management tools and practices adopted by several financial institutions both in developed and developing countries to provide solutions to various data management problems. That will provide business organizations with business intelligence opportunities, increase market share, gain competitive advantage, and improve decision making process.

Definitely the use and integration of these tools with financial services/products provides financial organizations with an enterprise-wide control of devices and data for managerial decision making and corporate IT governance. As data integration, linkages of information, data availability & redundancy, fast data access, timeliness & updating of information, and information standardization are very important requirements for data/information management that are not yet met in a satisfactory way (Meissner, et al. 2002). These requirements are a great challenge especially to banks when exchanging data on real time bases with competing partners. This is because they all involve the use of communication networks (data & voice)

both private and public for information access and data transfer. Most critical is that customers use public networks to carry out some transactions with their financial service providers and these networks are beyond the organization's control, therefore imposes challenges on security, risk, speed, and unreliable mode of transaction, or sometime having infrastructural downtime.

In the light of all these challenges, this paper reviews the literature on recent data management issues and challenges, followed by the evaluation of identified DM tools used in financial sector. The paper also discusses the data management practice in financial institutions in developed and developing countries that implemented SAS software. Finally, the paper concludes with the impact of DM tools on the identified financial organizations in both the developed and developing countries.

DATA MANAGEMENT CHALLENGES

Many of the financial institutions had grown to become big corporate enterprise with many branches within and outside their country of origin. These force them to adopt enterprise governance in order to manage the vast amount of data generated at all levels and branches. Meissner et al. (2002) argued that exchanging data in real time between the right entities is a key challenge as information flow needs to be controlled all the time, for that reliability and performance are considered a big challenge in managing corporate financial data. Reliability been defined in the business context, as an ability to perform the promised service dependably and accurately (Parasuraman et al. 1988). However, the reliability on the Internet focuses more on the technical aspect (Song and Zinkhan, 2003). Technically, reliability is seen as the extent to which the website is available and functioning properly (Zeithaml et al. 2002). On the other hand, performance includes high transmission

rate with high and free bandwidth availability (Meissner, et al. 2002). Accordingly operational reliability and system performance if not addressed properly could affect the overall organizational efficiency and response time which eventually could pose a great challenge to the organization. Similarly, data integrity poses an interesting challenge to data management as it requires several complex data structures to be made flexible for exchange while supporting compatibility of different versions of data schemas.

Conversely, risk management is identified as a major data management issue requiring close attention in the financial sector. Power et al. (2009) challenges the core elements of enterprise risk management (ERM) as part of intellectual failure that contributes to financial crisis. The authors argued that senior management and boards must understand risk appetite more as the consequence of a dynamic organizational process involving values as much as metrics. Explaining that risk management and mitigation processes should be explicitly related to organizational and sub-organizational objectives, design controls and mitigations which produce a residual risk consistent with a target risk appetite, and monitor this entire process, making feedback adjustments as necessary (Power et al. 2009). Similarly, Cummins et al. (2009) studied efficiency of insurance firms with endogenous risk management and financial intermediation activities, in which they found that risk management is a complicated data management issue, because nowadays customers are really concerned about risk practices and exposure.

Additionally, Teodoru et al. (2009) reported that business process management and integration solution could be a challenge to data management processes. Integration is now more than ever the key to efficiency, enabling lower transaction costs and increased sales volumes, which holds true for capital markets,

for retail financial services, and for the corporate sector. Teodoru (2009) argued that integration and process optimization not only has to extend across the enterprise, but must also embrace third parties who often supply key components of today's complex, multi-instrument financial products. There is no doubt that only a sophisticated and efficient data management software can automatically handle these business intelligence processes effectively.

Personal data management is another challenge to data management in financial institutions. As electronic transactions today make it necessary for the customers to give away their personal data to the service provider and hope that the latter will not use them in a malicious way (Efraimidis et al 2009). In order to protect customer's personal information financial organization's had to manage and secure that information alongside financial information, which increases the volume of data to manage and attracts higher costs. For example, banks are responsible for the confidentiality, integrity, and authenticity of customer's information. This responsibility is strongly enforceable as a result of the existence of privacy regulations that make sure financials organizations to protect customer's personal information. Thus, managing and protecting customer's personal information becomes a challenge to financial institutions, even though they take advantage of that to study customer's income inflow and expenses. That will give them the opportunity to understanding what products and services are affordable to individual or category of customers.

METHODOLOGY

An exploratory content analysis was conducted to examine some selected data management tools used mostly in financial sectors in the UK and Malaysia. The content analysis was conducted between 2nd and 10th February, 2010. In all 26 DM

tools were selected and each of the vendor's website was evaluated to determine solutions provided by these tools (see Appendix). Out of the 26 tools evaluated 16 were found given more focused on business intelligence in financial and other sectors. Health, manufacturing and services sectors had three (3) tools each out of the 26 evaluated. Although, majority of the DM tools evaluated were Open Source, three (3) vendors (SAS, IBM, Oracle, Pervasive, and Gain) were found to be the leading proprietary software providers for data management. These vendors provides the standardized products/solutions that cut across all aspects of data analytics and integration, most especially on business intelligence, risk management, and customer relations. Among all the 26 DM tools examined SAS was found to be the most popular tool in use with more than 45,000 business, government and university sites relying on SAS, covering 92% of the top 100 companies on the 2009 Fortune Global 500 List (www.sas.com). Therefore, SAS is adopted in this study, to examine the impact of data management in financial sectors of developed (UK) and developing (Malaysia) countries.

ANALYSIS OF FINDINGS FROM SELECTED SAS USERS

SAS tools were selected to examine the challenges faced by developed (UK) and developing (Malaysia) countries. The findings shows that industries in developed countries were the major users of SAS, with United States having the highest number of 208 (i.e. 43.2%) out of the 481 organizations found to be using SAS as at the time of the study (www.sas.com), with United Kingdom having 21 organizations that implemented SAS. Among developing countries, Malaysia and China were the major users of SAS tools having 13 organizations each. In this section, SAS users from

developing (Malaysia) and developed (United Kingdom) were examined based on the DM challenges faced, tools used, and practical benefits achieved.

SAS DM CHALLENGES IN MALAYSIA

Out of the 13 Malaysian organizations using SAS 6 are financial institutions comprising 4 banks and 2 insurance companies. The finding shows that all these organizations benefited from the SAS software, even though implemented for different solutions. Table 1 summarizes the findings revealed from the exploratory content analysis on the 6 financial institutions in Malaysia that implemented SAS tools.

Table 1: Financial organizations using SAS in Malaysia

Organization	Challenges	Tools	Benefits
AFFINBANK	1. Integrate risk management procedures 2. Comply with Basel II Accord.	SAS® Enterprise **Risk** Management	• Met the Basel II deadline (Jan. 08) ahead of schedule. • Better risk management practice. • Offer better risk-adjusted pricing to customers.
Alliance Bank	1. Banking-specific solution to integrate disparate data. 2. Provide timely data access for critical decisions. 3. Leave transparent and auditable reporting trail.	SAS Banking Intelligence Architecture with SAS Data Integration Server and SAS Data Integration .	• Integrated eight source systems to give a single enterprise-wide view of customers, products and services. • Detailed transactional data, increases productivity and efficiency through reduced dependency on information systems. • **Risk** compliance, customer info.
CIMB Bank	1. Improve credit scoring capabilities 2. Continue its growth and	SAS Credit Scoring for Banking	• The bank builds up its internal capability in **risk** scorecard development. • Reduces the turnaround time for credit application

	speed up profitability		processing. • Able to price products competitively based on risk • Build sophisticated application and behavioral scorecards
EON Bank Group	1. Consolidate multisource data. 2. Meet credit risk requirements for Basel II compliance.	SAS® Credit **Risk** Management for Banking	• Decreased credit losses through improved risk models and smarter customer segmentation capabilities. • Enhanced credit policies and smoother internal processes.
Insurance Services Malaysia	1. Help Malaysian insurers become more competitive.	SAS Enterprise BI Server	• ISM's members advance their businesses with the help of speedy, accurate and consistent information. • Industry depth along with predictive analytics, risk scoring and intelligence about operational trends.
Malaysia Deposit Insurance Corporation	1. Assess, monitor and manage risk in the Malaysian banking community	SAS® Financial Management and SAS® Strategic Performance Management	• Reduce data gathering and processing time. • Allows PIDM to gather and report on data from banks across the country

(Source: www.sas.com)

The findings from Table 1 shows that all the four (4) banks (Affinbank, Alliance bank, CIMB bank, and EON bank) were faced with risk management challenges as such they employed SAS tools to help them manage their risk procedures. Although they implement slightly different SAS tool components, their target was to improve risk management practices. Being one of the DM functions, risk management is an important mission critical to the health of the financial sector. Adequate risk management systems are not only of great concern to the stakeholders and investors but also the bank's customers. Other DM challenges faced by banks in developing countries are:

- Integration of multiple data sources to give a single enterprise view
- Provision of timely data access for critical decision;
- Improved credit scoring capabilities;
- Growth and speed up profitability;
- Meeting credit risk requirements for Basel II compliance.

The two insurance companies (i.e. Insurance Services Malaysia and Malaysia Deposit Insurance Corporation) also implement SAS tools in order to assess, monitor and manage risk in the Malaysian banking community as well as help Malaysian insurers become more competitive. Again, the finding shows that the two insurance companies implemented different versions of the SAS software (i.e. SAS Enterprise BI Server and SAS® Financial Management & Strategic Performance Management) as shown in Table 1.

On the organizational impact, all the organizations examined reported that they achieved the target benefits through the use of SAS. Although, the chief risk officer of Affinbank said, "SAS is a powerful tool but yet is not able to give us a big advantage for being so uniquely flexible." Therefore, they still need SAS® Enterprise Risk Management suite to be more flexible in handling risk procedures. Nevertheless, Alliance Bank, Group CEO said, "*Our collaboration with SAS has enabled us to gain insights into our customers' behavior and needs, thus allowing us the opportunity to offer 'Banking Made Personal' for our customers through our suite of products and services."* Thus, the findings revealed that all the financial organizations that implemented SAS tools in Malaysia had achieved the target benefits that met the user's requirements.

DM CHALLENGES IN UNITED KINGDOM

Table 2 shows that the financial organizations using SAS in UK implemented different SAS components, although there are similarities in the challenges they all face. Their major challenges include targeting customers in a highly competitive marketplace, lowering costs & increasing profitability, and reducing risks with more accuracy in their marketing campaigns.

Table 2: Financial organizations using SAS in UK

Organization	Challenges	Tools	Practical Benefits
1 st Credit	Business model depends on its ability to price batches of debt more accurately and swiftly than the competition.	SAS software-based models	• Ability to get good business fast, and then manage debt collection effectively, has enabled 1st Credit to grow at a rate of 50% per annum.
Bank of America Europe Card Services	Enable sustainable improvements in large-scale complex card marketing campaigns for an already successful business: improve targeting, increase success, manage risk and reduce costs.	SAS Marketing Optimization	• Improving campaign and business performance to help push an already leading market share. • A wide-ranging analytical platform to optimize campaigns and allocate promotional interest rates more effectively.
Confused.com	Making use of valuable data in a competitive marketplace to gain new customer insights, better target campaigns and improve operational efficiency, enhance cross-selling and increase revenue.	SAS Analytics	• Greater understanding of customers means smarter targeting, improved retention marketing, reduced wastage and lower campaign costs, with an opportunity to exploit new communications channels.
HSBC	Reduce incidence of fraud, lower costs and increase customer confidence.	SAS® Fraud Management, part of the SAS Fraud Framework for Banking.	• HSBC has achieved significantly lower incidence of fraud across tens of millions of debit and credit card accounts,

			significantly exceeding aggressive objectives.
JPMORGAN ASSET MANAGEMENT	Understanding and controlling costs in a complex global asset management business, in the face of uncertain markets and lower margin areas, to improve product, client and channel profitability.	SAS Activity-Based Management from Oros software	• Improved understanding of costs and enhanced control of profitability within a global business, enabling more joined-up management targeted at sustained profitability , plus significant time-savings in gaining ABC and ABM insights and providing reports to the business.
SWINTON	Improve speed, control, effectiveness and accuracy in marketing campaigns designed to target valuable customers, generate leads and build market share in a relentlessly competitive marketplace.	SAS® Marketing Automation	• Operational efficiency gains provided immediate ROI; by improving campaigns effectiveness SAS will help Swinton to acquire new customers, retain existing ones and drive market share.

(Source: www.sas.com)

The table above shows that Swinton & Europe Card Services implemented SAS marketing tools, HSBC uses SAS Fraud Management, and Confused.com uses SAS Analytics, while JPMorgan and 1st Credit uses SAS Activity-based and Software-based models respectively.

The findings revealed that all the organizations have improved their business performance as a result of gaining greater understanding of their customer's needs, improved marketing campaigns, and optimized profitability within a relentlessly competitive marketplace. 1st Credit reported that they had achieved growth rate of 50% per annum, while HSBC said with SAS fraud management tool they have achieved a significant reduction in fraud cases across tens of millions of debit and credit card accounts, considerably exceeding their aggressive objectives.

Confused.com, Customer Director says *"SAS gives us a much better idea of who we should be targeting… I can certainly see us improving customer retention significantly and improving the relevance of campaigns. And there's also a lot of potential to improve onsite processes and help inform new product development, so there are wider impacts for the business."* Similarly, Ian Grime, Head of Data management & Analytics (Bank of America Europe Card Services) said about SAS that "*we took what was already the best in the market and improved it, while introducing new dimensions of flexibility and adaptability."* This clearly indicates that SAS products positively impacted on the financial institutions using the product in the UK. These firms have reaped great benefits from utilizing SAS products and have achieved their set targets.

CONCLUSION

The paper discussed the data management challenges in financial institutions of two selected countries. The authors identified 26 most popular data management tools available with their vendors, and evaluates those tools by selecting the leading technology used in both developed and developing countries. SAS was found to be widely implemented in many financial institutions in most developed and few developing countries. The paper critically identified the challenges, tools and benefits of data management in financial organizations in UK and Malaysia through SAS implementation.

SAS was found to be mostly used in developed countries (e.g. UK) to improve customer retention and confidence in a highly competitive marketplace, while developing countries (e.g. Malaysia) widely use SAS for risk management. This shows that financial institutions in developed countries pay more attention to targeting

new customers for increased revenue and market share. Whereas those in developing countries focus more attention on protecting customer's investments with a more secured system. Most importantly, both regions employed SAS tools to meet customer's needs and satisfaction in order for them to survive the highly dynamic and competitive financial environment through the implementation of SAS software, as clearly revealed in Tables 1 and 2.

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Appendix: Data management tool's vendors with solutions offered

SN	DM TOOL	VENDOR	SECTOR
1	The Facts™	Quantum Compliance Systems, Inc http://www.qcs-facts.com	Health & Safety Sector
2	DATIRIS™	Datiris - http://www.datiris.com	Retail & Manufacturing
3	SAS® Data Quality Solution	SAS - http://www.sas.com/	Financial
4	PowerCenter	Informatica http://www.informatica.com	Manufacturing
5	Pentaho Data Integration	Pentaho - http://www.pentaho.com	Financial
6	MapForce	Altova - http://www.altova.com	Services
7	Genedata Phylosopher®	Genedata - http://www.genedata.com	Health
8	Sybase IQ	Sybase - http://www.sybase.com	Business Intelligence
9	OneData	Data Foundations http://www.datafoundations.com	Business
10	Oracle Hyperion	Oracle - http://www.oracle.com	Business/Financial
11	GAIN Data Management	AIMSoftware http://www.aimsoftware.com	Business/Financial
12	Talend Integration Suite	Talend - http://www.talend.com	Business
13	Zoomix Accelerator™	Zoomix - http://www.zoomix.com	
14	Veracity™	KIKA - http://www.kikamedical.com	Health
15	iLuminate	Illuminate www.i-lluminate.com	Business Intelligence
16	ZEMA v3	Zema - http://www.zemasuite.com	Manufacturing
17	DecisionStream™	IBM® Cognos® http://www.ibm.com	Business Intelligence
18	OpenDQ™	Infosolve Technologies http://www.infosolvetech.com	Services Sector
19	DBclassify	Zettapoint http://www.zettapoint.com	Business
20	dn:Director	Datanomic http://www.datanomic.com	Financial
21	Data Match 2009	Data Ladder www.dataladder.com	Business/ Financial
22	DonorIQ	EQDS	Services

		http://www.equitydecisions.com	
23	Viscovery Suite	Viscovery - http://www.viscovery.net	Business
24	qMDM	Data Flux - http://www.dataflux.com/	Business/ Financial
25	Pervasive Data Integrator™	Pervasive – http://www.pervasive.com/	Business
26	NetWeaver	SAP - http://www.sap.com/	Business

(Source: http://ict.iiu.edu.my/~webmaster/claroline)

MEASURING RELIGIOSITY AMONG MICRO-ENTREPRENEURS IN MALAYSIA

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Abstract

Religiosity is a subjective matter to be measured. The challenge in this effort is not to let the sensitivity of the matter to hinder the noble and vital cause that it will contribute to facilitate a financial model based on faith or moral values. The main reason for making faith as the main critical factor in a model is its underlying power that actually determines its quality level. The primary usage of religiosity index is in determining the quality of life with faith as the power factor; wealth and asset as the composite factor. This index has been tested on a group of micro-entrepreneurs from a few selected areas in Malaysia. The study was to find the quality of life that they have as a result of their entrepreneurial activities. The inclusion of faith factor in this calculation is to see how far it can vary the quality of life being measured. The results show potential contribution of this factor to be a primary parameter for a model of similar nature as the one being used in this study.

Keywords: *micro-entrepreneur, religiosity index, micro-finance, quality of life*

Introduction

In the modern society today, religion often being viewed as personal matter and excluded from the professional attribute of a person. However, religion as part of the culture is an important element in shaping and determining behaviour. Various authors have suggested religion as an important dimension in Malaysian ethical behaviour studies (Rusnah Muhammad, 2009). In measuring religiosity, Rusnah used a few models that have been put forward by researchers such as Wilde & Joseph (1997), Khashan & Kreidi(2001). The author defined "measure of religiosity" as the intensity of commitment to a religion belief system. Three different measures of religiosity have been used; namely, cognitive, behaviour and experiential. It is found that those with high religiosity score would behave in conformance with desirable values and behaviours. The measurement used are determined by using percentiles, where, more religious (more than 33.1% score) and less religious (less than 30.1% score). Habib Tiliouine(2009) suggested in his research that the scope for measuring the religiosity must comprise a comprehensive perspective of Islam with reference to commitment, behaviour, standard religious belief and compulsory practices. He specified the indicators as practice, belief, duties and things that should be avoided. In addition, Krauss et al (2005) mentioned the early theorist on dimension of religiosity as associational, communal, doctrinal and devotionalism thus they used Glock & Stark Model that states the following dimension of religiosity: ideological, ritualistic, experiential, intellectual and consequential. Ilyas (1992) proposed a model of religiosity based on Islamic principles; they are, knowledge ('ilm), belief(iman), practice(amal), consequences (natijah) and realization of experience (ihsan).Many of these models have shed some light on the possibility that this subjective matter can be quantitatively evaluated and used.

1. Methodology

The religiosity index used in this study has been proposed by Tiliouine & Belgoumidi (2009) with a minor modification. The steps are explained below:

a. Scope

The scope of the measurement should be concise but comprehensive in measuring Islamic religiosity. To measure degree of religiosity, he believed that it can be determined by looking at one's daily practice and beliefs in accordance with the teaching of Islam.

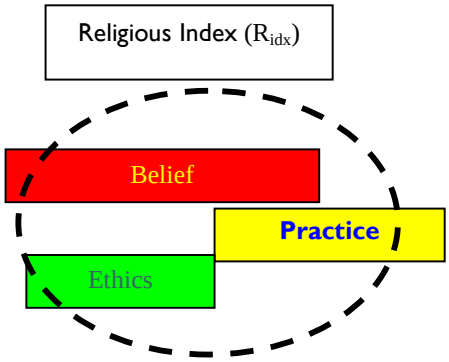


Figure 1: Scope of Religiosity Measure

b. Indicators

Operationally speaking, religiosity is determined by belief or faith, practice and ethic/moral development. A set of items covered the 3 mentioned areas : religious belief , religious practice and ethics (as shown in Table 1)

Belief	Practice	Ethics
1. Belief in God 2. Belief in Angel 3. Belief in Quran/Hadith 4. Belief in the Prophet 5. Belief in The Hereafter 6. Belief in Qada' & Qadar	1. Practice all basic ibadah 2. Enrichment 3. Seeking knowledge 4. Charity	1.Community involvement 2.Permissible/Prohibited

Table 1: Indicators for Religiosity Measure

c. Calculating the score

i. Calculating the score of the indicators :
The indicators have been transformed into a set of questions and the responses are captured as values as described by Table 2 below.

Belief	Strongly Disagree[1]------[2]------[3]------[4]------[5] Strongly Agree
Practice	Never[1]------[2]------[3]------[4]------[5] Always
Ethics	DoNotAgree[0]----[1] Agree

Table 2: The scale used

ii. Calculating the R-Score

The points will be summed up(as in (1)) from each indicator (belief, practice and ethics) and the total score is obtained for each respondent and the mean is produced. All scores are normalized into a 5-point scale. The mean values are totalled up and averaged in order to produce R-Score.

R-Score = Ave(Belief + Practice+ Ethics) **(1)**

R-Score	
0.8-1.0	Very Religious
0.6-0.79	Religious
0.4-0.59	Average
0.0-0.39	Non-religious

Table 3: R-Score interval and interpretation

iii. Classifying R-Score into Religiosity Index (R-Index)

R-Scores are classified into religiosity index as detailed out by the following table.

R-Score		Religiosity Index (R-Index)
0.8-1.0	Very Religious	3
0.6-0.79	Religious	2
0.4-0.59	Average	1
0.0-0.39	Non-religious	-1

Table 4: R-Index

The index of 3 [R-Index=3] means religion plays a definitely vital role in the life of respondents. The index of 2 classifies a respondent as someone that sees religion as an important element in his/her life. The index of 1 shows religious values have no significant impact on their daily life. The index of -1 states religious values as an intimidation to their daily life. These index values are not to label the respondent as such but to use as an impact factor to the quality of life (QoL).

iv. The use of R-Index

R-Index values are used as an impact factor to QoL as shown in Table 5 below. Positive index values will double or triple the wealth as such but on the other hand, negative index will diminish QoL as the wealth increases.

Religiosity Index (R-Index)	How it affects Quality of Life(QoL) $QoL=[Wealth]^{R\text{-}Index}$
3	$[Wealth]^3$
2	$[Wealth]^2$
1	$[Wealth]^1$
-1	$[Wealth]^{-1}$

Table 5:The Relationships Between R-Index and Quality of Life

d. The questions used to measure the three dimensions as mentioned above are constructed conscientiously to avoid any misleading or misinterpretation of the concept being measured.

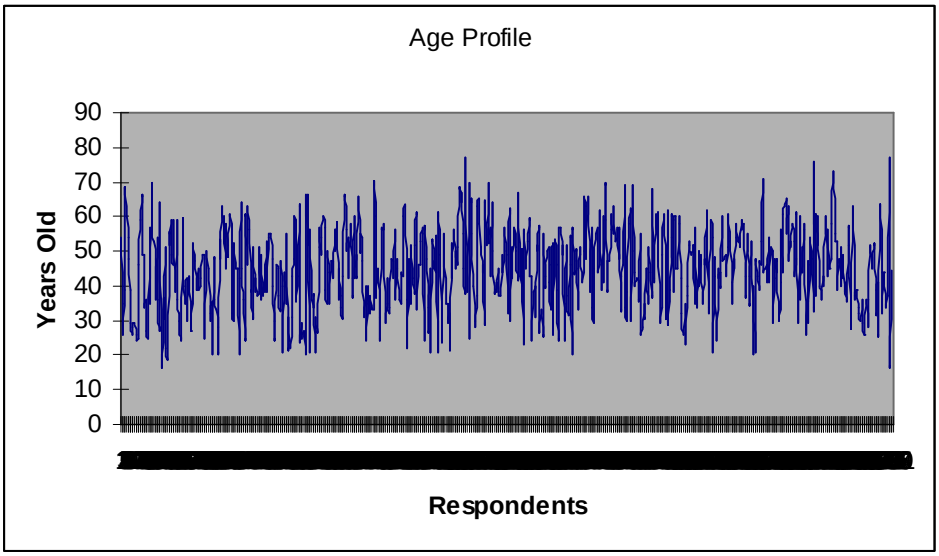
2. Data Profile

The data has been collected from three different areas; namely, Kelantan/Terengganu(East), Kedah(North), and Melaka/Negeri Sembilan (South) (as shown in Figure 2.0). The total of 676 respondents are micro-entrepreneurs that are active members of Amanah Ikhtiar Malaysia(AIM). AIM is a well-known and successful microfinance institution in Malaysia.



MEAN	**44.59**
MIN	**17**
MAX	**77**

Figure 2:Data Collection



Areas

Figure 3: The Age Profile of Respondents

MEAN : 44.59	**MIN : 17**	**MAX:77**

Figure 4: The Age Statistics

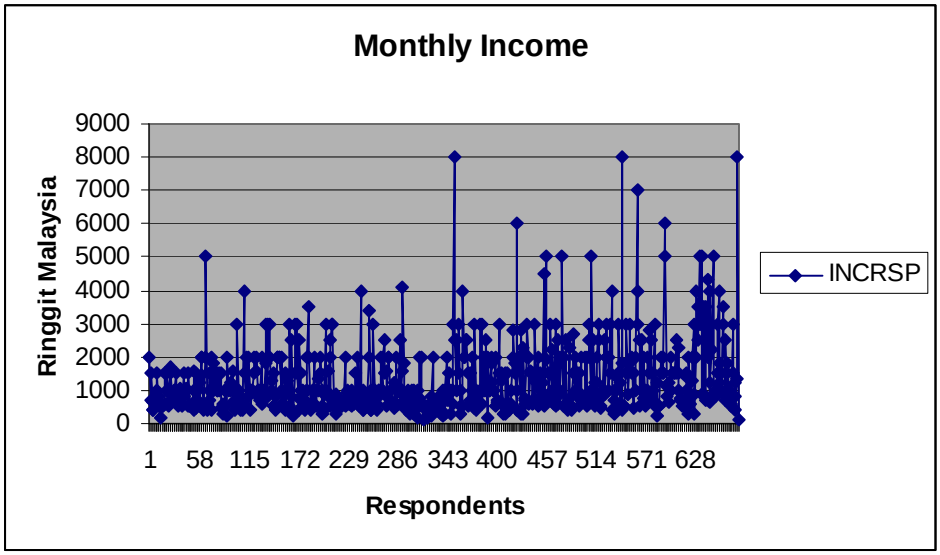


Figure 5: The Monthly Income of Respondents

MEAN : 1341.57	**MIN : 100**	**MAX:8000**	**Income Less Than RM1500 : 62.4%**

Figure 6: The Statistics

3. Results and Analysis

	Belief	Mean
	Respondents were asked whether they agree or not to the following statements	**S-Disagree[1]---------S-Agree[5]**
1	My life has a clear sense of purpose	4.40
2	Today's social ills are not due to lack of religious knowledge	2.72
3	Quran relieves pain and diseases	4.70
4	I follow the sunnah in daily life	2.07
5	It is OK not to pay our debt	1.61
6	I admire people who own expensive homes, cars and clothes	3.65
7	I am interested in status	2.75
8	I believe that miracles happened the way the Quran says they did	4.11
9	Rewards of paradise encourage me to do good things	4.69
	Practice	**Mean**
	Respondents were asked how often they comply to the following practices	**Never[1]----------Always[5]**
1	My family members and I dress in accordance with religion	4.55
2	I follow the sunnah in daily life	4.37
3	Frequency of voluntary prayers	3.58
4	Voluntary fasting other than Ramadhan	3.45
5	Pay visit to relatives as a religious duty	3.89
6	Care about neighbours and their well being	4.49
7	Greeting others even to strangers	3.96
8	I watch/listen/attend religious meetings	3.75
	Ethics	
	Respondents were asked whether they AGREE or DO NOT AGREE with the following statements	**Agree**
1	Eid prayer is more important than Jumaat prayers	228 (33.73%)
2	To give charity is commendable	631 (93.34%)
3	If found RM1, I can take and use it	73 (10.80%)
4	If found RM1000, I can take and use it	54 (7.99%)
5	Aware of Islamic banking system	658 (97.34%)
6	Given a choice, will choose Islamic loan	638 (94.38%)

Table 6 : Results of the Survey

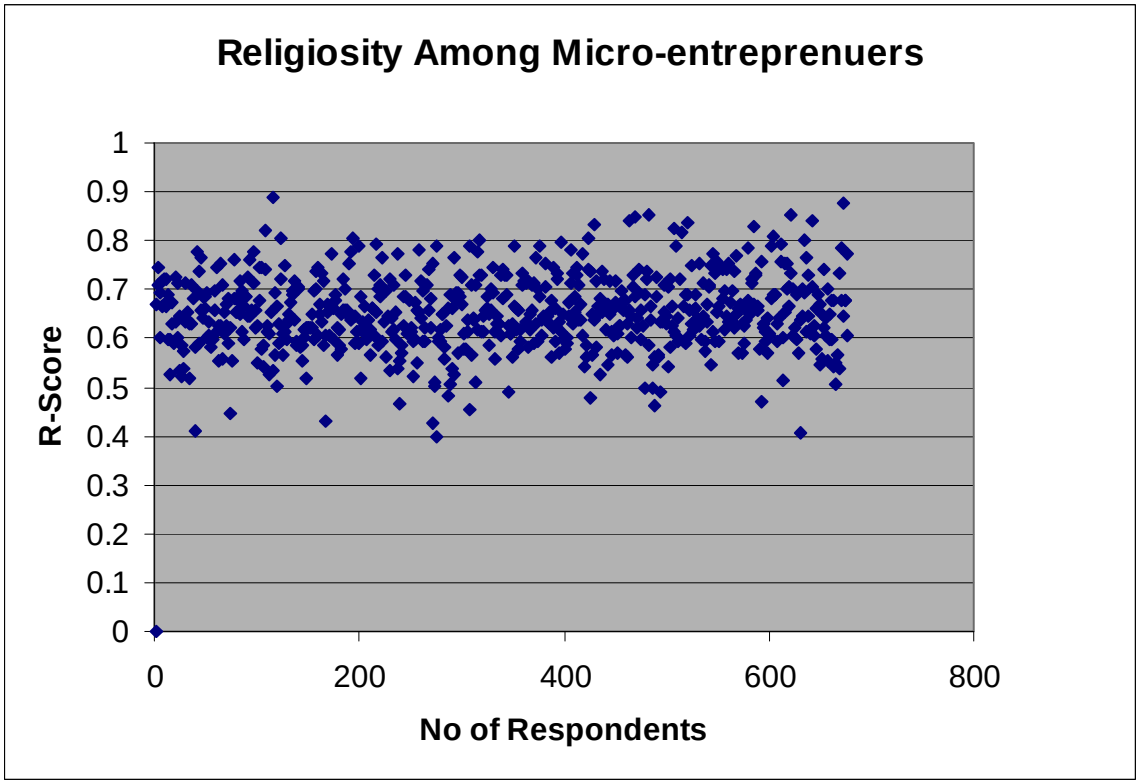


Figure 7 : R-Score of the Respondents

4. Conclusion

This article has put forward a model to measure religiosity. Although the subject is very subjective a lot of researchers have agreed and proposed many models to quantified religiosity. The tricky part of this exercise is not the subjectivity of the matter but how to deal with it without losing the sensitivity of the subject and the quantitative evaluation that has been the main aim of this process. As religion is viewed so deeply within the community especially the targeted population in Malaysia, the idea of judgemental perception into their religious practices will face some difficulties or even un-cooperative feedback. The authors sees it not as a drawback to strive for objective evaluation into this but a challenge that will subside once a good balance between research's measurement process and judging people's belief can be managed. The results have shown potential use of this model to measure a bigger indicator such as the quality of life.

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SERVICE CLIMATE FROM EMPLOYEE'S PERSPECTIVE IN MALAYSIAN LOCAL BANKS

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Abstract

With the Malaysian service sector grows and offers extensive options to consumer to spend their ringgits, a priority on customer needs and wants are becoming more vital as a competitive advantage for each company. This study tests the six factors that influence employees' perceptions toward creating a good service climate. These factors include reward, organization support, self-reliance, management commitment, customer service, facilities and resources. This study looked at the possibility that the respective organizations can structure their companies and treat their employees in such a way to increase the strength of service climate and increase the attitudes of their employees, which may lead to better service performance. Data were collected in three Malaysian local banks (including in an Islamic bank) from employees' perspectives, and analyzed via factor analysis and multiple regression. Results indicated that the model generated a climate for service. However, the analysis should not end here as Sechneider et al. (1998) revealed the relationship between service climate and other important behavioral construct, that is service quality. Implications of these results for theory and practice are offered.

Introduction

Satisfaction of customers is very important in ensuring that services received by customers are equivalent and worthy to their ringgits paid to the service providers companies. The satisfaction not comes merely in the form of the usage of services, but also comes from experience in dealings with the front liner teams of the service providers. Compared to companies that produce products, treatment towards customers by employees in service provider companies are very important because of the intangible forms of their core competence.

For this reason, studying factors leading to an existence of good service climate from the perspective of employees are very important since the service climate ideally can influence the service quality provided by employees towards customers and increased the employee's loyalty level towards companies. Hence, the objective of this study is to examine the combination of measures that contribute to a good service climate, with the focus of the study on three Islamic banks in Malaysia. The selection on banking industry is made on the basis that this industry is among the largest services providers. The six factors that are included in the study are reward, organization support, self-reliance, management commitment, customer service, facilities and resources.

The article of this paper is structured into several parts; (i) literature review, (ii) methodology, (iii) discussion of findings and (iv) the conclusion.

Literature Review

Service climate

There have been many terms used by scholars in order to describe the meaning of climate. Some of them use 'climate' only (Powell and Butterfield, 1978; Glick, 1985) and most of them use a more specific term, i.e. diversity climate (McKay et al, 2007, Hicks-Clarke and Iles, 2000), innovation climate (Anderson and West, 1998), justice climate (Colquitt et al, 2002), organizational climate (Mahn et al, 2000; Johnson, 1996), service climate (Schneider et al, 1998; Gronroos, 2000; Dietz et al, 2004; Baker and Fesenmaier, 1997; Bowen and Schneider, 1989), safety climate (Hoffman and Stetzer, 1996; Hofmann and Mark, 2006; Zohar, 2000), transfer of training climate (Tracey et al, 1995) and work climate (Gelade and Ivery, 2003; Mahn et al, 2001; Kirkcaldy and Athanasou, 1999). These authors have explained significant variance in specific behavioural outcomes. In this case, different usage of terminologies has given different meanings of application.

It needs to be made clear that the authors are only interested in the climate for service, so that the explanation for demonstrating the applicability of the climate construct is relevant to the tables presented. By following the climate logic and the following explanation with respect to service, readers can have an enhanced, deeper understanding of this study.

Tagiuri (1968 in Powell and Butterfield, 1978) refers to service climate as the quality of the organization's environment as experienced by its members and can be described in terms of values or the meaning of a particular set of characteristics of the environment and how organizational environments importance are perceived and interpreted by employees (James and James, 1989, 1990; Johnson, 1996). Schneider (1986:63) proposed the meaning of the term to employees as:

"*…the nest of policies, practices, procedures and reward, support and expectations, as a whole, are thought to create a sense of imperative and it is the sense of imperative…*".

The employees will behave due to policies, practices, procedures, and routines to facilitate the excellence of services that has been outlined by the organization to achieve goals or other organizational imperatives (Schneider and Bowen, 1993). They are been expected to behave in order to get supported, recognized and rewarded by the management (Schneider and Bowen, 1993; Schneider et al, 1996; Schneider et al, 1998; Bowen et al, 2000; Schneider et al, 2000). This includes the extent of the perceptions that management set clear performance standards, provide appropriate training and information, remove obstacles to service, assist in employee job performance and distribute rewards for good service to customers (Hui et al, 2007).

Powell and Butterfield (1978) viewed service climate as a property of organizations and frequently functioning as a property of individuals' experience, values, knowledge and expertise (Brown and Leigh, 1996). Gronroos (2000) proposed the concept of service climate as the internal climate, the picture of how internal relationships function between people in an organization. Furthermore, Newman (2001) only referred to employee training, staff appraisal and reward when it comes to the conception of service climate. Burke et al (1992) thought that service climate could be conceptualised from a social interactionist perspective as evaluations of environmental attributes that have a social or situational construction component. Borucki and Burke (1999) added that service climate in terms of employee cognitive appraisals of the organization's attitude towards employee well-being and the concerns of members of the organization about the customer. It is derived from a consensual understanding, within a company, a department or a group, of how to behave in different settings and with different customer populations (Hui et al, 2007).

The evolution of climate has occurred through a number of different phases (Reichers and Schneider, 1990). The first stage is named as introduction and elaboration; followed by evaluation and augmentation. The final stage of concept is consolidation and accommodation. What is originally known and emphasize by the scholars was only the climate in the eye of the individuals who involved in the service delivery either by customer, employee or manager. In 1975, Schneider tried to spark the discussion about climate by put forward the idea of "climate for something". The potential idea of the foundation for service climate was first initiated by Parkington and Schneider (1979). Their idea marked an early significant development with a research study about job stress among employees and customers in twenty three branches of Atlantic Coast, a

commercial bank in the United States. The expansion of climate for service continued drastically after the initial research. Researchers in related areas, especially in the psychology field, have continued to distinguish problems and advise solutions for future researchers and practitioners in the field of that specific climate.

Schneider (1983) commented his previous research that not very much attention on ethiology of climate. The ideas been expanded by the other researchers with other relevant subject (e.g. culture and innovation) and the continuation of climates been extended to a specific climate for instance climate for service. He worked with Moeller (1986) attempted to identify the elements of service climate by using a conceptual model introduced by Katz and Kahn. Few years later, he collaborated with Wheeler and Cox (1992) conducted a study to identify the themes that represents internal service climate and relate the paradigm of organizational climate to service excellence. After that, the specific service climate scales followed by Schneider and Bowen (1993); Johnson (1996); Baker and Fesenmaier (1997); Schneider, White and Paul (1998a); Andrews and Rogelberg (2001); Jong et al (2004); Dietz et al (2004); Schneider et al (2005); Jong et al (2005); Little and Dean (2006); Dimitriades (2007); Walker (2007) and Hui et al (2007) which were be appropriated with their research setting. The perceptions of characteristics in a setting compose the climate in the organizations.

Due to Schneider (1983), previous scholars attempted to explore new ideas from new perspectives, such as relate the research with financial matters which is only for short period and be different from others. As Rogg et al (2001) found out that service climate facilitates the delivery of customer satisfaction supported by Johnson (1996), while Schneider et al (1998a) demonstrated a positive link between the way employees perceive service climate and customers' perceptions of service quality. Service climate as well incorporated with other subjects in related areas such as human resource management (Schneider and Bowen, 1993; Schneider, White and Paul, 1998a) and organizational citizenship behavior (Dimitriades, 2007) where the types of variables measures and methods suited the researchers' needs. It has been found to be related to employee commitment (Lux et al, 1996) and to increase the empowering leadership behaviours of a service worker's supervisor with flow on effects to the worker (Yagil and Gal, 2002). Service climate and service culture are two different themes, which are hardly to separate (Reichers and Schneider, 1990; Schneider et al, 1996) because their strengths and weaknesses compensate each other (Schneider, 2000).

Schneider et al (1998a) proposed that the presence of foundation issues does seem to provide a basis for a climate for service. It is focusing more specifically on service-oriented policies and practices which produce the climate for service. Schneider's (1980) findings have been prolonged in Schneider and Bowen (1985; 1993), Schneider et al (1998a) and Schneider et al (2005). Global service climate has been introduced by Schneider et al (1998) and the term has been used again in Little and Dean (2006). Jong et al's (2005) proposed self-managing team service climate, the continuity of Jong et al's (2004) work. While Dimitriades (2007) in brought in the term of organizational service climate and followed by Hui et al (2007) presented the psychological service climate

term. Dietz et al (2004) proposed two specific service climates in employees' point of view which are branch and organization as a whole.

Different researchers with different studies generated different dimensions for future analysis. There are service climate dimensions scales are replicated from the previous works of other scholars such as in Andrews and Rogelberg's (2001) research in small businesses used the scales from the work of Schneider and Bowen (1985) and Rogelberg et al (1999). And the other example is the work of Baker and Fesenmaier (1997) which replicating the work of Zeithaml et al (1990). Lastly, Schneider et al's (2005) service climate dimensions were assessed with an eight-item measure developed by Schneider et al (1998a). Table 1 presented the originality of measures of service climate used by the scholars, investigated the circumstance in organizations involved in their research. They attempted to conceal as much states surrounded the employees either in tangible (e.g. systems support and logistics support) or intangible (e.g. bureaucrat orientation and enthusiastic orientation) form.

Table 1: Variables measured from previous service climate research

Author	Service climate variables measured
Schneider (1980)	**Manager and employee interviews:** What happened to and around them on a typical day that made them feel particularly bad about their work. What came to mind when they thought about customer service and the bank. What they thought giving good service involved; what are the components of good service. How they felt when they were not giving good service; what prevented them from providing good customer service. **Survey:** Employee desires to give good service and what happens when the stress of customer versus management demands is encountered. Relationships between the way employees and customers experience service
Schneider and Bowen (1985)	Overall quality, enthusiastic orientation, bureaucrat orientation, branch management, systems support, customer attention retention and logistics support.
Huei and Howard (1994)	**Strategic focus:** awareness of strategic challenge, vision for the future, innovation, quality policy/philosophy, value systems/ethics **Leadership and management:** top management involvement, visible commitment to goals, role in quality improvement process, concern for improvement, system/structure for quality improvement **Workforce:** awareness of productivity/quality issues, attitudes/morale, cooperation, involvement, perceptions of work environment, social interactions, task characteristics, consequential constraints
Johnson (1996)	Service strategy, service support, service systems, information seeking, training, rewards and recognition, management service orientation, employee service orientation, sales and service relationship, estimate of customer satisfaction, overall service climate.
Liao and Chuang (2004)	**S**ervice performance, employee involvement, service training,

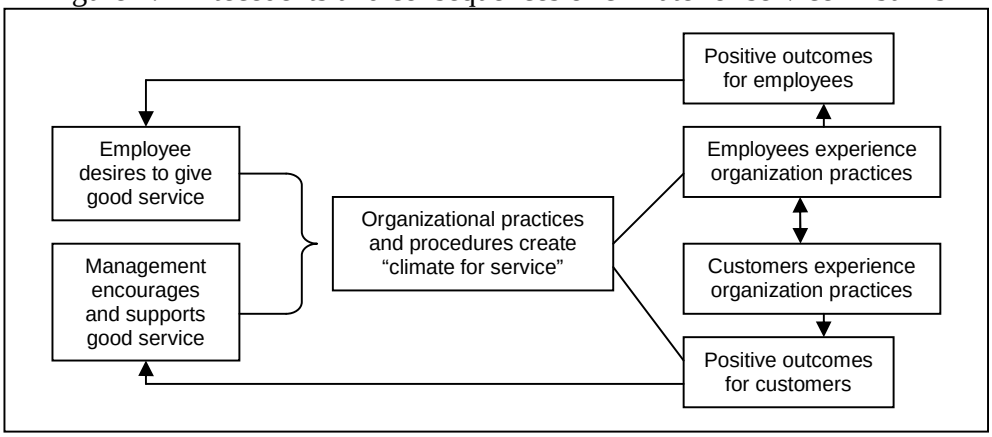
	performance incentives,
Walker (2007)	Management service practices, management communication, management support, staff service practices, client focus, staff service ethos, staff personal attributes, staff concern for clients, employment issues, resourcing, estimate of client evaluation service

Although service climate is a specific application of organizational climate (Johnson, 1996), its theory is still in the early stages of its maturation (Dietz et al, 2004). Service climate is built on foundations of caring for both customers and employees (Burke et al, 1992; Schneider et al, 1992). The importance of elements of service climate to customers and employees has been demonstrated in various studies. When there is a climate for service, employees have come to understand that superior customer service is expected, desired and rewarded; other things being equal, they are more likely to proved good service (Liao and Chuang, 2004).

Service climate in banking

Though discussion with an external customer as the focus, for total quality, internal customers are also equally important. The principles that apply for external customers apply for internal customers as well. They are sensitive to customer perceptions of overall service quality. They apparently know when their customers are satisfied or dissatisfied with the level of customer service provided by their bank (Raynierse and Harker, 1992). They also mentioned stability within an organization, which raises questions as to the importance of service climate in a bank. Customer service will be further strengthened when there is a corporate service culture in place that values the customer (e.g. handling complaints) and focuses on providing effective service. In one of Schneider (1980) research in branches of a bank, customers report good perceptions of service delivered as a sign of employees' perceptions towards strong internal climate, influence the bank's good financial position in term of profit (see Figure 1).

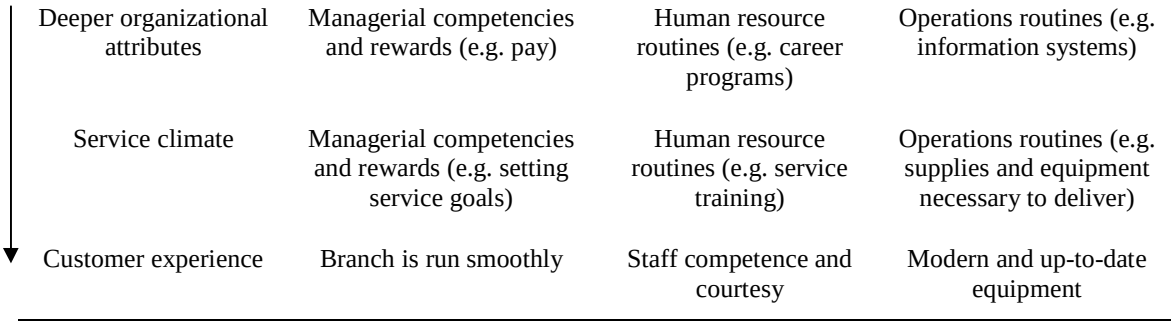
Figure 1: Antecedents and consequences of climate for service in banks



Source: (Schneider, 1980)

Figure 2 summarizes the results of the studies describes by Schneider (1990), the one on the climate for service and the other on human resource management. The figure shows that an organization's human resource practices are correlated with customer perceptions of a service climate but that these practices are only on of the leys to a service climate. Also important for a service climate are other issues, such as management's emphasis on service, the adequacy of equipment and supplies and operational support. The conclusion is that a service climate is dependent on many facets of the optimal functioning of the organization, not just on the human resource practices.

Figure 2: A conceptualization of system effects on service quality



Source: Schneider (1990)

Another factor that might contribute to a bank's success is the form of appropriate organisational structure and its policy of encountering discussions and suggestions. People in the front line are most often aware of quality needs of customers and can offer valuable suggestions. Banks should actively encourage all level of staff to contribute actively towards building a learning bank and its own service climate.

A chain is only as strong as its weaker link. The quality programme can only work if each employee the link in the organizational chain is totally committed to developing a quality services bank. In fact, unless standards of service are established and implemented for internal customers, it will be almost impossible for a bank to implement any quality programme. Department and branches go to make the whole bank and unless there is smooth functioning in the system, it cannot deliver. For example, if a loan proposal is to be processed at a bank's branch, but the proposal is not processed quickly at the main office, the branch may not be able to give the customer what has been promised. There must be total commitment from each and every employee for the quality programme to succeed.

What is needed here is the need to acknowledge the characteristics that are important in a service climate in banking sector that will fulfill the employees' requirement. The researcher have to bear in mind that in the case of bank employees who are geographically located at a distance, for example in this case is Malaysia, the organization or management will have to acknowledge the work environment that these employees are in; the employees attitude, appearance, motivation, interactions, strengths and weaknesses and specifically their cultural beliefs.

The facilities, the approach used in delivering the services, the employees' appearance, attitude and motivation are all issues that still baffle as the service deliverer in the banking institution. They have to be sensitive in the benefits, challenges and the changes that have taken place and are still taking place at the present time. In today's banking institution, interactions among the employees and the customers, can also be used as part of gathering information regarding the services involve and assist the organization or management to determine employees' expectations and perceptions towards the services they provide.

Current service organizations face a lot of challenges, and one of it is to ensure that the policies, procedures, facilities and work environment are created within the employees circumstances and services delivered to the customers is in the best form at every time. Rightfully as an employee of a banking institution, one will realize that whatever that works with one set of customers at one time does not mean that it will work out again as expected at another time. In addition to that, it may not also work with another group of customers even at the same or different time. Only with the aid of the policies, procedures, facilities and work environment and the employee experience, they will be able to deal with the flaw and make improvements in the service delivery processes. Once the employees have learned and understand what is being delivered; either face to face or on-line, it is feasible to know the cause of the service delivery that has taken place, what facilitated the delivery process, what prevented the process of delivery, what impact technology has to the process itself. It is the issue that makes the process of delivery a beneficial experience for the organization, employee and customer that is important to be conceded. It is the issue that makes the environment of the organization effective that is important to be recognized.

Banks involve a high proportion of contact services due to services and products being offered in a very competitive environment, competing with financial institutions, insurance companies and building societies, regardless of location around the world. For Johnston and Silvestro's (1990) study, they chose banks because banks are the largest identifiable source of anecdotes in the area of positive or negative perceptions experienced by customers and employees. Johnston (1995) stated in his study that banks have identifiable customers who will have had not just a single experience with the particular organization, but an ongoing relationship over several years involving many transactions and other services per year.

The crux of the service is the customer experience in which staff involvement, their willingness and ability to serve determines customers' perceptions of quality (Newman, 2001). In McDougall and Levesque's (1994) research, an enabling dimension was identified that included a number of items that contributed to the ease or comfort of the customer in the service encounter. As for Cui et al (2004), bank employees regarded courtesy and timeliness as the dominant factors, while customers regarded access, availability, courtesy and timeliness as the dominants factors. The mismatch found in the relative importance of the determinants points to another area for service quality control.

Methodology

The purpose of this phase of the study was to gain a big picture of service climate in the banking sector in Malaysia, to overview the areas involved and have some background information about the context e.g. banks and employees. The questionnaire was used as the data collection instrument because of the advantages it offered, such as wider distribution and the subsequent reduction in distribution bias. Besides that, the questionnaire offers advantages in terms of costs, speed, sample size, time and communication (Oppenheim, 2001).

Having reviewed the literature on evaluation of service climate from the previous related research in the banking sector, the elicitation process through the open-ended responses provided assisted the researcher with important data which was essential for the selection of items in the questionnaire. Predominantly references on designing a questionnaire were seriously considered by looking at other questionnaires as references whereby the researcher was able to see what was good and poor about them and derive more confidence, since even many well known instruments look terribly imperfect in retrospect. The references also presented directions on how to design the proper construction of the questionnaire. It was intended in the selection of the constructs to cover the elements that definitely could help answer the research questions, such as the respondents' characteristics, perceptions, enabling environments in the service delivery process, preferred instructional and delivery approaches.

In these questionnaires, the questions were principally based and adapted from a number of items found by prominent scholars in the service climate (Katz and Kahn, 1978; Parkington and Schneider, 1979; Schneider, 1980; Schneider et al, 1980; Schneider and Bowen, 1985; Schneider et al, 1992; Raynierse and Harker, 1992; Singh, 2000; Andrews and Rogelberg, 2001) and service quality field (Le Blanc and Nguyen, 1988; Lewis, 1991; Kwan and Tan, 1993, 1994; Avkiran, 1994; Johnston, 1995; Galloway and Blanchard, 1996; Hartline and Ferrel, 1996; Stafford, 1996; Joseph et al, 1999; Allred, 2000; Lassar et al, 2000; Othman and Owen, 2001; Newman, 2001; Adlaigan and Buttle, 2001, 2002; Jun et al, 2002; Gounaris et al, 2003; Jamal and Nasser, 2003; Vijayan and Shanmugam, 2003) which are reported instruments designed to assess various service orientations and their use of different strategies for certain services. The questions were based on and adapted from a few noted studies that have been carried out successfully.

Gorard (2001) assured that the advantages of using such previous instruments and questions are considerable because the instruments used have been piloted, used previously, are mature and ready to be used, probably on a far larger scale than the researcher could envisage. This can carry some extra authority for the readers of this study.

Discussion of findings

Before factor analysis was conducted.

Table 1: Reliability statistics

Cronbach's Alpha	N of items
.975	132

After factor analysis:

(i) 39.64% items were taken out from the list due to loadings were less than .5. Therefore, the usable items left to 81 from 132 items (Costello and Osborne, 2005).

(ii) The number of rotated components was 30. Therefore, relevant number of variables for this study would be ten in order to see clearly contribution of each component.

(iii) The researcher distilled these ten components and decided to withdraw three factors from the list due to critical number of items as the respective components had less than six variables per factor (Fabrigar et al, 1999).

(iv) 80.49% communalities are greater than .6 (MacCallum et al, 1999).

The results of factor analysis as in the following Table 2 is presented after two iterations.

Table 2: Descriptive and reliability analysis

Component	**Reward**	**Organization support**	**Self-reliance**	**Management's commitment**	**Customer service**	**Facilities and sources**	**Overall**
Items	11	11	16	15	20	8	81
Mean	3.2278	3.4293	3.8396	3.4121	3.7036	3.4861	3.5164
Std. deviation	.5897	.4990	.4276	.5236	.5602	.5493	.5249
Cronbach's Alpha	.911	.823	.886	.921	.948	.899	.966

Table 3: Multiple Regression Results

Model		Unstandardized Coefficients		Standardized Coefficients	t	Sig.
		B	Std. Error	Beta		
1	(Constant)	1.978	.590		3.353	.001
	Reward	.030	.015	.235	1.947	.054
	Organization Support	.037	.024	.258	1.561	.121
	Self-reliance	-.008	.010	-.077	-.826	.410
	Management Commitment	-.001	.014	-.010	-.073	.942
	Customer Service	.006	.006	.110	1.076	.284
	Facilities and Resources	-.008	.018	-.046	-.418	.676

A multiple regression analysis was conducted to predict service climate to service quality from perspective of bank employee towards reward, organization support, self-reliance, management commitment, customer service, facilities and sources. The analysis indicates factors related to the service climate. Here, the existence of good service climate is assumed as leading to good quality services provided by the banks' employees to their customers.

Based on the analysis, R = .48 indicated a less-than-perfect relationship between service climate to service quality and independent variables. Only 23% of the criterion variance can be accounted for by its linear relationship with the predictor variables.

Predicted service climate = 1.98 + .04OS + .03Rew + .01CS - .01SR - .001FS

The prediction equation for the standardized variables is as follows:
$Z_{\text{Predicted service climate}} = .26Z_{OS} + .24Z_{Rew} + .11Z_{CS} - .08Z_{SR} - .05Z_{FS}$

The result shows several factors that have high significant contribution to the prediction of the service climate. These elements are organization support, reward and customers. These findings leading to the statement that the existence of these elements in every organization is very important from the perspective of the employees, in the way to create and strengthen service climate.

Conclusion

This article focused to examine factors leading to the service climate in the three banks in Malaysia, from the perspective of the employees. Their perspective is chosen as they who are actually playing the main roles in a direct communication with customers — as the front liners —and having the direct experience with customers. Six factors included in the study are; reward, organization support, self-reliance, management commitment, customer service, facilities and resources. The study assumed that the existence and

strength of service climate can influence the way of the performance of employee in dealing with clients.

The study is conducted to identify whether the individual factors make a significant contribution to the prediction equation of the service climate. The result suggests that factors leading to service climate in the chosen banks are organization support, reward and customer service. For the managerial implications, these elements are very important to be strengthened in their organization, as these elements can increase the satisfaction of employees and influence their behavior. The existence of the factors— in tangible and intangible forms — should be constructed in the organization.

In the theoretical viewpoint, the study should be extended to include more factors in order to capture the detailed factors contributing to service climate in the organization. Schneider (1983) for example, advised the future researchers to be very specific regarding themes of climate to be explored of examined if they hope to assess the relationship between climate and other construct such as organizational behavior of interest. Additionally, the future study should also be extended to the comparison of perception on the service climate and service quality in Islamic banking industry and conventional banking industry to have the clear setting on the aspects.

SUKUK STRUCTURE AND UNDERLYING RISKS: LESSON FROM MALAYSIA

Paper submitted to The 4th Islamic Banking, Accounting and Finance Seminar 2010 (iBAF 2010): *Globalization Sustainability in Islamic Financial Services: Prospects and Challenges*,
organized by Faculty of Economics and Muamalat, Universiti Sains Islam Malaysia (USIM), Bandar Baru Nilai, Negeri Sembilan, Malaysia,
14 – 15th October 2010.

Abstract

The *sukuk* market has grown rapidly over the last few years in terms of size, numbers and sophistication. *Sukuk* provide sovereign governments and corporations with access to the huge and growing Islamic liquidity pool, in addition to the conventional investor base. Most of the *sukuk* are structured based on *ijarah* contract, while others applied some various contracts such as *mudharabah*, *musharakah, salam* and *istisna'*. *Sukuk* are different from conventional bonds by some risks that each issuer and investor must take into consideration. There are a lot of issues and debates regarding *sukuk*, including the implication of underlying risks on its structure. The risks that *sukuk* encounter varies according to the structure of contract as well as underlying assets of the *sukuk*. This study will discuss on two types of *sukuk*, namely *sukuk ijarah* and *sukuk mudharabah*. The primary focus is to highlight underlying risks of these *sukuk* structures which may be different from conventional bonds. The identification of risks is vital for product development and serves as preliminary step towards innovation. In addition, the implication of risks in *sukuk* structuring is important for re-establish the credibility of *sukuk* within the Islamic finance industry. What is more important is for *sukuk* to sustain in the liberalized international economy.

JEL classification: G15, G29, G32
Keyword: Islamic finance; Malaysia; risk; *sukuk*

1. INTRODUCTION

The *sukuk* market has grown rapidly over the last few years in terms of size, numbers and sophistication. *Sukuk* has gain popularity in Malaysia since its first inception in 2002. *Sukuk* provide sovereign governments and corporations with access to the huge and growing Islamic liquidity pool, in addition to the conventional bonds. Most of the *sukuk* are structured based on *ijarah* contract, while others applied some various contracts such as *mudharabah, musharakah, salam* and *istisna'*.

Sukuk are different from conventional bonds by some risks that each issuer and investor must take into consideration. The risks that *sukuk* encounter varies according to the structure or underlying contract of the *sukuk*. For instance, the risks of *sukuk murabahah* differ from those of *sukuk ijarah, sukuk mudharabah* or *sukuk musharakah* respectively. The risks also vary depending on the underlying assets of these *sukuk*. Among the common risk is violation of *shariah* provisions, i.e. *shariah* non-compliance risk. Depending on the degree of violation, it ranges from voiding the overall *sukuk* to the cancellation of certain conditions. Other type of risk in *sukuk is* operational risk. Since *sukuk* structures must be based on underlying assets which the return on these *sukuk* originates, then risks of these assets also play an important role on the *sukuk* structures. Therefore, the implications of underlying risks on *sukuk* structure are among the prevailing issues in *sukuk* debates. Furthermore, in the wake of a series of high profile *sukuk* defaults in the GCCs, e.g. Investment Dar, Saad Group and Dubai World's Nakheel *Sukuk* in 2009, *sukuk* are alleged to have lost credibility as feasible and viable Islamic long-term project financing instrument (Raja Teh Maimunah, 2010a).

Given that much of the problems of *sukuk* structures that come into surface are to a large extent related to risks, this study will discuss the underlying risks in *sukuk* structures, specifically *sukuk ijarah* and *sukuk mudharabah*. The primary focus is to highlight the general and special risks surrounding *sukuk* which are different from conventional bonds. In addition, by closely examining the risk for both *sukuk* structures, which represent debt-based and equity based instrument subsequently, the study will also bring to light the main differences of both structures from risk management point of view. The identification of risks is vital for risk mitigation mechanism in *sukuk* as well as for product development and serves as preliminary step towards innovation.

The study contributes to literature by providing comprehensive discussion on underlying risks of two *sukuk* structures, i.e. *sukuk ijarah* and *sukuk mudharabah*. Identification of risks in *sukuk* structures is important for the reason that the use of financial products in conformity with *shariah* principles causes special issues for supervision and risk management. Efficient risk management in Islamic capital market instruments has assumed particular importance as they try to cope with the challenges of financial liberalization. What is more important for *sukuk are* to sustain in the international market and to re-establish the credibility of *sukuk* within the Islamic finance industry.

The rest of the paper is organized as follows. Part 2 summarizes overview of *sukuk* development specific to Malaysian Islamic capital market. Part 3 describes research design. Part 4 discusses findings on *sukuk* structure and underlying risks, and Part 5 concludes.

2. RESEARCH BACKGROUND: SUKUK DEVELOPMENT

2.1 *Sukuk*

Sukuk are one of financial instrument for raising funds and are a vital vehicle for resource mobilization, whether in the public or private sector. The Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI) refers *sukuk* to investment products. It can be defined as "certificates of equal value representing undivided shares in ownership of tangible assets, usufructs and services or (in the ownership of) the assets of particular projects or special investment activity" (AAOIFI, 2002). Based on the definition, *sukuk* can be further defined as a commercial paper that provides an investor with ownership in an underlying asset. It is an asset-backed trust certificate evidencing ownership of an asset or its usufruct. It has a stable income and complies with the principle of *shariah*. Unlike conventional bonds, *sukuk* need to have an underlying tangible asset transaction, either in ownership or master lease agreement.

Sukuk can be of many types depending on Islamic contracts or principles of financing and trades used in the structuring process. AAOIFI has issued standards as guidelines for 14 different types of *sukuk*, which can be classified as tradable and non-tradable, ranging from short-term purchase financing to complex funding of real estate development and industrial project financing. However, the most common principles used in *sukuk* structuring are *mudharabah, musharakah, murabahah, ijarah, salam* and *istisna'*.

2.2 Risks in *Sukuk*

Risks are an essential part of financial instrument. Increasing complexity and convergence of financial activities has resulted in diversity of risks. The Islamic financial industry has different orientation towards risks. The risks are more aligned on the basis of contract types, as a result of the special structuring of the contracts in its products (Akkizidis & Khandelwal, 2008).

Sukuk are distinct from traditional bonds by some risks that each issuer and investor must take into account. In economic terms, there are three common types of *sukuk*; namely fixed-income *sukuk*; asset-backed *sukuk* (ABS); and hybrid *sukuk* (Zawya, 2009). Risks in the first *sukuk are* very much to do with credit risk of the originator/obligor (firm), whilst risk in the ABS is related to performance of the underlying asset of *sukuk*. Risk for the last *sukuk* originates from combination of originator's credit risk and underlying asset. Therefore, *sukuk* should not be treated as debt instruments which are similar to bonds, and which underlying assets as well as their contractual structures to transfer funds from investors to *sukuk* issuers. By treating *sukuk* alike bond will lead to improper assessment of *sukuk* and, as a result, the risks will not be addressed appropriately. The risks that the *sukuk* encounter varies according to their structure and depends on the underlying assets of *sukuk*, be it tangible or intangible.

2.3 Studies on Risk in *Sukuk*

Of all rapidly growing Islamic capital market securities, none are gaining in popularity as much as *sukuk*. The study on *sukuk*, in particular the underlying risks of *sukuk* are an interesting subject matter and offers room for further research. At present, only a few studies on this specific issue since *sukuk* are relatively new capital market instruments as compared to conventional bonds. Significant ideas are mostly put forward by Tariq

(2004) and Tariq and Dar (2007). Tariq (2004) discusses on various risks in *sukuk*. One of the risks is *shariah* non-compliance risk that refers to the loss of asset value as a result of the issuers' breach of its fiduciary responsibilities with respect to compliance with *shariah*. There could be several such instances of wilful or innocent breaches. The dissolution clauses of the *sukuk* prospectus define events that will make the *sukuk* deed null and void due to *shariah* non-compliance. In this case, he discusses the possibility of extending the functions of embedded options to fit the needs of *sukuk* certificates and *shariah* considerations. This facility provides a debt structure framework that helps replicate the functions of traditional instruments and in turn benefit from the convexity gains of these instruments.

Tariq and Dar (2007) again make an effort to identify the underlying risks of *sukuk* structures and suggest some possible methods of mitigating the risks. Meanwhile the underlying assets of the *sukuk* certificates are subject to few risks, e.g. risk of loss of the assets. *Sukuk* structured based on fixed rates are exposed to rate of return risk in the same manner as fixed-rate bonds are exposed to interest-rate risk. The rise in market interest rates leads to a fall in the value of fixed-income *sukuk*. In the event of a divergence between the unit of currency in which the assets in the *sukuk* pool are denominated and the currency of denomination in which the *sukuk* funds are accumulated, the *sukuk* investors are rendered to an exchange-rate risk. Some of the issues on this matter have also been addressed by a few scholars. Rosly and Sanusi (1999) criticize the application of *bay' al-'inah* and *bay' al-dayn* in *sukuk* in Malaysian practice which lead to *shariah* non-compliance risk. Those contracts were not allowed by the majority of *fuqaha'*, especially Shafie on the premise that it is similar to back-door interest and could be risks for *sukuk* to be accepted by different Islamic thought.

There are also issues addressed by Al-Amine (2001 & 2008) regarding the possibility of reselling *sukuk salam* before taking possession that might lead to *gharar* or *riba*. He also discussed the issue of benchmarking in *sukuk* that use London Inter-bank Offer Rate (LIBOR), which is similar to the conventional bonds benchmarking. Chapra and Khan (2000) identify various unique credit risks that are particular to Islamic finance including *sukuk* as one of the instrument. Khan and Ahmed (2001) identified that *salam sukuk* has unique basis of credit risks, while *sukuk musharakah* has high default risk.

The key to innovation of *sukuk* are to focus on pricing and risk characteristics. For sovereign, *sukuk* pricing could be based on real macroeconomic variables such as gross domestic product (GDP) growth rather than interest benchmarks. When GDP growth was high, government tax revenue would usually increase more rapidly. This would enable governments to pay a higher return to investors in their sovereign *sukuk*. Conversely when gross domestic product (GDP) growth was lower, government revenue would be lower, implying a reduced capacity to service debt and pay *sukuk* holders. In other words, *sukuk* holders would be taking on some of the sovereign risk (Tariq, 2004). By sharing risk with governments and reducing their obligations in times of difficulty, the risk of default would be reduced.

Sundararajan and Luca (2002) consider that non-existence of efficient institutional support increases the risk of *sukuk* as compared to traditional fixed incomes. Tariq (2004) find that the emergence of *sukuk* certificates as mechanisms of liquidity management presents a novel asset-backed securities structure that can set the foundation for supporting risk-management derivative instruments. Therefore, he suggests the development of *sukuk* and its derivatives such as embedded options as a good financial management in managing risks of *sukuk*.

2.4 Structure of *Sukuk Ijarah* and *Sukuk Mudharabah*

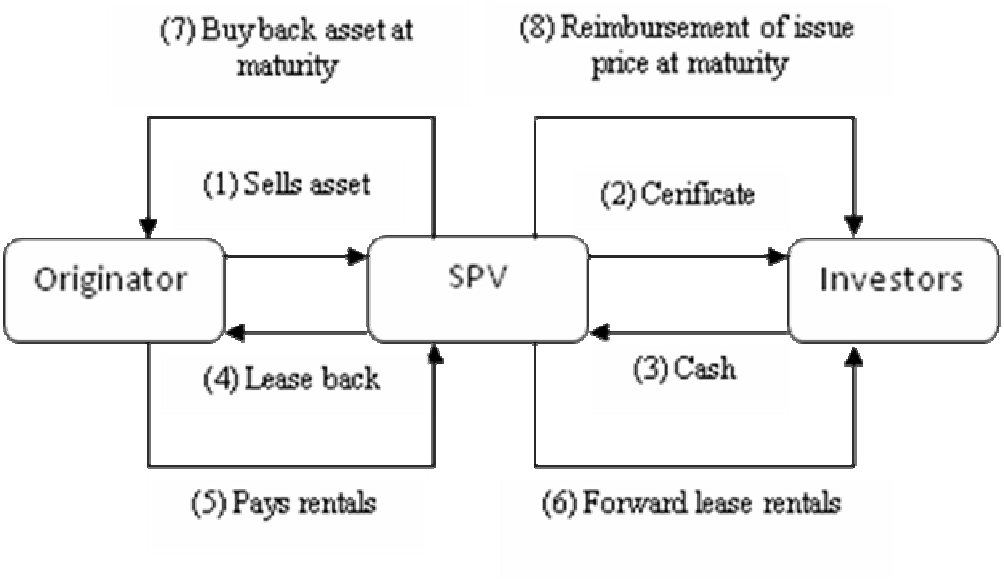
Sukuk can be classified into two types of financing, namely debt and equity-based. Based on these two classifications, various *sukuk* structures have been developed based on Islamic principle/contract over the decade. *Sukuk ijarah* is the most popular and widely used Islamic structure locally and internationally. *Sukuk mudharabah* is one of the simplest structures of *sukuk* given the fact that *mudharabah* contract is an age-old way of financing enterprises. Other types of *sukuk* are also playing significant role to help issuers and investors alike to participate in major projects according to their financing and investment needs.

2.4.1 *Sukuk ijarah*

Sukuk ijarah represents ownership of equal shares in a rented real estate or the usufruct of the real estate (AAOIFI, 2002). Basically, the *sukuk* owner has the right to own the real estate, receive the rent or disposes the *sukuk* at any time. *Sukuk ijarah* continue to prevail as the most popular manifestation of *sukuk* certificates due to their unambiguous *shariah* conformity and familiar leasing formula. The following are the common features of *sukuk ijarah* as outline by Nisar (2007):-

a. Fully descriptions on contract are very much necessary and the assets being leased and the amount of rent both are clearly known by contractual parties at the time of the contract. This is very crucial to enable an asset or a building that is yet to be constructed, being leased by the time set for its delivery to the lessee.
b. Predetermined rental in under *ijarah* must be in clear terms.
c. As per *shariah* principles concerns, the owner will responsible on any expenses related to underlying assets and maintenance expenses related to its operation are to be borne by the lessee.
d. SPV purchases the asset to enable them to issue s*ukuk ijara.* The asset is then leased to third party for its use.
e. *Sukuk ijarah* are completely negotiable and can be traded in the secondary markets.
f. *Sukuk ijarah* offer a high degree of flexibility from the point of view of their issuance management and marketability.

Figure 1 illustrates the basic structure of *sukuk ijarah*.



Source: Abstracted from Wilson (2008).

Figure 1: **Basic Structure of *Sukuk Ijarah***

ii. Steps involved in the *sukuk ijarah* structure:

(1) The originator sells certain assets to special purpose vehicle (SPV) at an agreed pre-determined purchase price.

(2) – (3) SPV will raise funds to finance the purchase of the assets through the issuance of *sukuk* and sell to investors.

(4) A lease agreement is signed between SPV and the originator for a fixed period of time, where the obligator leases back the assets to lessee.

(5) – (6) SPV receives periodic rentals from the originator. These are distributed among the investors i.e. the *sukuk* holders.

(7) – (8) At maturity, the SPV sells the assets back to the seller at a predetermined value. This proceed will be used to reimburse the certificate holder at issue price.

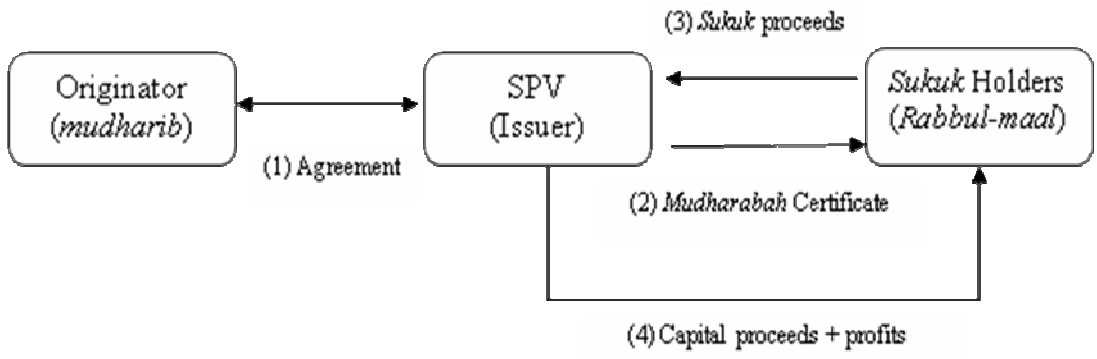
2.4.2 *Sukuk mudharabah*

This *sukuk* represent ownership of units of equal value in the *mudharabah* equity and are registered in the names of holders on the basis of undivided ownership of shares in the *mudharabah* equity and its returns according to the percentage of ownership of share (AAOIFI, 2002). The main purpose of *sukuk mudharabah* is to boost the public participation in big investment projects. In this structure, the capital provider is called *rabbul-maal* and the entrepreneur is called *mudharib*. In fact, the *rabbul-maal* is the owner of *sukuk mudharabah*. Nisar (2007) summarizes the general characteristics of *sukuk mudharabah* as:-

a. *Sukuk mudharabah* represent common ownership and entitle their holders share in the specific projects against which the *sukuk* has been issued.

b. The *sukuk mudharabah* contract is based on the official notice of the issue of the prospectus which must provide all information required by *shariah* for the *qirad* contract such as the nature of capital, the ratio for profit distribution and other conditions related to the issue.
c. The *sukuk mudharabah* holder is given the right to transfer the ownership by selling the deeds in the securities market at his discretion.
d. The originator who receives the fund collected from the subscribers of *sukuk mudharabah* can also invest its own fund and could get profit for the capital invested in addition to his share in the profit as *mudharib*.
e. *Sukuk mudharabah* contract should not contain any capital guarantee from the issuer or the manager of the fund or a fixed profit, or a profit based on any percentage of the capital.
f. It is permissible to create reserves for contingencies, such as loss of capital, by deducting from the profit.

Figure 2 illustrates the basic structure of *sukuk mudharabah*.



Source: Author's compilation (2010).

Figure 2: **Basic Structure of *Sukuk Mudharabah***

ii. Steps involved in the *sukuk mudharabah* structure:

(1) The originator entering agreement with SPV to raising fund in finance a project.
(2) SPV issues *mudharabah* certificate that representing common ownership in the specific projects.
(3) SPV received cash from the investor and pass it through to originator/ *mudharib*. In this case, SPV and *mudharib* are two separate entities.
(4) *Rabbul-maal* collects regular profit payments and final capital proceeds from project activity.

In the case of *mudharib* and project owner is two different entities, the *mudharib* hands over the completed project to the owner upon completion. Furthermore, the *sukuk* holders are given the right to transfer the ownership by sale or trade in the securities market at his discretion at maturity.

For the purpose of this study, *sukuk ijarah* and *sukuk mudharabah* are used as they represent debt-based and equity-based, allowing for significant comparison in terms

of structure and risk. This is very important and vital for industry development since there is lack of study on risks for both structures.

2.5 Development of *Sukuk Ijarah and Sukuk Mudharabah* in Malaysia Capital Market

Malaysia's Islamic capital market continues to show vibrant growth as can be seen from the ever-increasing size and diversity of products offered. For instance, Table 1 describes the issuance of both *sukuk ijarah* and *mudharabah* from 2007 to 2009. This is attributable to various factors including well-executed policies, facilitative regulatory environment, increasing numbers and sophistication of intermediaries that continue to push the frontiers in terms of product innovation as well as the existence of a complete, matured and well established Islamic financial system.

Table 1: Malaysia: *Sukuk Ijarah* & *Sukuk Mudharabah* Issuance (2007-2009)

	SUKUK IJARAH				***SUKUK MUDHARABAH***		
No.	**Year**	**Issuer**	**Size of Issues (RM mil)**	**No.**	**Year**	**Issuer**	**Size of Issues (RM mil)**
1.	2009	Pengurusan Air SPV Berhad *(*Musharakah)*	20,000	1.	2008	Projek Lintasan Shah Alam Sdn Bhd *(*Ijarah)*	745
2.	2008	Dewa Ringgit Sukuk Limited	3,500	2.	2008	Matang Highway Sdn Bhd (*Musharakah)	70
3.	2008	Dura Pisifera Sdn Bhd	321	3.	2008	Muhibbah Engineering Berhad	130
4.	2008	Dura Pisifera Sdn Bhd	38	4.	2008	Muhibbah Engineering Berhad	400
5.	2008	TH Group Berhad	330				
6.	2008	Tadamun Services Berhad *(*Istisna' & Murabahah)*	1000				
7.	2008	Sepangar Bay Power Corporation Sdn Bhd	450				
8.	2008	Syarikat Borcos Shipping Sdn Bhd *(*BBA)*	370				
9.	2008	TSH Sukuk Ijarah Sdn Bhd	400				
10.	2008	Projek Lintasan Shah Alam Sdn Bhd *(*Mudharabah)*	745				
11.	2008	Aras Sejagat Sdn Bhd	500				
12.	2008	Stratavest Sdn Bhd	120				
13.	2008	Cosmo-Jupiter Berhad	600				
14.	2007	Tradewinds Plantation Capital Sdn Bhd	190				
15.	2007	Binariang GSM Sdn Bhd	3,150				
16.	2007	Menara ABS Bhd	1,100				
17.	2007	Al-Aqar Capital Sdn Bhd	300				

18.	2007	Alam Maritim Resources Bhd	500
19.	2007	Total Mobile Sdn Bhd	30
20.	2007	Total Mobile Sdn Bhd	150
21.	2007	Hijrah Pertama Bhd	2997
22.	2007	Pins Capital Sdn Bhd	150
23.	2007	Kuala Lumpur Kepong Bhd	500

Note: * = Combination issues.

Source: Abstracted from Securities Commission of Malaysia (2010).

3. RESEARCH DESIGN

The aim of this paper is to provide a conceptual understanding on *sukuk* structures. It also discusses underlying risks comprehensively, with Malaysian *sukuk* industry as a case study. This paper will follow qualitative research method. Data sources include observation, documents and texts (i.e. archival research), and the researcher's analyses on the subject matter. Written data sources include published and unpublished documents, company reports, reports, newspaper articles and others.

4. ANALYSIS AND DISCUSSION

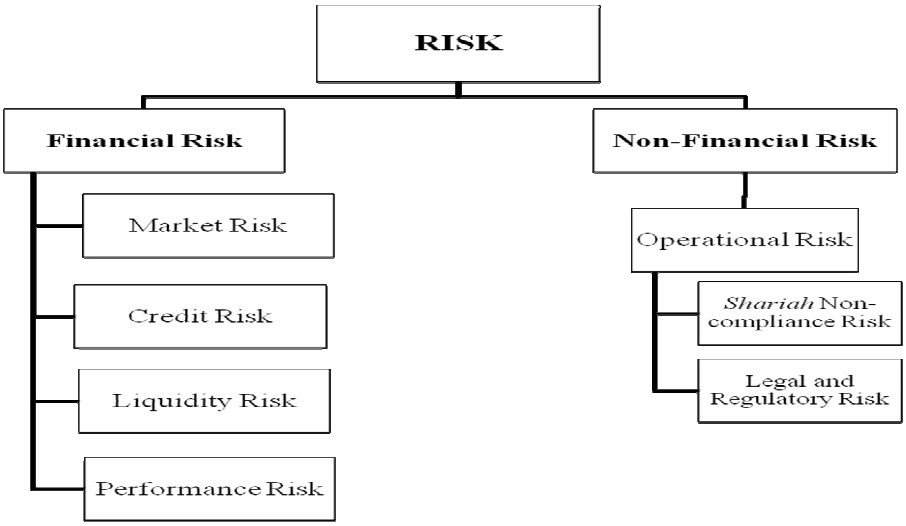
4.1 *Sukuk* Structure and Underlying Risk

Sukuk has been used extensively in financing for the last ten years. The complex structure of *sukuk* draws different reactions from the Islamic capital market participant as well as scholars around the world. Some structure of *sukuk* may approved by *Shariah* Board in one country but not in other countries. The continuous debate on *sukuk* structure has raise numbers of issues that contribute to the development of *sukuk* market. One of the significant issues is the underlying risk on *sukuk* structure. This issue might be overlooked as most of the debate focus on the form of *sukuk* itself.

Generally, the existence of risk must be accompanied with at least two possible outcomes and at least one outcome must be unfavorable. The presence of more than one outcome turn out the possibility of desired outcome deviates from the actual outcome (Vaughan & Vaughan, 2008). However, the concept of risk is ambiguous and can be interpreted into various ways. In Islamic perspectives, risk could be the possibility of any event or product that not comply with *shariah* principles and Islamic laws. Any activity that involves *riba, gharar* and *maisir* is prohibited under *shariah* principles.

Risk could stimulate innovation to improve certain process or product as well as to exploit the risk itself. Identifying the risk in Islamic financial instruments is essential as it could initiate the process of innovation. Thus, in this section the underlying risk associate with *sukuk ijarah* and *sukuk mudharabah* will be indentified. Generally, risk can be divided into two broad categories i.e. financial and non-financial risk. Financial risk is basically refers to any event that causes a direct financial losses, while non-financial risk may not contribute to financial loss directly but it could increase the severity of financial risk. According to BIS (2009), financial risk consists of market risk, credit risk and liquidity risk. However, for the purpose of this paper, the discussion of financial risk could be extended to other related risk such as performance and bankruptcy risk. Thus, risks that not fall under these categories can be classified as non-financial risk as illustrated by Figure 3.

Figure 3: Underlying Risk for *Sukuk Ijarah* and *Sukuk Mudharabah*



Source: Authors' compilation (2010).

4.2 Financial Risk

4.2.1 Market risk

Khan and Ahmed (2001) define market risk as the risk originating in instruments and assets traded in well-defined markets. In other words, it is a risk of losing money due to changes in market forces. Accordingly, the movement of government and economic policies are the core of the existence of market risk. As the market forces are very dynamic and volatile, market risk could be categorized into different type of risk. In this paper, we will focus on rate of return risk, foreign exchange rate and price or asset risk.

i. Rate of return risk

As far as *sukuk* concerns, interest rate risks can be considered as rate of return risks. Currently, most of the foreign denominated *sukuk* used conventional benchmark such as LIBOR as the reference rate for pricing purposes due to the unavailability of well established Islamic benchmark. Thus, the movement of LIBOR would affect the rate of return. Accordingly, Ariss and Sarieddine (2007) accentuate that the movement of reference rate would affect the Islamic bank's expected rate of return and may affect its ability to meet its obligations.

For fixed rate *sukuk*, the exposure to rate of return risks is similar with the exposure of fixed-rate conventional bonds to interest rate risk (Tariq & Dar, 2007). This will lead the market value of *sukuk* to shrink as the interest rate rising. However, this situation may not always happen for *sukuk* as the holders may sell the *sukuk* certificate before maturity or hold it until maturity. For the first situation, Tariq and Dar argument may applicable as buying and selling price of the *sukuk* would be based on the market price. However, fixed rate sukuk are mostly held by big institution and they tend to hold it until maturity. Thus, Tariq and Dar argument may questionable. Usmani (2008) declares that most of *sukuk* issued today are guaranteeing the return of principal to the *sukuk* holders at maturity. In Malaysia, it is permissible to guarantee the principal invested. In this case, the movement of interest rate is irrelevant for the actual market value of *sukuk*.

Tariq and Dar (2007) also point out that the exposure of fixed rate *sukuk ijarah* to market return volatility is higher compare to floating rate due to its exposure for entire maturity.[1] The effect of rate of return risk on fixed rate *sukuk ijarah* is the opportunity cost rather than the effect on market value of *sukuk* itself. This opportunity cost refers to the chances to enjoy capital gain. Although *sukuk ijarah* represent ownership of equal share in the rented asset or usufruct of the asset, Wilson (2005) emphasizes on the *sukuk ijarah* holders whom only benefits from fixed periodical rental payment and not to capital gains that usually the main motivation for equity investment. As such, floating rate *sukuk ijarah* seem to be more exposed to the interest rate volatility as the holder will received varied rate of return for entire maturity based on the movement of reference rate i.e. LIBOR. Regardless of market value of *sukuk*, floating rate *sukuk ijarah* tend to be riskier as the interest rate change.

Under *sukuk mudharabah*, the certificate holders are only entitled for profit sharing and no provision of capital gain (Wilson, 2005). Rate of return is solely depending on the project performance i.e. the value of *sukuk* will increase should the project perform well and vice versa. In the event of a business loss, the loss shall be borne solely by the capital provider (*rabbul-maal*). As such, the investors are facing high risk of losing their money. In reflection to this issue, the Shariah Advisory Council (SAC) of Securities Commission of Malaysia allows *sukuk* issuers in Malaysia to apply third party guarantee on the capital invested under *muqaradhah/mudharabah*.[2] SAC also permits fee (*ujrah*) to be paid to guarantor.

ii. Foreign exchange risk

Basically, the exposure of all *sukuk* structure to foreign exchange (FOREX) risk is similar but the composition of asset in *sukuk* pool and the maturity could differentiate the level of exposure for each type of *sukuk* (Tariq & Dar, 2007). Unfavourable fluctuation of exchange rate causes currencies to be depreciated or appreciated and leads to greater FOREX risk exposure. In relation to the discussion on *sukuk ijarah* and *mudhabah* exposure to FOREX risk, it will focus on the underlying assets and *sukuk* tenure.

Underlying asset is the backbone to *sukuk ijarah* as the certificate issued to investors will be backed by this asset. *Ijarah* based is relatively more expose to FOREX risk compared to *mudharabah* due to the presence of asset into it structure. Furthermore, underlying assets under *sukuk ijarah* could generate returns in foreign currency and this cash flow could be affected by the currency fluctuation (Zaidi, 2007). In other words, *sukuk ijarah* is also exposes to the economic losses as a result of currency exchange movement. Accordingly, FOREX risk occurs when the currency of the underlying asset in *sukuk* pool deviates from the currency where *sukuk* fund are accumulated (Tariq & Dar, 2007). Diversified asset composition and diversification of return from underlying asset is crucial to reduce the impact of foreign exchange variation.

Petronas Global Sukuk (PGS) was the first *sukuk* listed in Bursa Malaysia (Bursa), a Malaysian domestic onshore stock exchange, under the exempt regime. It also listed in Labuan International Financial Exchange (LFX), the Malaysian offshore stock exchange, and the Luxembourg Stock Exchange. This USD1.5 billion *sukuk* was structured based on *ijarah* principle and was marketed in Abu Dhabi, London, Singapore, Hong Kong and

[1] Floating rate *sukuk ijarah* exposes market return volatility within the time of floating period, normally 6 months (Tariq & Dar, 2007).

[2] *Shariah* Board in Malaysia is known as *Shariah* Advisory Council (SAC). There are two SACs; SAC of Bank Negara Malaysia (BNM) for the money, banking & *takaful* (Islamic insurance) market, and SAC of Securities Commission (SC) for the capital market (including *sukuk*).

New York. As PGS widened its target market and reduce the dependency on local and Middle East investors, it diversified currency exposure and minimizing the foreign exchange risk.

Besides underlying assets, the tenure of both *sukuk ijarah* and *mudharabah* is factoring the level of exposure to the risk of foreign exchange transaction. Transaction risk is related to the time gap between entrance and settlement of the contract. As such, *sukuk* with longer maturity will create higher time gap and increase the expose to this risk compare to the shorter maturity. In fact, the exchange rate could fluctuate more often in long term. For example, Kumpulan Gutrie Berhad through its SPV, First Global *Sukuk* had issued two series of *ijarah* based *sukuk* (Series A and Series B) in 2001 with a total value of USD150 million. The maturity for both Series A and B was 4 and 5 years respectively. Although the underlying asset for both certificates were similar i.e. parcel of land, but the exposure of Series B to transaction risk is greater than Series A due to its maturity.

iii. Price/asset risk

Price or asset risk can be defined as a variation in value of the underlying assets. In other words, price risk is the differences between fair-market and reported values of the underlying asset. In fact, *sukuk ijarah* is vulnerable to price risk compare to *sukuk mudharabah* due to nature of *ijarah* structure that requires asset backing in the process of certificate issuance. The underlying assets especially tangible assets are likely to depreciate in the future and cause the asset values to fall below prevailing market values. The issuer is likely to face this risk as the underlying assets under *sukuk ijarah* will be bought back by the issuer at maturity. Any differences in value will be borne by issuer and the investor will get the principal as stated in the contract.

4.2.2 Credit risk

Apart from market risk, *sukuk are* also exposing to credit risk. Khan and Ahmed (2001) define credit risk as the risk that counterparty will fail to meet its obligations timely and fully in accordance with the agreed terms. It is also refers to the probability that an asset or loan becomes irrecoverable due to a default or delay in settlements (Tariq & Dar, 2007). *Sukuk* credit rating is reflects to the credit worthiness of the underlying asset and the issuers of certificate. Generally, *sukuk* with good credit rating (e.g. AAA, AA) entails low credit risk. Basically, *sukuk are*sued in Malaysia must have at least one credit rating throughout the tenure of *sukuk* (SC & BNM, 2007). This is important to boost confidence level of *sukuk* investors as well as Islamic capital market participants.

As mentioned above, SAC allows third party guarantee on capital invested by *rabbul-maal* under *sukuk mudharabah*. Thus, the major credit risk faced by the *rabbul-maal* is the non-payment of profit share by the *mudharib* at specified time. Poor performance of project and asymmetric information problem may contribute to credit risk. Generally, asymmetric information occurs when *mudharib* access more information compare to investors and this situation may encourage to non-fully disclosure of information for the benefits of *mudharib*. It then exposes the *rabbul-maal* to another risk called accounting risk. Accounting risks can be defined as the possibility to manipulated profit purposely for the benefit of one particular party. According to Obiyathulla (2008), *mudarabah* or *musharakah* contracts are highly exposed to accounting risk. In practice, *rabbul-maal* does not monitor the operations of project they are invested in. As such, only the *mudharib* know the profitability of the project. According to Wilson (2005),

purchasers of *sukuk* securities have the right to information on the purposes for which their monies are to be allocated. Investors' right to access information must be stated clearly in the contract to avoid any dispute after the contract is enforced. As such, accountability and transparency of *mudharib* is vital to ensure the *maqasid al-shariah (*objective of *shariah*) is attained.

The holders of *sukuk ijarah* enjoy fixed periodical rental payment from the issuer for entire maturity of *sukuk*. In essence, *sukuk ijarah* facing credit risk in two occasions. Firstly, credit risk during the contract is enforced. Under *sukuk ijarah*, issuer is obliged to pay the specified rental at specified time to the *sukuk* holders. Failure to pay rental payment at specified time imposes credit risk. Floating rate of *sukuk ijarah* is greater expose to this risk as rise in reference rate would increase the burden of rental payment. As such, the possibility of issuer to delay the rental payment is relatively high. Should this occurs, the *sukuk* holders can exercise the right to nullify the contract and force the obligor to buy back the assets (Tariq & Dar, 2007).

Secondly, credit risk when the contract is matured. At maturity, the SPV under *sukuk ijarah* will sells the underlying assets back to the issuer at a predetermined price. The proceeds from this selling will be distributed among *sukuk* holders. However, credit risk could occur at maturity when issuer is unable to buy back the underlying asset at predetermined value. According to Tariq and Dar (2007), *sukuk* holders could exercise the right to take legal action and force the obligor to enter into debt-rescheduling proceedings.

Excessive credit risk could expose the originators to bankruptcy risk. It refers to the inability of the issuer to meet its short and long term financial obligations. This risk is significant should the originator confront with financial difficulties after the enforcement of the contract. In assessing the issues regarding to bankruptcy risk, the ownership on the underlying assets should be explained.

Under *sukuk ijarah*, ownership of the underlying assets is belonging to the investor through certificates issued by the special purpose vehicle (SPV). Nevertheless, this ownership is considered as an "interim basis" as it will expire at maturity. Furthermore, it refers to the undivided ownership of the leased assets and the cash flow arising from the assets. However, some questions related to the ownership and occurrence of sale should be addressed. First, does the actual sale occurs (i.e. name of investors are stated in master title)? Second, can the investors liquidate the assets in case of originator default? According to AAOIFI, asset ownership should be transferred in full from originator to investor and the investor should own the *sukuk* asset legally. In practice, actual sale of asset may not occurs due to the tendency of contractual parties to sign both contracts i.e. sell and lease back, buy back contract concurrently. In fact, most of the SPV are owned by the originator. Accordingly, Vicary (2010) highlights that if the investors are unable to dispose the asset in case of default, the underlying asset has no genuine role in *sukuk* structure. In this case, the structure of *sukuk are* merely a metaphor for the purpose of legitimacy under *shariah* law. Howladar (2006) insists that *sukuk* holders must own the beneficial title of the underlying asset to avoid the risk of "claw back".[3] By owning the asset legally, *sukuk* investors are entitle to all rights on the assets including the right to liquidate the asset in the event of originator become insolvent.

Basically, *sukuk mudharabah* is used to finance specific projects with low to medium risk to attract more investors. In handling or managing a project, it is rendering the owner or the entrepreneur to speculative risk as it can be either profitable or

[3] Claw back refers to the possibility that those assets may now be reclaimed by the administrator of the insolvent estate and will not be available to repay *sukuk* investors (Howladar, 2006).

unsuccessful. Under *mudharabah* structure, bankruptcy risk could happen due to the failure of the project or the *sukuk are*suer become insolvent. The former is clearly understood that *rabbul-maal* would borne the entire loss should the project does not perform well, but the *mudharib* will responsible for the losses due to it negligence, mismanagement and dishonesty. However, in the case of originator gone bankrupt, which lead to the failure of the project, could the investors claim against them to recover their investment?[4]

The presence of SPV is not compulsory for *sukuk mudharabah* but most of the issuer in Malaysia (or even worldwide) tends to use SPV for tax incentives purposes as well as the function of SPV to remote bankruptcy risk. Although, the originator owns the SPV[5], it liability is limited to the capital invested in SPV and prevent the *rabbul-maal* to make claims against the originator in the event of insolvency. Therefore, the bankruptcy risk facing by the investor is solely on the performance of the project and not to the originator.

4.2.3 Liquidity risk

Liquidity concerns on *sukuk* are continuously highlighted by Islamic capital market participants. In order to be liquid, *sukuk* market needs a very large volume as well as a sufficient supply and demand. Accordingly, a seller would be able to find a replacement to substitute the old *sukuk* that they have sold. Generally, liquidity risk would occur when *sukuk* holders are unable to sell their certificate due to certain restrictions such as inactive secondary market. Inactive or lack of secondary market may prevent the maximization of *sukuk* mobilization in the industry and may confront with liquidity risk.

Secondary market for *sukuk* in Malaysia is relatively new with Petroliam Nasional Bhd (PETRONAS) *Al-Ijarah Sukuk* was the first *sukuk* listed in Bursa in August 2009. This the result of the decision by Bank Negara Malaysia (BNM) and Securities Commission of Malaysia (SC) to allow debt securities and *sukuk* to be listed in Bursa by both listed and non-listed issuer under the provision of section 229(1) and section 230(1) of the Capital Market and Security Act 2007 (BNM & SC, 2009). Statistically, there are 12 *sukuk* listed under exempt regime[6] in this bourse amounting approximately of USD18.8 billion as May 2010 (Raja Teh Maimunah, 2010b). In fact, as a largest *sukuk* market in the world, Malaysia has emerged as a leader in *sukuk* listing and Bursa has overtaken Nasdaq Dubai as the top listings exchange in the world for *sukuk* in 2009 (Malaysian Islamic Financial Centre (MIFC), 2010).

In Malaysia, both *sukuk ijarah* and *mudharabah* are allowed to be traded in secondary market. Currently, *sukuk ijarah* and *musharakah* dominate the *sukuk* listed in Bursa but most of the *sukuk* are traded over-the-counter (OTC) and supported by a settlement system operated by the Malaysian central bank (MIFC, 2010). For example, Sukuk 1Malaysia 2010 (based on commodity *murabahah*) was introduced in June 2010. This *sukuk* has 3-year tenure with 5% return per annum and can be bought and sold before the maturity. Investors can trade this *sukuk* at appointed agent banks[7] with minimum sale/purchase of RM100 and in multiples of RM100. However, buy and hold

[4] It is permissible by *shariah* law to establish reserves for contingencies but it only covers the shortfall of expected profits.
[5] Most of SPV in Malaysia are owned by the originator.
[6] Exempt regime means that the *sukuk* will not be quoted or traded on the exchange. It basically traded over-the counter. Under this regime, the issuer of *sukuk* or debt securities not necessarily listed company. Unlisted company is also allowed to issues this security.
[7] List of agent banks can be retrieved from http://www.bnm.gov.my/index.php?ch=255&pg=816&ac=839.

culture does not signify the liquidity of *sukuk* especially *sukuk ijarah*. As s*ukuk ijarah* offer high fixed return compared to conventional bond at similar rating and tenure holders, the holders tend to hold the certificate until maturity. Furthermore, most of the *sukuk* are held by large institutions and it may inaccessible for the average private investors. This culture may prevent the mobilization of *sukuk* in the market.

Under *mudharabah*, the *rabbul-maal* has the right to sale the ownership at maturity in the securities market at his discretion. It also permissible to dispose the *sukuk mudharabah* for entire maturity and the price would fully depend on the current project performance. As such, the value of *sukuk* could be above or below the par value.

4.2.4 Performance risk

Generally, performance risk can be defined as a situation where actual performance deviates from expectation. Performance risk could increase the severity of credit risk and as mentioned above, credit risk causes bankruptcy risk. Accordingly, performance risk is crucial in determining the survival of the *sukuk*. In relating to *sukuk* structure, both s*ukuk ijarah* and *mudharabah* are facing performance risk but in different magnitude. The value of *sukuk mudharabah* is solely depends on the project performance. As such, it value could be above or below face value should it dispose before maturity (capital invested is guaranteed in Malaysia). Under this structure, the investor is highly exposes to this risk as the investor will bear all the losses if the project is underperform.

In *sukuk ijarah* case, the performance of underlying asset does not affect the rental payment but the overall originator performance could affect the ability to pay the rental for the whole tenure of the *sukuk*. As the overall performance of the originator might be affected by any economic conditions, rental payment could be default. For example, the rising in interest rate (most *sukuk* use LIBOR as a reference rate) for floating rate *sukuk ijarah* causes the rental payment increases. It gives additional burden to the originator and might lead to delay in payment. Therefore, it is very essential for investor to assess not only the underlying asset but also the originator before put their money in *sukuk*.

4.3 Non-Financial Risk

4.3.1 Operational risk

Operational risk refers to the failure of the internal process, people and system that resulting direct and indirect losses (Basel, 2001). The complexity of *sukuk* structure could be the main sources of operational risk. As such, it could increase the consequences of financial losses should it occur. Although operational risk could come from any sources, the discussion on this paper only focus on *shariah* non-compliance risk and legal and regulatory risk.

i. *Shariah* non-compliance risk

Shariah non-compliance risk is one of the operational issues that had been debated continuously since the existence of *sukuk*. In fact, it is a major operational risk that associated in *sukuk ijarah* and *mudharabah*. *Shariah* non-compliance risk refers to the possibility of an asset to loss it value due to the issuers' violation of fiduciary responsibilities under *shariah* law (Tariq & Dar, 2007). Therefore, it is a paramount to comply with *shariah* principles to ensure the legitimacy as well as to evade the element of *riba*, *maisir* and *gharar*. As the *shariah* compliance issues are very subjective and can be

interpreted in different ways, it has produced different *shariah* standards and guidelines between jurisdictions in structuring a *sukuk*. For instance, the statement made by Sheikh Taqi Usmani in November 2007 that most of non-*ijarah sukuk* issued in the market are non-*shariah* compliant[8] causes mix perception on *sukuk* structure and Islamic finance as a whole. It is also viewed as one of the strong reasons that lead to the shrinking of global *sukuk* issuance in 2008. Indeed, in Malaysia *sukuk mudharabah* and *musharakah* are permissible. Thus, consistency of *shariah* ruling between regions is very much needed to avoid uncertainty and confusion among Islamic capital market players.

Sukuk structure is exposes to *shariah* non-compliance risk for whole of it tenure. Underlying asset of a *sukuk* must be *shariah* approved and it can be tangible or intangible asset[9] and AAOIFI has highlighted that *sukuk* must not represent element of receivables or debts. In Malaysia, SAC has allowed receivable or debt component to be used as an asset in *sukuk* issuance.[10] These receivable or debt must be derived from Islamic transaction and not from the conventional transaction. For example, *Sanadat Mudharabah* Cagamas are Islamic bonds issued under the Islamic principle of *mudharabah* (profit-sharing) to finance the purchase of Islamic home financing debts. Similar practice also has been done in Saudi Arabia through the issuance of Caravan 1 *Sukuk* in 2004.[11]

Under *sukuk ijarah*, sale of asset is remaining to be a major issue and has been addressed by many scholars and practitioners in recent years. The true sale of asset from originator to SPV must be occurred to enable the SPV to issue certificate of ownership to investor. As such, the investors hold the ownership to the underlying assets indirectly through the SPV. In fact, SPV is act as a trustee on the underlying asset. The legal ownership issue is critical should the originator become insolvent to avoid "claw back" problem. Furthermore, it is vital that SPV owns the asset legally to comply with the *shariah* principles in issuing *sukuk* certificate. This issue had been outlined by AAOIFI and stressed out that the underlying asset of *sukuk* must be owned by the investors in order to be tradable. This principle is broadly accepted including Malaysia. However, execution of transfer of ownership (sale of asset) and *ijarah* contract at same time is prohibited under *shariah* law.[12] As such, contractual parties may use purchase undertaking as an initial commitments by the SPV (lessor) to buy the particular asset from the originator (lessee). Similarly, sale undertaking could be taken to commit to sell back the asset at maturity to the originator. Although sale and purchase undertaking is not a contract, it is critical in attending to contingencies during the course of the lease such as accelerating the outstanding rentals in the event of default by the lessee (Adam & Thomas, 2005). However, AAOIFI observed the purchase or sale undertaking as a guarantee that prevent the application of profit and risk sharing.

In certain extent, originator may not always pay the specified rental or profit at specified time that may lead to the late payment and default. Basically, penalty charged on late payment of default is not derived from the underlying asset or project. Thus, it is

[8] 85% of non-*ijarah sukuk* are non-*shariah* compliant (Zawya, 2009).

[9] Tangible assets such as building, land, etc. Intangible assets such as usufruct of services (e.g. marketing services and delivery services) and usufruct rights (e.g. right over for the use of land, right over the concession project).

[10] In Malaysia, receivables are not categorized as a money and allows *sukuk* to be 100% backed by receivables.

[11] Caravan 1 *Sukuk* was issued in Feb 2004, totaling SR98mil. (USD26mil.). It securitized the automobile inventory of HANCO, a car leasing company. The SPV purchased the inventory (2344 vehicles) and hence the associated cash flows (lease and rental contracts), from the originator.

[12] Sale of asset (transfer of ownership) cannot be executing along with *ijarah* contract as it may create uncertainty. Should this occurs, it means the contract is signed in advance and become effective at a future date (after sale contract is completed).

prohibited under *shariah* principles. However, SAC has permitted the investors to be compensated (*ta'widh*) due to late and default payment. The rate of compensation on late payment of profit is 1% per annum and for failure to settle the principal payment; current market rate in Islamic interbank money market will be used to determine the *ta'widh*. Both rates cannot be compounded. Investors are also allowed to receive a rebate (*ibra'*)[13] on early settlement. This provision must be stated clearly and inserted in primary legal document of *sukuk* to avoid uncertainty.

As mentioned before, *sukuk* can be traded in secondary market. However, it must follow to ensure the *shariah* principles' conformance. Thus, Saiful Azhar (1999) has outlined the following rules to sell *sukuk* before it maturity:-

- If the *mudharabah* capital after the subscription period is over and before the operation of the specific project still in the form money, therefore, the trading of *sukuk* would be based on the exchange of money for money and it must satisfy the rules of *sarf*.
- If such capital is still in form of debt, it must be based on the principle of Islamic debt trading or exchange debt for debt.
- If such capital is in the form of money, debt, assets and benefits, trade must be based on the market price evolved by mutual consent.

To sum up, standardization of *shariah* ruling is vital to avoid confusion and to contribute further development of *sukuk* market worldwide. It might distort the rapid development of *sukuk* in providing another option of financing to capital market participants. Guidelines by AAOIFI could be initial initiative toward standardization, but it must be followed by the enforcement of these guidelines globally. In other words, *shariah* boards in respective jurisdiction used the AAOIFI's guideline in overseeing the practice of *sukuk*.

ii. Legal and regulatory risk

Malaysian *sukuk* market is governed by various legislations, rules and guidelines by numbers of authority bodies. Security Commission of Malaysia (SC) and Labuan Offshore Financial Services Authority (LOFSA) are the specific bodies that regulated the practice of *sukuk* for onshore and offshore Islamic capital market respectively. Thus, the issuance of *sukuk* must comply with the directives from these authorities. For example, *sukuk* that issued onshore must fulfill the requirement under Policies and Guidelines on the Issue/Offer of Securities, Minimum Contents Requirements for Trust Deeds and Guidelines on the Offering of Asset-Backed Securities. Furthermore, transferable and tradable *sukuk* rating is a must in Malaysia and indicative rating must be submitted along with the application to issue *suku*k. Although no minimum rating is required, *sukuk* must be rated by rating agencies recognized by SCM.[14]

Changes in regulatory by the authorities may expose the originators or issuers of *sukuk* to legal and regulatory risk. Furthermore, in jurisdictions where English and common law (e.g. Malaysia) is practiced and in the absence of *shariah* laws, the former

[13] According to SAC, *ibra'* clause in the primary legal document is considered as *syart* (condition) which in compliance with *muqtadha `aqd* (purpose of contract). SAC has advised that the *ibra'* clause can be inserted in the payment and settlement section.

[14] The rating agencies could be domestic or international agency. RAM Holding (formerly known as Rating Agency Malaysia Berhad) and Malaysia Rating Corporations Berhad (MARC) are two domestic rating agencies recognized by SC.

will be applied. According to Raja Teh Maimunah (2010a), the issuance of *sukuk* may be structured to comply with *shariah* principles but the rights of investor and issuer's responsibilities are governed by English law. Indeed, lack or almost non-existent separate Islamic law that governed this specific issue contributes to the relying on the conventional laws in settling court disputes. It then solved accordance to the applicable provisions under English law. The Contract Act 1950, Company Act 1965, Trust Company Act 1949 and Trustee Act 1949 could be used in Malaysia to determine the investors' right and issuer's responsibilities. This issue is mainly arise when originator become insolvent.

Complete legal documentation for *sukuk* issuance is imperative in order to deal with *shariah* issues. In fact, *sukuk issuance* is substantially requires more documentation and legal due diligence compared to conventional bond. For example, sale and lease back agreement under *sukuk ijarah* might violate the *shariah* principles. Signing *ijarah* contract in advanced (together with sale of asset agreement) but become effective in the future date consist the element of uncertainty. As such, purchase undertaking is required to ensure the agreement is exercisable under *shariah* law. However, contractual parties in *sukuk issuance* must be well aware whether the purchase undertaking is enforceable under English law. Thus, incomplete legal documentation might expose the *sukuk* transaction to *shariah* non-compliance risk as well as legal risk.

The listing of Malaysian *sukuk* started since 2002 when Malaysian Global *Sukuk* was listed in Luxembourg Stock Exchange, Bahrain Stock Exchange and LFX. However, the listing of *sukuk* in Bursa only begins in August 2009 by the inaugural listing of PETRONAS *Al-Ijarah Sukuk*. As mid-July 2010, there are 13 *sukuk* listed in Bursa under the exempt regime including the first foreign *sukuk*, GE Capital *Sukuk* Ltd. Although *sukuk are* listed under exempt regime, it does not mean that it could avoid the listing requirements by Bursa Malaysia. Exempt regime means that the *sukuk* will not be quoted or traded on the exchange and basically, it is traded over-the counter (OTC). In fact, the listing requirements for *sukuk are* similar to conventional listing requirements. It also must comply with the rules and regulations introduced by Bursa and the issuer of *sukuk* must obtain the approval from SC before been listed in Bursa Malaysia. The authorities might change the rules and regulation at anytime to improve the efficiency and effectiveness of *sukuk*'s secondary market. As such, the issuer must be well aware on any changes to avoid the risk of being delisted from the exchange.

Identifying the underlying risks is vital in order to facilitate the development, practice and application of *sukuk* structure. Thus, the previous discussion on underlying risks for both *ijarah* and *mudharabah* strtuctures can be summarised in Table 2.

Table 2: Underlying Risks in *Sukuk Ijarah* & *Sukuk Mudharabah*

TYPE OF RISK		*SUKUK IJARAH*	*SUKUK MUDHARABAH*
1.		**FINANCIAL RISK**	
1.1	**Market risk**		
1.1.1	Rate of return risk	- Fixed rate -Market value of *sukuk are* not always relevant to interest rate/ reference rate movement. -Return is fixed for the whole tenure of sukuk. Rising in reference rate would create "opportunity cost" for investors. - Floating rate -Rate of return is varied for entire	- Rate of return and *sukuk* market values is determined by project performance.

		tenure of *sukuk*. - Floating rate is riskier than fixed rate.	
1.1.2	Foreign exchange risk	- Underlying asset composition -*ijarah* is more vulnerable to this risk compare to *mudharabah*. - Tenure -*Sukuk* with longer maturity is highly exposed to this risk compare to shorter maturity.	
1.1.3	Price risk/ Asset risk	- *Ijarah* is vulnerable to price risk compare to *mudharabah* due the present of tangible asset in its structure.	
1.2	**Credit risk**	- Credit risk is non-payment of rental at specified time and the possibility of issuer to be unable to redeem the underlying asset at maturity date.	- Credit risk is non-payment of profit share by the *mudharib* at specified time as the principal invested is guaranteed at maturity by third party.
1.3	**Liquidity risk**	- Tradable in secondary market through OTC before maturity - Most of holders are tend to hold the *sukuk* until maturity.	- Tradable in secondary market through OTC. - At maturity, *sukuk* holder has the right to transfer the ownership by sale or trade in the securities market.
1.4	**Performance risk**	- Performance of underlying asset does not affect the rental payment but the overall originator performance could affect the ability to pay the rental for the whole tenure of the *sukuk*.	- Value of *sukuk* is solely depends on the project performance and investor will bear all the losses if the project is underperform.
2.		**NON-FINANCIAL RISK**	
2.1	**Operational risk**		
2.1.1	*Shariah* non-compliance risk	- Investors are allow to be compensated (*ta'widh*) due to late and default payment or rental. - true sale of underlying asset must be occurred.	- Underlying asset in term on receivable derived from Islamic transaction is allowable. - Investors are allow to be compensated (*ta'widh*) due to late and default payment of profit. - If traded before maturity, must follow the rules outlined by Saiful Azhar (1999).
2.1.2	Legal and regulatory risk	- Requires more documentation compare to conventional bond in dealing with *Shariah* issue. - Exchange listing requirements under Exempt Regime.	

Source: Authors' compilation (2010).

4.4 Risk Mitigation in *Sukuk*

Financial risk management is the practice of creating economic value in a firm by using financial instruments to manage exposure to risk. Risk management requires identifying sources of risks, measuring and mitigation; and it can be qualitative and quantitative.

Specific to financial risk management, it focuses on when and how to hedge using financial instruments to manage costly exposures to risk.

Risk is inherent in any transaction, whether Islamic or conventional but the former assume additional risk, i.e. *shariah* non-compliance risk, of what *shariah* considers being a compliant investment product within the ethical and financial parameters. Nowadays, as the structure of Islamic financial contracts is enhanced with more elements, institutions offering Islamic products should be able to identify the types of risks that they face by employing such contracts during structuring process.

As far as risk management in *sukuk are* concerned, the prevailing question for regulators and practitioners alike is certain features of *sukuk* structure and the underlying risks. As noted before, there are a wide range of *sukuk* structures. Some *sukuk* are more akin to debt-based instruments, others have equity-like characteristics, whilst others mirror conventional asset-backed structures. Differences in the structure have significant implication on the underlying risks.

In the Islamic finance industry, conceptual definitions can give rise to products with differing risk, legal and economic characteristics. Terms such as *musharakah*, *mudharabah*, *murabahah* and *ijarah* are generic categories which originate from the different nominate contracts used in early Islamic history. These terms define types of transaction which underpin specific products – but they are not the products themselves. As a result, different products utilising the same underlying contracts (or indeed a combination of contracts) may vary significantly different in terms of their risk profiles and economic substance.

The issue of series of high profile *sukuk* defaults in the GCCs is more of credit (default) and legal risks rather than the *sukuk* structure. For instance, the absence of clarity of how the issuer of Nakheel *Sukuk* had planned to meet the payment obligations upon maturity (redemption) date; the uncertain rights of the investors and issuer's responsibilities which are governed by English law or UAE law, i.e. one must see how assets could be seized under both laws, not under *shariah* law since the *sukuk* was structured to comply with *shariah* principles.

This part will only discuss risk mitigation in *sukuk* for two types of risk, namely credit risk and legal risk which represent financial and non-financial risk, respectively.

4.4.1 Credit (default) risk

Certainty with regard to the post-default process in *sukuk* transactions is necessary because the potential for a default exists in all types of transactions. Even the most prudently structured products can fail due to circumstances outside investors' control. Clarity as to what may reasonably be expected in a default scenario with respect to any financial transaction leads to an enhanced ability to foresee and mitigate the risks inherent to that type of transaction. Until a right is interpreted and enforced, the benefits enjoyed by the person holding that right are limited to the benefits resulting from the obligations that the corresponding obligor is willing or able to perform. In a sense, defaults in a type of transaction reveal the actual rights held by investors in that type of transaction. Knowledge of such rights allows the financial practitioners structuring and documenting that type of transaction greater ability to mitigate the risks. The foregoing applies to a great extent to the *sukuk* market.

Current defaults in *sukuk*, though unfortunate in a number of respects, are not entirely negative occurrences. Nor can it be said that those defaults alone represent a maturation of the *sukuk* market, but likely to prove means for the maturation. Instead,

each default represents another incremental opportunity for increased knowledge about the relevant *sukuk* and its underlying structures. Increased knowledge will better equip those structuring and documenting *sukuk* transactions to understand and address the risks facing those *sukuk* transactions. Ultimately, the *sukuk* defaults should not be regarded as a failure of the instrument itself but a multitude of things typical of any credit issue.

4.4.2 Legal risk

The question for regulators and practitioners alike is that in the context of securities legislation configured for conventional products, how instruments such as *sukuk* fit under the existing frameworks. In addition, there can be a lack of clarity in regulatory classification of Islamic finance products. Securities legislation has historically been crafted to deal with conventional products, and Islamic securities which are structured to replicate the function of conventional products may be categorised differently, or not captured at all, under existing frameworks, due to differences in their underlying legal, economic or risk structures.

In fact, the knowledge factor is compounded in the context of *sukuk* products as the assets on which such products are based (or by which they are backed) are scattered in multiple jurisdictions which apply different legal systems (Islamic, common law, civil law or hybrid legal systems) and which may vary in terms of the maturity of their judicial systems and enforcement mechanisms. This gives rise to the need for a comparative study of how each default is being handled in the relevant jurisdictions. Such study will be far from complete absent meaningful cumulative feedback on the manner by which *sukuk* default scenarios were treated.

Regulators should put more emphasize on the economic and risk characteristics of the contractual arrangements which underpin *sukuk* with a view to provide a consistent and appropriate level of regulation. In practise, this may mean fitting *sukuk* within existing products classification or creating new regulations, different types of *sukuk* may even be regulated differently.

5. CONCLUSIONS

The Malaysian *sukuk* market presents some challenges for investment. It is relatively immature and concentrated at RM168 billion (outstanding as at March 2010). Many risks can be mitigated with appropriate asset allocation, a relevant investment process, and an appropriate subscription redemption cycle. In this study, we made an effort to identify the risks underlying *sukuk* structures and suggest some possible methods of mitigating such risks. Indeed, the subject is an emerging one and offers rich potential for further research as the Islamic capital market continues to grow. For instance, there is an urgent need to develop risk management tools including hedging against currency and yield curve movement to ensure that Islamic financial institutions can grow in a prudent and controlled manner.

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SUSTAINABLE DEVELOPMENT INDICATORS OF SELECTED MUSLIM COUNTRIES

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Abstract

The aim of this paper is to analyze the impact of income level, population growth and industrial growth on sustainable development indicators of 39 Muslim countries of the world. For this purpose, a GMM (Generalized Method of Moments) method of estimation is used to observe the impact based on cross-sectional data. Data collected for the study covers the period of 1990 to 2005 and are sourced from the World Bank. The results indicate that the middle/higher income countries have less problem of air quality compared to low income countries which is at higher process of industrialization. This is consistent with hypothesized relationship of environmental Kuznet curve. It is also found that less population growth and low income countries contribute to better biodiversity or less percentage of country's territory in threatened eco-regions.

Keywords: Sustainable development, Islamic countries, economic growth indicators

1. Introduction

The concept of sustainable development was introduced in 1980 by the International Union for the Conservation of Nature and Natural Resources (IUCN). The World Conservation Strategy stated that "for development to be sustainable it must take account of social and ecological factors, as well as economic ones; of the living and non-living resource base; and of the long-term as well as the short-term advantages and disadvantages of alternative actions" (IUCN, 1980). This definition recognizes the interrelationship between social concerns, economic activity and the environment. However, the focus remains on environmental integrity.

However, in 1987 the Brundtland Commission in its report 'Our Common Future' defined the term sustainable development as "*a development that meets the needs of the present without compromising the ability of future generations to meet their own needs"* (WCED, 1987). To date, the Bruntland Commission definition is the most commonly used definition of sustainable development. Over the years, further improvements were made on the above definition, including that of the Islamic perspective.

The objective of this paper is to evaluate the environmental sustainability of 39 Muslim countries by looking at various growth indicators. Specifically, the paper examines the impact of economic growth, population growth and industrial growth on indicators of sustainable development of the countries under study.

The paper is organized as follows. Following this section, Section 2 discusses the concept of sustainable development from the conventional and Islamic perspectives. Section 3 looks at the research method followed by the discussion of findings in Section 4. Finally, Section 5 concludes the discussion.

2. The Concept of Sustainable Development

The literature discusses three main approaches to sustainable development. The first approach focuses on "*maintaining the rate of growth*" in the long-run in which development refers to the process of sustaining growth. This approach originates from classical economic theories, such as those of Malthus (1798), Ricardo (1817) and Mill (1857). Later, when the neoclassical and London schools adopt this approach, they relate the concept of sustainable growth to the use of natural resources. This, in turn, is related to the concept of weak and strong sustainability because the consumption of natural resources and the depletion that ensues would depend on what comprises these resources.

The second approach focuses on achieving "*intergenerational equity*", that is, to ensure that the total welfare received by the present generation is non-declining over time and from one generation to another. This view is proposed by the United Nations in its World Commission on Environment and Development. This approach is generally accepted by many due to its inclusion of both the developed and developing economies.

The third approach relates to the idea of "maintaining *the present quality of human and environmental life*". In other words, there should be a balanced between growth and environmental protection and conservation. Hassan (2003) suggests minimization of

pollution instead of elimination because *"a minimal temporal increase in output is unavoidable in the face of population growth, poverty eradication programs and mitigation of regional prosperity imbalances."* Since the production of goods and services has some negative externalities such as pollution, eliminating the externalities altogether would be overwhelming.

On the other hand, the Islamic literature tends to discuss sustainable development in terms of the environmental aspect. Of late, there is an attempt to relate the concept of sustainable development to the economic aspect. For instance, Mannan (1989) put forth nine conditions of the development process in a modern Muslim society. Those conditions are:

i. mass participation and sharing in economic activities through the establishment of Islamic social banking at grass-roots level.
ii. using distributive consideration for determining production priorities
iii. humanizing the lines of production
iv. humanizing the lines of distribution and consumption
v. institutionalizing the obligatory, Islamic tools of redistribution f income.
vi. institutionalising the Islamic voluntary sector.
vii. provisions for future generations
viii. increasing the level of economic cooperation
ix. increasing the levels of regional, economic and monetary integration.

According to the author, the identified nine conditions would provide the blueprint for the establishment of the *ummah* economic order. Development in Islam is centered on the development of the human person to fulfill the two functions of the human person; as the servant of God (*Abdullah*) and as his vicegerent on Earth (*Khalifah*). The development goals of Islam are well anchored in the concepts of falah and the extendend horizon of the present world and the hereafter. This is to be achieved through the balanced satisfaction of both the material and spiritual needs of all human beings (Hamid, 2006). Imam Al-Ghazali noted that well-being comprises the continual enrichment of man's faith (*Deen*), self (*Nafs*), intellect (*Aql)*, posterity (*Nas*l), and wealth (*Mal*).

Meanwhile, Ikram Azam (2002) points out three areas for sustainable human development namely: (1) choice to live a long and healthy life; (2) choice to be educated; and a decent standard of living and; (3) choice to have resources needed for a decent standard of living. These measurements are quite similar to the Human Development Index (HDI) developed by the United Nation and was first introduced in 1990. The HDI is a summary measure of human development. It measures the average achievements in a country in three basic dimensions of human development: a long and healthy life, knowledge and a decent standard of living. The basic objective of development is to create an enabling environment for people to enjoy long and healthy lives. Hamid (2006) suggests setting up a specific "Islamic Development Index" that is in harmony with the HDI.

The goal of sustainable development is to achieve an equitable distribution of economic well-being that can be shared among present and future generations. This implies the utilization of renewable resources in ways which do not diminish their usefulness for the future and the depletion of non-renewable resources at a rate slow enough to ensure the high probability of a systematic transition to renewable sources. Thus, policies that support population growth which is unsuitable with economic conditions and consumerist

living should be rejected. If one looks at one of 8th the Millennium Development Goals (MDG), Goal 7 refers to "Ensure environmental sustainability" and list the following targets:

- Target 9: Integrate the principles of sustainable development into country policies and program and reverse the loss of environmental resources.
- Target 10: Halve, by 2015, the proportion of people without sustainable access to safe drinking water and basic sanitation.
- Target 11: Have achieved, by 2020, a significant improvement in the lives of at least 100 million slum dwellers.

In short, regardless of whether one take the conventional or Islamic approach in discussing sustainable development, the end results is the same. While the Brutdland definition stresses the humanitarian face of development, Islam propagates the values of moderation as an economic behavior pattern to draw the line between human needs and wants. Therefore, the contribution of this paper is to evaluate the performance of the selected Muslim countries in terms of their environmental sustainability based on the inverted U-shaped Kuznet curve hypothesis.

3. Research Method

In this section, an empirical investigation is performed to observe the environmental sustainability of selected Muslim countries as a result of their development, in particular when the development involves changes in income level, industrial growth and population growth. The results of the impact of countries' development on sustainability of environment of these countries are expected to assist policymakers to outline and implement the best policies for their sustainable development through the identification of factors which lead to problem of sustainable environment among Muslim nations. A limitation of this study is that the model developed for the investigation will specify only on 'environmental sustainability' which is known as one part of sustainability of development. This is due to limited availability of data. The study will leave more exploration to be done on 'socio-cultural' and 'economic' aspects in the future as suggested in the previous section on Islamic perspectives of sustainable development.

The study evaluates the impact of economic growth, population growth and industrial growth on the environmental sustainability of 39 Muslim countries (based on data availability). The cross-sectional data collected cover the period of 1990 to 2005. All data of income level, industrial growth and population growth are obtained from the World Bank.

The study employs GMM (Generalised Method of Moments) methods of estimation in a multiple regression model. This model is dynamic (as compared to the OLS model) in the sense that the set of explanatory variables includes some explanatory variables that are potentially jointly endogenous (in the sense of being correlated with the error term). Thus, the GMM method of estimation is used to capture this endogeneity problem.

The dependent variable of the regression equation is a proxy of environment sustainability, namely, the Environment Sustainability Index (ESI), air quality, land, biodiversity and water quality. Meanwhile, the independent variables are proxies of

economic development, such as income level, population growth and industrial growth. The ESI is the index used for environmental sustainability which centers on the state of environmental systems, both natural and managed. It also measures stresses on those systems, including resource depletion and pollution rates, measures impacts and responses and human vulnerability to environmental change and it tracks a society's capacity to cope with environmental stresses and each country's contribution to global stewardship (ESI Report, 2005). In specific, four indicators of 'environmental systems' which used to construct the ESI are also used in this study to reflect the more likely that the country to be environmentally sustainable to the extent its vital environmental systems are maintained at healthy levels and to the extent to which levels are improving rather than deteriorating. Those indicators are air quality ,AIR (base on variables of urban population weighted NO_2 concentration, urban population weighted SO_2 concentration, urban population weighted TSP concentration and indoor air pollution from solid fuel use), biodiversity, BIO (base on variables such as percentage of country's territory in threathened ecoregions, national biodiversity index and others), land, LAND (base on variables such as percentage of total land area, including inland waters, having very low anthropogenic impact and percentage of total land area, including inland waters, having very high anthropogenic impact) and water quality, WQLTY (base on variables such as dissolved oxygen concentration, electrical conductivity and others).

The following regression equation is used in this study to examine the impact of economic development on the environment sustainability:

$$ES_i = \beta_0 + \beta_1 DUMMY_i + \beta_2 IGROWTH_i + \beta_3 POPGROWTH_i + u_i \quad \ldots\ldots(1)$$

where ES is Environment Sustainability Indicators (namely, either ESI, AIR, LAND, BIO or WQLTY), IGROWTH is industrial growth, POPGROWTH is population growth and DUMMY is a proxy of income level (1=high/middle income countries, 0=otherwise).

The ES is based on the index revealed on 2005 for each country, published by Yale University as a joint project with few other organisations. As for the industrial growth, the average annual growth of industrial output between 1990 and 2003 is used. Average annual population growth rate between 1990 and 2003 is used as a measure of population growth. Category of income group for each country is obtained from the World Bank list of economies, April 2006.

4. Findings

Table 1 shows the results obtained from the regression using the GMM method. Using overall index of environmental sustainability, ESI (regression 1), all independent variables are not significantly contribute to the change in ESI of the countries. However, when the indicator of environment sustainability is specified on air quality (AIR) ie. in regression 2, the dummy variable which represents the income level is significant at 5 per cent level with positive sign. This indicates that the middle/higher income countries have less problem of air quality compared to low income countries. The result is somehow consistent with hypothesized relationship of environmental Kuznets curve which found by some previous studies such as Grossman and Krueger's(1991), Shafik and Bandyopadhyay's (1992), Selden and Song (1994) and others.

Table 1: Empirical Results

Equation / Variable	Dependent Variable: (1) ESI	(2) AIR	(3) LAND	(4) BIO	(5) WQLTY
constant	40.57***	-0.17	0.57	0.72**	-0.06
	(8.01)	(-0.46)	(1.29)	(2.71)	(-0.19)
Population growth (PG)	1.49	-0.05	-0.21	-0.18	-0.05
	(0.83)	(-0.44)	(-1.23)	(-1.86*	(-0.49)
Industrial growth (IG)	0.09	-0.05**	0.03	0.02	0.02*
	(0.40)	(-2.65)	(1.41)	(1.67)	(1.75)
Dummy	2.75	0.95**	-0.14	-0.73***	-0.38
	(0.78)	(2.60)	(-0.40)	(-3.58)	(-1.13)
Included observations	39	39	39	39	39
S.E of regression	6.418	0.544	0.704	0.402	0.575
J-statistic	0.302	0.114	0.371	0.162	0.279
Diagnostic test:					
JBnormal	0.273	19.609***	0.076	8.183**	3.941
Ljung-Box Q-stat.:					
Lag=1	0.019	0.555	0.289	0.429	0.024
Lag=2	0.502	1.862	1.847	0.789	0.387
Lag=3	3.368	2.242	3.657	1.726	0.856
Instrumental list	C, IG, WQLTY, AIR, LAND, BIO	C, IG, PG,WQLTY, LAND, ESI, BIO	C, IG,PG, WQLTY, AIR, ESI, BIO	C, PG, IG, WQLTY, AIR, LAND, ESI	C, PG, IG, BIO, AIR, LAND, ESI

Notes: 1. t-statistic in parentheses

2. *JBnormal* is the Jarque-Bera Statistic of Normality Test
   Ljung-Box Q-statistics at lag k is a test statistic for the null hypothesis that there is no autocorrelation up to order k.
3. *** significant at 1% level
   ** significant at 5% level
   * significant at 10% level.

The curve basically views relationship between various indicators of environmental degradation and income per capita. In the early stages of economic growth degradation and pollution increase, but beyond some level of income per capita (which will vary for different indicators) the trend reverses, so that at high-income levels economic growth leads to environmental improvement. This implies that the environmental impact indicator is an inverted U-shaped function of income per capita. We assume that a similar phenomenon is applicable to any group of countries including the selected Muslim countries under study. The result is further strengthened by negative and significant of 'industrial growth' variable in the same regression. The negative coefficient of this industrial growth variable in the regression simply means that high industrial growth contributes to degradation of air quality in the sample countries. Undoubtedly, low income countries are having high industrial growth, in which industrial sector is well known as the sector which could promise high speed of growth for the economic growth. The process of industrialization in most of these countries has put the environment at a high cost as the main aim is solely for economic growth of the countries. To achieve the

targeted income level, the awareness of the importance of sustainability of environment rises as it is key element for the country to sustain in the long-run.

In regression 4, when biodiversity (BIO) is used as the indicator of environment sustainability, the sign of dummy and population growth variables are negative and significant. The results imply that less population growth and low income countries are normally contribute to better biodiversity or less percentage of country's territory in threathened ecoregions. Obviously, countries with less population and less developed are expected to have part of the country's territory untouched by rapid development that harmed the ecoregion or the environment. In regard to regression 5, industrial growth seems to contribute positively to the quality of water (WQLTY) when it is used as an indicator of environmental sustainability. It is expected that the process of industrialization in the sample countries is contributing to the improvement of irrigation system and the quality of water flowing in all regions of the countries. This could not be possible without the process of industrialization which basically depending on this main utility.

The overall empirical results are quite good. *J-statistic* is used to test the validity of overidentifying restrictions when the regression have more instruments than parameters to estimate. In this example, we have six or seven instruments to estimate four parameters and so there are two or three overidentifying restrictions. The null hypothesis of the test is that the overidentifying restrictions are satisfied and from table 1, all 5 regressions the J-statistics accept the null hypotheses that the overidentifying restrictions are satisfied. Jarque-Bera statistic (*JB normal*), on the other hand, is normality test for the residuals. The results found that most equations have no problem of normality distribution in residuals. Most importantly, the *Ljung-Box Q-statistics* for all regressions show that all regressions has no problem of autocorrelations in residuals up to order 3 (lag 3).

Thus, these empirical results of selected Muslim countries indicate that the issue of environmental sustainability should be one of the main agendas of Muslim countries development especially for those low income or underdeveloped countries as the process of industrialization and high population rate might contributes to degradation of environment in term of air quality and biodiversity. However, a balance between economic growth and sustainable environment is only expected to be accomplished once a certain level of economic growth has been achieved, as hypothesized by the Kuznet curve. But, if the Muslim world adheres to the *habluminallah*, *habluminanaas* and *hablumminal-alam* principles, it is still possible to achieve a moderate rate of economic growth while sustaining the environment, even at a low stage of development or low income level. This is in line with the *ummatan wasatan* or moderation values imbued in Islamic teachings.

5. Conclusion

The paper examines the sustainable development concept in terms of sustainable environment sustainability by looking at 39 Muslim countries over the period of 2003-2005. Using environment sustainability and its components as indicators of sustainable development, the study found that environmental degradation, in particular poor air quality, among selected Muslim countries basically suffered by low income countries

which at higher rate of industrialization process. However, those countries which already attained a status of middle/high income level countries are more likely to concern more on improving their air quality. Nevertheless, it is also found that high population growth in these countries contributes to poor biodiversity or high percentage of harmed eco-region. Thus, the process of industrialization and growing population rate in these countries should be aligned with proper policies with regard to environmental issues in order to ensure the sustainability of development of the countries involved. In addition, preserving the environment and achieving economic growth for the *ummah* is key strategies for development and social change.

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WADI^{C}AH: AKAD KONTRAK INSURANS SYARIAH DALAM SYARIKAT INSURANS SYARIAH "MUBARAKAH" DI INDONESIA[1]

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Abstrak

Kajian ini membincangkan konsep *wadi^{c}ah* yang digunakan sebagai akad kontrak insurans syariah oleh syarikat insurans syariah "Mubarakah" di Indonesia bagi memberi perlindungan keselamatan dan keamanan ke atas peserta insurans. Ia juga membincangkan konsep *wadi^{c}ah* dan insurans mengikut pandangan Islam dan pendapat para cendikiawan muslim yang pakar dalam bidang ekonomi Islam. Kertas kerja ini bertujuan untuk memerhati pelaksanaan konsep *wadi^{c}ah* dalam syarikat insurans syariah dan untuk memberi jaminan perlindungan ke atas harta produk *wadi^{c}ah*. Produk-produk *wadi^{c}ah* telah dipelbagaikan kepada banyak jenis mengikut keperluan semasa, seperti pendidikan, dana haji dan yang lainnya. Pembahagian keuntungan dari pulangan pelaburan *wadi^{c}ah* ini di antara syarikat dan peserta-pesertanya adalah berbentuk saguhati dan ditambah lagi manfaat-manfaat yang lainnya. Metodologi yang digunakan adalah melalui kajian kepustakaan dan juga melalui temu bual. Hasil kajian ini mendapati bahawa syarikat insurans syariah "Mubarakah" di Indonesia telah menerapkan konsep *wadi^{c}ah* dalam sistem insurans Islam ke atas produk-produknya. Namun masih tetap memerlukan penjelasan secara detail berkaitan dengan penggunaan istilah produknya, juga pantauan pengawasan syariah.

PENGENALAN

Syariah Islam merupakan pedoman yang mengatur seluruh aspek kehidupan manusia sama ada di dunia ataupun di akhirat. Kehidupan manusia di dunia ini sendiri tidak akan lari daripada muamalah yang mesti mengikut dengan panduan Ilahi. Syariah Islam sebagai satu peraturan, hendaklah dilaksanakan dan diterapkan dalam segala urusan sehingga mencapai satu matlamat yang dikehendaki oleh Allah (s.w.t) iaitu mendapat keredhaanNya dalam menempuh kehidupan di dunia ini.

Muamalah adalah salah bidang syariah Islam, yang berkaitan rapat dengan harta yang merupakan keperluan dalam kehidupan di dunia ini. Peningkatan kemajuan kehidupan itu sendiri bergantung kepada harta. Namun perlu diingat bahawa harta yang berada di tangan manusia adalah amanah yang dititipkan oleh Allah kepada hambaNya agar dapat menjaga dan menggunakan sebagaimana yang ditentukan olehNya. Oleh itu, dalam melaksanakan amanah tersebut mestilah berteraskan

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instrumen yang terdapat dalam syarak, di antaranya adalah *wadi^{c}ah* yang merupakan prinsip dan akad kontrak perniagaan dalam instrumen ekonomi dan kewangan Islam.

Prinsip *wadi^{c}ah* dapat dijadikan sebagai produk insurans yang berunsurkan kepada simpanan. Dari satu sudut, *wadi^{c}ah* mempunyai akad yang mengandungi unsur kebajikan dan persahabatan di antara pemilik dan pelaksana atau institusi yang menjaga barangan tersebut. Syarikat insurans syariah merupakan institusi penjagaan moden yang direalisasikan secara benar dan mengikut kehendak syarak. Walau bagaimanapun, hal ini terdapat banyak perbezaan di kalangan ulama dan pakar ekonomi, kerana ia adalah satu syarikat berbentuk konvensional yang diIslamisasikan.

Pengertian *Wadiah*

Wadi^{c}ah menurut pengertian bahasa Arab diambil daripada *wada^{c}tu al-shay'* bermaksud saya meninggalkannya. Dapat juga dikatakan sebagai simpanan, deposit, dan barang yang ditumpangkan kepada orang lain agar ia menjaganya.[2] Istilah makna dalam pengertian *wadi^{c}ah* sangat luas dan ini berpulang kepada keperluan sama ada yang dahulu atau yang semasa. Sedangkan maksud, matlamat dan objektifnya adalah sama. Ibnu Fāris dalam kitab *Mu^{c}jam Maqāyis Al-lughah*, berkata ia adalah asal suku kata satu yang menunjukkan kepada perkataan "meninggalkan dan menyerahkan."[3]

Adapun *wadi^{c}ah* dalam pandangan dan pengertian fuqaha empat mempunyai pelbagai makna:

Hanafiyyah mentakrifkan *wadi^{c}ah* sebagai suatu perwakilan untuk menjaga harta orang lain dengan matlamat untuk menderma, menolong dan memberi bantuan sahaja tanpa mengambil upah.[4] Mālikiyyah mentakrifkan *wadi^{c}ah* adalah harta yang diwakilkan untuk mendapat penjagaan.[5] Shāfi^{c}iyyah mentakrifkan *wadi^{c}ah* adalah akad yang memerlukan penjagaan atau barangan, bagi meminta hak untuk mendapat kebenaran di dalamnya. Dalam takrif yang lain dikatakan bahwa ia adalah mewakilkan daripada penjagaan sama ada barangan yang dimiliki halal atau yang haram secara khusus (seperti najis yang manfaat/ baja) dalam bentuk yang khusus.[6] Hanābilah mentakrifkan *wadi^{c}ah* adalah sesuatu nama harta yang disimpan serta dijaga kepada orang yang menjaganya tanpa balasan.[7]

Namun kesemua empat imam mazhab berpendapat bahawa *wadi^{c}ah* juga dapat dinamakan *idā^{c}*.[8] al-Jurjāni mentakrifkan *wadi^{c}ah*, adalah amanah yang ditinggalkan

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[2]Lihat *Munjid al-tulāb*, Dār al-Mashriq, Beirūt, 1959, hlm. 909; *al-Munawwir kamus Arab-Indonesia*, Unit Pengadaan Buku-buku Ilmiah Keagamaan Pondok Pesantren " Al-Munawwir ", Krapyak, Yogyakarta, 1984, hlm. 1652.

[3]*Mu^{c}jam maqāyis al-lughah*, Dār Ihyā' al-Kutub al-^{C}Arabiyyah, Mesir, 1368H, jil. 6, hlm. 96.

[4]^{C}Ala' al-Din Abū Bakr ibn Mas^{c}ūd al-Kāsāni, *Badāi^{c} al-sanāi^{c} fi tartib al-sharāi^{c}*, Dār al-Kutub al-^{C}Ilmiyah, Beirūt, 1997, jil. 8, hlm. 351.

[5]al- Dardir, *Hāshiyat al-dusūqi ^{c}alā al-sharh al-kabir*, Dār al-Fikr, Beirūt, jil. 3, hlm. 419.

[6]Abū Zakariyyā Muhy al-Din ibn Sharf al-Nawāwi, *al-Majmū^{c} sharh al-muhadhdhab*, jil. 14, hlm. 340; Abū Zakariyyā Muhy al-Din ibn Sharf al-Nawāwi, *Rawdat al-tālibin*, al-Maktab al-Islāmi, Dimamshq, 1388H, jil. 5, hlm. 285.

[7]Mansūr ibn Yūnus ibn Idris al-Buyūti, *Kashshāf al-qanā^{c} ^{c}an matn al-iqnā^{c}* , Dār al-Fikr, Beirūt, 1982, jil. 4, hlm. 166.

[8]Abd al-Rahmān al-Jaziri, *Kitāb al-fiqh ^{c}alā al-madhāhib al-arba^{c}ah*, Dār al-Hadith, Qāhirah, jil. 3, hlm. 228-229.

kepada orang lain dengan sengaja untuk mendapatkan penjagaan dan pemeliharaan.[9] Jadi kesemua takrif ini mengandungi makna bahawa *wadi^{c}ah* adalah simpanan dalam bentuk harta atau benda kepada orang lain dengan tujuan mendapat perlindungan dan penjagaan ke atasnya tanpa mengambil balasan, disertai juga dengan niat menolong di tangan pemegangnya untuk pemiliknya.

Dalil-dalil pensyariatan *Wadi^{c}ah*

Para fuqahā' mengambil dalil-dalil rujukan yang menunjukkan kepada pensyariatan *wadi^{c}ah*, sama ada daripada al-Qur'an, al-Hadith, Ijmak dan Akal.
Dalil-dalil dari al-Qur'an:

1. Allah berfirman dalam kitabNya:

إِنَّ اللَّهَ يَأْمُرُكُمْ أَنْ تُؤَدُّوا الْأَمَانَاتِ إِلَى أَهْلِهَا [10]

Maksudnya:
Sesungguhnya Allah menyuruh kamu supaya menyerahkan segala jenis amanah kepada ahlinya (yang berhak menerimanya).[11]

Berdasarkan kepada sebab-sebab turunnya ayat ini, maka didapati mengenai sebuah cerita tentang memulangkan kunci ka^{c}bah kepada Othmān bin Talhah, sedangkan ayat ini juga dapat dilihat berdasarkan kaedah usūl yang mengandungi makna bahawa satu perkataan dalam ayat adalah umum untuk seluruh urusan amanah, bukan kepada sebahagian amanah atau lebih khas sahaja. Dan hal ini dapat dilihat berdasarkan kepada kaedah usūl fiqh:

العِبْرَةُ بِعُمُوْمِ اللَّفْظِ لا بِخُصُوْصِ السَّبَبِ [12]

Maksudnya:
Satu perkataan dengan keumuman lafaz, bukan dengan kekhususan sebab.

Oleh itu, mana-mana amanah dalam bentuk apapun, seperti *wadi^{c}ah* tetap termasuk dalam pengertian seluruh amanah. Walaupun dilihat daripada sebab-sebab turun ayat tidak dikhususkan kepada kunci sahaja seperti dalam cerita di atas, tetapi ia mencakupi untuk semua bentuk amanah yang diletakkan kepada orang lain dengan sengaja untuk mendapatkan penjagaan.

2. Allah berfirman dalam ayat yang lain:

وَتَعَاوَنُوا عَلَى الْبِرِّ وَالتَّقْوَى [13]

Maksudnya:

[9C]Ali ibn Mohd al-Jurjāni, *Kitāb al-ta^{c}rifāt*, Dār al-Kutub al-^{C}Ilmiyyah, Beirūt, 1995, hlm. 251.

[10]al-Qur'an, al-Nisā' 4: 58.

[11]Semua terjemahan ayat-ayat al-Qur'an dalam tulisan ini berdasarkan *Tafsir pimpinan Ar-Rahman kepada pengertian al-Qur'an*, edisi kesebelas, (Kuala Lumpur, Darul Fikir, 2000).

[12]Mohd Amin Suwayd al-Dimashqi, *Tashil al-husūl ^{c}alā qawā^{c}id al-usūl*, Dār al-Qalam, Dimashq, 1412H/1991, hlm. 110.

[13]al-Qur'an, al-Mā'idah 5: 2.

Dan hendaklah kamu bertolong menolong untuk membuat kebajikan dan bertaqwa.

Dalam ayat dapat difahami bahawa Allah (s.w.t) memerintahkan kepada orang-orang yang beriman untuk tolong menolong dan saling membantu dalam kebaikan dan ketaqwaan, di antara perkara yang termasuk dalam hal ini, adalah *wadi^{c}ah*. Terdapat perkataan dalam kitab *al-Nuzum al-Musta^{c}dhab*: " *al-Birr* adalah nama yang *jāmi^{c}* untuk semua kebaikan, sedangkan taqwa daripada *wiqāyah* (penjagaan) atau apa-apa yang menjaga dan melindungi manusia dari merbahaya di dunia dan azab di akhirat.[14]

Dalil-dalil yang diambil daripada hadith Rasul Allah (s.a.w)

3.

مَا رَوَىْ أَبُوْ دَاوُدَ وَالتُّرْمُذِىْ وَالدَّارِمِىْ وَأَحْمَدُ عَنِ النَّبِيِّ صَلَّى اللهُ عَلَيْهِ وَ سَلَّمَ قَالَ ((أَدِّ الأَمَانَةَ إِلَىْ مَنِ ائْتَمَنَكَ، وَلاَ تَخُنْ مَنْ خَانَكَ)).[15]

Maksudnya:
Diriwayatkan oleh Abū Dāud, Turmudhi, al-Dārimi dan Ahmad daripada Nabi Muhammad (s.a.w), Baginda bersabda: " Tunaikanlah amanah kepada sesiapa yang memberikan amanah kepadamu, dan janganlah berkhianat kepada orang yang telah berkhianat kepadamu.

Ayat dan hadith secara *mantūqnya* menunjukkan kewajipan memulangkan amanah dan merupakan dalil mengenai asal *idā^{c}*.[16]

4.

مَا رَوَىْ مُسْلِمٌ وَابْنُ مَاجَهَ وَأَحْمَدُ عَنِ النَبِىِّ صَلَّى اللهُ عَلَيْهِ وَ سَلَّمَ أَنَّهُ قَالَ ((مَنْ كَشَفَ عَنْ مُسْلِمٍ كُرْبَةً مِنْ كُرَبِ الدُّنْيَا كَشَفَ اللهُ عَنْهُ كُرْبَةً مِنْ كُرَبِ يَوْمِ الْقِيَامَةِ, وَاللهُ تَعَالَىْ فِىْ عَوْنِ الْعَبْدِ مَادَامَ الْعَبْدُ فِى عَوْنِ أَخِيْهِ)).[17]

Maksudnya:
Diriwayatkan oleh Muslim, Ibn Mājah dan Ahmad daripada Nabi (s.a.w) sesungguhnya Baginda, bersabda: " Sesiapa yang telah menyelesaikan kesusahan-kesusahan orang-orang Islam di dunia, maka Allah akan menyelesaikan kesusahan-kesusahannya di hari Qiyāmah. Dan Allah Ta^{c}ālā

[14]Ibn Battāl al-Rakbi, *al-Nuzum al-musta^{c}dhab*, Mustafā al-Babi al-Halabi, Mesir, 1379, jil. 1, hlm. 366.

[15]al-Turmudhi, *Sunan*, kitāb al-buyū^{c} ^{c}an rasūl Allāh (s.a.w), bāb mā'a jā'a fi al-nahy li al-muslim 'an yadfa^{c} 'ilā al-dhimmi al-khamr bi bay^{c}ihā lah, no. 1264; al-Dārimi, *Sunan*, kitāb al-buyū^{c}, bāb fi 'adā' al-amānah wa al-ijtināb al-khiyānah, no. 2597; al-Bayhaqi, *Sunan al-Bayhaqi al-kubrā*, kitāb al-da^{c}wā wa al-bayyināt, bāb akhdh al-rajūl haqqah mimman yamna^{c}uh iyyāh, no. 21092; Abū Dāud, *Sunan*, kitāb al-aymān wa al-nudhūr, bāb fi al-rajūl ya'khudh haqqah man tahtah yadih, no. 3534.

[16]*Īdā^{c}* adalah istilah lain daripada *wadi^{c}ah*.

[17]Muslim, *Sahih*, kitāb al-dhikr wa al-du^{c}ā' wa al-tawbah wa al-istighfār, bāb fadl al-ijtimā^{c} ^{c}alā tilāwah al-Qur'ān wa ^{c}alā al-dhikr, no. *2699*; al-Turmudhi, *Sunan*, kitāb al-birr wa al-sillah ^{c}an rasūl Allāh (s.a.w), bāb mā'a jā'a fi al-satr ^{c}alā al-muslim, no. 1930; Abū Dāud, *Sunan*, kitāb al-diyāt, bāb fi ma^{c}ūnah li al-muslim, no. 4946; Ibn Mājah, *Sunan*, kitāb al-sunnah, bāb fadl al-^{c}ulamā' wa al-haththu 'alā talabat al-^{c}ilm, no 225.

berada sentiasa dalam pertolongan hambaNya, sekiranya hambaNya dalam pertolongan saudaranya.

Dalam kandungan hadith di atas menunjukkan kepada tidak adanya keraguan bahawa sesungguhnya salah satu bentuk pertolongan muslim terhadap saudaranya adalah menerima *wadi^{c}ah* untuk dijaga ketika diperlukan penjagaan olehnya.

5.
مَا رَوَى الْبَيْهَقِى عَنْ عَائِشَةَ رَضِىَ اللهُ عَنْهَا فِىْ هِجْرَةِ الَّنبىِّ صَلَّى اللهُ عَلَيْهِ وَ سَلَّمَ قَالَتْ : مَا أَمَرَ ـ تَعْنِى رَسُوْلُ اللهِ صَلَّى اللهُ عَلَيْهِ وَ سَلَّمَ ـ عَلِيًّا رَضِىَ اللهُ عَنْهُ أَنْ يَتَخَلَّفَ عَنْهُ بِمَكَّةَ حَتَّى يُؤَدِّىْ عَنْهُ صَلَّى اللهُ عَلَيْهِ وَ سَلَّمَ الوَدَائِعَ الَّتِىْ كَانَتْ عِنْدَهُ لِلنَّاس.[18]

Maksudnya:
Diriwayatkan oleh Bayhaqi daripada ^{C}A'isyah (r.a) dalam hijrah Nabi (s.aw), berkata: " bahawa Rasul Allah (s.a.w) telah memerintahkan kepada Ali (r.a) agar tinggal di Makkah, sehingga menunaikan *wadi^{c}ah* kepunyaan orang-orang lain yang berada disisinya.

6. Dalil daripada ijmak

Fuqahā' telah bersepakat membentuk ijmak mengenai *keharusan wadi^{c}ah*.

7. Dalil-dalil daripada rasional/akal

Untuk lebih memperkukuhkan dalil-dalil yang sebelumnya, maka ditambah beberapa dalil-dalil akal/ rasional dalam dua segi.

i. *Wadi^{c}ah* boleh diqiyaskan dengan pinjaman, sebagaimana *wadi^{c}ah* adalah salah satu daripada jenis pinjaman/*i^{c}ārah*. Ia merupakan pinjaman kepada kemanfaatan barangan tanpa balasan untuk menjaga harta orang lain.[19]

ii. Diharuskan *wadi^{c}ah* adalah sebahagian kemudahan yang sangat diperlukan oleh orang ramai, sepertimana tidak wujud kemampuan sedang mereka memerlukan penjagaan harta dan benda.

Hukum *Wadi^{c}ah*

Para fuqahā' telah bersepakat bahawa *wadi^{c}ah* adalah bentuk akad muamalah yang *diharuskan* oleh syariah Islam. Namun demikian, mereka telah berselisih pendapat mengenai hukum asal jika dilihat dari segi hukum *taklifi*,[20] :

[18]al-Bayhaqi, *Sunan kubrā*, kitāb al-wadi^{c}ah, bāb mā jā'a fi al-targhib fi adā' al-amānah, no. 12476.

[19]al-Zāhid al-Bukhāri, *Mahāsin al-Islām* , al-Quds, t.th, Mesir, hlm. 75; ^{C}Ali ibn Mohd al-Jurjāni, *Kitāb al-ta^{c}rifāt*, hlm. 30.

[20]*Taklifi*, adalah beban atau kemampuan sama ada di pihak penyimpan *wadi^{c}ah* ataupun penerimanya. Lihat *al-Munawwir kamus Arab Indonesia*, hlm. 1316; ^{C}Ali ibn Mohd al-Jurjāni, *Kitāb al-ta^{c}rifāt*, hlm. 65.

Hanafiyyah memberi hukum bagi pemegang *wadi^{c}ah* adalah *mustahāb*, kerana ia merupakan pertolongan kepada saudaranya. Bahkan ia adalah perkara yang *mandūb* (sunat), sesuai dengan firman Allah (s.w.t) :

وَتَعَاوَنُوا عَلَى الْبرِّ وَالتَّقْوَى [21]

> Maksudnya:
> Dan hendaklah kamu bertolong menolong untuk membuat kebajikan dan bertaqwa.

Dan sabda Rasul Allah (s.a.w):

إِنَّ اللهَ فِىْ عَوْنِ الْعَبْدِ مَادَامَ الْعَبْدُ فِى عَوْنِ أَخِيْهِ. [22]

> Maksudnya:
> Sesungguhnya Allah sentiasa menolong hamba, selama hambaNya menolong saudaranya.

Mālikiyyah, mengatakan bahawa hukum *wadi^{c}ah* dilihat dari barangan adalah *ibāhah (harus)* bagi penyimpan dan pemegang, keduanya mempunyai hak yang sama. Tetapi hukumnya bertukar menjadi *wajib* bagi hak penyimpan sekiranya merasa takut sama ada kerana hilang ataupun rosak bila tidak disimpan, disertai dengan wujudnya orang yang berkemampuan untuk menjaganya. Dan menjadi *haram* hukumnya apabila harta yang disimpan akan dicuri atau dirampas. Oleh itu, wajib dipulangkan kepada pemiliknya dengan segera. Juga kepada hak pemegang *wadi^{c}ah* kadang-kadang menjadi *wajib*, apabila pemiliknya takut kepada penzalim/penceroboh dan dia tidak mendapat sesiapa yang dapat memegang *wadi^{c}ah* selain dia, maka lazim ketika itu memegang *wadi^{c}ah* berdasarkan *qiyās* kepada sesiapa yang mengakui untuk bersaksi atas kesaksian, dan tidak ada sesiapa yang bersaksi selain dia. Dan menjadi *haram* bagi pemegang *wadi^{c}ah* apabila ia adalah harta rampasan, kerana memegangnya dianggap sebagai pertolongan untuk tidak memulangkan kepada pemiliknya. Dan menjadi *nadb/sunat* apabila takut kepada sesuatu yang mewajibkannya tanpa mengetahui kewajipannya. Dan *karāhah* apabila takut kepada sesuatu yang haram tanpa mengetahui keharamannya.[23]

Shāfi^{c}iyyah berpendapat *diharuskan* memegang *wadi^{c}ah* bagi sesiapa yang mampu menjaganya dan dapat menyerahkan amanah kepada ahlinya kerana ia merupakan pertolongan yang diperintahkan, apabila tidak ada sesiapa yang dapat melakukan selain dia, takut kalau tidak diterima akan menjadi rosak, maka jelas lazim baginya untuk memegang *wadi^{c}ah*. Ini kerana diharamkan mengambil harta muslim sepertimana haram atas darahnya tetapi tanpa meluputkan manfaat dirinya dan menjaga tanpa balasan/upah, sebagaimana melakukan kesaksian dengan upah. Imam

[21]Al-Qur'an, al-Mā'idah 5: 2.

[22]Muslim, *Sahih*, kitāb al-dhikr wa al-du^{c}ā' wa al-tawbah wa al-istighfār, bāb fadl al-ijtimā^{c} ^{c}alā tilāwah al-Qur'ān wa ^{c}alā al-dhikr, no. *2699*; al-Turmudhi, *Sunan*, kitāb al-birr wa al-sillah ^{c}an rasūl Allah (s.a.w), bāb mā'a jā'a fi al-satr ^{c}alā al-muslim, no. 1930; Abū Dāud, *Sunan*, kitāb al-diyāt, bāb fi ma^{c}ūnah li al-muslim, no. 4946; Ibn Mājah, *Sunan*, kitāb al-sunnah, bāb fadl al-^{c}ulamā' wa al-haththu 'alā talabat al-^{c}ilm, no 225.

[23]Ibn Rushd, *al-Muqaddamāt al-mumhidād*, Dār al-Gharb al-Islāmi, Beirūt, 1408H, jil. 2, hlm. 465; al-Muwwāq, *al-Tāj wa al-iklil sharh mukhtasar khalil*, al-Sa^{c}ādah, Mesir, 1329H, jil. 5, hlm. 266.

al-Nawawi berkata: " Seandainya telah jelas ke atasnya untuk memegang *wadi^{c}ah*, lalu tidak menerimanya bahkan berpaling tadah, maka ia telah ber*maksiat* (silap). Dan tidak memerlukan jaminan baginya, kerana tidak lazim menjaganya".[24] Apabila dia tidak mempunyai kemampuan, maka *haram* baginya untuk menerima *wadi^{c}ah* tersebut kerana ia memperdaya, menyebabkan kehilangan dan tidak berwaspada mengambilnya. Begitu juga walaupun mampu menjaga *wadi^{c}ah*, tetapi ia tidak percaya dengan keamanan dirinya, maka boleh menjadi *haram* atau *makruh*, dan inilah yang *muktamad*.[25]

Hanābilah berpendapat bahawa memegang *wadi^{c}ah* adalah *harus* bagi sesiapa yang mengetahui dirinya boleh dipercayai dan berkemampuan untuk menjaganya. Dan menjadi *makrūh* selain daripadanya kerana terdapat penipuan kepada pemiliknya, melainkan apabila pemiliknya redha sama ada setelah mengetahuinya hal tersebut ataupun tidak, untuk menafikan penipuan.[26]

Berdasarkan kepada pendapat fuqahā' yang empat, maka didapati bahawa hukum *wadi^{c}ah* adalah *harus*, sama ada dari pihak penyimpan atau pemegangnya. Hal ini disebabkan kewujudan *maslahah-maslahah* dan keperluan, terutama sekali pada zaman kini, demi melindungi dan menjaga harta dan benda.

INSURANS SYARIAH DALAM PERSPEKTIF ISLAM.

Pada zaman sekarang ini banyak kemajuan dan perkembangan sains teknologi moden yang menyebabkan bertambahnya pencapaian manusia dalam memenuhi kehidupan dunia. Perkembangan yang agresif ini, juga membawa kepada bertambahnya risiko dan spekulasi dari sudut jiwa dan harta benda. Justeru itu, sistem insurans syariah memainkan peranan yang penting dalam menangani permasalahan-permasahan moden yang berkaitan dengannya.

Insurans syariah dilihat dari sudut syarak ia merupakan jenis akad baru, yang belum diwujudkan pada masa-masa ijtihad melalui ijtihad sebelumnya. Kewujudan mekanisme insurans di era moden ini telah menyebabkan para ulama berselisih pendapat dalam keharusan penggunaannya. Sebahagian ulama mengharuskan penggunaan mekanisme insurans, dengan berpegang kepada kaedah: "Asal segala sesuatu adalah harus" [27] (الأَصْلُ فِي الأَشْيَاءِ الإِبَـاحَةُ)

Sebahagian ulama lainnya mengharamkan insurans, dengan hujjah bahawa dalil yang melarang dan mengharamkannya sudah pasti benar dan *qat^{c}i*, dan tidak ada dalil lain yang melarang menggunakan dalil pengharaman tersebut. Dan ada pendapat lain dengan membezakan dalam pelbagai-bagai insurans, sehingga hukum boleh menjadi halal ataupun menjadi haram, dengan dalil-dalil tertentu yang menetapkan perbezaan tersebut. Keharusan pemakaian insurans adalah atas prinsip darurat dan keperluan semasa dengan mengambil dalil-dalil yang membolehkannya. Namun demikian dari masa ke masa ramai daripada kalangan ulama dan cendikiawan muslim

[24]Abū Zakariyyā Muhy al-Din ibn Sharf al-Nawawi, *Rawdat al-tālibin*, hlm. 287.

[25]al-Hasnā, *Kifāyah al-akhyār*, al-Muniriyyah, Mesir, 1347H, jil. 2, hlm. 7; Abū Zakariyyā Muhy al-Din ibn Sharf al-Nawawi, *Rawdat al-tālibin*, jil. 5, hlm. 285-286.

[26]Mansūr ibn Yūnus ibn Idris al-Buyūti, *Kashshāf al-qanā^{c} ^{c}an matni al-iqna^{c}* , jil. 5, hlm. 167

[27]Jalāl al-din Abd al-Rahmān ibn Abi Bakr al-Suyūti, *al-Ashbāh wa al-nazā'ir*, Dār al-Fikr, Beirūt, jil. 1, hlm. 131.

dalam bidang muamalah dan ekonomi Islam melakukan kajian mengenai insurans ini. Setelah dikaji, didapati adalah insurans dibenarkan dengan prinsip-prinsip dan konsep syariah. Oleh itu, demi merealisasikan perkara berkenaan maka diambillah istilah insurans syariah.

Adapun istilah insurans syariah dalam kertas kerja ini membawa maksud bahawa insurans yang dibenarkan pelaksanaannya adalah dengan berlandaskan kepada konsep syariah. Dengan kewujudan mekanisme insurans dan peranan syariah ini maka dapatlah sedaya upaya merealisasikan sebahagian daripada muamalah ini.

Pengertian Insurans Syariah

Insurans menurut bahasa Arab disebut sebagai *al-ta'min al-syar^{c}i*. Perkataan *al-ta'min* adalah berasal daripada perkataan " الأمْنُ " bermaksud " aman ", lawan perkataan "الخَوْفُ" " bererti " takut", iaitu secara makna asalnya adalah menenangkan jiwa dan menghilangkan ketakutan, sebagaimana dikatakan " أمَّنَهُ تَأْمِيْنًا وَاتْمَنَهُ وَاسْتَأْمَنَهُ " yang mana membawa maksud kembali kepada keamanan.[28] *Al-syar^{c}i* adalah membawa maksud secara syarak. Insurans dalam bahasa Inggeris adalah jaminan.[29] Ataupun boleh dikatakan dengan mencari keamanan dengan jaminan dalam hak pemilikan sama ada jiwa ataupun harta, untuk menghilangkan rasa takut daripada risiko-risiko yang memungkinkan kerugian atau musibah yang akan berlaku.

Firman Allah (s.w.t):

قَالُوا يَاأَبَانَا مَا لَكَ لَا تَأْمَنَّا عَلَى يُوسُفَ وَإِنَّا لَهُ لَنَاصِحُونَ [30]

Maksudnya:
Merekapun (pergi berjumpa dengan bapa mereka lalu) berkata: "Wahai ayah kami! Mengapa ayah tidak percaya kepada kami tentang Yūsuf, padahal sesungguhnya kami sentiasa tulus ikhlas mengambil berat kepadanya?.

Dalam firman Allah (s.w.t) yang lainnya:

وَإِذْ قَالَ إِبْرَاهِيمُ رَبِّ اجْعَلْ هَذَا الْبَلَدَ ءَامِنًا وَاجْنُبْنِي وَبَنِيَّ أَنْ نَعْبُدَ الْأَصْنَامَ [31]

Maksudnya:
Dan ingatlah tatkala Nabi Ibrāhim berdoa dengan berkata: Wahai Tuhanku! Jadikanlah negeri Mekkah ini negeri yang aman, dan jauhkanlah daku dan anak-anakku dari perbuatan menyembah berhala.

Kedua dalil ini menunjukkan bahawa nilai keamanan mempunyai peranan yang sangat penting dalam menjaga harta, benda dan jiwa manusia. Sehingga keamanan dapat diwujudkan dalam satu bentuk insurans.

[28]Muhib al-Din Abi al-Fayd al-Sayyid Muh Murtadā al-Husayni al-Wāsiti al-Zubaydi, *Tāj al-^{C}Ars* , 1356H, jil. 9, hlm. 124.
[29]Joyce M. Hawkins, *Kamus dwibahasa oxford fajar*, Fajar Bakti, Selangor, 2001, hlm. 209.
[30]al-Qur'an, Yūsuf 12 :11.
[31]al-Qur'an, Ibrāhim 14 :35.

Insurans syariah secara istilahnya adalah akad kontrak insurans syariah yang dibuat oleh peng-insurans dengan segala ketentuannya kepada syarikat insurans untuk mengendalikan insurans dengan kadar bayaran premium yang dijadikan sebagai sebahagian gantirugi yang mungkin berlaku pada sesuatu masa.

Insurans syariah juga disebut sebagai insurans kerjasama iaitu insurans yang melibatkan persetujuan sejumlah orang yang terdedah kepada mara bahaya yang sama, bagi menghilangkan risiko bahaya yang disepakati sesama mereka, dengan menggunakan wang yang mereka dermakan secara sukarela.[32]

Insurans syariah mengandungi unsur simpanan yang mana premium yang dibayar oleh peserta insurans kepada syarikat insurans dikatagorikan kepada dua akaun, akaun simpanan dan akaun khas. Sekiranya, peserta tidak akan melanjutkan tempoh matang insurans, maka akaun simpanan bagi hasil dapat diambil oleh peserta. Pelaksanaannya akan dikemukakan pada bahagian akhir kertas kerja ini yang menskopkan kajian terhadap insurans syariah akaun simpanan.

Pendapat-pendapat ulama dan pakar ekonomi dalam pengertian insurans syariah.

1. Abdullah Nāsih Ulwān telah menghuraikan insurans syariah sebagai satu bentuk kegiatan di mana masyarakat saling menjamin antara satu sama lain berdasarkan iman dalam membina masyarakat yang aman dan makmur.[33]

2. Abū Zahrah memberikan maksud insurans syariah sebagai tanggungan antara individu-individu yang berada dalam masyarakat, mereka menjamin antara satu sama lain atau membantu dalam hal-hal kebajikan.[34]

3. Dr. Hailani Muji Tahir[35] pula mentakrifkan insurans syariah/Islam (*takāful*) ini ialah suatu akad atau persetujuan di antara kedua-dua pihak iaitu penginsurans (syarikat) dan yang menginsurans (pemegang polisi) ke atas suatu perkara (polisi) dengan cara (*sighah*) dan syarat-syarat tertentu dengan syarat syarikat bersedia membayar ganti rugi kepada pemegang polisi jika berlaku kejadian tertentu dalam perkara yang diinsuranskan manakala pemegang polisi pula bersetuju membayar polisi yang diinsuranskan.[36]

Berdasarkan penjelasan insurans dalam hukum Islam atau lebih dikenali dengan nama *takāful* ini didapati, pada dasarnya mesti mengandungi asas *ta^{c}āwun* (saling menolong), *tadāmun* (saling menjamin), *mu^{c}āwadah* (saling memberi ganti) di antara sesama masyarakat Islam melalui mekanisme tertentu dan tidak mengandungi unsur *gharār*. Jadi, insurans syariah yang disebut dalam bahasa Indonesia sebagai

[32] Qal'ahji, Muhammad Rawwas, Urusan kewangan semasa, terj., al-Hidayah, Kuala Lumpur, hlm. 235

[33]Abdullah Nāsih ^{C}Ulwān, *al-Takāful al-ijtimā^{c}i fi al-Islām*, Dār al-Saūdiyyah, Jeddah, hlm. 15.

[34]Muhammad Abū Zahrah, *al-Mujtama^{c} al-Islāmi*, Dār al-Fikr al-^{C}Arabiy, Qāherah, t.th. hlm. 4.

[35]Dr. Hailani Muji Tahir, pensyarah Jabatan Syariah, Fakulti Pengajian Islam, Universiti Kebangsaan Malaysia, Bangi.

[36]Hailani Muji Tahir, *Islam dan kedudukan insurans nyawa*, Kertas kerja seminar system kewangan Islam. Persatuan Mahasiswa Fakulti Ekonomi, UKM, Bangi, 1984.

asuransi syariah mempunyai beberapa perkataan Arab yang sama seperti takaful, tadamun, ta'min dan ta'min.

Prinsip-prinsip Umum Insurans Syariah.

Prinsip-prinsip umum dan utama yang menjadi panduan asasi adalah sebagai berikut:

i. Saling kerja sama dan saling membantu.

Umat Islam adalah satu kumpulan masyarakat yang mempunyai kelebihan banyak terhadap sesamanya dalam menjalankan kehidupan di dunia ini berbandingkan dengan umat lainnya, diantaranya adalah saling menolong dan bekerjasama dalam kebajikan.

Adapun nas-nas yang menunjukkan dan mengukuhkan kepada sifat di atas adalah:

i. Firman Allah (s.w.t):

وَتَعَاوَنُوا عَلَى الْبرِّ وَالتَّقْوَى [37]

Maksudnya:
Dan hendaklah kamu bertolong menolong untuk membuat kebajikan dan bertaqwa.

ii. Hadith Rasul Allah (s.a.w):

عَنْ سَالِمٍ عَنْ أبِيْهِ أنَّ رَسُولَ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ قَالَ : مَنْ كانَ فِي حَاجَةِ أخِيْهِ كَانَ اللهُ فِي حَاجَتِهِ [38]

Maksudnya:
Daripada Sālim, daripada ayahnya, sesungguhnya Rasul Allah (s.a.w) bersabda: “Sesiapa yang memenuhi hajat saudaranya, maka Allah akan memenuhi hajatnya.

iii. Rasul Allah (s.a.w) bersabda:

عَنْ أبِي هُرَيرَةَ قَالَ قالَ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ : وَاللهُ فِي عَوْنِ العَبْدِ مَا كَانَ العَبْدُ فِي عَوْنِ أخِيْهِ [39]

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[37]al-Qur’an, al-Mā’idah 5: 2.

[38]al-Bukhāri, *Sahih*, kitāb al-mazālim, bāb lā yazlim al-muslim al-muslim wa lā yazlimuh, no. 2310; Muslim, *Sahih*, kitāb al-birr wa al-sillah wa al-ādāb, bāb tahrīm al-zulm, no. 2580; al-Turmudhi, *Sunan*, kitāb al-hudūd ᶜan rasūl Allāh (s.a.w), bāb mā’a jā’a fi al-satr ᶜalā al-muslim, no. 1426; al-Bayhaqi, *Sunan al-Bayhaqi al-kubrā*, kitāb al-iqrār, bāb nasr al-mazālim wa al-akhdh ᶜalā yad al-zālim thumma al-imkān, no. 11292; Abū Daud, *Sunan*, kitāb al-diyāt, bāb al-mu’ākhah, no. 4893; al-Nasā’i, *Sunan al-kubrā*, kitāb al-rajm, bāb al-satr ᶜala al-zāni, no 7291.

[39]Muslim, *Sahih*, kitāb al-dhikr wa al-duᶜā’ wa al-tawbah wa al-istighfār, bāb fadl al-ijtimāᶜ ᶜalā tilāwah al-Qur’ān wa ᶜalā al-dhikr, no. *2699*; al-Turmudhi, *Sunan*, kitāb al-birr wa al-sillah ᶜan rasūl Allāh (s.a.w), bāb mā’a jā’a fi al-satr ᶜalā al-muslim, no. 1930; Abū Dāud, *Sunan*, kitāb al-diyāt,

Maksudnya:
Daripada Abū Hurayrah (r.a): Allah sentiasa menolong hamba, selagi hamba itu menolong saudaranya.

ii. Saling melindungi daripada pelbagai kesusahan.

Peserta-peserta insurans Islam telah bersetuju untuk saling melindungi antara satu sama lain daripada segala hal kesusahan bencana. Dalil-dalil yang menyatakan tentang sifat melindungi daripada kesusahan, adalah:

i. Firman Allah (s.w.t):

وَإِذْ قَالَ إِبْرَاهِيمُ رَبِّ اجْعَلْ هَذَا بَلَدًا ءَامِنًا [40]

Maksudnya:
Dan (ingatlah) ketika Nabi Ibrahim berdoa dengan berkata: "Wahai Tuhanku! Jadikanlah (negeri Mekkah) ini, negeri yang aman dan sentosa.

ii. Firman Allah (s.w.t):

الَّذِي أَطْعَمَهُمْ مِنْ جُوعٍ وَءَامَنَهُمْ مِنْ خَوْفٍ [41]

Maksudnya:
Tuhan yang memberi mereka penghidupan: menyelamatkan mereka dari kelaparan, dan mengamankan mereka dari ketakutan.

iii. Sabda Rasul Allah (s.a.w):

عَنْ أَنَسِ بْنِ مَالِكٍ قَالَ قَالَ النَّبِيِّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ : الْمُؤْمِنُ مَنْ أَمِنَهُ النَّاسُ وَالْمُسْلِمُ مَنْ سَلِمَ الْمُسْلِمُونَ مِنْ لِسَانِهِ وَيَدِهِ وَالْمُهَاجِرُ مَنْ هَجَرَ السُوءَ وَالَّذِي نَفْسِي بِيَدِهِ لاَ يَدْخُلُ الْجَنَّةَ عَبْدٌ لاَ يَأْمَنُ جَارَهُ بَوَائِقَهُ [42]

Maksudnya:
Daripada Anas bin Mālik (r.a) berkata: Rasul Allah (s.a.w) bersabda : " Seorang yang beriman ialah siapa yang boleh memberikan keamanan kepada manusia. Seorang muslim ialah siapa yang dapat memberikan keselamatan kepada lisan dan tangannya. Seorang muhājir ialah siapa yang berhijrah (berpindah) dari kejahatan, demi diriku dalam kekuasaan Allah, bahawa sesiapapun tidak akan masuk ke surga kalau tidak memberikan perlindungan jirannya yang dalam kesusahan"

iv.Hadith Rasul Allah (s.a.w):

عَنْ عَمْرِو بْنِ مَالِكٍ الجَنْبِ أَنَّ فَضَالَةَ بْنَ عُبَيْدٍ حَدَثَهُ أَنَّ النَّبِيَّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ قَالَ :

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bāb fi ma^{c}ūnah li al-muslim, no. 4946; Ibn Mājah, *Sunan*, kitāb al-sunnah, bāb fadl al-^{c}ulamā' wa al-haththu 'alā talabat al-^{c}ilm, no 225.

[40]al-Qur'an, al-Baqarah 2: 126.

[41]al-Qur'an, al-Quraysh 106 :4.

[42]Ahmad ibn Hanbal al-Shaybāni, *Musnad Ahmad*, Musnad Abi Sa^{c}id al-Khudri, no. 12583.

الْمُؤْمِنُ مَنْ أَمِنَهُ النَّاسُ عَلَىَ أَمْوَالِهِمْ وَأَنْفُسِهِمْ [43]

Maksudnya:
Daripada [C]Amrin ibn Mālik al-Janb, sesungguhnya Fadālah ibn [C]Ubayd telah dikatakan bahawa sesungguhnya Rasul Allah (s.a.w) bersabda: "Seseorang yang beriman ialah sesiapa yang boleh memberi keselamatan dan perlindungan terhadap harta dan jiwa raga manusia.

iii. Saling Bertanggung jawab

Di dalam syarikat insurans, para peserta hendaklah bersetuju untuk saling bertanggung jawab antara satu sama lainnya. Tanggung jawab ini hendaklah juga berasaskan kepada niat ikhlas ibadah, sebagaimana telah terdapat dalam hadith-hadith:

i.
عَنْ أَبِيْ مُوسَى قَالَ قَالَ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: الْمُؤْمِنُ لِلْمُؤْمِنِ كَالْبُنْيَانِ يَشُدُّ بَعْضُهُ بَعْضًا [44]

Maksudnya:
Daripada Abū Mūsā (r.a) berkata, Rasul Allah (s.a.w) bersabda: "Seorang mu'min dengan mu'min yang lainnya seperti sebuah bangunan dimana tiap-tiap bahagian dalam bangunan itu mengukuhkan bahagian-bahagian yang lainnya"

ii.
عَنِ النُّعْمَانِ بْنِ بَشِيْرٍ قَالَ قَالَ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ : مَثَلُ الْمُؤْمِنِيْنَ فِي تَوَادِهِمْ وَتَرَاحُمِهِمْ وَتَعَاطُفِهِمْ مَثَلُ الْجَسَدِ إِذَا اشْتَكَى مِنْهُ عَضْوٌ تَدَاعَى لَهُ سَائِرُ الجَسَدِ بِالسَّهْرِ وَالحُمَى [45]

Maksudnya:
Daripada al-Nu[c]mān ibn Bashir berkata, bahawa Rasul Allah (s.a.w) bersabda: "Perumpamaan hubungan persaudaraan dan perasaan orang-orang yang beriman dalam kasih, sayang dan kelembutannya antara satu dengan lainnya seumpama jasad apabila satu daripada anggotanya tidak sihat, maka seluruh tubuh akan merasainya dengan kesusahan tidur dan demam.

iii.
عَنِ بْنِ عُمَرَ عَنِ النَّبِيِّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ أَنَّهُ قَالَ : أَلاَ كُلُّكُمْ رَاعٍ وَكُلُّكُمْ مَسْئُوْلٌ عَنْ رَعِيَّتِهِ فَالأَمِيْرُ الَّذِي عَلَى النَّاسِ رَاعٍ وَهُوَ مَسْئُوْلٌ عَنْ رَعِيَّتِهِ وَالرَّجُلُ رَاعٍ عَلَى أَهْلِ بَيْتِهِ وَهُوَ مَسْئُوْلٌ

[43]Ibn Mājah, *Sunan*, kitāb al-fitan, bāb hurmah dam al-mu'min wa mālih, no. 3934.

[44]al-Bukhāri, *Sahih*, kitāb al-adab, bāb ta[c]āwun al-mu'minin ba[c]duhum ba[c]dan, no. 5680; Muslim, *Sahih*, kitāb al-birr wa al-sillah wa al-ādāb, bāb tarāhum al-mu'minin wa ta[c]ātufihim wa ta[c]ādudihim, no. 2585; Al-Turmudhi, *Sunan*, kitāb al-birr wa al-sillah [c]an rasūl Allāh (s.a.w), bāb mā'a jā'a fi shafaqah al-muslim [c]alā al-muslim, no. 1928.

[45]Muslim, *Sahih*, kitāb al-birr wa al-sillah wa al-ādāb, bāb tarāhum al-mu'minin wa ta[c]ātufihim wa ta[c]ādudihim, no. 2586.

عَنْهُمْ وَالمَرْأَةُ رَاعِيَّةٌ عَلَى بَيْتِ بَعْلِهَا وَوَلَدِهِ وَهِيَ مَسْئُوْلَةٌ عَنْهُمْ وَالعَبْدُ رَاعٍ عَلَى مَالِ سَيِّدِهِ وَهُوَ مَسْئُولٌ عَنْهُ ألا فَكُلُّكُمْ رَاعٍ وَكُلُّكُمْ مَسْئُوْلٌ عَنْ رَعِيَّتِهِ [46]

Maksudnya:
Daripada Ibn [C]Umar bahawa sesungguhnya Rasul Allah (s.a.w) bersabda: "Bukankah setiap kamu adalah pemimpin, setiap kamu adalah pemikul tanggung jawab terhadap orang-orang yang di bawah tanggungjawabmu (rakyat). Seorang amir (gubenor) yang berada di tengah-tengah masyarakat adalah pemimpin, ia bertanggung jawab terhadap rakyatnya. Seorang lelaki adalah pemimpin bagi keluarganya, ia bertanggung jawab atas mereka. Seorang wanita adalah pemimpin bagi rumah suami dan anak-anaknya, ia bertanggung jawab atas mereka. Seorang hamba adalah penjaga atas harta tuannya, ia bertanggung jawab terhadapnya. Bukankan kamu pemimpin dan kamu semua juga sebagai penanggung jawab terhadap orang yang di bawahmu.

iv. Sabda Rasul Allah (s.a.w):

عَنْ أَنَسٍ عَنِ النَّبِيِّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ قَالَ: لاَ يُؤْمِنُ أَحَدُكُمْ حَتَّى يُحِبَّ لأَخِيْهِ مَا يُحِبُّ لِنَفْسِهِ [47]

Maksudnya:
Daripada Anas (r.a) bahawa Nabi (s.a.w) bersabda: "Seseorang tidak dikatakan beriman sehingga ia mengasihi saudaranya sebagaimana ia mengasihi dirinya sendiri"

v.
عَنْ جَرِيْرِ بْنِ عَبْدِ اللهِ قَالَ قَالَ رَسُوْلُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ : مَنْ لاَ يَرْحَمِ النَّاسَ لاَ يَرْحَمُهُ اللهُ عَزَّ وَجَلَّ [48]

Maksudnya:
Daripada Jarir ibn Abdillah (r.a) bahawa Rasul Allah (s.a.w.) bersabda: "Sesiapa yang tidak mempunyai perasaan kasihan kepada manusia, maka ia juga tidak mendapat kasih sayang dari Allah.

Berdasarkan kepada hadith-hadith di atas, maka didapati bahawa sifat tanggung jawab yang dimiliki oleh muslim sesama muslim lainnya merupakan kewajipan bagi setiap insan, hal ini tentulah terwujud daripada sifat saling menyayangi, mencintai, saling membantu, dan merasa mementingkan kebersamaan untuk mendapat kemakmuran bersama dengan matlamat yang baik dalam mewujudkan masyarakat yang beriman, taqwa dan bahagia.

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[46]al-Bukhāri, *Sahih*, kitāb al-jumu[c]ah, bāb al-jumu[c]ah fi al-qurā wa al-mudun, no. 853; Muslim, *Sahih*, kitāb al-imārah, bāb fadilah al-imām al-[C]ādil wa [C]uqūbah al-jā'ir wa al-haththu [c]alā al-rifq bi al-ra[c]iyyah wa al-nahy [c]an 'idkhāl al-mashaqqah [c]alaihim, no. 1829.

[47]Bukhāri, *Sahīh*, kitāb al-imān, bāb min al-imān 'an yuhibba li akhih mā yuhibbu li nafsih, no. 13; Muslim, *Sahih*, kitāb al-imān, bāb al-dalil [c]alā anna min khisāl al-imān 'an yuhibba li akhih al-muslim mā yuhibbu li nafsih min al-khayr, no 45.

[48]Muslim, *Sahih*, kitāb al-fadā'il, bāb rahmatuh wa al-[c]iyāl wa tawāddu[c] huwa fadl dhālik. No. 2319; al-Turmudhi, *Sunan*, kitāb al-birr wa al-sillah [c]an rasūl Allāh (s.a.w), bāb mā'a jā'a fi rahmah al-muslimin, no. 1922.

HUBUNGAN *WADI^{C}AH* DENGAN INSURANS SYARIAH.

Perbincangan mengenai *wadi^{c}ah* dan insurans syariah dengan jelas memperlihatkan bahawa kedua-duanya memainkan peranan penting dalam usaha untuk merealisasikan proses insurans secara syariah.

Pada zaman moden yang sentiasa dipengaruhi produk-produk konvensional, maka perlu ada satu pertubuhan yang dapat melaksana satu mekanisma yang berkaitan dengan perkhidmatan secara profesional dan selaras dengan syariah. Dalam melaksanakan prinsip *wadi^{c}ah* dalam insurans syariah, konsep amanah dan jaminan sangat memainkan peranan. Kedua mekanisma ini, iaitu: *wadi^{c}ah* dan insurans syariah, mempunyai hubungan yang sangat rapat dalam mengembangkan ekonomi dan muamalah Islam.

Justeru itu, penulis telah melakukan perbahasan secara kajian ilmiah dan analisa mengenai hubungan kedua-dua konsep ini dan mendapati bahawa *wadi^{c}ah* merupakan satu jenis amanah di tangan pemegangnya. Jadi segala bentuk simpanan mestilah menggunakan konsep amanah, agar pemegang menjaga dan melindungi simpanan itu. Sedang cara menjaga amanah simpanan tersebut mesti dengan memberi jaminan keselamatan ke atasnya. Demikian juga dengan insurans syariah yang berkonsepkan amanah dalam melakukan prosesnya.

Wadi^{c}ah menaungi dan melindungi hak-hak pemilikan untuk pemiliknya, walaupun ia berada di tangan penerimanya dan pemiliknya dapat meminta pulang simpanan berkenaan pada bila-bila masa yang dikehendaki. Manakala insurans syariah adalah sebagai pelindung terhadap produk insuransnya. Oleh sebab itu, untuk mendapat kemaslahatan secara kongsi antara pihak *wadi^{c}ah* dan insurans, maka bentuk insurans ini hendaklah menggunakan sistem Islam, yang menghubungkan dengan konsep *wadi^{c}ah*. Sehinggalah terbentuk prinsip saling menjaga dan melindungi terhadap pemilikan simpanan tersebut.

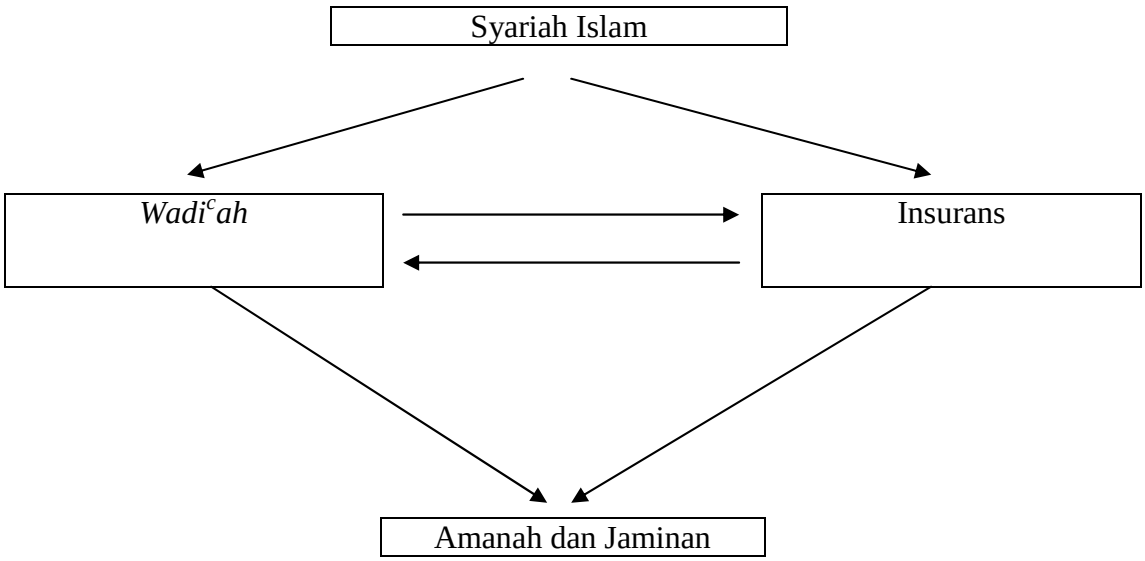
Jaminan keselamatan ke atas barang yang terdapat di dalam konsep *wadi^{c}ah* hanyalah boleh dibuat pada keadaan tertentu sahaja khususnya di tangan pemegang, jika ia hilang atau rosak kerana tidak mendapat penjagaan keselamatan, maka ia tiada jaminan pampasan. Manakala insurans merupakan sistem penjagaan yang memberi jaminan keselamatan terhadap barang dalam keadaan apa juapun, sama ada berlaku kehilangan atau kerosakan terhadap barang. Apatah lagi sekiranya pihak syarikat akan mengguna simpanan untuk melabur. Oleh itu, syarikat insurans syariah selaku pemegang simpanan meminta syarat-syarat, yang seterusnya akan memberi jaminan apabila berlaku kelalaian, kezaliman ataupun kerana tidak mengambil berat dalam menjaga *wadi^{c}ah*. Dengan kata lain, barang *wadi^{c}ah* selama mana masih berada dalam penjagaan pemegangnya, maka ia berada dalam jaminan keselamatan, apabila tidak, maka tidak ada jaminan ke atasnya.

Apabila pemegang *wadi^{c}ah* menggunakan harta simpanan untuk berniaga, dan menghasilkan keuntungan, maka keuntungan tersebut adalah hak milik pemilik *wadi^{c}ah* pada asalnya. Sesetengah fuqahā' berpendapat bahawa penjualan yang terdapat dalam perniagaan ini adalah tidak sah. Manakala syarikat insurans tidak akan memulangkan keuntungan daripada bahagian barang yang telah diniagakan. Berdasarkan kepada pendapat sesetengah fuqahā' bahawa seluruh jual beli yang

dilakukan oleh pihak syarikat insurans menjadi *fāsid*, kerana modal yang digunakan untuk berniaga adalah hasil wang caruman milik peserta. Untuk kepentingan bersama antara pemilik *wadi^{c}ah* dan insurans selaku sistem keamanan ke atas harta *wadi^{c}ah*, maka dibuat satu bentuk insurans dengan sistem Islam yang melaksana kedua konsep ini. Hal ini, bertujuan untuk mendapat keuntungan yang halal dan baik bagi pihak-pihak yang terlibat di dalamnya.

Perbahasan berkenaan telah diterangkan dengan jelas, bahawa sesungguhnya insurans tidak menyerupai *wadi^{c}ah* dalam satu bentuk, demikian juga tidak ada satu bentuk *qiyās* insurans kepada *wadi^{c}ah*. Oleh itu, sesetengah ulama tidak bersetuju terhadap pelaksanan insurans. Namun demikian ulama dan pakar ekonomi Islam telah berijtihad bersama sehingga mengharuskan penggunaan insurans dalam sistem Islam/*takāful*. Hubungan antara konsep *wadi^{c}ah* ini adalah seperti dalam rajah berikut:

RAJAH 1.1 Hubungan *Wadi^{c}ah* dan Insurans dalam Syariah Islam



Merujuk kepada rajah di atas didapati bahawa syariah Islam telah meng*harus*kan penggunaan kedua konsep *wadi^{c}ah* dan insurans, untuk kepentingan bersama dengan syarat, mesti mengikut kehendak syarak yang sebenar. Jadi kedua konsep ini dapat digunakan secara bersamaan, *wadi^{c}ah* dijadikan sebagai pelan perkhidmatan, akad dan produk. Manakala insurans dijadikan sebagai sistem keamanan dan perlindungan terhadap harta *wadi^{c}ah* yang mesti dilaksanakan mengikut sistem Islam/*takāful*. Kedua konsep ini akan menatijahkan prinsip amanah dan jaminan, kerana pihak insurans menggunapakai *wadi^{c}ah* sebagai modal melabur, manakala peserta mendapat penjagaan keselamatan keatas harta simpanannya.

PELAKSANAAN *WADĪ^{C}AH* DALAM SYARIKAT INSURANS SYARIAH "MUBARAKAH" DI INDONESIA

Berkembangnya syarikat-syarikat insurans yang berkonsepkan kepada syariah di Indonesia adalah satu pertanda bahawa nilai-nilai Islam sudahpun diterapkan dalam kehidupan harian khususnya di bidang muamalah. Keperluan masyarakat akan konsep yang bercirikan Islam, telah menggerakkan para pakar ekonomi Islam yang melibatkan diri dalam syarikat berkenaan membuat satu pelan perkhidmatan insurans syariah yang menggunakan konsep *wadi^{c}ah* dalam bentuk simpanan. Manakala prinsip *tabarru^{c}* yang diperolehi daripada sumbangan peserta, syarikat menggunakan istilah *yuran ta^{c}āwun*. Ada juga kumpulan wang peserta disumbangkan secara *tabarru^{c}* kesemuanya, mengikut jenis produk yang disertai.

Syarikat insurans syariah ini dalam menjalankan usaha perniagaannya mempunyai produk-produk perkhidmatan tertentu untuk dipasarkan. Sekiranya syarikat ini mendapat keuntungan dari hasil pelaburan simpanan yang dibuat, maka ia akan memberi saguhati kepada peserta atas dasar perjanjian yang dibuat bersama[49] atau akan dibayar kepada penerima perolehan manfaat insurans. Ia bertujuan memberi keuntungan di antara pihak syarikat dan peserta-peserta yang terlibat dalam urusan produk perkhidmatan ini.

Segala usaha yang dilakukan oleh syarikat dalam menjalankan produk-produknya, pertimbangan hukum dan pelaksanaannya dalam kegiatan syarikat, yang bercirikan Islam adalah merujuk kepada perundangan Islam dan peraturan syarak. Pelaksanaan wadiah dalam insurans syariah ini adalah sebagai berikut:

1. *Wadiah* Dana Pendidikan

Produk perkhidmatan syarikat ini adalah produk insurans yang dirancang untuk memberikan perlindungan berganda dan tempoh yang panjang di kemudian hari bagi peserta yang mengamanahkan secara *wadi^{c}ah* kepada syarikat sejumlah dana yang mereka maksudkan untuk pembiayaan pendidikan anaknya sehingga ke peringkat Institusi Pengajian Tinggi (IPT). Perlindungan ini bermaksud berupa perlindungan kematian yang diberikan kepada ahli waris peserta[50] apabila peserta meninggal dunia dalam tempoh penyertaan insurans, serta pembiayaan pendidikan yang diberikan

[49] *Wadi^{c}ah* yang diniagakan dan mendapat keuntungan dari hasil pelaburannya, maka syarikat tersebut membahagi kepada peserta dalam bentuk saguhati sebanyak 50% atas dasar persetujuan bersama antara syarikat dan peserta. Nazyah Hammād, *Aqd al-wadi^{c}ah fi al-syari^{c}ah al-Islāmiyyah*, Dār al-Qalam, Damaskus & al-Dār al-Shāmiyyah, Beirut, 1993, hlm. 111-114.

[50] Pelan produk insurans ini banyak melibatkan banyak pihak antara syarikat dan peserta yang terdiri daripada ibu bapa atau penjaga sebagai pemegang amanah dan anak. Ibu bapa atau penjaga yang bertanggung jawab menjamin bayaran wang caruman. Oleh itu, dana biasiswa pendidikan ini mempunyai hubungkait dengan kematian jika ditakdirkan salah seorang peserta meninggal dunia. Bererti perolehan manfaat perlindungan insurans akan dibahagikan kepada ahli waris. Dari segi hukum warispun mana-mana pihak yang mempunyai tali persaudaraan/keluarga berhak mendapat harta yang ditinggalkan, jadi wang caruman berkenaan yang terkumpul secara beransur-ansur, yang pada mulanya sebagai dana biasiswa akan menjadi waris kepada ahlinya. Iapun dapat disebut sebagai perlindungan tambahan untuk peserta. Lihat Muhammad Ali al-Sabuni, *Hukum waris menurut al-Qur'an dan hadis*, terj. Zaini Dahlan, Trigenda Karya, Bandung, 1995, hlm. 43-45.

kepada anak secara langsung yang dijadikan sebagai biasiswa[51] sesuai dengan jadual yang ditentukan dan disepakati bersama, sama ada peserta meninggal ataupun tidak.

Oleh kerana produk insurans syariah ini mengandungi unsur simpanan, maka premium yang dibayar oleh peserta terdiri daripada yuran *ta^{c}āwun li al-khairāt*, *ta^{c}āwun li al-wadi^{c}ah* dan *wadi^{c}ah* (simpanan). *Yuran ta^{c}āwun li al-khairāt* adalah sejumlah wang caruman yang dibayar oleh peserta secara tulus ikhlas dan tidak untuk diminta kembali, bertujuan untuk memberi perlindungan kematian kepada ahli waris peserta, secara bersama-sama. *Yuran ta^{c}āwun li al-wadi^{c}ah* adalah sejumlah wang caruman yang dibayar oleh peserta secara tulus ikhlas dan tidak untuk diminta kembali bertujuan untuk mencukupkan *wadi^{c}ah* peserta yang meninggal dunia secara bersama-sama dalam tempoh penyertaan insurans yang mana *wadi^{c}ah* tersebut diberikan secara bertahap kepada anak peserta untuk digunakan sesuai dengan tujuan yang telah dirancangkannya sewaktu masih hidup. Hal ini adalah sebagai pembiayaan pendidikan anak. *Wadi^{c}ah* adalah sejumlah dana yang diamanahkan peserta kepada syarikat, dalam hal ini ia bermaksud dana untuk pembiayaan pendidikan anak, yang akan diberikan kepada anak sebagai biasiswa sesuai dengan jadual yang ditentukan dan disepakati bersama. *Wadi^{c}ah* ini akan dilaburkan oleh syarikat yang mana hasilnya akan dibagi secara adil, jujur dan kerelaan atas persetujuan kedua-dua belah pihak.

Manfaat-manfaat berkenaan dengan program insurans ini adalah sebagai berikut:

i. Apabila peserta insurans meninggal dunia bukan akibat kemalangan dalam tempoh penyertaan insurans, maka syarikat akan membayar perlindungan kematian sebesar 100% perolehan manfaat insurans bagi penerima perolehan manfaat insurans atau keluarga peserta insurans dan biasiswa bagi anak atau penerima biasiswa.

ii. Apabila peserta meninggal dunia akibat kemalangan dalam tempoh penyertaan insurans, maka syarikat akan membayar perlindungan kematian sebesar 200% perolehan manfaat insurans, maksimum sesuai ketentuan syarikat bagi penerima manfaat insurans atau keluarga peserta insurans dan biasiswa bagi anak atau penerima biasiswa.

iii. Apabila penerima biasiswa meninggal dunia akibat kemalangan dalam masa pendidikannya, maka syarikat akan membayar perlindungan kematian sebesar perolehan manfaat insurans kepada keluarganya.

iv. Apabila peserta insurans tidak meninggal dunia dalam tempoh penyertaan insurans, maka syarikat hanya akan membayar biasiswa bagi penerima biasiswa sesuai dengan jadual yang telah ditetapkan.

Formula Penerimaan Biasiswa

$$t\,(DB) = \frac{tV}{m}$$

[51]Biasiswa bermaksud pembiayaan pendidikan daripada perolehan manfaat insurans untuk peserta.

Notis :

i. t (DB)	=	Biasiswa pada tahun ke-t (mula masuk Sekolah Rendah sehingga 5 Tahun di peringkat IPT)
ii. tV	=	Nilai Tunai akhir tahun ke-t.
iii. m	=	Baki Masa Penerimaan Biasiswa.

Tempoh matang insurans ini dapat dipilih 1 sehingga 18 tahun. Penyertaan terbuka kepada sesiapa yang berusia minimum 18 tahun saat masuk insurans dan maksimum 60 tahun dengan batasan umur ditambah dengan masa insurans tidak lebih daripada 65 tahun.

Masa pembayaran premium adalah sama sepertimana tempoh penyertaan insurans. Pada dasarnya pembayaran premium dilakukan secara tahunan, namun kerana premium terdiri daripada *wadi^{c}ah* dan yuran *ta^{c}āwun*, maka peserta boleh memilih pembayaran *wadi^{c}ah* sama ada secara tahunan, setengah tahun sekali, tiga bulan sekali atau bulanan. Manakala pembayaran yuran *ta^{c}āwun* hanya dapat dilakukan secara tahunan. Bentuk program produk ini ditawarkan dalam nilai rupiah.

Proses penyertaan secara perseorangan untuk produk ini, calon peserta dikehendaki mengisi borang SPAS, membayar premium *ta^{c}āwun* kemudian menyampaikannya kepada syarikat melalui bahagian pemasaran supaya penyertaan berkuat kuasa dengan segera. Setelah menerima SPAS lengkap serta premium, maka syarikat mengeluarkan polisi dan menghantarnya kepada yang berkenaan melalui pejabat atau bahagian pemasaran. Borang SPAS dapat diperolehi melalui bahagian dan pejabat-pejabat pemasaran syarikat yang berdekatan dengan calon peserta.

Premium insurans terdiri daripada premium *ta^{c}āwun* yang dibayar pada awal setiap tahun dan premium *wadi^{c}ah* sebesar manfaat insurans yang boleh dibayar secara ansuran, menurut kepada tempoh penyertaan insurans dan cara pembayaran. Besar kecilnya jumlah premium *ta^{c}āwun* bagi peserta itu berdasarkan kepada usia yang termaktub dalam jadual premium *ta^{c}āwun*, seperti berikut:

JADUAL 3.3 Premium *Ta^{c}āwun* Insurans *Wadi^{c}ah* Dana Pendidikan
Per 1.000.000 Manfaat Insurans

Umur	**Premium**
18-30	8.800
31	8.855
32	8.875
33	8.925
34	8.975
35	9.185
36	9.305
37	9.590
38	9.935
39	10.130
40	10.460
41	10.790
42	11.000
43	11.415
44	11.930
45	12.320
46	13.100
47	14.090
48	14.975
49	16.280
50	17.690

Premium *ta^{c}āwun* per tahun, mengikut umur peserta insurans.
Sumber: PT. Asuransi Syariah "Mubarakah" di Indonesia 2002

Formula pengiraan produk *Wadi^{c}ah* Dana Pendidikan adalah sebagai berikut:

i. Perolehan manfaat insurans dipilih iaitu: 10 juta, 20 juta atau 30 juta mengikut kepada keinginan peserta / pemegang polisi.

ii. Tempoh penyertaan insurans adalah mengikut kepada usia anak yang disekolahkan sebagai penerima biasiswa.
Manakala kiraan tempoh penyertaan insurans dirumuskan dengan: 18 th ditolak usia anak saat mula insurans. Manakala tempoh matang insurans dibatasi antara 3 sehingga 18 tahun.

iii. Masa pembayaran premium *wadi^{c}ah* maksimum untuk manfaat insurans Rp 10.000.000, Rp 20.000.000 dan Rp 30.000.000 berturutan adalah 5, 8 dan 10 tahun dan masa pembayaran premium *ta^{c}āwun* adalah sama dengan tempoh penyertaan insurans.

iv. Cara pembayaran premium adalah tahunan tetapi premium boleh dibayar secara bulanan, tiga bulan sekali atau enam bulan sekali.

v. Premium *wadi^{c}ah* dan premium *ta^{c}āwun*

$$\text{Premium } wadi^{c}ah \text{ tahunan (PWT)} = \frac{\text{Manfaat insurans}}{\text{Masa pembayaran premium}}$$

PWT

Premium *wadi^{c}ah* bulanan = -------
12

Premium *wadi^{c}ah* untuk tiga bulan sekali= PWT

4

Premium *wadi^{c}ah* untuk enam bulan sekali = PWT

2

Manakala premium *ta^{c}āwun* peserta berumur *x* adalah =
Manfaat insurans
---------- x jadual premium *ta^{c}āwun* peserta umur *x*
1.000.000

vi. Bagi hasil akan dikira sesuai dengan realisasi hasil pelaburan, iaitu:
Nilai tunai = total premium *wadi^{c}ah* + bagi hasi – penggunaan *wadi^{c}ah*.
Manakala tahapan biasiswa ini baru dapat diperoleh pada usia anak 6 tahun dan dirumuskan dengan:

Tahapan biasiswa anak usia *x* = Nilai Tunai anak Usia *x*

Baki masa pendidikan

Baki masa pendidikan diperolehi daripada (22 tahun + 1 tahun) ditolak usia anak waktu itu.

vii. Perlindungan kematian untuk peserta adalah sebagai berikut:
Apabila peserta meninggal dunia bukan kerana kemalangan, perlindungan kematian yang dibayar sebesar: 100% X manfaat insurans.
Manakala peserta yang meninggal dunia akibat kemalangan, perlindungan kematian yang di bayar sebesar: 200% X manfaat insurans
Dan penerima biasiswa yang meninggal dunia akibat kemalangan, perlindungan kematian yang dibayar sebesar: 100% X manfaat insurans kepada keluarganya dan sejak itu biasiswa dihentikan.

Berkenaan dengan tuntutan kematian yang terdapat dalam produk *wadi^{c}ah* dana pendidikan ini adalah sama dengan produk-produk lainnya kecuali syarikat membayar tuntutan berupa perlindungan kematian kepada penerima perolehan manfaat insurans, tetap membayar biasiswa bagi anak atau penerima perolehan biasiswa sesuai dengan jadual yang berkenaan dengannya.

2. *Wadiah* Dana Haji

Produk perkhidmatan ini adalah produk yang ditawarkan untuk memberi perlindungan bagi peserta yang mengamanahkan secara *wadi^{c}ah* kepada syarikat sejumlah dana yang bertujuan untuk melaksanakan ibadah haji. Menyimpan pembiayaan perjalanan haji adalah wujud niat nyata seseorang untuk memenuhi panggilan haji. Ibadah haji memerlukan dana yang cukup besar. Simpanan haji yang

belum digunakan, untuk sementara waktu dimanfaatkan bagi kemaslahahan umat dalam membiayai pelbagai kegiatan perekonomian melalui pelaburan. Simpanan haji memberi keuntungan baik bagi peserta dan dunia perniagaan pada umumnya. Program produk insurans *wadi^{c}ah* dana haji ini memberikan peluang kepada umat Islam agar dapat mengamanahkan kepada syarikat secara *wadi^{c}ah yad damānah*,[52] *wadi^{c}ah* tidak diberi faedah sebagaimana yang dilakukan bank bukan syariah, akan tetapi dilakukan bagi hasil seperti prinsip *mudārabah* terhadap keuntungan daripada mengambil perolehan manfaat *wadi^{c}ah* tersebut. Dengan prinsip ini, maka kedua-dua pihak jauh daripada amalan riba. Selain itu, niat peserta insurans untuk menunaikan ibadah haji akan lebih terjamin sebab *wadi^{c}ah* dana haji dilindungi oleh premiun *ta^{c}āwun* sehingga tidak ada alasan bagi peserta insurans untuk tidak dapat menunaikan ibadah haji, setidak-tidaknya secara upah haji. Sekiranya peserta tidak dapat pergi haji maka boleh diwakilkan kepada salah seorang penerima perolehan manfaat insurans atau ahli waris peserta insurans pergi haji.

Wadi^{c}ah ini mempunyai manfaat yang berlebihan di mana ia diterapkan secara profesional untuk mendapat nilai tambah halal, bebas daripada faedah/riba melalui pelaburan bersifat *mudārabah*. Pembayaran wang caruman dapat dijelaskan pada bila-bila masa di luar jadual pembayaran standard. Kemudahan mendaftar pada syarikat, melindungi niat peserta insurans untuk menunaikan ibadah haji, sekalipun dengan cara upah haji atau salah seorang penerima perolehan manfaat insurans yang pergi untuk menunaikan haji sebagai penggantinya kerana ia dilindungi dengan premiun *ta^{c}āwun*. Peserta-peserta insurans mendapat perlindungan tambahan *personal accident* sehingga 100 juta rupiah. Tempoh penyertaan insurans adalah bebas, minimum satu tahun. Semua *wadi^{c}ah* dan hasil pelaburan dikembalikan kepada peserta atau penerima perolehan manfaat insurans.

Berkenaan dengan manfaat yang sedia ada, adalah sebagai berikut:

i. Apabila peserta insurans meninggal dunia bukan akibat kemalangan dalam tempoh penyertaan insurans, maka syarikat akan membayar 100% perolehan manfaat insurans dan seluruh *wadi^{c}ah* yang telah dibayar beserta dengan bahagian hasil pelaburan *wadi^{c}ah*nya ditolak penggunaan daripada pengumpulan *wadi^{c}ah*.

ii. Apabila peserta insurans meninggal dunia akibat kemalangan dalam masa insurans, maka syarikat akan membayar 200 % perolehan manfaat insurans, maksimumnya sesuai ketentuan syarikat dan seluruh *wadi^{c}ah* yang telah dibayar beserta dengan bahagian hasil pelaburannya ditolak penggunaan dari pengumpulan *wadi^{c}ah*.

iii. Apabila peserta insurans tidak meninggal dunia dalam tempoh penyertaan insurans, maka syarikat akan membayar seluruh *wadi^{c}ah* yang dibayar beserta dengan bahagian hasil pelaburannya ditolak penggunaan daripada pengumpulan *wadi^{c}ah*.

[52] *Wadi^{c}ah yad damānah* merupakan salah satu jaminan produk syarikat "Mubarakah" terhadap *wadi^{c}ah* para peserta. Hendri, Pegawai tehnikal syarikat "Mubarakah" Jakarta, temu bual, 2003, 19 Mei.

Tempoh matang insurans dapat dipilih antara 1-20 tahun. Manakala penyertaan terbuka untuk peserta yang berusia minimum adalah 18 tahun. Proses penyertaan secara perseorangan adalah calon peserta insurans dikehendaki mengisi borang SPAS, menjelaskan bayaran premium *ta^{c}āwun* dan *wadi^{c}ah*, kemudian mengajukan kepada syarikat melalui tenaga pemasaran supaya penyertaan berkuat kuasa dengan segera. Setelah menerima SPAS yang lengkap serta premium, maka syarikat mengeluarkan polisi dan menghantarkannya kepada yang berkenaan melalui pejabat pemasaran.

Premium terdiri daripada premium *ta^{c}āwun* yang dibayar pada awal tiap tahun dan premium *wadi^{c}ah*. Minimum pembiayaan naik haji yang boleh dibayar secara ansuran bergantung kepada tempoh penyertaan insurans dan cara pembayarannya. Besar jumlah premium *ta^{c}āwun* bagi peserta insurans adalah berdasarkan kepada umur.

Formula pengiraan produk *wadi^{c}ah* dana haji adalah sebagai berikut:

i. Perolehan manfaat insurans adalah sebesar pembiayaan haji yang direncanakan
ii. Tempoh penyertaan adalah mengikut kepada permulaan insurans dan rencana pergi haji peserta / pemegang polisi.
    Tempoh penyertaan insurans = Tahun pergi haji peserta – Tahun mula menyertai insurans
iii. Masa pembayaran premium *wadi^{c}ah* dan premium peserta adalah sama dengan tempoh penyertaan insurans.
iv. Cara pembayaran premium *wadi^{c}ah* adalah sama dengan cara pembayaran *wadi^{c}ah* dana pendidikan.[53]
v. Premium *wadi^{c}ah* dan premium *ta^{c}āwun* pun sama seperti *wadi^{c}ah* dana pendidikan.[54]
vi. Bagi hasil dan nilai tunai adalah sama seperti dana pendidikan.[55]
vii. Perlindungan kematian akibat kemalangan dibayar sebesar 200% X manfaat insurans, manakala bukan akibat kemalangan dibayar sebesar 100% X manfaat insurans. Perlindungan kematian ini dapat juga digunakan untuk upah haji peserta.

Tuntutan kematian dalam insurans dana haji ini dapat diproses seperti mana produk-produk lainnya kecuali syarikat membayar tuntutan berupa pembiayaan haji langsung kepada penyelenggara haji dan disertai salinan resit pembayaran kepada penerima perolehan manfaat insurans. Seluruh *wadi^{c}ah* dan bahagian hasil pelaburan diserahkan kepada penerima perolehan manfaat insurans. Sekiranya tuntutan habis kontrak, maka syarikat membayar kembali seluruh *wadi^{c}ah* dan bahagian hasil pelaburannya kepada peserta insurans untuk digunakan yang berkenaan sebagai biaya melaksana ibadah haji.

[53]Lihat formula kiraan produk *Wadi^{c}ah Dana Pendidikan*.
[54]ibid.
[55]ibid.

KESIMPULAN

Syariah Islam memainkan peranan penting dalam menangani segala permasalahan yang salah satunya adalah bidang muamalah. Muamalah menerangkan dan mengkaji isu-isu yang berkenaan dengan ekonomi, yang menjadi keperluan hidup manusia. Institusi-institusi kewangan telah banyak ditubuhkan untuk menyelesaikan sebahagian permasalahan ekonomi umat, diantaranya adalah syarikat insurans syariah "Mubarakah" di Indonesia. Syarikat ini menerapkan konsep dan pelaksanaan *wadi^{c}ah* dalam sistem insurans yang dibenarkan oleh syarak. Dengan perbincangan ini, maka penulis dapat membuat kesimpulan sebagai berikut:

Wadi^{c}ah adalah salah satu konsep yang dibenarkan pelaksanaannya oleh syarak. Menurut takrif klasiknya *wadi^{c}ah* bermaksud barang yang disimpan oleh tuan punyanya kepada orang lain untuk dijaga keselamatannya dengan baik. Manakala menurut zaman moden ini *wadi^{c}ah* diimplemasikan dalam bentuk pelan produk perkhidmatan yang ditawarkan oleh syarikat-syarikat kewangan Islam. *Wadi^{c}ah* yang telah dikumpulkan di syarikat ini dalam bentuk simpanan wang akan dilaburkan dengan persetujuan bersama di antara pihak peserta dan syarikat, yang kemudian keuntungannya akan dibahagi hasil bersama mengikut ketentuan.

Produk *wadi^{c}ah* adalah berbentuk amanah, oleh itu hendaklah pemegang *wadi^{c}ah* bertanggungjawab dengan barang yang diamanahkan, ia boleh berubah bentuk jaminan sekiranya pemegang barang menggunakannya dengan syarat mendapat keizinan daripada pemiliknya atau ia bercampur dengan barang kepunyaan pemegang *wadi^{c}ah*. Hukumnya adalah *harus*, walaupun begitu ia boleh menjadi *wajib* sekiranya pemilik merasa khuatir ke atas keselamatan barangnya atau ia terdedah kepada mala petaka.

Insurans pula merupakan jenis akad baru yang belum diwujudkan pada masa ijtihad melalui ijtihad sebelumnya. Oleh kerana itu, ia lebih dikenali dengan sistem konvensional, namun demikian bagi memenuhi kepentingan ramai dan dengan kebenaran syarak, maka ia ditubuhkan dalam bentuk syarikat yang menggunakan sistem Islam. Syarikat insurans merupakan tempat menyimpan harta dengan jaminan keselamatan ke atasnya.

Memandangkan betapa perlunya perlindungan kepada anggota masyarakat bagi menghadapi kemungkinan malapetaka dan bencana serta keraguan berkenaan perlindungan yang disediakan oleh syarikat insurans yang ada sekarang daripada segi hukum syarak, maka para ulama fiqh sudah membuat kajian yang terperinci bentuk perlindungan yang boleh disediakan bagi memenuhi keperluan yang berlandaskan hukum syariah. Hasil daripada kajian ini, mendapati bahawa ulama bersepakat menyatakan perlindungan yang dikehendaki itu boleh disediakan selaras dengan kehendak syarak melalui konsep insurans syariah.[56] Prinsip-prinsip asas dan utama yang menjadi panduan insurans syariah adalah saling bekerjasama dan saling membantu, saling melindungi daripada pelbagai kesusahan, dan saling bertanggungjawab dengan matlamat yang baik untuk mewujudkan masyarakat yang beriman, bertakwa dan bahagia demi mendapat kemakmuran bersama.

[56]Mat Hassan Abu Bakar, *Apa itu ekonomi Islam*, Pts Publication & Distributors, Pahang, 2003, hlm. 113.

Konsep *wadi^{c}ah* dan insurans syariah merupakan dua mekanisme yang saling berhubung rapat antara satu sama lain dari sisi amanah. Amanah adalah satu sifat yang asasi bagi menerapkan konsep *wadi^{c}ah* dalam insurans syariah, yang bertujuan untuk dapat saling mempercayai dan saling bertanggungjawab di antara mana-mana pihak yang terlibat. Kesemua perbincangan ini tidak lain adalah bertujuan untuk mengembangkan perekonomian umat dan muamalah Islam bagi menyelesaikan sebahagian masalah ekonomi umat secara profesional di bawah naungan syariah Islam.

Konsep *wadi^{c}ah* yang diterapkan syarikat berdasarkan kepada saguhati dalam membahagi keuntungan kepada peserta, ia adalah merupakan pelan produk perkhidmatan syarikat insurans syariah " Mubarakah" di Indonesia. Pelaksanaan *wadi^{c}ah* adalah bersesuaian dengan kaedah-kaedah syarak yang menggabungkan bentuk simpanan, sumbangan dan manfaat-manfaat perolehan insurans.

Melalui perbincangan tentang konsep *wadi^{c}ah* dan insurans dalam syarikat insurans syariah "Mubarakah" di Indonesia ini, maka penulis berharap agar kiranya dapat menambah sedikit kepada khazanah ilmu Islam daripada kajian ilmiah yang sederhana ini dalam usaha menyelesaikan sebahagian permasalahan masyarakat dan negara dalam bidang ekonomi yang selaras dengan syarak dan keperluan semasa.

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THE ADOPTION OF AAOIFI ACCOUNTING STANDARDS *DIFFUSION OF INNOVATION*

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ABSTRACT

Purpose *– The accounting and auditing organization for Islamic financial institutions (AAOIFI) had taken a proper initiative to develop accounting, auditing, governance and ethics standards for Islamic financial institutions. The AAOIFI standards serve as a guideline that may reflect the unique characteristics of Islamic financial institutions. This paper investigates mainly the level of compliance with the AAOIFI accounting standards by Islamic banks Malaysia.*

Design/methodology/approach – *The paper uses a questionnaire in order to explore the level of compliance with the AAOIFI accounting standards. The data was analyzed by using descriptive statistics and multiple regressions were conducted.*

Findings- *the paper indicates that the level of compliance with the AAOIFI accounting standards by Islamic banks of Malaysia have a moderate level of compliance with the AAOIFI accounting standards due to the fact that the AAOIFI accounting standards are as guidelines according to Bank Negara (BNM).*

Originality/value – *This paper contributes to the understanding of the diffusion of the AAOIFI accounting standards and contributes also towards a better understanding and acceptability of the AAOIFI accounting standards.*

Keyword (s): *Islamic accounting, Islamic Financial Institutions, AAOIFI Standards.*

INTRODUCTION

Islamic banks managed assets worth US$ 112.6 billion making a net profit of US$ 1.2 billion (Khan, 2001) in addition, there is about 300 Islamic banking and financial institutions across 75 countries, holding a paid-up capital of over US$13 billion, controlling assets worth US$300-US$500 and investments US$500 billion-US$800 billion, with an average annual growth of 15 per cent. It has been estimated that

Islamic banking and finance industry will reach to US$4 trillion by 2010 (Khan & Bhatt, 2008).

Islamic banking acts as an investor, a trader, a financial advisor, a consultant and a financing house (Ariss & Sarieddine, 2008) However, the development of Islamic financial institutions in the Islamic and non-Islamic countries needs the Islamic accounting standards-AAOIFI accounting standards- due to the unique characteristics of these institutions such as free-interest system.

The trend towards the accounting and auditing organization for Islamic institutions (AAOIFI) standards has become pressing in the Organization Islamic Conference (OIC) countries. Therefore, researchers in financial reporting for Islamic financial institutions have conducted a considerable number of studies in the Islamic banks conformance to accounting standards. Until recently, Islamic banking problems included a lack of standardized accounting and auditing standards (Pomeranz, 1997). Basically, Islamic banks lack some evidence to adopt the AAOIFI accounting standards and analysis of Islamic banking principles under national Sharia'h advisory council, central bank roles, political system and economic structure. Moreover, the problem is the basis of Islamic accounting standards and Islamic disclosure still based on a conventional accounting philosophy (Harahap, 2003). The adoption of international standards by Islamic banks will help enhance their credibility and fuel their growth worldwide (Ariss & Sarieddine). However, the rapid development of Islamic financial institutions needs clear standards for disclosing information, satisfying not only the general standards of disclosure but also standards relating to Islamic values (Harahap, 2003).

LITERATURE REVIEW

AAOIFI has published 68 standards, 23 accounting standards, 5 auditing standards, 6 governance standards, 2 ethics standards, and 30 *shariah* standards (AAOIFI, 2008). Most of the previous studies focused on the level of understanding and acceptability of AAOIFI accounting standards and the need for Islamic accounting standards, Islamic Sukuk according to AAOIFI FAS 17, comparison between IAS and AAOIFI, the prohibition of interest in Islam and mode of finance. However, in line with that, the research objective is developed and to be tested to evaluate the level of compliance with AAOIFI accounting standards by Islamic banks in Malaysia. A few studies have been conducted in this area. For instance, by Ismail and Latiff (2001), Karim (2001), Shahul, Alrazi and Nazli (2006), Ani Salwani (2006), Farah Nadzri (2009) and Thea Vinnicombe (2010) were found to examine the understanding, acceptability and compliance with the AAOIFI standards.

The first study in this area was conducted by Ismail and Latiff (2001), theoretically examines that to what extent Islamic financial institutions have adhered to the AAOIFI standards and IAS standards, AAOIFI has no legal backing and compliance with its standards is voluntary in some countries e.g. Malaysia. In Malaysia, with regard to AAOIFI's set of standards, BNM has no objection to its adoption to the extent that it is not in contradiction to the national requirements.

Karim (2001) found that Sudan and Bahrain require Islamic financial institutions to comply with the AAOIFI's standards. Efforts to require it are underway in other countries like Malaysia and Qatar. Some Islamic banks, such as Bank Islam Berhad Malaysia, Islamic Development Bank have also started to voluntarily use the AAOIFI accounting standards to prepare their financial statements. The implementation abroad of the AAOIFI standards would require exerting more efforts

with central banks and governments where Islamic banks operate to have the AAOIFI standards recognized.

Shahul, Alrazi and Nazli (2006) argued that how far the Islamic financial institutions have complied with the AAOIFI standards. The calculation is based on the number of the principles which followed AAOIFI to the total accounting principles applied. In this regard, (BIMB) comply with only 15 percent meanwhile (BIB) comply with 61 percent. Thus, the BIMB in Bahrain more comply with the AAOIFI accounting standards than BIB in Malaysia. Also, Ani Salwani (2006) argues that the level of understanding on Islamic bonds and acceptability of AAOIFI FAS 17 investment in Islamic bonds among bank mangers in Malaysia. The managers who are involved directly in the investment in Islamic bonds AAOIFI FAS 17 have only moderate level of understanding. It was found that also those who have been well educated in Islamic banking and finance have a better understanding of Islamic bonds. On the other hand, AAOIFI FAS 17 is well accepted by Malaysians bank mangers and may be considered applicable in Malaysia even though they have not referred to AAOIFI standards.

Farah Nadzri (2009) concluded that the extents of disclosure by the IFIs are much lower than the AAOIFI requirements. The test performed also revealed that the adopters of AAOIFI do provide more disclosure as compared to the non-adopters. However, the mean result is relatively low to suggest full compliance with the AAOIFI.

Thea Vinnicombe (2010) studied is the extent to which Islamic financial institutions comply with the accounting and governance standards issued by the AAOIFI in their financial reporting. The findings of the study show compliance to be very high with respect to the governance standard relating to the in-house supervisory

boards of Islamic banks, and reporting the Islamic murabaha contract, compliance is also high in the case of murabaha contracts. In contrast, compliance with the AAOIFI's requirements regarding the Zakah religious tax and the mudaraba contract is relatively low.

EMPIRICAL INVESTIGATION AND CONCLUSION

The study population consists of a number of accountants in 17 Islamic banks in Malaysia. The Sampling size in social science refers to the some procedures, in reference to Sekaran (2000) by referred to a rule of thumb, sample sizes between 30 and 500 could be effective depending on the type of sampling design used and the research question investigated. Therefore, *purposive sampling* using in this paper and the total of sampling size is 89 samples. Study of a sample rather than the entire population is also sometimes likely to produce more reliable results and justifiable method which reduces the difficulties such as cost and time Cooper and Schindler (2006). A total of 408 questionnaires were distributed to the accountants of Islamic banks in Malaysia. Only (89) copies were returned to the researchers, approximately 22% which is sufficient for statistics reliability. This section empirically analyzed the level of compliance with AAOIFI accounting standards among the respondents in Islamic banks of Malaysia.

Table 1: Highly compliance with AAOIFI accounting standards:

No	Statement	Mean
1	FAS 1 requires that unrestricted investment accounts be presented on the liabilities and equity in a separate section.	3.85
2	FAS 1 requires that restricted investment accounts be reported off-balance sheet in the statement of the changes in restricted investements.	3.15
3	FAS 5 requires bank to disclose percentages for profit-allocation between investment account holders and the bank.	3.78
4	FAS 6 disclosure should be made, in the notes on significant accounts,	3.89

	of the percentage of the funds of unrestricted investment.	
5	FAS 16 require that disclosures shall be made if the reporting currency is different from the local currency. The reasons for using a different currency shall be provided.	4.02
6	FAS 17 the sukuk held to maturity shall be measured at historical cost.	4.03
7	FAS 20 require that the bank shall disclose in the notes to the financial statements the policy adopted in financing deferred payment sale transactions.	3.88
8	FAS 23 require consolidated financial statements shall be prepared by combining the financial statements of the IFI.	3.66
	Total	3.78

This analysis used mean scores to measure the level of compliance with AAOIFI accounting standards. Table 1 shows that the extent of compliance with AAOIFI accounting standards from accountant's perceptive are moderate level of compliance with AAOIFI requirements the overall 3.25. In reference to Table 1, the researchers found out that 8 accounting standards out of 20 standards have been examined have high level of compliance. Out of these 8 accounting standards 2 standards are relatively were highest adopted, while 6 standards between 3.5 and 4 scores which indicates high level of compliance also. On the other hand, out of 20 standards, 10 standards have moderate level of compliance with AAOIFI accounting standards that means 50 percent of AAOIFI accounting standards have moderate level of compliance based on accountant's perspective. Finally, two items failed to be disclosed at a minimum 50 percent of the AAOIFI requirements regarding AAOIFI FAS 9 Zakah, this results supported by Farah Nadzri (2009) Indicate that the extents of disclosure by the IFIs are much lower than the AAOIFI requirements.

The study also found that leverage and origin factors might contribute to the level disclosures of zakah and financial products. However, the mean result is relatively low to suggest full compliance with standard of Zakah AAOIFI FAS 9. In addition, AAOIFI FAS 17 Sukuk in Islamic banks of Malaysia the highest mean

scores 4.03 representing the statement in paragraph 8 of the standard. This indicates that Sukuk held to maturity shall be measured at historical cost. The result is expected that the respondents are adopted AAOIFI FAS 17 requirements in their accounting practices.

Furthermore, mean score is 4.02 representing the AAOIFI FAS 16 it is consist of 29 paragraph as well as set out the accounting rules for recognizing, measuring, presenting and disclosing foreign currency transactions and foreign operations that are undertaken by Islamic banks and financial institutions. However, Foreign Currency Transactions and Foreign Operations with high mean score, this indicates that disclosure should be made for using a different currency with the reasons, especially representing the statement in paragraph 21 “Disclosure shall be made if the reporting currency is different from the local currency in the Islamic bank’s country. The reasons for using a different currency shall be provided”.

The AAOIFI FAS 20 “deferred payment sale”. With 3.88 mean scores which indicates that Bai' Bithaman Ajil are the most common financial transactions. this standard aims at setting out the accounting rules for recognizing, measuring, presenting and disclosing assets available for deferred payment sale, and the revenues, expenses, gains and losses relating to these assets as well as receivables that arise from such sale transactions that are conducted by Islamic financial institutions.

Generally, most of AAOIFI accounting standards have similarities mean scores and high compliance with AAOIFI accounting standards due to high awareness and acceptable of the AAOIFI standards. For instance, AAOIFI FAS 5 & FAS 6 also with high mean scores 3.78 and 3.89 respectively.

Finally, FAS 23 with mean scores 3.66 this indicates that Islamic banks should prepare consolidated financial statements in accordance with this standard. This is

indicating that the consolidated financial statements are disclosed to users such; shareholders, investment account holders and general public.

Table 2: Moderate compliance with AAOIFI accounting standards:

No	Statement	Mean
1	FAS 2 Assets available for sale after acquisition on the basis of Murabaha shall be measured at their historical cost.	2.58
2	FAS 3 disclosure should be made in the notes to the financial statements for a financial reporting period if the Islamic bank has made during that period a provision for decline in the value of Mudaraba assets.	3.05
3	FAS 4 disclosure should be made in the notes to the financial statements for a financial reporting period if the Islamic bank has made during that period a provision for a loss of its capital in Musharaka financing transactions.	3.29
4	FAS 7 Parallel Salam transactions shall be recognized when the Islamic bank receives the capital of Salam transactions.	3.07
5	FAS 8 requires leased assets to be booked in an Ijarah Muntahia Bittamleek assets account and measured at book value.	3.44
6	FAS 10 require that the Islamic bank shall disclose in its financial statements revenues and profits of Istisna'a contracts recognized for the financial period.	2.95
7	FAS 11 require that the Islamic bank shall disclose in the notes any deductions, either as a percentage or an amount, from mudaraba income.	2.69
8	FAS 14 In the case of a change in accounting policies, a disclosure to this effect shall be made including the reasons.	3.31
9	FAS 21 require that disclosures shall be made of the accounting policies adopted in the transfer of assets from unrestricted investment accounts to restricted investment accounts.	2.98
10	FAS 22 require disclosure should be made regarding segment revenue and segment expense for each reportable segment.	2.57
	Total	2.99

Table 2 shows the list of accounting treatments of AAOIFI accounting standards. Out of 10 AAOIFI accounting standards being tested, 5 items are 3 mean scores and above. Which indicates that these accounting standards are would be at the moderately high level of compliance. In addition, 10 accounting standards being tested, 5 items are 3 mean scores and less. This indicates that the accounting standards are would be at the moderate level of compliance. These standards are FAS 2 & 3 & 4

Murabaha, Mudaraba Musharkah financing (mode of finance). As well as FAS 21 accounting policies and FAS 22 disclosure of revenue and expenses. With regard to uniform mode of finance standards, the AAOIFI has developed and issued three standards under mode of finance which are: FAS 2 Murabaha financing, FAS 3 Mudaraba financing and FAS 4 Musharkah financing.

In reference to table 2 shows that FAS 2+3+4 modes of financing (Murabaha, Mudaraba and Musharaka) are at the same range of compliance with AAOIFI accounting standards.

Table 3: Low compliance with AAOIFI accounting standards:

No	Statement	Mean IBM
4	FAS 9 require that zakah should be treated as expenses of the bank.	2.37
5	FAS 9 require that unpaid zakah should be treated as liabilities.	2.48
	Total	2.43

Based on the analysis conducted, the lowest mean score for Islamic banks of Malaysia is 2.37 and 2.48 representing the AAOIFI FAS 9. This indicates that Zakah should be treated as expenses and unpaid zakah should be treated as liabilities. In other words, perception of accountants in Islamic banks of Malaysia gives relatively low compliance to this standard due to less understanding.

Zakah: Literary, “Zakah means blessing, purification, increase and cultivation of good deeds. It is called Zakah because it blesses the wealth from which it is paid and protects it. In Shari’a, Zakah is an obligation in respect of funds paid for a specified type of purpose and for specified categories. It is a specified amount prescribed by Allah the Almighty for those who are entitled to Zakah as specified in the Qur’an. The word Zakah is also used to indicate the amount paid from the funds that is subject to Zakah” (AAOIFI, 2008).

AAOIFI FAS 9 consist of 21 paragraph that describe measurements, recognition and disclosure requirements as well as this standard aims at setting out accounting rules for the treatments related to the determination of the Zakah base (i.e., the base on Zakah is to be computed), measurement of items included in the Zakah base and disclosure of Zakah in the financial statements of the Islamic banks and financial Institutions (AAOIFI, 2008).

TEST OF HYPOTHESES

The following hypotheses explain the relationship between independent variables and compliance with AAOIFI accounting standards in terms of the relative advantage, compatibility, complexity, trialability, and observability. The outputs of multiple regression are showed in table 4

Table 4: Regression results

Independent Variables	Coefficients
Expected Sign	**Malaysia**
Constant	**-80.757**
Relative advantage (+)	**.000**
Compatibility (+)	**.015**
Complexity (-)	**.078**
Trialability (+)	**.096**
Observability (+)	**.000**
Adjusted R^2	**.723**
F value	**15.473**
No. of observations	**89**

Table 4 presents the results of regression model that examine the relationship between level of compliance and independent variables. The model includes Islamic banks in Malaysia based on Rogers's variables which are five independent variables (e.g. the relative advantage, compatibility, complexity, trialability and observability). The model is significant with R2 (adj.) of 0.723. The results reveal that, as predicted, the level of compliance with AAOIFI accounting standards effect by the relative

advantage, compatibility, complexity, trialability and observability. There are significant differences in the level of compliance with AAOIFI accounting standards by Islamic banks in Malaysia.

The results provide support for the research hypotheses that the more relative advantage, compatibility and observability of AAOIFI accounting standards, the more likely AAOIFI accounting standards will be adopted. On the other hand, the more complexity of AAOIFI accounting standards, the less likely AAOIFI accounting standards will be adopted. In addition, the more trialability of AAOIFI accounting standards, the more likely AAOIFI accounting standards will be adopted. The "trialability" variable are not supported due to the fact is AAOIFI accounting standards not for trail propose, AAOIFI accounting standards needs legal back to be adopted.

The result confirms the trend observed in the descriptive analysis, namely that the level of compliance in Malaysia relatively a moderate level of compliance with AAOIFI accounting standards. The researcher is expected that Islamic banks in Malaysia are comply with AAOIFI accounting standards due to prior study conducted by (Hameed, 2006) which confirms that Bank Islam Malaysia Berhad (BIMB) are comply with AAOIFI accounting standards.

SUMMARY INSIGHTS AND CONCLUDING REMARKS

Due to the rapid growth in the Islamic Capital Market (ICM), compliance with the Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI) standards is a newly emerging area of study in line with greater interest in Islamic finance. Adopting or complying with Islamic accounting standards has become the focus of increasing attention among accountants, academics, practitioners, researchers

and investors. In reference to data analysis, results further show that the level of compliance with AAOIFI accounting standards by Islamic banks in Malaysia is moderate level due to their consistence with their regulation impose by the regulatory bodies in Malaysia such as BNM and MASB. On the other hand, in Malaysia adopted AAOIFI standards are voluntary or as guidelines.

The study found that relative advantage, compatibility, and observability show the positive influence and significant over the compliance with AAOIFI accounting standards which indicates that the more the relative advantage, compatibility, trialability and observability of AAOIFI accounting standards, the more likely AAOIFI would be adopted. On the other hand, the complexity shows negative influence on the compliance with AAOIFI accounting standards which indicate that the more complexity the less likely AAOIFI would be adopted. In addition, the complexity, trialability was insignificants due to The AAOIFI standards serve as a guideline that may reflect the unique characteristics of Islamic financial institutions and then follow Shar'ah principles.

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BUDAYA BERHUTANG DALAM MASYARAKAT MASAKINI : SATU PENELITIAN BERDASARKAN KONSEP HUTANG DALAM ISLAM

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Abstrak: Islam telah meletakkan asas yang kukuh berkaitan hutang piutang. Diharuskan berhutang apabila seseorang berada di dalam kesempitan dan tidak digalakkan berhutang tanpa keperluan. Situasi sekarang dengan kes-kes keberhutangan yang serius dan masalah-masalah yang berlaku kesan dari hutang ini cukup menakutkan. Kesan hutang dalam Islam bukan sekadar melibatkan hidup di dunia malahan hingga ke alam kematian. Kertas kerja ini adalah kertas konsep yang mengupas mengenai konsep hutang dalam muamalat Islam yang bersumberkan dalil-dalil dari al-quran dan hadith-hadith Rasulullah S.A.W. Ia dapat dijadikan panduan dalam amalan berhutang yang dapat memberi kebahagiaan kepada penghutang sama ada di dunia mahupun di akhirat.

Kata Kunci : Budaya Berhutang Dalam Masyarakat, Hutang Dalam Islam.

Pendahuluan

Konsep hutang yang wujud dalam kehidupan manusia sudah lama dibincangkan di dalam muamalat Islam. Ayat yang paling panjang di dalam al-Quran berkait rapat dengan persoalan hutang iaitu di dalam surah al-baqarah ayat 282. Hadith-hadith yang berkaitan dengan persoalan hutang juga telah ditinggalkan oleh Rasullah (S.A.W) kepada umat Islam. Ia menunjukkan bahawa persoalan hutang adalah antara persoalan yang penting di dalam syariah Islam dan dalam kehidupan manusia. Hutang perlu difahami

oleh masyarakat Islam supaya kehidupan sentiasa dalam kebahagiaan di dunia mahupun di akhirat.

Di zaman moden masa kini fenomena berhutang sudah menjadi lumrah dalam kehidupan. Malah ada yang beranggapan hanya dengan berhutang sahaja mereka dapat memenuhi keperluan hidup seharian. Dengan gaya kehidupan moden sekarang yang kompleks, keperluan dan kehendak manusia semakin bertambah. Kecanggihan transaksi sekarang seperti pengenalan kad kredit dan pelbagai kemudahan skim bayaran ansurans memudahkan masyarakat berhutang. Ditambah pula dengan tarikan-tarikan dan promosi dari institusi kewangan yang menawarkan pembiayaan hutang menyebabkan masyarakat mudah terpengaruh untuk berhutang dan ada penghutang yang terjerat ke kancah hutang yang serius terutama bagi penghutang yang terlalu mengikut nafsu dan tidak mempunyai perancangan dalam berhutang.

Maksud Hutang Dalam Islam

Perkataan yang merujuk kepada hutang yang terdapat di dalam al-Quran, Hadith dan fiqh ialah *al-Dayn* , *al-Qard* dan *al-Salaf* . Hutang dalam institusi kewangan Islam sekarang adalah merujuk kepada perkataan *al-Dayn.* Kata jamaknya ialah *al-Duyun* yang merujuk kepada pemberi hutang dan penerima hutang.[1] Dalam Mu'jam al-Wasit

[1] Dr Naziah Hammad.2008. *Mu'jam al-Mustalahah al-Maliyah wa al-Iqtisadiyyah fi Lughati al-Fuqaha'*. Dar al-Qalam : Damsyik. h. 208 Lihat juga Abi Husin Ahmad bin Faris 1991. *Mu'jam Muqaayis Lughah*. Jil 2.Dar al-Jil : Beirut. hal.320.

perkataan Dayyana merujuk kepada kata sifat bagi hutang.[2] Perkataan Dain pula ialah seseorang yang berhutang, manakala Daynan ialah masdar bagi Dana iaitu pinjaman ataupun hutang. Terdapat dua pandangan di kalangan para fuqaha berkaitan istilah *al-Dayn* iaitu :

a) Menurut Imam Hanafi, *al-Dayn* ialah harta yang wajib ditanggung (dibayar) samada terhasil dari akad pertukaran *(muawadhah)*, atau dari barang yang *itlaf*[3] atau dengan cara hutang *(qard).*

b) Menurut ulama Maliki, Syafie dan Hanbali, *al-Dayn* ialah sesuatu yang menjadi tanggungjawab *(zimmah)* terhadap harta apabila berlaku transaksi[4] hutang antara pemiutang dan penghutang.

Berdasarkan keterangan di atas, *al-Dayn* boleh diertikan sebagai setiap sesuatu yang menjadi tanggungjawab (untuk dibayar balik) sama ada hutang tersebut diperolehi dengan cara qard melalui wang, manfaat atau terhapus (*itlaf*).

Dalil-Dalil Hutang Dalam Islam

[2] Dr. Ibrahim Anis , Dr. Ab Halim Muntasar , Atiyyah al-Sawalihi dan Mohd Khalafallah Ahmad. 1972. *Mu'jam al-Wasit*.jil1-2 , Qaherah, hal 330. Rujuk juga Dr Rohi Baalbaki, 1992, *Kamus al-Mawrid*, jil 4, Dar al-Ilm Lilmalayin, Beirut, hal 534, 558 dan 88 menunjukkan persoalan hutang menggunakan perkataan *Da-na, Daynan* dan *Istidan.*

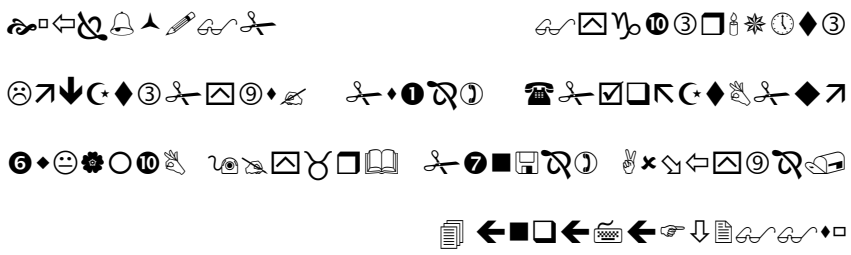
[3] Itlaf dari segi bahasa ialah rosak atau binasa. Dari segi istilah Fuqaha, al-Kasani menyatakan sesuatu barang yang telah digunakan dengan cara menghabiskan atau merosakkannya secara adat kebiasaan (*Mausuat Fiqhiyyah*, 1992, jil 1, Wizarah Awqaf wa al-Syuun al-Islamiyyah, Kuwait, Bab Itlaf, hal. 216. seperti makanan dan minuman. Rujuk juga Muhammad Rawwas al-Qal'aji dan Hamid Sadiq Qunaibi, 1996, *Mu'jam al-Lughat al-Fuqaha'*, Dar al-Nafais, Beirut, hal 19.)

[4] *Mausuat Fiqhiyyah*, 1992, jil 2, Wizarah Awqaf wa al-Syuun al-Islamiyyah, Kuwait, Bab al-Dayn, hal. 103.

Konsep asas hutang dalam Islam terdapat di dalam al-quran, Sunnah Rasulullah (S.A.W) dan juga berdasarkan ijma' ulama dan Qiyas.

1. Dalil al-Quran

i- Surah al-Baqarah, ayat 282



> Maksudnya : "Wahai orang-orang Yang beriman! apabila kamu menjalankan sesuatu urusan Dengan hutang piutang Yang diberi tempoh hingga ke suatu masa Yang tertentu maka hendaklah kamu menulis (hutang dan masa bayarannya) itu".

Ayat di atas adalah adalah dalil tentang keharusan muamalat hutang di dalam Islam. Ia juga meliputi hutang *Salam* dan juga jual beli dengan harga tangguh.[5] Ibn Abbas mentafsirkan bahawa ayat di atas diturunkan khusus untuk *salam*. Iaitu amalan jual beli *salam* penduduk Madinah, kemudiannya merangkumi semua jenis-jenis hutang yang lain.[6]

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[5] Abd Rahman bin Nasr al-Saudi, 1410 H, *Taisir al-Karim al-Rahman fi Tafsir Kalam al-Manan*, jil 1, al-Riasah al-Amah li al-Idarati al-Buhuth al-Ilmiayyah wa al-Ifta' wa al-Da'wati wa al-Irsyad, Riyadh, hal.342.

[6] Al-Qurtubi, Abi Abdullah Muhammad bin Ahmad al-Ansari 2000, *Jami' al-Ahkam al-Quran*, jil 3, Dar Kutub al-Ilmiah, Beirut, hal. 243.

ii- Al-Baqarah, ayat 245.



> Maksudnya : ”Siapakah orangnya Yang (mahu) memberikan pinjaman kepada Allah sebagai pinjaman Yang baik (yang ikhlas) supaya Allah melipatgandakan balasannya Dengan berganda-ganda banyaknya? dan (ingatlah), Allah jualah Yang menyempit dan Yang meluaskan (pemberian rezeki) dan kepadaNyalah kamu semua dikembalikan”.

Menurut al-Qurtubi, ayat di atas adalah ayat berkaitan hutang. Konsep hutang dalam Islam tidak hanya dengan manusia sahaja, bahkan hutang yang baik ialah memberi hutang dengan mengharapkan keredaan Allah seperti sedekah. Ayat di atas juga menunjukkan kewajipan penghutang membayar hutang sebagaimana Allah akan membalas balasan berlipat ganda dengan kebajikan yang dilakukan oleh manusia.[7]

2. Dalil al-Sunnah

i- Imam Bukhari meriwayatkan hadith yang bersumberkan dari Jabir bin Abdullah R.A dari Rasulullah (S.A.W) iaitu :



[7] Al-Qurtubi, Abi Abdullah Muhammad bin Ahmad al-Ansari 2000, *Jami' al-Ahkam al-Quran*, jil 3, Dar Kutub al-Ilmiah, Beirut, hal. 157.

[illegible] [illegible] [illegible] [

[illegible] [illegible] [illegible] [

[illegible] [illegible] [illegible] [

> Maksudnya : "Hendaklah kamu bertolong-tolongan untuk membuat kebajikan dan bertaqwa, dan janganlah kamu bertolong-tolongan pada melakukan dosa (maksiat) dan pencerobohan".

Hukum Hutang Dalam Islam

Berdasarkan dalil-dalil dari al-Quran, al-Sunnah, ijma' dan Qiyas di atas dapat disimpulkan bahawa memberi hutang kepada orang lain adalah sunat [14]. Hutang adalah amalan baik yang bersesuaian dengan sifat kemanusiaan iaitu saling bantu membantu antara satu sama lain. Oleh itu seseorang yang berada dalam kesusahan dan kekurangan memerlukan pertolongan dari orang kaya. Manakala meminta untuk berhutang bagi keperluan seharian atau menambah modal perniagaan adalah harus hukumnya.

Hukum hutang boleh berubah bergantung kepada manfaat ataupun kerosakan yang berlaku hasil dari muamalat hutang yang melibatkan samada pemiutang ataupun penghutang. Jika hutang tersebut bertujuan ke arah merosakkan maka hukumnya adalah haram atau makhruh bergantung kepada perbuatan yang dilakukan. Sebaliknya jika tujuannya kerana *dharuriyyat*[15] maka hukumnya adalah wajib[16]. Antara hukum hutang ialah :

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[14] Mustofa al-Khin, Mustofa al-Bugho dan Ali al-Syarbaji, 2000. *al-Fiqh al-Manhaji Ala Mazhab al-Imam al-Shafie*, jil 3, Dar al-Qalam, Damshik, hal. 91.
[15] Al-Ahkam al-Adliyyah, 2002, *Undang-Undang Sivil Islam*, Terj. Md Akhir Yaacob, Dewan Bahasa dan Pustaka, Kuala Lumpur, hal. 33.
[16] Ahmad As'ad Mahmud al-Haj, 2008, *Nazriyyatu al-Qard fi al-Fiqh al Islami*, Dar al-Nafais, Jordan, hal 66.

i- Haram : Hukum haram berlaku apabila pemiutang memberi hutang kepada penghutang dan diketahui bahawa hutang tersebut akan digunakan untuk tujuan yang diharamkan sebagai contohnya menghutangkan wang kepada penghutang yang diketahui tujuannya untuk berjudi dan berzina. Begitu juga memberikan hutang dengan syarat faedah atau untuk tujuan perniagaan yang diharamkan seperti perniagaan loteri untuk perjudian.

ii- Makhruh : Hukum makhruh boleh berlaku apabila digunakan untuk tujuan yang dimakruhkan seperti hutang untuk tujuan memproses tembakau bagi industri rokok. Begitu juga pemiutang mengetahui hutang tersebut akan digunakan untuk menunjuk-nunjuk.

iii- Wajib : Hukum wajib boleh berlaku apabila pemiutang mengetahui penghutang tersebut amat memerlukan hutang untuk menampung keperluan hidupnya dan keluarga serta tiada cara yang lain untuk mendapatkan keperluan hidup kecuali berhutang. Jika hutang tidak diberikan menyebabkan kemudaratan kepada diri dan keluarganya. Contohnya semasa seseorang dalam kelaparan yang amat sangat atau dalam sakit tenat dan mereka tidak memiliki apa-apa harta untuk memulihkan keadaan mereka. Manakala pemiutang pula orang yang mempunyai harta yang lebih.[17]Berdasarkan al-Ruyani, hukum asal memberikan pinjaman atau hutang pada zaman awal

[17] Mustofa al-Khin, Mustofa al-Bugho dan Ali al-Syarbaji, 2000. *al-Fiqh al-Manhaji Ala Mazhab al-Imam al-Shafie*, jil 3, Dar al-Qalam, Damshik, hal. 91-92. Rujuk juga Abdullah bin Muhammad al-Thayyar, Abdullah bin Muhamad al-Muthlaq dan Muhammad bin Ibrahim al-Musa, 2004, *al-Fiqhul Muyassar Qismul Muamalat, Mausu'ah Fiqhiyyah Haditsah Tatanawwalu Ahkama al-Fiqhi Islami Bi Uslub Wadhih li Mukhtasin Wa Gharimin*, Terj. Miftahul Khairi, Madarul Wathan Lin Nasr, Riyadh.hal : 157-158.

Islam adalah wajib yang berdasarkan surah al-Maaun (7,2). Namun hukum tersebut telah dinasakhkan menjadi sunat [18].

Fenomena Berhutang Dalam Masyarakat

Hukum harus berhutang dengan syarat-syarat tertentu yang terdapat di dalam Islam sepatutnya menjadikan orang melayu yang beragama Islam khususnya menjadi penghutang yang sederhana dan tidak menghadapi masalah dari hutang mereka. Namun terdapat kes-kes yang menunjukkan sebaliknya. Kewujudan kes-kes ini menunjukkan wujud masalah dan kepincangan dalam amalan berhutang di kalangan masyarakat Islam di Malaysia.

Budaya suka berhutang di kalangan masyarakat melayu telah dirakamkan oleh British pada zaman penjajahan lagi. Menurut Kratoska Paul H. [19] pihak British merumuskan tentang amalan suka berhutang masyarakat melayu seperti berikut :

> *" The Malays fell into debts because of the tendency to be extravagant and because of the lack habits of thrift"*

Laporan dari pihak British ini dapat diperkukuhkan lagi dengan fenomena sekarang yang memperlihatkan bahawa golongan penghutang melayu yang beragama Islam adalah golongan yang paling ramai terlibat dalam gejala muflis. Laporan di

[18] Al-Syarbini, Muhammad, 1998, *Mughni al-Muhtaj*,jil 2,Dar al-Fikr, Beirut, hal.356.
[19] Paul Harold Kratoska ,1975, *Proconsuls, Yeomen and Rice Farmers Cultural Categories in British Malaya*, University of Chicago, Thesis Ph. D. Jabatan Sejarah.

Parlimen oleh Timbalan Menteri di Jabatan Perdana Menteri iaitu Datuk M. Kayveas, pada 2006 seramai 13,590 telah diishtihar muflis dan jumlah yang tertinggi ialah kaum melayu iaitu seramai 6,259 orang berbanding 5,735 dari kaum Cina, 1,165 India dan 431 lain-lain kaum.

Mengikut laporan yang dikeluarkan oleh Bank Negara Malaysia, jumlah hutang kad kredit pada suku pertama tahun 1998 ialah RM 969 juta, tetapi pada suku pertama tahun 2000, hutang tertunggak kad kredit dalam negara telah meningkat kepada RM 5 bilion. Peningkatan ini juga dapat dilihat pada jumlah belian menggunakan kad kredit ialah RM 1710 juta kepada RM 2.8 bilion dalam tempoh yang sama [20] . Berdasarkan statistik, penggunaan menggunakan kad kredit didapati telah meningkat dengan begitu ketara. Ia membuktikan usaha kerajaan untuk menggalakkan masyarakat berbelanja bagi merancakkan ekonomi negara telah berjaya. Namun begitu dalam aspek yang lain, ianya telah mewujudkan satu bentuk budaya yang tidak sihat iaitu sindrom suka berhutang.

Agensi Kaunseling dan Pengurusan Kredit (AKPK) adalah pihak yang dipertanggungjawabkan oleh Bank Negara Malaysia untuk membantu masyarakat dalam menguruskan kewangan. Sejak penubuhannya pada april 2006 sehingga februari 2010, AKPK telah memberi kaunseling kepada 115,126 kes di seluruh Malaysia. Dari jumlah itu seramai 39, 447 penghutang telah dimasukkan ke dalam program pengurusan hutang AKPK[21] untuk membolehkan penghutang membayar balik hutang mereka sekadar kemampuan mereka.

[20] Dewan Masyarakat, Disember 2001.
[21] The Sun, 1 Jun 2010.

Dengan suasana ekonomi yang tidak menentu sekarang menuntut kepada perbelanjaan yang bijak. Kadar inflasi pada bulan julai 2008 melonjak kepada 8.5 peratus melebihi 0.8 peratus pada bulan sebelumnya.[22] Peningkatan inflasi ini mengakibatkan bebanan kepada pengguna dan budaya berhutang yang melampau akan menjadikan kehidupan menjadi semakin tertekan. Ada yang berhutang dengan Along untuk menyelesaikan masalah kewangan mereka. Golongan yang terlibat dalam masalah hutang tidak mengira sesiapa sama ada individu ataupun organisasi.

Implikasi Negatif Yang Wujud Dari Masalah Hutang

Kesan negatif yang berlaku dari masalah hutang begitu banyak. Ia meliputi sama ada dari alam roh atau pun alam dunia. Hutang yang tidak diselesaikan semasa hidup akan menyebabkan orang mukmin yang telah meninggal dunia akan tergantung jiwanya sehingga selesai hutang tersebut. Sabda Rasulullah S.A.W :

[illegible][23].« [illegible] »

Maksudnya : Dari Abu Hurairah R.A berkata, sabda Rasulullah S.A.W "Jiwa seorang mukmin tergantung kepada hutangnya sehinggalah dijelaskan".

[22] Utusan Malaysia , 29 Ogos 2008.
[23] al-Tirmizi, *Jami' al-Tirmizi*, no. 1078, Dalam *Mausuat Hadith al-Syarif al-Kutub al-Sittah*, 2000, Cet. 3, Dar al-Salam, Arab Saudi, hal. 1755.

Al-Shan'ani mengatakan hadith ini menunjukkan bahawa seseorang akan tetap disibukkan dengan hutangnya walaupun telah meninggal dunia. Hadith ini menganjurkan kepada muslim supaya segera menyelesaikan hutang sebelum meninggal dunia dan beratnya tanggungjawab penghutang terhadap hutangnya [24].

Penghutang juga tidak akan masuk syurga sehingga hutangnya dibayar [25] dan Rasulullah S.A.W sendiri tidak akan menyembahyangkan jenazah seseorang yang masih menanggung hutang sehinggalah dijamin hutang tersebut akan dibayar oleh orang lain. Sebagaimana Hadith yang diriwayatkan oleh Imam al-Bukhari iaitu :

[illegible]

[24] Adil bin Muhammad Al-Abdul Ali, 2005, *Hatta La Taghriq Fi al-Duyun*, Terj. Yahya Tengku, Darus Sunnah, Jakarta, hal 95.

[25] Hadith Rasulullah S.A.W :

[illegible]

Maksudnya : Diriwayatkan oleh Muhammad bin Jahsy berkata, saat kami sedang duduk bersama-sama Rasulullah S.A.W, tiba-tiba Baginda mengadap wajahnya ke langit kemudian meletakkan tangannya di atas dahi seraya bersabda, "Maha suci Allah alangkah beratnya apa yang diturunkan" Keesokan hari aku bertanya, "Apakah perkara berat yang diturunkan itu ?" Baginda bersabda , " Demi jiwaku yang berada di tanganNya, seandainya ada seseorang yang terbunuh di jalan Allah kemudian dia dihidupkan kembali, lalu terbunuh lagi, lalu dihidupkan lagi, lalu terbunuh lagi dan dia masih menanggung hutang, dia tidak akan masuk syurga sehingga hutangnya dibayar". (al-Nasa'i, *Sunan al-Nasa'i*, no. 4688, Dalam *Mausuat Hadith al-Syarif al-Kutub al-Sittah*, 2000, Cet. 3, Dar al-Salam, Arab Saudi, hal. 2390.)

. [illegible] « [illegible] » [illegible]
[26] . [illegible]

> Bermaksud : " Dari Salamah bin al-Akwa' R.A, dia berkata "Kami pernah duduk di sebelah Rasulullah S.A.W, tiba-tiba didatangkan satu jenazah, maka mereka berkata, "Sembahyangkanlah untuk dia", Baginda bertanya "Apakah dia memiliki hutang?". Mereka menjawab "Tidak". Baginda bertanya "Apakah beliau meninggalkan sesuatu? Mereka menjawab "tidak". Maka baginda menyembahyangkan mayat tersebut. Kemudian didatangkan jenazah yang lain dan mereka berkata " Wahai Rasulullah, sembahyangkanlah untuk dia", Baginda bertanya "Apakah dia memiliki hutang?". Dijawab "Ya". Baginda bertanya "Apakah dia meninggalkan sesuatu?". Mereka menjawab "Tiga dinar". Maka baginda menyembahyangkan mayat tersebut. Kemudian didatangkan jenazah ketiga dan mereka berkata "Sembahyangkanlah untuk dia", Baginda bertanya "Apakah dia meninggalkan sesuatu?". Mereka menjawab "Tidak". Baginda bertanya "Apakah dia memiliki hutang?". Mereka menjawab "Tiga dinar". Baginda bersabda "Sembahyangkanlah sahabat kalian". Abu Qatadah berkata " Sembahyangkanlah untuknya wahai Rasulullah dan hutangnya menjadi tanggunganku". Maka Baginda menyembahyangkan jenazah tersebut".

Al-Daraquthi meriwayatkan bahawa Rasulullah S.A.W apabila sampai waktu menyembahyangkan jenazah, baginda tidak pernah sedikitpun bertanyakan perkara selain daripada hutang[27]. Ini menunjukkan bahawa persoalan tidak menjelaskan hutang adalah perkara serius dan seseorang akan bebas dari tanggungannya sehinggalah hutang itu dijelaskan. Setelah ianya dijelaskan barulah boleh dilakukan pembahagian harta pusaka.

[26] Bukhari, *Sahih Bukhari*, no. 2289, Dalam *Mausuat Hadith al-Syarif al-Kutub al-Sittah*, 2000, Cet. 3, Dar al-Salam, Arab Saudi,hal. 178.
[27] Muhammad bin Ismail al-Amir al-Yamani al-San'ani, 1995, *Subul al-Salam*, jil 3, Dar al-Fikr, Beirut, hal 1185.

Kesan negatif dari hutang dapat juga dilihat semasa hidup di dunia. Secara umumnya kesan yang timbul dari gejala hutang dapat dilihat dari aspek fizikal dan mental sama ada melibatkan individu, keluarga, masyarakat serta negara.

Kesan negatif paling ketara berdasarkan undang-undang hasil dari masalah hutang ialah muflis atau bankrap. Laporan dari Bank Negara Malaysia mendedahkan bahawa jumlah individu yang diisytiharkan bankrap pada tahun 2008 adalah sebanyak 13,907 kes dan lebih kurang 10 peratus daripadanya melibatkan individu yang berhutang dengan kad kredit. Daripada 3,548 individu yang diisytiharkan muflis disebabkan hutang kad kredit, sebanyak 50 peratus daripadanya merupakan pemegang kad kredit yang berusia bawah 30 tahun. [28]

Kecederaan fizikal boleh berlaku disebabkan oleh hutang [29]. Tiga lelaki diperlakukan seperti binatang apabila leher dan kaki mereka dirantai serta dikurung dalam 'lokap' buatan Along. Lebih kejam, mangsa hanya dibekalkan dengan sebuku roti untuk setiap dua minggu dan terpaksa minum air paip dalam bilik kecil yang dilengkapi tandas.[30]

Gangguan emosi yang lahir dari masalah hutang akan menyebabkan hidup dalam ketakutan dan tindakan yang tidak normal.Dengan itu terdapat kes wanita yang berhutang dengan Along akhirnya terpaksa ke kancah pelacuran demi untuk membayar hutang [31]. Kecurangan boleh berlaku kerana suami mempunyai hutang dan hidup dalam kemiskinan

[28] Utusan Malaysia, 17 Jun 2009.
[29] Ibid, 9 Ogos 2009. Lihat juga dalam Utusan Malaysia, 14 Julai 2009, ibu tunggal diancam dipotong tangan kerana gagal membayar hutang Along serta interest sebanyak RM 22,000.00 setelah berhutang berjumlah RM 8,800.00.
[30] Ibid, 28 Mei 2009.
[31] www.bharian.com.

yang keterlaluan [32]. Tedapat juga wanita yang diperangkap dengan diugut akan disebarkan adegan lucahnya kepada masyarakat jika menuntut hutangnya. Selain tidak boleh menuntut hutangnya, beliau terpaksa menanggung beban hutang kad kredit, bil telefon dan hutang persendirian bekas pasangannya yang ingin memulakan perniagaan.[33]

Konflik dalam keluarga akan berlaku jika ahli keluarga mempunyai hutang. Pihak pemungut hutang akan sentiasa menghubungi individu dan keluarga yang terlibat. Lebih menakutkan jika dihubungi oleh Along. Pertengkaran antara ibu dan bapa akan mengakibatkan anak lari dari rumah lantaran tidak wujud ketenteraman dalam rumah. Suami akan melarikan diri dan menyembunyikan diri kerana tidak tahan diburu oleh Along [34].

Paling menakutkan kesan dari konflik hutang ialah tindakan membunuh diri. Pakar runding Psikiatri, Pusat Perubatan Universiti Malaya (PPUM), Dr Muhamad Muhsin Ahmad Zahari menjelaskan golongan berusia 40 tahun ke atas membunuh diri di Malaysia disebabkan faktor ekonomi[35]. Akibat kemelesetan ekonomi menyebabkan hutang semakin banyak, ditambah pula dengan kehilangan pekerjaan dan seterusnya pengishtiharan bangkrap akan menyebabkan mudah untuk melakukan tindakan bunuh diri.

Pelbagai masalah yang berlaku kesan dari masalah hutang memerlukan tindakan agar ianya tidak melarat sehingga menjejaskan ketenteraman negara. Ini menyebabkan Menteri dalam Negeri, Datuk Seri Hishamuddin Hussein melancarkan perang habis-

[32] Utusan Malaysia, 10 Mei 2009.
[33] Harian Metro, 24 Mei 2010.
[34] www.bharian.com.
[35] Ibid.

habisan kepada Along[36] lantaran kekejaman yang dilakukan oleh Along. Banyak tangkapan dan usaha membuang iklan-iklan dilakukan antara polis dan pihak berkuasa tempatan.

Kembali Kepada Paksi

Berdasarkan situasi budaya berhutang masyarakat masa kini dan kesan yang lahir daripadanya amatlah berat maka disarankan agar penghutang Islam di Malaysia kembali kepada konsep berhutang berdasarkan Islam. Islam telah menyediakan panduan berhutang dalam kehidupan agar kehidupan umat islam dalam bahagia walaupun berhutang. Antara panduan berhutang dalam Islam ialah :

1. Berhutang Untuk Keperluan Kehidupan

Tujuan utama berhutang dalam Islam adalah untuk memenuhi keperluan atau melepaskan kesulitan dalam kehidupan seharian. Penghutang yang menggunakan hutang untuk mendapatkan harta yang bukan keperluan seperti berhutang membeli kereta baru sedangkan kereta yang lama masih elok dan boleh memenuhi keperluan harian, adalah tidak wajar. Amalan berhutang untuk keperluan amat penting demi maruah diri seseorang. Dalam Islam taraf penghutang walau setinggi manapun kedudukannya tetap berada di bawah pemiutang[37]. Oleh itu tidak wajar seseorang merendahkan kedudukannya dan harga diri dengan berhutang tanpa keperluan yang sebenar.

[36] Utusan Malaysia, 23 jun 2009 dan 25 jun 2009.
[37] Tangan di atas adalah lebih baik dari tangan yang dibawah iaitu pemberi hutang lebih baik dari penerima hutang. Sebagaimana hadith Rasulullah S.A.W yang menasihatkan Hakim bin Hizam:

Tahap keperluan untuk berhutang berbeza dari individu dengan individu yang lain untuk melayakkannya berhutang. Terdapat banyak faktor antaranya gaya hidup individu, bilangan ahli keluarga, lokasi kawasan, faktor persekitaran dan lain-lain. Tahap keperluan asas tidak ditetapkan secara mutlak di dalam Islam kerana keperluan asas ini berbeza mengikut masa, tempat dan masyarakat. Justeru pertimbangan individu amat penting untuk menentukan tahap keperluan berhutang. Pemerintah juga berperanan untuk menentukan tahap keperluan yang terkini berdasarkan pertimbangan dari pakar ekonomi, fiqh dan juga pakar sosial[38].

2. Berazam Untuk Membayar Hutang

Penghutang yang baik sentiasa berazam untuk menjelaskan hutangnya. Seseorang yang ingin berhutang sudah tentu mengetahui kemampuan membayar hutang. Menurut Ibn al-Manayyar, jika seseorang berhutang sedangkan beliau tidak mampu membayar, maka sebenarnya peghutang tersebut mengambil harta orang lain dan tidak mahu

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« [illegible]

Maksudnya : "Wahai Hakim! Sesungguhnya harta ini adalah hijau dan manis. Sesiapa yang mengambilnya dengan kelapangan jiwa, maka diberkati baginya pada harta tersebut. Tetapi sesiapa yang mengambilnya dengan jiwa yang tamak, maka tidak diberkati baginya pada harta itu, sama seperti orang yang makan Namun tidak kenyang. Tangan di atas lebih baik daripada tangan di bawah". (Bukhari, *Sahih Bukhari*, no. 1472, Dalam *Mausuat Hadith al-Syarif al-Kutub al-Sittah*, 2000, Cet. 3, Dar al-Salam, Arab Saudi, hal. 116).

[38] Abdullah Lam bin Ibrahim, 2003, *Ahkam al-Aghniya'*, Cet.1, Dar al-Nafais, Jordan, hal. 42.

membayarnya[39]. Seseorang yang berhutang dan berazam untuk membayarnya, insya'Allah akan ditolong oleh Allah S.W.T sebagaimana hadith Rasulullah S.A.W :

[illegible] [40] .

Maksudnya : "Dari Abu Hurairah R.A, dari Nabi S.A.W, baginda bersabda, "Barangsiapa mengambil harta manusia dan ingin membayarnya, maka Allah akan [menolong] untuk membayarnya; dan barangsiapa mengambilnya dan ingin membinasakannya, maka Allah akan [menolong] untuk membinasakannya".

Maksud "mengambil harta orang lain" dalam hadith di atas adalah merujuk kepada mengambil harta dengan cara hutang. Manakala maksud "menunaikan" pula merujuk kepada menjelaskan hutang [41]. Dengan keazaman dan kesungguhan, Allah S.W.T akan memberi kemudahan kepada penghutang untuk menjelaskan hutangnya. Sebagaimana sabda Rasulullah S.A.W diriwayatkan oleh Ibn. Majah, Ibn. Hibban dan Hakim[42] :

[illegible] [43].

[39] Ahmad Ali bin Hajar al-Asqalani, 2000, *Fath al-Bari bi Syarah Sahih Bukhari*, jil 5, Dar al-Hadith, Qaherah, hal. 69.
[40] Bukhari, *Sahih Bukhari*, no. 2387, Dalam *Mausuat Hadith al-Syarif al-Kutub al-Sittah*, 2000, Cet. 3, Dar al-Salam, Arab Saudi, hal. 187.
[41] Muhammad bin Ismail al-Amir al-Yamani al-San'ani, 1995, *Subul al-Salam*, jil 3, Dar al-Fikr, Beirut, hal 1153.
[42] Ibid.
[43] Hadith ini betaraf hadith marfu' (Muhammad bin Ismail al-Amir al-Yamani al-San'ani, 1995, *Subul al-Salam*, jil 3, Dar al-Fikr, Beirut, hal 1153).

> Bermaksud : "Tidaklah seorang muslim berhutang kepada orang lain, dan Allah mengetahui bahawa ia berniat untuk melunasinya, melainkan Allah akan melunasi hutangnya di dunia dan akhirat".

Seseorang yang berhutang tanpa keperluan tetapi untuk menghancurkan atau menghabiskan harta orang lain dan bermaksud tidak mahu membayar hutangnya, maka Allah akan membalas tindakan tersebut. Kehidupan penghutang tersebut akan disusahkan kehidupannya dan tiada keberkatan dalam kehidupan dunia. Manakala di akhirat nanti akan diseksa oleh Allah S.W.T. [44]

3. Bersikap Baik Ketika Membayar Hutang

Sikap baik semasa membayar hutang akan lebih mengeratkan hubungan antara penghutang dan pemiutang. Penghutang sememangnya perlu bersikap baik dalam membayar hutangnya kerana kebaikan yang telah diberikan oleh pemiutang kepadanya. Dengan sikap baik ini secara tidak langsung menunjukkan kesyukuran dan terima kasih kepada pemiutang. Bersikap baik dalam membayar hutang telah dianjurkan oleh Rasulullah S.A.W. Sabda Baginda[45] :

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[44] Muhammad bin Ismail al-Amir al-Yamani al-San'ani, 1995, *Subul al-Salam*, jil 3, Dar al-Fikr, Beirut, hal 1153.

[45] Di dalam Sahih Bukhari terdapat lima hadith yang dirakamkam menggunakan perkataan " Sesungguhnya sebaik-baik kamu adalah yang paling baik dalam membayar hutang". Iaitu hadith bernombor 2305,2306, 2390, 2392 dan 2393.

[46]. « [illegible] » [illegible] . [illegible] [illegible] [illegible] [illegible] . « [illegible] » [illegible]

Maksudnya: “Dari Abu Hurairah R.A, dia berkata, “ Seseorang memiliki hutang dengan Nabi S.A.W seekor unta dengan umur tertentu, lalu dia datang kepada baginda untuk menerima bayarannya. Maka Nabi S.A.W bersabda “Berilah kepadanya unta yang sama umur dengan untanya”. Namun mereka tidak menemui unta yang sama umur kecuali yang lebih tua. Baginda bersabda “Berilah kepadanya!” Orang itu berkata, “Engkau tunaikan untukku, Allah akan menunaikan untukmu”. Nabi S.A.W bersabda “Sesungguhnya sebaik-baik kamu adalah yang paling baik dalam membayar hutang”.

Selain itu, maksud amalan membayar hutang yang baik ialah sentiasa tetap dalam pembayaran hutangnya berdasarkan tempoh masa yang dipersetujui. Rasulullah tetap membayar hutangnya walaupun baginda berada di dalam masjid. Amalan Rasulullah S.A.W ini telah diriwayatkan oleh Jabir bin Abdullah R.A. Sabda Rasulullah S.A.W :

[illegible] [illegible] [illegible] [

Imam al-Ghazali membincangkan cara yang baik dalam membayar hutang ialah penghutang itu sendiri pergi mendapatkan pemiutang. Tindakan ini memberi kemudahan kepada pemiutang dan elakkan dari pemiutang datang berkali-kali untuk mendapatkan hutangnya. Penghutang pula apabila mempunyai wang hendaklah membayar hutang walaupun belum sampai tempoh bayarannya.[48]

4. Tepati Janji Dan Tidak Menangguhkan Bayaran

Menepati janji adalah sifat yang mulia yang menyebabkan seseorang itu dipercayai dan diyakini. Rasulullah S.A.W yang digelar al-amin semasa sebelum dilantik menjadi rasul telah mengamalkan sifat menepati janji dalam menunaikan hutang dan tidak menangguhkan bayaran. Peristiwa ini berlaku yang diceritakan oleh Abdullah bin Abi al-Hamsa' yang menjadi pemiutang kepada rasulullah S.A.W.

[illegible] [49]

Bermaksud : "Dari Abdullah bin Abi al-Hamsa' berkata. "Saya telah menjual sesuatu kepada Nabi S.A.W semasa baginda belum diutuskan menjadi Rasul, dan masih ada lagi baki harganya yang belum dijelaskan kepada saya. Saya berjanji akan datang ke tempatnya, tetapi telah terlupa, kemudian selepas tiga hari barulah

[48] Imam Abi Hamid Muhammad bin Muhammad al-Ghazali, 1998, *Ihya' Ulumuddin*, jil.3 , Maktabah Misr, Mesir, hal.107.
[49] Abi Daud, *Sunan Abi Daud*, no. 4996, Dalam *Mausuat Hadith al-Syarif al-Kutub al-Sittah*, 2000, Cet. 3, Dar al-Salam, Arab Saudi, hal. 1589.

saya teringat, maka saya pun segera ke tempat yang dijanjikan. Saya dapati Nabi masih ada di tempat itu, lalu Nabi berkata : Hai orang muda! Sesungguhnya engkau menyusahkan saya, sejak tiga hari saya di sini kerana menunggu kamu".

Hadith di atas menunjukkan sikap menepati janji Rasulullah S.A.W yang cukup tinggi. Walaupun selama tiga hari baginda sanggup menantikan pemiutang kerana janji yang telah dibuat antara baginda dengan Abdullah bin Abi al-Hamsa'. Sikap yang ditunjukkan oleh baginda adalah sikap orang yang bertamaddun dan sikap inilah antara faktor yang memberikan kejayaan kepada dakwah baginda juga menjadi ketinggian dan kemajuan masyarakat Islam[50]. Mununaikan janji telah diwajibkan dan menjadi kefardhuan dalam Islam apabila wujud kontrak perjanjian. Apabila tidak ditunaikan janji tanpa ada keuzuran maka pihak yang memungkirinya berdosa serta mempunyai salah satu ciri-ciri orang munafik. Ciri-ciri orang munafik telah dinyatakan oleh Rasulullah S.A.W dalam hadith baginda :

[illegible]

Bermaksud : "Dari Abu Hurairah R.A bahawa Rasulullah S.A.W bersabda : " Tanda-tanda orang munafik ada tiga; jika becakap dia berbohong, jika berjanji dia mengingkari dan jika diberi amanah dia khianat".

Kesimpulan

[50] Mohd Sulaiman Hj Yasin, 1992, Akhlak dan Tasawuf, Mas'adah (M) sdn. Bhd, Kuala Lumpur, hal. 469.
[51] Bukhari, *Sahih Bukhari*, no.33 , Dalam *Mausuat Hadith al-Syarif al-Kutub al-Sittah*, 2000, Cet. 3, Dar al-Salam, Arab Saudi,hal.5 .

Fenomena keberhutangan yang serius sebagaimana laporan-laporan yang dinyatakan dan kesan-kesan yang berlaku dari hutang ini memerlukan penyelesaian yang menyeluruh dan sempurna kepada penghutang. Tanpa panduan yang komprehensif, umat Islam akan sentiasa terbelenggu dengan jerat hutang. Tanggung-jawab penghutang terhadap hutangnya amatlah besar dan berat dalam Islam. Kerana itulah apabila berlaku kematian, penghutang yang mati hendaklah diselesaikan dahulu hutangnya sebelum dilakukan segala wasiat dan faraid kepada waris-waris si mati.

Agama Islam yang bersifat sempurna menyediakan panduan berhutang yang mengambil kira aspek keduniaan dan akhirat. Paling penting panduan berhutang Islam bersifat pencegahan hutang yang serius dan tidak menggalakkan menambahkan hutang. Sifat mencegah adalah lebih baik dari mengubati. Bertepatan dari pencegahan ini dapat dilihat terdapat panduan berhutang yang disarankan Islam agar ianya dapat diamalkan dan dihayati dalam kehidupan. Dengan panduan ini diharapkan agar umat Islam dapat hidup dalam tenang dan bahagia di dunia dan di akhirat.

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SHARIAH RISK AND CLAWBACK EFFECT OF *AL-BAI-BITHAMAN AJIL* IN DEFAULT

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Abstract

The purpose of this paper is to examine the meaning, nature and measurement of Shariah risk faced by Islamic banks. BBA contract and its documentations is analyzed in the light of legal environment in Malaysia and measurement of Shariah risk based on constructed or hypothetical cases. Shariah risk will adversely affect bank's earnings when BBA contracts are deemed invalid in the court of law either in a foreclosure or ruling via court declaration. Islamic banking should be able to use our findings to estimate potential loss of Shariah risk and make the necessary provisions This paper provides new insights of risks faced by credit intensive Islamic banks who, when relinquishing critical requirement of Islamic contract such as ownership risk will suffer loss from Shariah risk.

Keywords: Al-bai-bithaman ajil, foreclosure, Shariah risk, clawback effect, profit-in-suspense

1.0 Introduction

The Islamic banking business seeks to generate profits out of revenues collected from financing activities and cost incurred in mobilizing deposits. When an Islamic bank provides a financing facility, say *al-bai-bithaman ajil (BBA)* home financing facility to its customer, it has taken a position such that exposure to risk or potential loss will turn into real losses when the customer actually defaulted on his debt obligation. In this way, an Islamic bank's shareholders face many risks. The major risk is credit risk whose unexpected losses can erode bank's capital. Market risk is critical when dealing with volatilities in the cost of funds as it may erode earnings. The 2008 subprime crises in the United States which severely paralyzed giants Lehman, Morgan Stanley and American International Group (AIG) saw increasing attention to operational risks (Caprio & Honohan 2010).

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Highly exposed Islamic banking portfolio to credit financing instruments such as BBA is not spared from losses due to default. Other unique risks faced by Islamic banks that can severely reduce its earning are risk of return risk (RoR) and displaced commercial risk (DCR). The former is potential loss arising from loss of deposits to conventional banks when rate of Islamic deposits are less competitive than interest rates on conventional deposits. The latter is the potential loss when the bank uses it own reserves to smoothen rates on Islamic deposits. Recently, a new type of risk called Shariah risk, surfaces into actual drama in both the legal and banking fraternity as it challenged the legality of BBA financing. It calls for immediate remedies to save Islamic banking from serious reputational risk as well as severe financial loss.

This paper examines two critical issues in Islamic risk management, namely the nature of Shariah risk in BBA financing and its measurement. First it examines the nature of Shariah risk within the credit environment of Islamic modes of financing in Malaysia. It gives a comparative look at the Shariah or juristic and civil requirement of BBA contract and its documentation and traces the gap that can trigger Shariah risk when an Islamic bank seeks a court order to foreclose property owned by defaulters. Secondly, this study attempts to measure Shariah risk by looking at the loss incurred by Islamic banks when a BBA contract is ruled invalid in court during the foreclosure proceeding. The size of loss depends on the timing of default, that is whether it took place in the early or later part of the financing period.

2.0 Shariah Risk

The Islamic Financial Service Board (IFSB) defines Shariah risk as one arising when an Islamic financial institution (IFI) offering Islamic financial services fails to comply with Shariah rules and principles determined by Shariah Board of the IFI or the relevant bodies in the jurisdiction in which the IFI operates. It asserts that IFIs should ensure that their contract documentation complies with Shariah rules and principles with regards to the formation, termination and elements possibly affecting contract performance such as fraud, misrepresentation, duress or any other rights and obligations (IFSB 2005).

When an Islamic financing facility is ruled invalid in the court of law due to say, fraud and misrepresentation, Shariah risk can then be defined as the potential loss to the Islamic bank arising from the nullification of contracts with adverse impact on bank's earnings. In general, Shariah risk originates from credit risk. It is triggered by default on BBA debt obligations leading to court hearing for foreclosure wherein the plaintiff and defendant will put their cases before the judge. The cost of the lawsuit may include the compensations and damages paid to customers, returning profit collected from the Islamic BBA facilities to the customers, cost of court proceedings and reputation risk.

To further understand the nature of Shariah risk, two aspects of financial transaction involving Islamic banking business are first examined, namely:

a) The concept of the transaction: This concerns whether the contract is based on sale (*bay'*), *ijarah, wakalah, musharakah* and other common contracts in Islamic

banking, where the pillars of contract (‘*aqd)* are central in determining the validity of contracts.

b) The legal documentation of the transaction: This spells out the rights, responsibilities and obligations of the contracting parties. In conventional loans, these include the loan agreement itself, the promissory note, loan payment term, demand by lender, method of payment and default. Additional provisions regarding default include cure for default, penalty for late payment, acceleration, integration, severability etc. In essence, it defines the legal relations between the bank and the customer. Usually the documentation is based on civil law but at the options of the parties concerned.

To illustrate the difference between the two above, let’s examine the following example. When a customer filed a lawsuit against the bank for non-Shariah compliance, he is making a claim for receiving damages from the bank, wherein his rights in the contract may have been breached by the bank or the bank did not fulfill its obligation as a selling party. In the case of BBA, the customer may file for damages due to failure to deliver. The judge will study the case based on the agreement made between the two parties. The agreement took shape in the form of *legal documentation* of the contract as drawn up by the bank’s solicitor instead of the general character of the ‘*aqd*. This is because the former provides detailed rights and obligations of the two parties, which entails the core component of a contract *(‘aqd*), while the latter outlines the principles of the transactions.

Shariah risk can emerge many ways such as:

a. Foreclosure case against the customer: The bank filing lawsuit against a customer who has defaulted on his *murabaha*/BBA obligation. But the judgement may turned in favour of the defendant (ie. customer) such as in the case of Arab-Malaysia Finance v Taman Jaya when the Judge Dato’ Wahab Patail ruled the contracted BBA as a *non bona fide* sale as it (ie BBA) constitutes a financing facility with a charge agreement rather than a sale. As the contract is void, the customer should only gives back the principle amount advanced to him by the bank. This also means that the bank must return the profit it has acquired from the customer, if total payments at default exceeded the original amount. This shall be discussed in more detail in Section 10.

b. Customer seeking a court declaration that BBA is invalid:

   This action may take place when the customer is facing difficulties to fulfill his BBA obligations as the housing developer has abandoned the project. The customer is paying both rental on the house his family is currently staying and the BBA monthly payments which is too hard to carry out. According to BBA contract, the bank who acts as the selling party must made delivery of the subject matter upon completion. But the seller/bank has failed to deliver the property although the customer has made payments based on the agreed contract. Another case concerns incorrect use of contract. For example, a BBA contract is only suitable for completed property but many Islamic banks have

been using BBA instead of *istisna'* for housing under construction. There is a Shariah compliance issue here at stake. In either case, the customer will file a lawsuit against the Islamic bank for not fulfilling its obligation. A lawsuit is a civil action brought before a court in which a party (plaintiff) has claimed to have received damages (ie. BBA payments without delivery, rental paid on current premise), the plaintiff, seeks a legal or equitable remedy. The defendants are required to respond to the complaint of the plaintiff. If the plaintiff is successful, judgment will be given in the plaintiff's favor, and a range of court orders may be issued to enforce a right, award damages, or impose an injunction to prevent an act or compel an act. A declaratory judgment may be issued to prevent future legal disputes.

In both cases as the above, equitable remedy in the form of compensations will erode bank earnings when hefty provisions are put aside as specified by banking supervisors.

3.0 Gharar, Ghorm and Shariah Risk

Risk is potential loss arising from an events such as death, accident and in finance, default on loan obligation. When the actual event takes place, the potential loss or risk is actualized into real loss. Real loss is not risk. Risk or *ghorm* is the one outcome of having an exposure in business. But risk can translates into actual gain too. Hence risk should not be viewed as inherently undesirable as most people think it is. The term *gharar* although referring to risk and uncertainties only applies to risk and uncertainties in business contracts rather than the outcome of the business. Hence, the business should avoid *gharar* concerning price of the subject matter or the characteristics contracting parties and embraces *ghorm* or risk-taking as a natural path of doing business.

In the banking business, the shareholders are risking their capital when loan are extended to customers, thus evidencing *ghorm* and not *gharar*. The same is applied to Islamic banking but loans are now replaced by credit financing with underlying asset. For this reason, the risks faced by Islamic banks are peculiar in nature as they have to deal with on-balance asset ownership. Efforts to avoid real asset ownership will lead to risk of Shariah non-compliance. This is the starting point of our investigation of Shariah risk in Islamic banking.

4.0 Risk-Behaviour of Islamic Banks

Islamic banks are required by the regulatory authority to allocate part of its capital to support each of the facilities extended to customers. The computation of the economic capital is based on the estimated maximum loss on the facility. Risk-weights are inserted into the computation to account of bank's risk appetite. The risk-weights are defined by the probability of default (PD), exposure of default (EAGD), loss given default (LGD) and maturity of the portfolio. Also, in giving

away funds, the bank must also estimate the risk-adjusted return on capital (RAROC) to ensure that estimation of returns must be driven by the product risk appetite (Bessis 2010)

Islamic banks that have applied BBA in most of their business operations are known to have utilized legal devices (*hilah*) to avoid potential losses arising from owning say, property before making the actual BBA sale. When customers failed to confirm the purchase, banks will sell off the property at a forced sale value where the loss, if any, will be absorbed by bank's capital. This is business risk. To make the matter worse, bank's holding of BBA as an asset for sale will call for higher risk-weights which mean more stress on capital. For these two main reasons, many Islamic banks have avoided ownership risks in conducting BBA. But by avoiding ownership risk in BBA to free itself from business risk (*ghorm*), it has instead invite uncertainties (*gharar*) in the contractual agreement in so far as ownership of asset is concerned. This in turn triggers Shariah risk.

6.0 The major elements of Shariah risk in Islamic banking and finance.

This section examines *gharar* in greater detail as it intends to investigate whether the act of avoiding ownership risk in BBA is a product of human manipulation or an act of nature. If one looks at the risk in contracts from the point of Islamic commercial law we can identify a few major components such as ambiguities (*gharar),* deception (*tagrir*), inequality and duress. These elements must be avoided and excluded from any financial transaction in order to ensure the validity of the contract.

It should be understood that *gharar (*uncertainty*)* and *taqhrir* (deception) in the financial transaction may render the contract and the facility provided by the bank totally null and void. Therefore the facility of BBA should be designed and structured in such a way does not provoke any potential violation of *Shariah* rules and principles, or lead to potential *gharar* or *taghrir,* the bank should clearly spell out the terms and conditions of the facility and shows to the customer clearly the flow of the BBA and its legal steps, sequence, applications and implications to avoid any potential elements of *gharar* in the contract or *taghrir* in the procedure of the facility. The Islamic bank and the legal advisor of the bank and the customer (the S&P lawyer) play a crucial role in providing a sound legal framework and smooth process for the banking facility of BBA which should be consistent with the *Shariah* rules. The *Shariah* compliance procedure should be always honored in the clauses of the contract agreement throughout the various sets of legal documentation, steps as advised by the bank.

It is within the bank responsibility to moderate the *gharar* that may exist in the contract by distinguishing between the excessive gharar (*gharar kathir*) and the minor gharar (*gharar yasir).* The first type of *gharar* is unanimously prohibited and not accepted in *Shariah* which render the financial transaction invalid, whereas the second type (*gharar yasir*), is unanimously allowed by *Shariah* such as buying a house whereby its foundation is not known even though it is part of

the asset sold, the jurists are in agreement that this minor *gharar* is tolerable and permitted.[4] The mentioned moderation of *gharar* should be applied in the procedure of the transaction and legal documentation as well; otherwise the facility may have a *Shariah* non compliance risk element.

According the *Maliki and Hanbali* School of Fiqh and other Muslim jurists are with the opinion that the minor *gharar* in sale is permitted and accepted in *Shariah*, and it does not affect the business transactions, this legal *Shariah* approach will facilitate the business transactions, the wisdom behind allowing the minor uncertainty in business transactions is the difficulty to achieve zero *gharar* in business operations especially within today complex transactions, however the major uncertainty is not accepted, and it is strictly forbidden in all kind of trade and business activities, it is considered as one of the major components of risk.

The parties concerns that have the responsibility to design the banking facility of BBA should not take advantage of the minor *gharar* and exceed the *Shariah* requirement on that. Precaution is always appreciated in Shariah compliance procedure, the structuring of the BBA agreement should be based on *Maqasid al Shariah* which represent a sound guideline to ensure proper design of legal documentation and monitoring of *gharar* and *taghrir*.

In addition to that *gharar* and *taghrir* should not be associated with the terms, conditions, wording and clauses of the legal documentation in the BBA facility, the facility should demonstrate justice and fairness in financial transaction, without having a tendency to secure 100% safety in the deal by avoiding the risk 100% and put the burden of the risk and its legal sequences and financial implications on the shoulder of the customer without a valid reason. The principle of sharing the risk based on the proportion ratio of responsibility is needed to ensure realization of *Maqasid al Shariah* and the spirit of brotherhood in Islam. The pricing mechanism is another area that should be addressed to reflect the Shariah legitimacy of bank's earnings as the price should be reasonable. While the bank must not take advantage of the customer's financial position, the pricing formula should be based its commercial viability as well as moral value.

The element of *tagrir* may take place when knowledge is lacking among consumers. For example, a bank customer may he blindly sign the legal documentation paper without understanding the *Shariah* and legal implication of his action. The *taghrir* is also associated with security documents which are part and parcel of the legal documentation of the facility provided by the bank, the consumer may or may not be aware of the *Shariah* and legal consequences and implication of his actions, such as putting the assets that he purchase as charge to the bank. To monitor and control the degree of *taghrir*, the bank should make full

[4] See: Ali Al Kafif, Ahkam Al Muamalat Al *Shariah*, p. 356.

disclosure of information of the transactions. This is to ensure justice and fairness in the contract agreement.

Parameter of *gharar* which invalidate the financial transaction

There are some elements that should be considered, otherwise the financial transaction may render in valid. The area of *gharar* is as follows:

- The *gharar* should be in exchange contract
- The *gharar* should be excessive
- The *gharar* should be related to the subject matter
- There is no need to engage in such financial transaction.[5]

The above elements should be observed by the IFI in the banking facilities provided, otherwise the facility may render null and void because of the un-tolerated *gharar*. In the case of the BBA facility the potential of gharar can be observed in the following area:

- Gharar rising from the sale of goods that do not belong to the selling party. The transaction is concluded before securing the ownership of the asset during the session of the contract.
- Gharar rising from selling what is not in one's possession. To avoid this gharar the bank must has possession first, and take liability and responsibility before concluding the financial transaction, the possession can be physically or constructively.
- Potential of gharar in BBA in the combination of contract whereby two contracts are combined together in one master agreement facility namely *murabahah* and *al-bay' al-''inah*, this combination may rise Shariah non compliance risk in the transaction.

As it is known in Shariah, ambiguities (*gharar)* and deception (*tagrir*) in the financial transaction may render the financial contract and the facility provided by the bank totally null and void. Therefore the facility of the BBA should be designed and structured in such a way does not provoke any potential violation of Shariah rules and principles, the bank should clearly spell out the terms and conditions of the facility and shows to the customer the flow of the BBA and its legal steps, sequence and applications to avoid any potential elements of *gharar* in the contract or

[5] AAOIFI Shariah standards, no. 31. (Arabic version).

deception in the procedure. The Islamic bank and the legal advisor of the bank and the customer (the S&P lawyer) play an important role in providing a sound legal framework and smooth process for the banking facility of BBA which is consistent with the Shariah law. The Shariah compliance should be honored in the clauses of the contract agreement throughout the various sets of legal documentation provided by the bank.

The bank should be able to moderate the *gharar* by distinguishing between the excessive *gharar* (*ghara kathir*) and the minor *gharar*. The first type of *gharar* is unanimously prohibited and not accepted in *Shariah* which render the financial transaction invalid. The second type known as minor *gharar* (*gharar yasir*), is unanimously allowed by *Shariah* such as buying a house whereby its foundation is not known even though it is part of the asset sold, the jurists are in agreement that this minor *gharar* is tolerable and permitted.[6] The mentioned moderation of gharar should be applied in the legal documentation.

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The ambiguity, *gharar* and deception should not be associated with the terms, conditions, wording and clauses of the legal documentation in the BBA facility, in addition to that the facility should demonstrate justice and fairness in financial transaction, without having a tendency to secure 100% safety in the deal by avoiding the risk 100% and put the burden of the risk and its legal sequences and financial implications on the shoulder of the customer without a valid reason. The principle of sharing the risk base on the proportion ratio of responsibility is needed to ensure realization of *maqasid al Shariah* and the spirit of brotherhood in Islam. The pricing a is another area that should be addressed as well to reflect the eligibility and permissibility of the income of the bank, it should be reasonable, free from taking advantage of the financial position of the customer, the pricing formula should be based on moral value and business consideration.

[6] See: Ali Al Kafif, Ahkam Al Muamalat Al *Shariah*, p. 356.

5.0 Rules of Bai' Bithaman Ajil (BBA)

Once the meanings of *gharar* and *tagrir* are established, it is important to examine the rulings of BBA in the light of risks faced by Islamic banks with high BBA exposures. BBA is a sale in which the parties agree that the payment of price shall be deferred on installment basis. The due time of payment can be fixed either with reference to a particular date, or by specifying a period, like three months, but it cannot be fixed with reference to a future event the exact date of which is unknown or is uncertain. If the time of payment is unknown or uncertain, the sale is void. If a particular period is fixed for payment, like one month, it will be deemed to commence from the time of delivery, unless the parties have agreed otherwise.

The deferred price can be more than the cash price, but it must be fixed at the time of sale. Once the price is fixed, it cannot be reduced in case of early settlement, nor can it be raised in case of late payment and default. In order to ensure that the buyer ie the customer pays the installments promptly, the customer may be asked to make a promise (*wa'ad*) that in case of default, he will donate some specified amount of the payments to charities. In this case when the seller ie the Islamic bank, receives such payments from the buyer, the payments will not be treated as earnings. Instead, the bank who acts on behalf of the customer gives away the money to charities. The BBA system also stipulated that when a buyer fails to pay up on its due date, the remaining installment will become due immediately.

In order to secure the payment of price, the seller may ask the buyer to furnish a security whether in the form of a mortgage or in the form of a lien or a charge on any of his existing assets. In the case of default, the seller can seek a court order to sell the property in order to recover the money used to purchase it.

6.0 Legal documentation of Al-Bai-Bithaman Ajil (BBA) Financing

Based on the above rules of BBA, an illustration is given in the following. Hamid is keen to purchase a $200,000 apartment in Kuala Lumpur, which he has seen in person. He will meet the developer/vendor and sign a Sale and Purchase agreement (S&P) after placing a 10% down payment, i.e. $20,000. In conventional practice, Hamid will look for a bank that can lend him the remaining sum of $180,000. Assume that Fastbank approves the loan and disburses a sum of $180,000 to the developer on behalf of Hamid. Thus, Hamid gets a loan from Fastbank and settled the remaining balance with the developer on cash basis. Hamid will pledge the property as collateral via the charge agreement on the $180,000 loan. Assuming interest rate at 4% flat over 20 years, Hamid will pay the bank $144,000 more in interest. His monthly installment = ($180,000 + $144,000) / 240 = $1350.

To sum up, conventional financing consists of the following contracts, namely:

1. Contract of loan between the Fastbank and Hamid.

2. Deeds of Assignment/Charge.

The same procedure applies for Islamic banks. But the transaction becomes complicated when Fastbank is not involved in the sale and purchase agreement (S & P) with Hamid. Instead similar to conventional arrangement, Hamid purchases the property from the developer. He puts up RM20,000 as down payment to secure the Sales and Purchase (S&P) agreement on his favour. In this manner, Hamid becomes the beneficiary owner of the property.

But how could Fastbank observe the rules of BBA (to sell the property to Hamid) when in the first place it does not own the asset? The Holy Prophet pbuh says "do not sell what you do not own". Here FastBank must be careful not to violate this critical Shariah injunction. To observe this Shariah rule, Fastbank is expected to purchase the property from Hamid via the Property Purchase Agreement (PPA for $180,000). Current practice indicates that the bank makes the $180,000 disbursement to Hamid, which it (ie. Fastbank) passes on to the developer.

Once the Fastbank holds ownership via PPA, it then sells the property to Hamid via the Property Sale Agreement (PSA). The terms are as follows:

1. Seller (Fastbank) and Buyer (Hamid)

2. Object of sale : Apartment

3. Price of object: Cost price $180,000) + profit margin ($144,000) = $86,000 = $324,000.

   Installment payments = $324,000/240 = $1350 per month.

Similar with conventional practice, the house will be placed as a collateral via the Deeds of Assignment or Charge. It says that the bank holds the right of beneficial ownership of the property in the manner that it holds the right to sell if when Hamid defaults on the BBA facility.

To summarize, BBA sale consists of three contracts, namely:

1. Property Purchase Agreement (PPA): Bank buys property from customer.

2. Property Sale Agreement (PSA): Bank sells property to customer at BBA price.

3. Deeds of Assignment/Charge: Bank A holds property as collateral.

It seems that the above agreements were drawn to treat BBA as a loan rather than a sale (*al-bay'*). In a BBA sale, the bank should purchase the house from the developer/vendor. Sale and Purchase agreement (S&P) should have taken place between the bank and developer. In this manner, the bank will hold risk of ownership (*ghorm*) and thus, holds the right to earn profits from the BBA sale.

When the fear of business risk may have stopped Islamic banks from entering Sale and Purchase agreement with developers, Islamic banks have opted to introduce the Property Purchase Agreement (PPA) to secure ownership (*milkiyah*) before executing the Property Sale Agreement (PSA). But the PPA is not independent of the PSA and thus invited the use of *bay al-'inah* in the BBA sale. By doing so, the PPA is not a true sale since the bank does not actually hold equitable ownership of the property. Negative risk-avoiding behavior is apparent here since the bank refuses to hold ownership for fear of holding business risk in the form of unwanted inventories if the customer declined the sale[7]. When the bank failed to prove that it actually holds equitable ownership prior the PSA, then the BBA contract resemble a financing agreement with a charge. It evidences *gharar* ie uncertainties as to who actually own the asset. Under a default situation, such a structure will invite Shariah risk. To protect himself from potential bankruptcy, the customer may seek court declaration to rule that the BBA invalid.

When Islamic banks purchase the property from the developer, then the BBA sale shall consists of the following agreements:

1. Property Sale Agreement (PSA): Bank sells property to customer at BBA price.

2. Deeds of Assignment/Charge: Bank holds property as collateral.

The above agreements will remove Shariah risk from the portfolio as the bank now takes ownership of asset prior to the BBA sale. However, when an Islamic bank adopts the *bay al-enah* contract as evidenced in the PPA and PSA agreement, ownership risk has been compromised[8].

7.0 Measurement of Shariah risk and bank loss.

Exposure to BBA financing means that Islamic banks are equally concerned with credit risk. In managing credit risk, they are required to measure the expected loss (EL) as well as unexpected loss (UL) from their credit financing portfolios. Expected loss is covered by bank's provisioning for bad debts while unexpected loss (UL) is to be absorbed by bank's capital (Saita 2007). However, loss from Shariah risk is unique because it originates from BBA defaults, thus tieing it to credit risk rather than operational risk. At the moment Islamic banks in Malaysia are more concerned with the court ruling by High Court Judge Dato' Wahab Patail in Malaysia concerning the invalidity of BBA (Abdul Wahad Patail 2008, Arab-Malaysian Finance vs Taman Ihsan Jaya). It is a civil court case that revolves around a default by Taman Ihsan Jaya who had received a BBA facility. Since the legal right of the property still remains

[7] Risk-avoiding behavior is allowed by Shariah when the individual looks for capital protection alone which is provided for in *wadiah dhamanah* products. Negative risk-avoiding behavior refers to the twin-demand for capital protection and fixed return as evidenced in all *riba* based contracts.

[8] BBA is also known as *bay al-enah* as the PPA and PSA agreements signify a concurrent sale and buyback transaction between two parties. The transfer of ownership from the customer to the bank (PPA) and subsequently from bank to customer (PSA) is impossible to meet as the Land Office usually takes at least 6 months to execute the title transfer.

with the client, the bank seeks to foreclose the property in court. Evidences concerning contract validity are first sought in the legal documentation of the facility rather than what the counterparties perceived the contract to be. This is to avoid *gharar*. The judge ruling ran in favour of the defendant as he found that the BBA sale is not a true sale. The defendant is required to return the original amount of the BBA facility to the bank.

Some except of the judge's opinion are given below:

"[68] This court accepts that where the bank is the owner or had become the owner under a novation agreement, the sale to the customer is a bona fide sale, and the selling price is as interpreted in Affin Bank Bhd v Zulkifli bin Abdullah. Thus, where the bank was the owner of the property, by a direct purchase from the vendor or by a novation from its customer, and then sold the property to the customer, the plaintiffs' interpretation of the bank's selling price is rejected and the court applies the equitable interpretation.

"[69] This court holds that where the bank purchased directly from its customer (ie PPA) and sold back to the customer with deferred payment (ie PSA) at a higher price in total, the sale is not a bona fide sale, but a financing transaction, and the profit portion of such Al-Bai' Bithaman Ajil facility rendered the facility contrary to the Islamic Banking Act 1983 or the Banking and Financial Institutions Act 1989 as the case may be".

"[70] Acting upon the basis that the bank's action resulted more likely from a misapprehension rather than of intent aforethought, the court holds the plaintiffs are entitled under section 66 of the Contracts Act 1950 to return of the original facility amount they had extended".

Although Abdul Wahab Patail's ruling was later overturned in the Court of Appeal, it is imperative to estimate the loss incurred to the bank if the customer had instead seek a court declaration for BBA invalidation or if the Court of Appeal agrees with the judge's ruling. We will consider three situations involving the BBA default and the ruling to "*return the original facility amount to the bank*". The three situations are:

a. Paid amount is less than original facility, which is equivalent to 75 monthly payments before defaulting.

b. Paid amount is equal to original facility which is equivalent to 134 monthly payments before defaulting.

c. Paid amount is more than original facility which is equivalent to 185 monthly payments before defaulting.

Based on the contract between Fastbank and Mr. Hamid, the total murabaha obligation is $324,000 with the original facility at $180,000.

The financing is for 20 years (240 moths) at 4% flat profit rate per annum.

Price of object: Cost price $180,000 + profit margin $144,000 = $324,000.

Installment payment: $324,000/240 = $1,350 per month ($750 principal portion + $600 profit portion).

The three following cases are stipulated based on the assumption that once the contract is invalidated, it means the bank must return the profit it has collected from the BBA sale. Bank's profit can be classified into two forms, namely earned and unearned profits, which the bank will lose both when a BBA is invalidated. Unearned profit is given back through a rebate (*ibra*) system while earned profit is given back via the clawback of accumulated bank reserves or retained earnings from the earned profit portion of the paid installments.

It is important to note that once the BBA sale is executed, the profit margin is recorded as "profit in suspense" which is also called unearned income (or sometimes is called deferred revenue) or unearned profit. It is a liability, such as when income item is earned, the related income item is recognized, and the unearned income is reduced. Hence, when a monthly payment is made to the Islamic bank, the bank keeps the earned profits, which increases capital overtime. In the same way, in the case of BBA invalidation, the clawback effect will reduce bank's capital, which this study uses as a measurement of Shariah risk. The computation of bank loss from the clawback effect in given in the following hypothetical cases:

Case A1: Mr. Hamid has paid $101,250 (75 months monthly installment) before defaulting. The outstanding balance is $222,750. However, the court has ruled the nullification of BBA and the profits elements of the 75 installments paid are to be clawed back and returned back to the customer. The court requires him to pay extra $123,750 representing the unpaid capital portion.

Basically, the total of amount of the unpaid financing will be $222,750. The amount represents the 165 months of unpaid monthly installments ($1,350 x 165 months = $222,750). However, the court settlement requires Mr. Hamid to pay another $123,750 ($180,000 - $56,250 = $123,750) being the capital portion of original financing. In other words, any profit portions from the 75 monthly installments paid are to be returned back to the customer.

Impliedly, the court judgment states that the financing that was based on trading of asset was not a bona fide sale and therefore, there shall be no profits recognized from the transaction. Therefore, the bank has to claw back any profits that have been recognized so far. This means, there will be adjustments to be taken up to the current year's profits and the retained earnings brought forward.

From the 75 monthly installments paid by the customers, the bank has recognized $45,000 profit paid. Therefore, $45,000 must be reversed out or clawed back from the bank current year's profits plus retained earnings brought forward and to be returned

back to the customer. The result of the clawed back resulting the bank to loss $45,000. Here, the customer is appearing to gain $45,000 as a result from the court injunction notwithstanding that his liability is now $123,750.

Case B1: Mr. Hamid has paid $180,900 (134 months monthly installment) before defaulting. The outstanding balance is $143,100. However, the court has ruled the nullification of BBA and the profits elements of the 134 installments paid are to be clawed back and returned back to the customer. The court requires him to pay extra $79,500 representing the unpaid capital portion.

The total amount of financing to be paid is $143,100. The amount represent the 106 months of unpaid monthly installments ($1,350 x 106 months = $143,100). However, the court settlement requires Mr. Hamid to pay another $79,500 ($180,000 - $100,500 = $79,500) being the capital portion of original financing. In other words, any profit portions from the 134 monthly installments paid are to be returned back to the customer.

Impliedly, the court judgment states that the financing that was based on trading of asset was not a bona fide sale and therefore, there shall be no profits recognized from the transaction. Therefore, the bank has to claw back any profits that have been recognized so far. This means, there will be adjustments to be taken up to the current year's profits and the retained earnings brought forward.

From the 134 monthly installments paid by the customers, the bank has recognized $80,400 profit paid. Therefore, $80,400 must be reversed out or clawed back from the bank current year's profits plus retained earnings brought forward and to be returned back to the customer. The result of the clawed back resulting the bank to loss $80,400. Here, the customer is appearing to gain $80,400 as a result from the court injunction notwithstanding that his liability is now $79,500.

Case C1: Mr. Hamid has paid $249,750 (185 months monthly installment) before defaulting. The outstanding balance is $74,250. However, the court has ruled the nullification of BBA and the profits elements of the 185 installments paid are to be clawed back and returned back to the customer. The court requires him to pay extra $41,250 representing the unpaid capital portion.

For this case, the total outstanding balance of the financing is $74,250 which represents 55 months of unpaid monthly installments ($1,350 x 55 = $74,250). However, the court settlement requires Mr. Hamid to pay another $123,750 ($180,000 - $138,750 = $41,250) being the capital portion of original financing. In other words, any profit portions from the 185 monthly installments paid are to be returned back to the customer.

Impliedly, the court judgment states that the financing that was based on trading of asset was not a bona fide sale and therefore, there shall be no profits recognized from the transaction. Therefore, the bank has to claw back any profits that have been recognized so far. This means, there will be adjustments to be taken up to the current year's profits and the retained earnings brought forward.

From the 185 monthly installments paid by the customers, the bank has recognized $111,000 profit paid. Therefore, $111,000 must be reversed out or clawed back from the bank current year's profits plus retained earnings brought forward and to be returned back to the customer. The clawback effect results in a loss of $111,000. Here, the customer is appearing to gain $111,000 as a result from the court injunction notwithstanding that his liability is now $41,250.

Table 1: Summary of results

CASE	Bank gain / (loss) to the customer	Customer gain / (loss) to the bank
A1	(45,000)	45,000
B1	(80,400)	80,400
C1	(111,000)	111,000

Table 1 shows the loss incurred by the Islamic bank based on the three hypothetical cases of BBA default. It helps explain that the claw-back effect is more serious when the default occurred as the facility is approaching maturity. Islamic banks can find the measurement of Shariah useful for the making estimation of provisions due to legal actions by clients. In the worst case scenario, the loss is expected to erode banking capital as money is clawed-back from bank's reserves rather than earnings.

8.0 Conclusion

The paper examines some aspect of Shariah risk in Islamic banking. When a judge is preceding a civil lawsuit involving an Islamic banking transaction, he or she will make the necessary judicial decision based on the written agreement of the contracting parties. Thus what the Shariah says as allowable and prohibited must be put in writing in the legal documentation. Legal documentation states in clear disclosure the rights and obligations of the bank and its customer. It is through documentation that contracting parties seek protection from the court of law. Failure to document the *aqd* effectively will practically make customers helpless against the stronger party, namely the bank. These rights are originally implied in the contract ('*aqd*) must be put in writing by the solicitor under the guidance of the Shariah advisory committee. There is no problem related to the concept of BBA, however the issue at hand is the application of BBA in the banking business where the court of law saw failure to comply to the true sale character of BBA. Failure to do so by way of negligence or mischief will invite Shariah risk. This is unhealthy to Islamic banks who in the first place must focus on their core business to expand market size and fulfill stakeholders' interest. Loss from Shariah risk can erode bank's capital if the default took place in a systemic way.

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The Performance of Governance of Nonprofit/Charitable Organizations: The Insight of Malaysian Waqf Institutions

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Abstract

This study seeks the governance performance particularly in the perspective of accounting accountability of non-profit/charitable organizations in Malaysia. The regular business practice or non charitable firms which comply with the Generally Accepted Accounting Procedure (GAAP) have place these firms in the right corporate governance and transparency manner. However, for the non-profit/charitable organizations, various studies show that most of them do not comply to the standard accountability (Cordery and Morley, 2005). The significance to have proper or standard accounting practice is mostly demanded especially in the Islamic organizations mainly waqf. Along with the revival of waqf institutions, the attention to the call for waqf accounting has been emerging. The new and modern waqf management has put greater emphasize on the principles of accountability and transparency. As part of good governance and best practices of waqf institutions accounting is believed to be able to improve the transparency of trustees (mutawalli). Indeed, accounting is a tool for mutawalli to discharge his accountability to many parties such as waqif, waqf board, government and community in large. This paper aims at exploring the performance of accounting practice by waqf administrator such as State Islamic Religion Council (SIRC), Malaysian Waqf Foundation, Department of Waqf and Zakh towards improvement of the accountability and transparency. By comparing the Malaysian waqf with the Statement of Recommended Practices for Charitable (SORP,2005) which been practiced in UK, some improvement could be made to Malaysian waqf institutions.

Keywords: waqf, corporate governance, mutawalli, charitable organizations

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Introduction

The effect of corporate governance towards firms have been debated prior to some corporate collapses such as Polly Peck in 1990 and BCCI in 1991 (UK), Enron in 2001 and WorldCom in 2002 (US) (Abdul Rahman, 2006). In Malaysia, corporate governance did not concern to matter very much until the Asian economic crisis in 1997. There are various reasons that contribute to the governance misconduct such as the accounting responsibility. The accounting accountability is significant in reducing the corporate misconduct. The practice of right corporate governance by firms is most expected which they should comply with GAAP in an ethical manner. Perhaps, the non-profit firms like the charitable organizations also accounted for the corporate responsibility. However, for the non-profit/charitable organizations, various studies show that most of them do not comply to the standard accountability (Cordery and Morley, 2005). They explained that the inefficient of accounting practices in charitable organizations is due to the unused of the standard accounting. Thus, there is no formal accepted definition of accounting in the non-profit organizations industry.

According to Yetman and Yetman (2010), nonprofit firms are conferred with various tax benefits like income, property and sales tax exemption. Therefore donors towards non profits can reduce their taxable income with their donations. In return for the significant benefits, nonprofit organizations are responsible to the public who are in effect financing these tax benefits. To be accountable non profits are needed to make their financial information available to the public. However, there is no standard general audit requirement for nonprofit organizations compared to other public firms which are required to present their audited financial statement public. Instead of conventional nonprofit firms, the Islamic institutions similar to charitable organizations like waqf also affected. A waqf or Islamic endowment also requires accounting standards. These are due to various studies found that there are still an ongoing issue of accountability and transparency of the waqf trustees (Abdul Rahim et al. 1999; Siti Rokyah, 2004).

As a result, Shahul and Hisham (2006), argued that the standard waqf accounting should be enforced to complement the issues. Therefore, the Department of Waqf and Zakh has instructed a committee to go thru the waqf accountability and transparency issues by studying and developing a standard of waqf accounting. To date, all State Islamic Religious Council (SIRC) are under their own state's legislation whereby the practices are differ from state to state.

This conceptual paper is aimed to explore the degree of effectiveness of waqf accounting and management globally and Malaysia particularly towards improving the accountability and transparency. The Statement of Recommended Practices for Charitable (SORP, 2007) seems to be an alternative to enhance and improve the waqf accounting quality.

The Definition of Waqf

A waqf is an Arabic verb "waqafe" which etymologically means to hold, to keep or detain. According to Imam Abu Hanifa waqf is the detention of specific thing in the ownership of waqif (appropriator or waqf founder) and the devoting of its profits or usufruct in charity on the poor or other pious intentions. In other words, a waqf or plural in Arabic called awqaf is an act of holding certain property and preserving it for the confined benefit of certain philanthropy with disallowing any use or disposition of it outside the specific objective (Kahf, 1998). Toraman et al. (2004) depicted that waqf applies to non-perishable property whose benefit can be extracted without consuming the property itself. Similarly, waqf served as a vehicle for financing Islam as a society (Hodgson, 1974).

There is no direct injunction of the Quran about waqf. However, there is a hadith which reported by Ibn Umar, whereby Umer Ibn Al Khitab got land in Khyber thus came to the Prophet Muhammad SAW and seek advice regarding the land. The Prophet mentioned to make the land inalienable and give the profit to the charity. Therefore, waqf signed as the permanent dedication by a Muslim of any property for a good faith purpose as pious and charitable.

In Islam, land was the first waqf. The mosque of Quba' in Medina was the first mosque in Islamic history which still exists till today which is waqf oriented. Among others that using waqf land are the Al Azhar University in Egypt, University of Cordova Spain, and Al Noori Hospital in Damascus. (Ahmad Zaki et al., 2008). In Malaysia, JCorp has playing a significant roles in practicing waqf for the ummah development. The establishment of Kumpulan Waqf An Nur Bhd. with management support by KPJ Healthcare Bhd. to manage a chain of waqf An Nur Clinics and Malaysia's first waqf hospital in Pasir Gudang Johor are among the success stories of Malaysian waqf practiced by JCorp. (Hashim, 2009).

Accounting for Charitable Organizations

The aims of Accounting Standard Board (ASB) are to set up and enhance standards of financial accounting and reporting for benefits of customers, and auditors of financial information. To date, ASB provides accounting standards that are primarily applicable to general purpose firm financial statements. In certain industries, a complete guidance is required to implement accounting standard effectively. As such the form of Statements of Recommended of Practice (SORP) is established for the ASB purpose. The SORP board has agreed that it shares the ASB vision of advancing and sustaining standards of financial reporting in the public interest. The Code of Practice sets out procedures to be followed by SORP has been recognized and accepted by ASB to further enhance the accounting transparency.

On the other hand, the SORP introduces the terms restricted and unrestricted to differentiate how charitable donations should be accounted for to reflect the wishes of the donors. These terms are intended to correspond with the terms specific and general used in previous editions of the SORP and have been adopted to help in the clarity of the financial statements. The terms restricted and unrestricted apply to charitable donations only and are not intended to be applied to other sources of funding (SORP, 2007). Charitable donations are assumed as restricted by reference to the facts and conditions regarding the donation. Different accounting treatments will require to be applied to reflect these classifications and it is significant that institutions understand these implications when accepting donations which organizing appeals other fundraising activities.

An endowment is a form of charitable trust which is held on trust to be retained for the benefit of the institution (SORP, 2007). Endowment funds can be sub divided into their capital element and an accumulated income fund. In many conditions, endowment funds are permanent due to governing body like trustees is required to maintain permanently the capital of the endowment fund. Since the endowment is permanent, it will be indicated by the wishes of the donor. This type of endowment fund cannot be spent as though it were income. Income from the endowment funds should be accounted for in the account.

Accounting for Waqf

Waqf has been an important source for Islamic economy. Thus the accountability and transparency of mutawalli (trustees) is important for the equal distributions. In Malaysia, the SIRC is the sole trustee of waqf under the Malaysian Federal Constitution due to religion factor which is under state administration. SIRC function is to organize all the waqf applications by individual or organization whether it is general waqf or special waqf and to maintain all the records, updating, monitoring, registering and developing all the waqf assets especially the general waqf. Hamid (2010) explained that the continuity of waqf management inefficiency such as unfound written record, un-updating and un-registration waqf details has placed SIRC in difficulty in managing the waqf assets.

Baharuddin et al. (2006) stated that the problem in waqf management is also caused by other factors such as lack of professional in managing waqf. Since waqf is a prestige Islamic institution, the demand of professional to cooperate with the mutawalli, new technique and technology oriented method should be utilized so that waqf assets could be managed wisely. This is in line with Paiz Hassan (2008) who agree with the professionalism is required in institution like waqf so that the Islamic image could be enhanced and sustained. He also added that seminar and training are required for waqf administrator so that the waqf administration will be smoothly organized and gave benefits to the appropriate person.

Indeed, waqf accounting standard is required to resolve the issues faced by the waqf trustees to record waqf financial transactions objectively and efficiently. Currently, each SIRC has their own accounting standard. So, there is no uniformity or standard practices like what have been practiced in the UK. The UK SORP on Charity Accounting has been successfully facilitates and give guidelines to administrators to help charities efficiently in preparing their financial statements for the annual report.

The accounting standard is required by the *mutawalli*. The standard here refers to an agreed, repeatable way of doing something. It is a published document that has a technical specification or other stated information designed to be used consistently as a rule, guideline, or definition. The most important standard is its ability to be developed and maintained best practices. Therefore this is required in the waqf accounting to be excelling in the record keeping and sustaining an effective management.

The Waqf Accountability and Transparency

There is a lot has been debated about waqf recently. There are seminars, discussions and talks among professional and public about the indispensible growth of the waqf institutions. Cajee (2008) indicates that there is a lot of international conferences which were held by Islamic Development Bank (IDB) through its subsidiary; the Islamic Research and Training Institute shows an increasing awareness among public towards waqf institution. The call of waqf accounting had been emerged due to the roles play by the mutawalli as parallel with the high demand of the waqf brand. The concepts of accountability and transparency cannot be ignored in this modern waqf management (Cajee, 2008). Adnan et al. (2007) added that proper governance and healthy practice of awqf institutions especially in accounting practice is believed can enhance the accountability and transparency of *mutawalli*.

Ihsan (2007) explained that the views towards *mutawalli* regarding responsibility and accountability influence the way of *awqaf* institutions produce and disseminate accounting information. Perhaps, Cordery and Morley (2005) also assert that the uncertainty over accounting practices in charitable sectors is not only because of the absence of accounting standards but also because the failure to establish a widely agreed definition of accountability for that industry.

Currently, there is a lack of research has been done related to the current practice of waqf in Malaysia. The previous literatures reveal that there are three main issues have been explored concerning waqf accounting. First of all, waqf accounting is a basic tool to be used as a better practice for corporate governance of waqf institutions. Thus, Marsoof (2004), Pirasteh and Abdolmaleki (2007) and Rashid (2007) explain about the preparation of accounting and auditing standards for awqaf. Secondly, according to Abdul Rahim et al. (1999) and Siti Rokyah (2005), they state that the accounting practices vary among the waqf institution due to the absence of the

accounting standard for waqf. Therefore, the waqf accounting standard (WAS) is needed to standardized the accounting practices among the awqf institutions. Thirdly, the existing standard such as Statement of Recommended Practice (SORP, 2005) for charity or AAOIFI's Statements of Financial Accounting should be used as a guideline to develop accounting concept and standard for awqf institutions since there is no legally waqf accounting standard has been introduced (Ihsan and Shahul, 2007).

By establishing the accounting concept and standard for waqf, thus may improve the accountability and transparency of waqf institutions to the public. The improvement of accounting standard and procedure is the most important element to the betterment of waqf institutions (Marsoof, 2004). Marsoof (2004) found that the management of waqf in Sri Lanka has not been optimized and thus, he suggested that the waqf accounting procedures and standard should be improved and his ideas is consistent with Adnan (2005) who agrees that waqf accounting standard should be developed for accountability and transparency. He also has explained about two alternatives models for waqf accounting which is waqf can be classified as a social organization, as therefore accounting for non-profit organizations will be sufficient to be adopted. The other alternative model has been suggested by Marsoof (2004) is waqf as an organization that intend to maximize its resources through investment activities, thus accounting for commercial organizations can be adopted.

Furthermore, Ihsan et al. (2006) state about the accountability and transparency issues in waqf institutions among Muslim countries. In their study, the findings show there is lack of accountability and transparency in management of waqf assets and also mismanagement by the mutawalli in administering waqf. They also have found four main ideas that can be applied in order to improve the accounting procedures for waqf institutions based on the proposal from the Charity Commission in the UK. The four main ideas are internal financial control, transparency and reporting, management of funds and code of Good Governance. In addition, it must to take into consideration the need in concerning the legal reformation of waqf and the government of Muslim countries should re-evaluate waqf acts for better improvement.

The other issue raised by the previous literature is about the accounting practices vary among awqaf institutions in Malaysia and Indonesia. Abdul Rahim et al. (1999) have pioneered the study on examining the accounting and administration practices among State Islamic Religious Council (SIRC) in Malaysia. Their findings revealed that there was no detailed information about waqf assets, the management was conducted unsystematically and lack of accounting systems for waqf assets, where there is no proper or written procedures to record waqf financial transactions. Abdul Rahim et al. (1999) also mentioned that this situation happened due to no federal authority to coordinate all waqf in Malaysia, therefore they suggested that the waqf department should be established to improve the management of waqf. They also recommended that accounting procedures and standards for waqf should be improved.

Another study on waqf has been done by Siti Rokyah in 2005. Siti Rokyah (2005) examined the status of financial reports and determined the level of waqf disclosed by SIRC in Malaysia. She also analyzed the financial procedures adopted and the relationship between financial procedures and waqf accounting practices. Her findings showed that SIRCs vary in terms of the status on producing the latest annual report. Most of the SIRCs have overdue and outdated financial reporting and most of them showed low level of disclosure in their annual reports. However, her study also revealed that SIRCs with qualified accounting staffs in handling the accounts and reports have higher level of disclosure. Furthermore, the SIRCs that produced the latest annual reports showed higher level of disclosure as compared to SIRCs which have outdated annual reports.

Conclusions

It can be concluded that the growing waqf institutions is very significant towards Muslim society. The roles play by mutawalli should be in line with the growth of the waqf development. Indeed, the technology and professionalism should come in the first place to sustain waqf as competitive as possible. The authority, administrator and the society should also work in hand to make sure that waqf is relevance and widen the awareness of waqf towards all type of life. If the integration of waqf is uphold, the Muslim society will further develop spiritually instead of Islamic economic growth therefore increasing the country sustainability.

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Use of Islamic Financing Instruments: Case study of selected Private Healthcare Providers

By

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Abstract

Demand for quality health care services in Malaysia is rising with improvements in per capita income, enhanced educational attainments, changes in demographic patterns and urbanization. People have become more conscious about their health and willing to pay for quality medical treatment. These factors accounted for the dramatic increase in the number of private hospitals from 10 in 1980 to 209 in 2009. In addition the government is promoting Malaysia as a medical tourism destination and halal hub in this region. Malaysia has been actively promoting its healthcare services to potential Muslim medical travellers especially from Middle East countries, Brunei, Singapore and Indonesia. Malaysia has the potential to be a preferred medical tourism destination among Muslim medical travellers as Malaysia is an Islamic country with a good infrastructure and medical facilities and offer high quality service at competitive cost. These developments augur well for existing and prospective Bumiputera/Muslim healthcare providers to expand capacity. Bumiputera/Muslim participation is relatively small but on the rise with the Kumpulan Perubatan Johor Corporation (KPJ) as the leader (20% market share of private healthcare sector in 2009). This paper reports the findings on the financing methods adopted by private Bumiputera/Muslim healthcare providers focusing on the use of Islamic financing instruments. The findings provide the basis for exploring and assessing alternative Islamic financing instruments to finance expansion in capacity.

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Use of Islamic Financing Instruments: Case study of selected Private Healthcare Providers

1. Introduction

Economic growth and financing are closely related (Levine, 1997; King & Levine, 1993; McKinnon, 1973; Goldsmith, 1969; Schumpeter, 1912). In today's business world, financing needs is irrefutable. Financing is a channel for businesses to provide the adequacy capital (and later turn into a form of the investment) to generate economic activities. The more bouyant economic activity is, the more is the need for financing. Financial intermediation plays important role to support the financing process (Greenwood & Jovanovic, 1990). The firms then will allocate these funds to the most productive use so that firms can operate at the most efficient capacity. Thus, the link between growth and financial development is a causal association. Finance does not just follow growth, but at the same time it leads to economic growth.

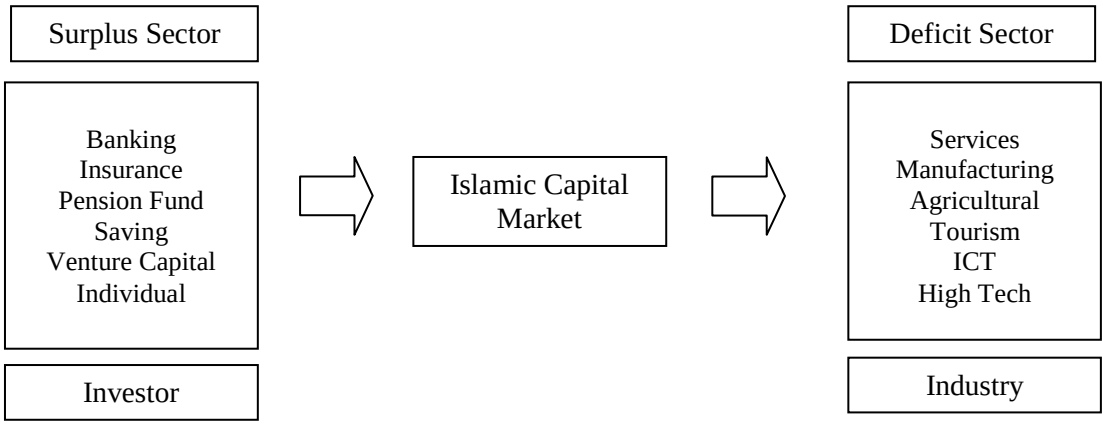
In Malaysia, besides the conventional financial system, the Islamic financial system also plays the same important role in the Malaysian economic development. This financial system also transmits the current excess funds to those who can use them for either consumption or investment purposes. However, in the Islamic financial system, any transformation of funds (wealth) or property has to be made through a valid contract ('aqad) which is based on the divine sources (Al-Quran and sunnah) and mutual consent (redha). Malaysian Islamic Financial System can be divided into three sectors namely as the Islamic banking sector, the takaful sector and the Islamic capital market sector.

The operation of Malaysian Islamic banking sector started in the early 1980s with the establishment of the Bank Islam Malaysia Berhad under the Islamic Banking Act 1983. In 1999, Bank Muamalat had been established as the second Islamic bank. Among services offered by the Islamic banking sector are *Al-Bai Bithaman Ajil* (BBA) house financing, BBA/*Murabahah*/*Ijarah* business financing, *Wadiah* and *Mudarabah* saving and investment and Islamic financial market. This positive development then followed on the other hand by the establishment of the Syarikat Takaful Malaysia Berhad under the Takaful Act 1984 using *Tabarru'* (charity) and *Mudarabah* (profit sharing) concepts. The establishment of Takaful

Nasional then followed after that. Family and medical Takaful, business Takaful and vehicle Takaful are among takaful plans offered by these takaful institutions (www.sc.com.my).

The Islamic capital market, in other words, is a complement component to the Islamic financial system. The Islamic capital market refers to the market that applies Islamic principles in capital market transactions, which are free from the involvement of forbidden activities by Islam and free from *usury* elements, gambling and ambiguity (*gharar*). There are several factors that have been identified to explain on the need of the Islamic capital market. For instance, firstly, to manage Islamic excess fund (e.g. Lembaga Tabing Haji fund, Yayasan Pembangunan Ekonomi Islam Fund, Perbadanan Usahawan Nasional Berhad Fund, etc) to be more efficient and productive for long term period. Secondly, to provide infrastructure among investors and issuers who are more aware to use Islamic investment and financing instruments. Thirdly, to complement the role of Islamic banking and Takaful system. Subsequently, the Islamic capital market can play an equal important role with the conventional capital market. Finally, to provide a wider local investors' scope of niche for investment through the Islamic capital market instruments (Nik Mohamed Ruslin, 2001). In general, Islamic capital market presence perceived as intermediary or investment mediator from sectors that have surplus capital to the undercapitalized sector based on the Islamic law principle (Figure 1).

Figure 1: Capital flow from surplus sector to deficit sector



Source: Seminar Pasaran Modal Islam, 2000

Recently, Islamic capital market has been focusing on the most actively growing bond (*sukuk*) market. Bank Negara Malaysia reported that Malaysia is the biggest *sukuk* market in the world (39% of total world *sukuk* outstanding which is USD204.5 billion as at end of June 2009) (IFIS, 2009). In local market, Sukuk outstanding as the end of March 2010 amounted to RM245.3 billion compared with RM248.7 billion as at end 2009. Sukuks issued in first quarter 2010 were mostly those using *Murabahah* (27%) and *Musharakah* (36%) concepts. However it is anticipated that there will be more sukuk adopting other contract concepts that will be issued in the second half of 2010 (RAM, 2010). As at end of March 2010, majority of the *sukuk* issued in the market were from the infrastructure and utilities sector which commands 24% of the total issuances (or valued about RM142 billion). This evidence that in a case of financing other sectors business expansions, such as in property and real asset, plantation and agriculture and services sectors (including healthcare), this type of investment can be considered.

In the service sector, Malaysia identified medical tourism as one of the new national key economic areas in propelling the nation towards high-income status (10thMP, 2010). Thereby, it is also expected that *sukuk* can become one of the gates especially for private healthcare investment opportunity. Malaysia's private healthcare sector still needs more investments for future growth, especially for Bumiputra private healthcare providers. Currently, the number of Bumiputra private hospitals which providing medical services to the tourists are very limited. Hence, integrating the right investment instruments and high quality human capital can provide well managed hospital and further able to contribute to the rise in profit and increase in productivity. Accordingly, this indirectly can increase medical tourism's contribution to Gross Domestic Product's (GDP) country.

Thus, this paper discusses the potential of integrating Malaysian Islamic capital market instrument particularly *sukuk*, with Bumiputra private healthcare providers. Innovation of various *sukuk* is believed capable in providing suitable financial infrastructure needs of this sector. We investigate Islamic financing methods adopted by Kumpulan Perubatan Johor Cooperation (KPJ) and selected non- Bumiputra healthcare providers for comparisons. From their experiences, we propose recommendations that can be applied by other Bumiputra private healthcare providers in this country. Thus, this paper begins with the premise that financing is anticipated as a main constrain for Bumiputera/Muslim healthcare providers to

expand their capacity. The rest of the paper is organized as follow. The paper consists of five sections, which includes introductions as the first section. Section two gives an overview of private healthcare sector in Malaysia and defining the nature of problem at hand. Section three investigates the KPJ's and selected non- Bumiputra healthcare provider's Islamic financing methods**.** Section four gives an evaluation and determination of the potential of the use of Islamic financing instruments by other Bumiputra private healthcare providers. Recommendations and conclusions are provided in the final section.

2. Malaysian private healthcare sector and Medical tourism industry

In the recently unveiled Tenth Malaysia Plan (2011 – 2015), this country is being propelled towards becoming a high-income and high-productivity economy. In order to realize this vision, the central thrust to sustainable economic growth and development of the country is human capital. High quality of human capital is not measured solely on physical health, but also emotional, spiritual and intellectual aspects. Accordingly, the understanding that health represents the human capital, the demand for quality health care services is consequently rising. Besides that, among the factors that also contribute to the rapid rise of an effective demand for health has been fuelled primarily by the rapid rise in per capita income, changes in demographic patterns and urbanization. Dowling & Valenzuela (2004) stated that income has long been accepted as the major force driving improvements in health outcomes for many countries. The experience of many countries has shown that a dramatic drop in the death rate occur when countries become industrialized and living standards and income rise. In the case of Malaysia, between 1980 and 2000, per capita gross national product (GNP) of Malaysia more than doubled, from RM3,221 to RM7,593 (Table 1) (Chee Heng Leng & Barraclough, 2009). A high proportion of the population of Malaysia is in the economically age group. In 2009, based on population projections on the adjusted 2000 population census, 63.6% of the population is those between the age group of 15 – 64 years. The elderly above 64 years of age was 4.54% of total population (Department of statistics, 2009). This population distribution portrays the needs of high number of private medical facilities among Malaysians. Moreover, when people become more educated they tend to be more conscious about their health as well.

Table 1: Private medical facilities and national income

Year	No. of facilities	No. of beds	% of total beds[1]	*Per capita GNP (RM)
1980	50	1171	5.8	3221
1985	133	3666	14.5	3758
1990	174	4675	15.1	4426
1995	197	7192	19.4	5815
1998	216	9060	25.1	-
2001	224	10348	28.4	7593[2]
2003	219	10405	26.7	-

Source: Ministry of Health Annual Report, various years.

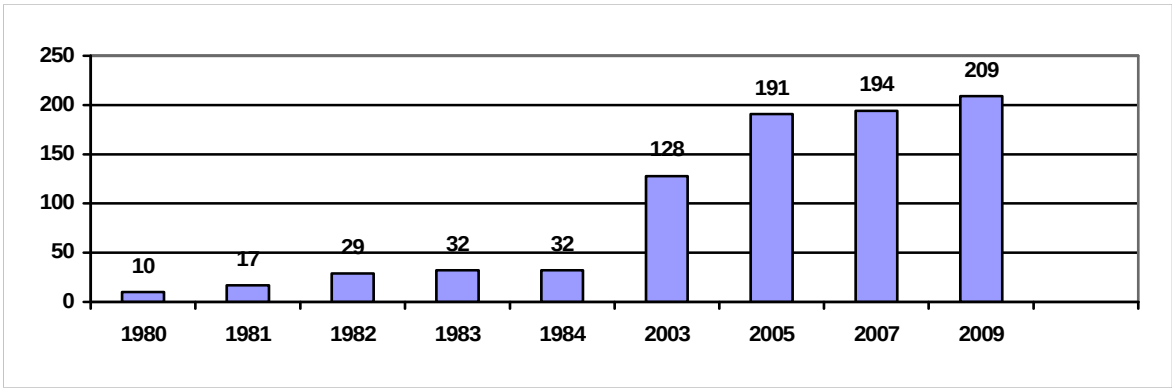
Note: * at purchasers' value, in 1978 prices.

[1] Total of acute beds in MOH hospitals and private hospitals

[2] For the year 2000

In the space of almost three decades, from 1980 to 2010, private medical facilities particularly private hospitals have shown tremendous growth. The number of private hospitals grew from 10 in 1980 to 209 in 2009 (Table 2). In 1980, private hospitals constituted 20% of total private facilities, whereas in 2003, they constituted 58%.

Table 2: Private Hospital in Malaysia



Source: MOH, various years

The proliferation of private hospitals in Malaysia has been dominated by for-profit private hospitals. In 2007, Kuala Lumpur (50 hospitals) was the state with the highest number of establishments of private hospitals It was then followed by Selangor (38 hospitals) and Johor (22 hospitals)(MOH, 2009). In terms of expenditure, the private health expenditure on health is 46.2% of total health expenditure (Ninth Malaysia Plan, 2006). Accumulated number of

beds has increased from 1,171beds (1980) to 12, 216 beds (2009). The impact of the 1997 Asian financial crisis on the economy provided much of the impetus for this development.

During the Asian financial crisis of 1997, the Malaysian ringgit dropped rapidly before it was pegged to the U.S. Dollar at RM3.80 and affected every part of the healthcare sector. The purchasing power of local patients for healthcare provided by the private sector was badly reduced and they reverted to the public healthcare sector for their needs. Many private hospitals were closed, downsized or cut back their benefits for employees. The price of imported pharmaceuticals, medical supplies and medical equipment rocketed. In the prevailing economic climate then, private hospitals could not comfortably survive (Chee, 2007).

In 1998, Malaysia introduced health tourism as a response to the crisis in its search for new and sustainable growth areas. Private hospitals then increased their efforts to attract more foreign patients. From the year 2000 onwards, the number of private hospitals started to increase. They are now targeting more foreign patients through tourism package where people today tends to travels to other countries purposely to seek treatments that can enhancing their well-being of the mind, body and spirit individually, families or groups (MOH, 2002).

Since various policy steps were taken, the Malaysian health care system has undergone steady growth, supported by tourism activities that have helped Malaysia to position itself as one of the premier destinations for health tourism. In 2006, hospitals in Malaysia were hosts to 296,687 foreign patients, earning revenues of RM 203 millions. Malaysia expects to earn RM1.2 billion from medical tourism by 2010 (Financial Times, 2005). Table 3 below illustrates the potential of this tourism segment by showing the number of patients and income under the Health Tourism Program in Malaysia from 2002 to first half of 2009.

Table 3: Number of Patients and Income under Health Tourism Program

Year	2002	2003	2004	2005	2006	2007	2008	2009
Number of patients	84,585	102,946 (22%)	174,189 (69%)	232,161 (33%)	296,687 (27%)	341,228 (15%)	374,063	165,095*
Income (RM Million)	35.9	58.9 (64%)	105.0 (78%)	150.9 (44%)	203.7 (35%)	253.84 (25%)	299.10	142.30*

Source: Association of Private Hospitals Malaysia.

Note: Figures in brackets is an annual changes

* Up to 1st half 2009 only

Malaysia has many advantages to develop the medical tourism industry. These advantages included basic prerequisite for being medical tourism destination, for instance, a good physical infrastructure facilities such as an excellent communication networking (high quality road system, telephone network and airports) and extensive supply of clean water and electricity. Besides that, Malaysia is fortunate to be endowed with an abundance of natural and unspoiled environment which can be transformed into fascinating tourism products which can best be included in medical tourism package (Ministry of Tourism, Arts and Culture, 2002). Malaysia also has the required skilled human resources in the medical field and some of the best facilities in this region. In 2009, there were 30,536 doctors, 3,567 dentists and 59,375 nurses registered with Ministry of Health. While in the same year, the ratios of registered medical personnel over population were 1: 927, 1: 7 936 and 1: 477 respectively (MOH, 2010). Malaysia's medical specialists have no communication barrier as most of them are well-trained with having post graduate training abroad and they speak excellent English. Malaysia's health human resources also have been described as more compassionate and caring. In addition, according to the Association of Private Hospitals of Malaysia, most of these hospitals and healthcare facilities have been equipped with the latest high technology medical devices and obtained at least Malaysian Society for Quality in Health (MSQH) Accreditation which is has been recognized by World Health Organization (WHO). The government has been playing a very significant role to stimulate the growth and the development of the medical tourism and halal industries. The Malaysian government has organized a number of conferences, forums, exhibitions, road shows and marketing promotion efforts. Recently, the Malaysia Healthcare Travel Council (MHTC) was established on 3rd July 2009 as the primary agency to develop and promote the healthcare

travel industry and to position Malaysia as the healthcare destination of choice in this region (http://www.myhealthcare.gov.my). Malaysian External Trade Development Association (MATRADE), Ministry of Health (MOH) and Tourism Malaysia are the government bodies tasked with this responsibility. From 2001-2009, among the countries targeted for promotional efforts were United Arab Emirates, Bahrain, Saudi Arabia, Myanmar, Vietnam, Indonesia, Singapore, Brunei and China (APHM, www.hospitals-malaysia.org).

Even though it is more than 10 years since the health tourism industry was actively promoted by government in partnership with industry, the participation of Bumiputera/Muslim healthcare providers, especially hospital facilities is relatively small. The sizes of all types of private Bumiputera/Muslim healthcare facilities are relatively small as well. Kumpulan Perubatan Johor Healthcare Berhad. (KPJ) has been identified as the leader (20% market share of private healthcare sector in 2009) for Bumiputera/Muslim healthcare providers in particular sector. Through its subsidiaries, KPJ is engaged in the operation of specialist hospitals. The KPJ Group of hospitals is the largest private healthcare group in the country, after the MOH. With all the advantages that Malaysian has to offer and the potential of the medical tourism industry, it is seen as a great opportunity for Bumiputera/Muslim healthcare providers to venture. However, financing is anticipated as a main constrain for them to expand their capacity. Thus, KPJ is referred especially in terms of how they finance their hospitals development to achieve its success and leading position. Findings of this research provide the basis for exploring and assessing alternative Islamic financing instruments to finance expansion in capacity for other Bumiputera/Muslim healthcare providers.

3. Case study on Islamic Financing Methods.

The number of private hospitals in Malaysia which adopted Islamic financing methods is very limited. From reachable sources, KPJ (Al-Aqar KPJ Real Estate Investment Trust based on the contracts of al-bay' and al-ijarah), Columbia Asia Sdn. Bhd. (Islamic Syndicate based on Ijarah Muntahiah Bitamik principle) (The Star, 17 March 2010) and Sarawak Specialist Hospital & Medical Centre Sdn. Bhd.(SSHMC) (Istisna' Sukuk) (MARC, 2009) are recently among those identified. The subject of interest in this section sheds some light on the actual issuance of Islamic financing methods and its performance on two case studies namely, Al-Aqar KPJ Real Estate Investment Trust by KPJ and Istisna' Sukuk by SSHMC.

3.1 Al-Aqar KPJ Real Estate Investment Trust

Kumpulan Perubatan Johor Healthcare Berhad (KPJ) is a healthcare division of Johor Corporation (JCorp). KPJ started with one specialist hospital in Johor with twelve doctors in 1981. KPJ is currently known as the first and only homegrown healthcare group in Malaysia. The KPJ Group is also the only hospital group listed on Bursa Malaysia Main Board since 29 Nov 1994. KPJ has the largest network of private hospitals in Malaysia which consist 19 hospitals in Malaysia and 2 hospitals in Indonesia with more than 2,000 licensed beds and 700 full-time resident consultants (http://www.washingtontimesglobal.com). KPJ has been applying a centralized dispensing, billing and collection system to facilitate the recording of the necessary activities. In terms of mode of payment, it is seen that the common transactions used are either cash paying and using a top-up system (45%) or insurance and corporate credit (55%). The provision for doubtful debt is only 1% of total sales in 2009 (Siti Sa'diah, 2010).

KPJ has been practicing the Islamic Real Estate Investment Trusts (I-REITs) as a method of financing. KPJ had issued four funds of I-REITs called Al-Aqar KPJ Real Estate Investment Trusts (Al-Aqar) worth RM1,012 million to finance the construction of its 21 private hospitals. The Securities Commission of Malaysia defines REIT as 'an investment vehicle that proposes to invest at least 50% of its total assets in real estate, whether through direct ownership or through a single purpose company whose principal asset comprise real asset' (Securities Commission, 2005). The key difference between the conventional and I-REITs

lies in how the incomes from REIT are earned and how the fund is supposed to be managed (Asyraf, 2007). For I-REIT, these two aspects need to be based on the principles of Shariah. Thus, an I-REIT is a collective investment vehicle that pool money from investors who invests (buying, managing or selling real estate) primarily in income-producing Syariah compliant real estate, and/or single purpose companies which are Syariah compliant whose principal assets comprise Syariah compliant real estate. The incomes from the real estate or companies are used to provide returns to its unit holders (Ting & Abdul Rahman, 2007).

Al-Aqar is the first I-REIT in the world and first Islamic hospital REIT in Asia which the initial transaction involves sale and lease back mechanism based on the contracts of al-bay' and al-ijarah (Asyraf, 2007). The first fund injected on 28 June 2006, owned and invested in six KPJ's private hospitals which were first acquired for KPJ and its subsidiaries. These properties worth a total market value of RM481 million include Ampang Puteri Specialist Hospital Building, Damansara Specialist Hospital Building, Johor Specialist Hospital Building, Ipoh Specialist Hospital Building, Puteri Specialist Hospital Building and Selangor Medical Centre Building (Idris, 2006). The following injections of tranches are shown in Table 4 with the latest had been exercised in early 2010.

Table 4: Al-Aqar tranches schedule

Injection	No. Of Hospitals	No. of Nursing Colleges	Total Value	Injection / Completion Date
1st	6	0	RM481 million	Aug 2006
2nd	5	0	RM170 million	Mar 2008
3rd	7	1	RM292 million	Mar 2009/Dec 2009
4th	3	0	RM139 million	2010

After 3rd injection, total assets will be RM1.08b with 580m Reit units issued.

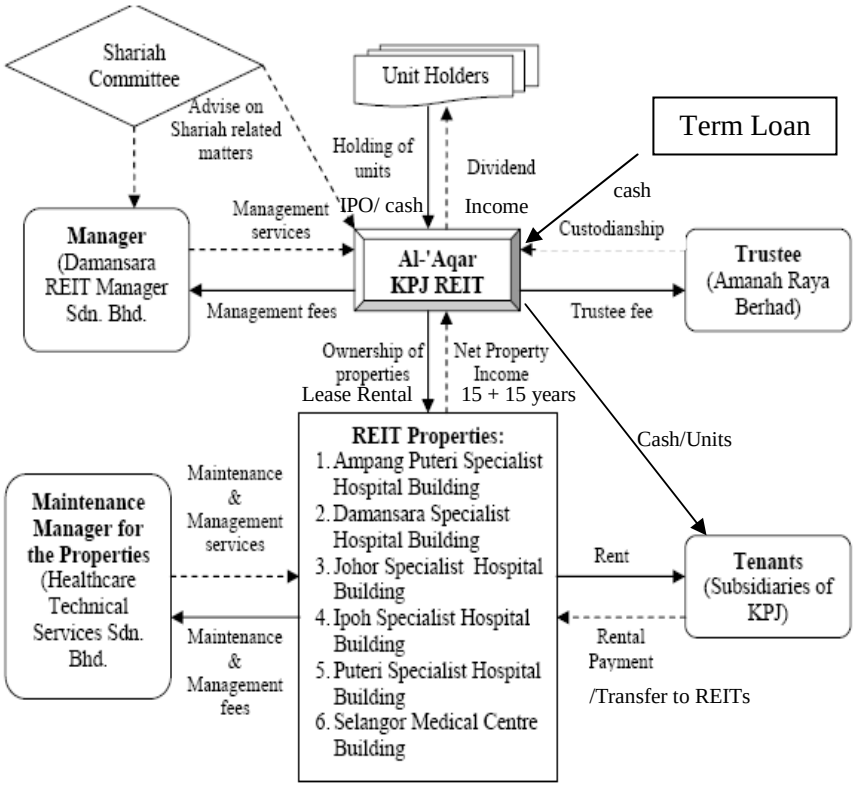
The KPJ's Islamic REIT financing structure is illustrated in the following diagram (Figure 1).

These acquired properties are then leased back to KPJ and its subsidiaries for the period of 15 years. In other words, the performance and operation of the KPJ Group are main factors to the Al-Aqar KPJ REIT's revenue. KPJ and its subsidiary companies is a specialist healthcare group which operates with normal hospital management, healthcare technical services, hospital development and commissioning activities. Besides that, their portfolio of businesses also includes nursing and healthcare professional continuous education, pathology services,

central procurement and retail pharmacy (KPJ REIT, 2006). Being a single tenant of the properties and long term player in the healthcare industry, KPJ Group is anticipated to be able to provide stable rental income to the Al-Aqar KPJ REIT (Asyraf, 2007).

Meanwhile, as the trustee to protect the unit holder's interests, Amanah Raya Berhad (ARB) was appointed. As required by the Securities Commission Guidelines, ARB shall actively monitor the administration of the fund by the management company, Damansara REIT Manager Sdn. Bhd., is in accordance with the objective of the fund, the deed, Islamic REIT Guidelines and acceptance and efficacious business practices within the real estate investment trust industry. This task is to ensure that the interests of unit holders are upheld at all times. At the same time, ARB is also responsible to avoid any potential conflict of interests arising from future acquisition of Shariah-compliant properties among the tenants, the sponsor and the manager which all are subsidiary of Johor Corporation (JCorp) (Asyraf, 2007).

Figure 1: KPJ's financing programme structure



Sources: Siti Sa'diah, 2010 and Asyraf, 2007.

As noted earlier, even the entire income of Al-Aqar is derived from KPJ's own subsidiaries, but the portfolio of their businesses is wide in range. KPJ as a parent company also has been underlined several strategies for its subsidiaries to be more opportunity-driven for long term sustainable competitive advantage. Among these strategies are to expand the existing business, create new areas of excellence, generate new revenue streams, have a high margin, enhance clinical professionalism and develop human capital (Siti Sa'diah, 2010). Table 5 below shows the KPJ's key performance Statistics for the last five years. The table shows double digit in growth of revenue and pre tax profit with average yearly changes is 22% for last five years and 35% for last four years respectively. Besides that, net profit figures achieved the highest margin in 2009 translating into 18.9% growth. Accordingly, MIDF RESEARCH (March, 2010) reported, KPJ's performance is in line with the overall market over the next 12 months. These performances have led KPJ to plan the expansion of the new hospital and the extension of its existing hospitals. The new potential hospitals developments will be located somewhere in Muar, Klang and Kuantan for the next 2 year plans. While KPJ Ampang Puteri, Damansara, Seremban and Kajang are plans to increase their beds capacity. With the expansion plans and company's future prospects, KPJ optimist to achieve 2billion in 2012.

Table 5 shows the KPJ's key performance Statistics

Year	2005	2006	2007	2008	2009
No of hospitals	15	17	17	19	19
Outpatients	1,162,585	1,556,172	1,733,500	1,956,303	1,978,669
Inpatients	117,539	158,412	179,227	196,291	206,907
Turnover (RM'000)	659,643	831,455	1,108,024	1,267,305	1,446,370
Profit Before Tax (RM'000)	42,301	60,060	85,255	114,052	141,956
Net Profit Attributable To Equity Shareholders (RM'000)	32,657	40,962	74,237	85,644	101,869
Earnings Per Share (sen)	16.25	20.30	36.02	41.41	49.01
Share capital (RM'000)	201,050	203,999	207,745	209,461	263,813
Shareholders' Fund (RM'000)	410,292	442,590	508,828	581,041	622,846

Sources: Siti Sa'diah, 2010

3.2 Istisna' (Construction) Sukuk

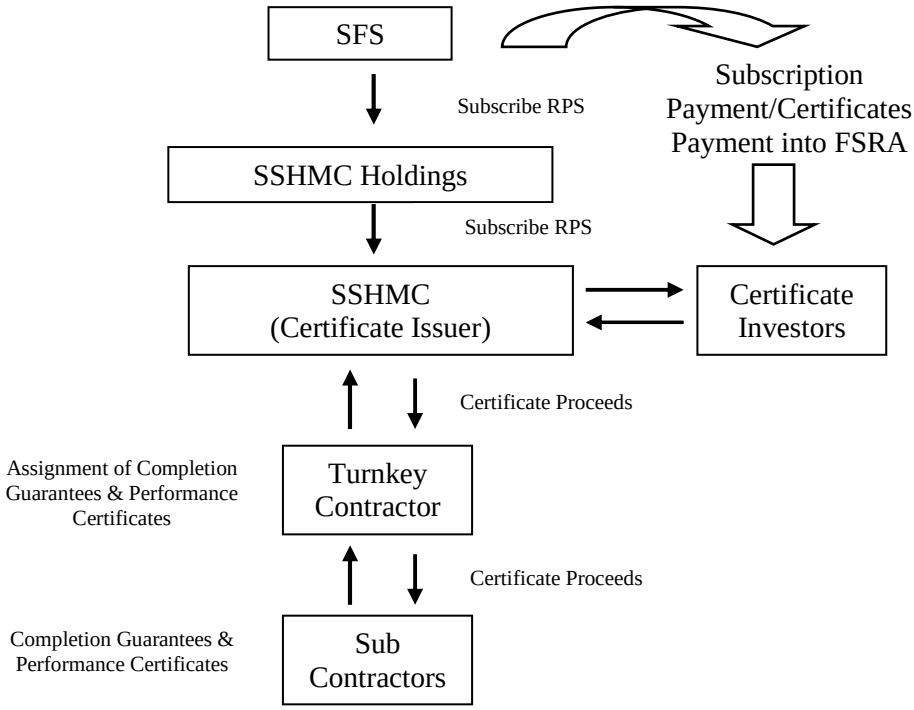
The similarity between KPJ and SSHMC is that each being controlled by state government, Johor and Sarawak respectively. Sarawak International Medical Centre (SIMC), located in Kota Samarahan, Sarawak is to be built by SSHMC. The latter has commenced operations in July 2003. To facilitate the construction of the SIMC, SSHMC was incorporated on 12 July 2001 which is indirectly wholly-owned subsidiary of State Financial Secretary Incorporated (SFS); a statutory body established under the State Financial Secretary (Inc) Ordinance under the laws of Sarawak and controlled by the state government. SIMC includes 166 beds in its three-storey hospital podium complex which attached with eight-storey inpatient accommodation building. SSHMC has been issuing eight tranches of istisna'sukuk worth RM425 million as a method of financing of the construction of SIMC private hospital. The substantial completion date, after an extended period of delay was in 2009. However, in June 2009, it was reported that overall physical construction was 99.4%, but a final completion and handover date has yet to be set. It is not the purpose of this paper to discuss on project's failure to achieve timely completion; however the paper focus on the objective of the Islamic financing method adopted by the private hospital and its implementation results.

According to Accounting and Auditing Organisation for Islamic Financial Institutions (AAOIFI), sukuk is a certificate that represents an equal value upon closing subscription, receipt of the value of the certificates and putting it to use as planned, common title to shares and rights in tangible assets, usufructs and services, or equity of a given project or equity of a special investment activity (Nathif, Abdulkader & Nathif, 2005). Therefore, Istisna' sukuk are certificates that are issued purposely to mobilize the funding for required investment activities that are owned by the subscriber.

In the case of SIMC construction financial structure (Figure 2), SSHMC, is initially a certificate issuer. State Financial Secretary Inc. (SFS) and SSHMC Holdings are the buyers of the intended product (SIMC) called subscribers. Two Certificates Subscription Agreements were issued between SSHMC and SSHMC Holdings (SA1), and between SSHMC Holdings and SFS (SA2). The SA2 stipulates that SFS has to make subscription payment to SSHMC Holdings directly into the Finance Service Reserve Account (FSRA), an account jointly managed by SSHMC and the facility agent for the purposed of certificate

repayment. While the cost of the product represent the funds realised from subscription worth RM425 million. Later, the SSHMC and SSHMC Holdings are certificate subscribers who own the product. They are entitled to the sale price of the certificates or the sale price of the product sold on the basis of Istisna'.

Figure 2: The SSHMC's financing structure.



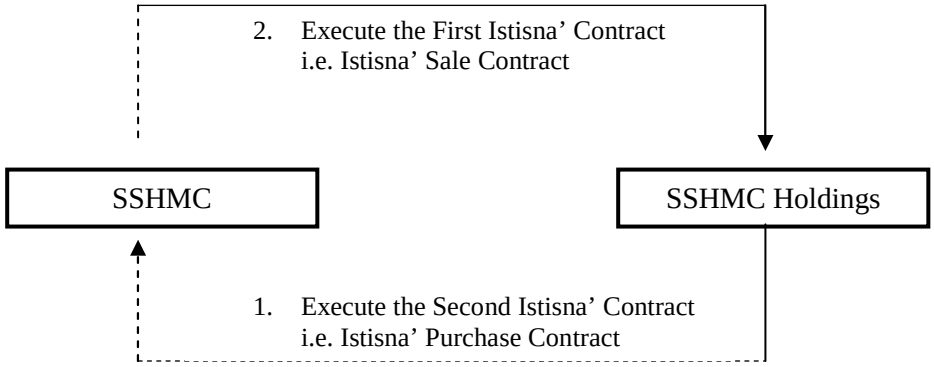
Source: MARC Credit Analysis – SSHMC, 2009

The istisna' financing concept is based on a sale and purchase contract involving a certificate issuer and subscribers, and the asset then will be delivered in the future according to the agreement specifications (Figure 3). SSHMC entered the first Istisna' Contract with SSHMC Holdings under which the latter agrees to construct and deliver the assets in the future at the Istisna' Sale Price which is equivalent to the aggregate Istisna' Purchase Price plus profit. The second Istisna' Contract was entered into between the same parties, with SSHMC agreeing to construct and deliver the same asset in the future at the Istisna' Purchase Price. The asset will eventually reside with SSHMC as the delivery of the asset will be from SSHMC to SSHMC Holdings (Second Istisna' Contract) and from SSHMC Holdings to SSHMC (First Istisna' Contract). The parallel Istisna' contract ensure that all the risks associated with the asset remain with SSHMC, the Certificate Issuer and the project owner.

Figure 3: Transaction Mechanism for SSHMC Istisna' Certificates

1 (a) Satisfies Istisna' Sale Price via Issuance of Istisna' Certificate directly to the Lead Arranger Evidencing SSHMC's payment obligations toward the Istisna' Sale Price.

2 (b) Deliver the asset once it is constructed.



2 (a) Execute Istisna' Purchase Price via proceeds from the issuance of Istisna' Certificate in 1(a).

2 (b) Deliver the asset immediately after receiving it from SSHMC.

Source: MARC Credit Analysis – SSHMC, 2009

Even though, the SIMC has not started its operation yet, in arriving at the financial projections, all available government and private industry data on healthcare were utilised. According MARC report (2009) on SIMC, the assumption and projections made during the construction phase of SIMC may not reflect the current developments in the health industry. Revenue is mainly derived from medical fees for outpatients and in-patients treatment, and diagnostic treatment (Table 6). The largest contributor of SIMC revenue is expected to be diagnostic treatment, while investment income will constitute a small portion of the revenue. Revenue is expected is rise in tandem with the increase in the number of occupied beds.

Table 6: SIMC's Profitability Projections from 2010 - 2021

	Average 2010-2011	**Average 2012-2013**	**Average 2014-2015**	**Average 2016-2017**	**Average 2018-2019**	**Average 2020-2021**
No. Of occupied beds	43	57	73	100	126	132
Revenue	29.75	40.58	56.04	81.26	109.09	122.77
Net Profit/(loss)	(47.89)	(45.39)	(0.65)	2.78	6.61	7.58

Source: MARC Credit Analysis – SSHMC, 2009

4. Evaluation and determination of the potential Islamic financing instruments.

As mentioned earlier, Malaysia has been positioning itself as a preferred medical tourism destination and as halal hub in this region. Accordingly, Association of Private Hospital Malaysia (APHM) has set certain criteria for private hospitals that are interested to join medical tourism industry as providers. Among these criteria are: the private hospital must be licensed, have recognized accreditation, have at least 100 beds for general private hospital and 50 beds for specialists hospital and easily accessible (TTG Asia, 2007). However, most of Bumiputera/Muslim private hospitals are still far from satisfying these requirements. Financing is acknowledged as a main constraint for Bumiputera/Muslim healthcare providers to expand their capacity. This factor's intended not only in the terms of financing sources but also the type of available financing, contribute to the failure to operate efficiently.

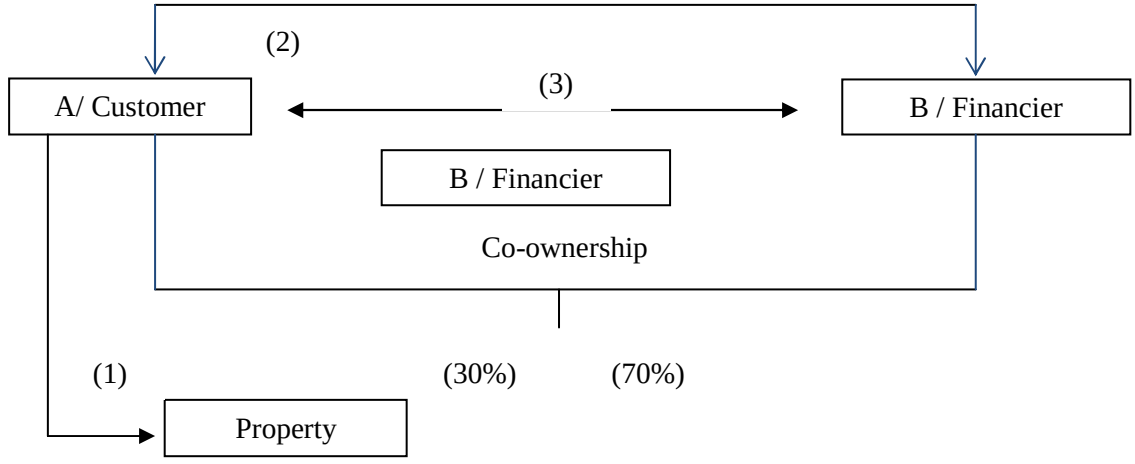
Based on the above two selected private hospitals' experience, either I-REITs or sukuk have their own advantages and disadvantages based on the syariah compliance needs. I-REITs offer investors the opportunity to hold diversified listed real estate certificates, which are expensive if they want to invest directly. While sukuk , on the other hand, is capable to spread the risk beyond the investors. Sukuk is also able to force investors to focus on the projects or venture, rather than relying on the 'overnight market'. As highlighted, due to small scale company they may deal with a faster-maturing yield, which is probably, be more successful compared with the longer-maturity yields. However, both, I-REIT and sukuk can achieve their great benefits if only they are issued and traded on large scale.

Besides the above examples, there is also other Islamic financing instrument that can be used as a means of financing especially of asset acquisitions and refinancing such as building or medical equipments. From a limited survey research conducted among Bumiputera/Muslim private hospitals, they support the potential use of Islamic venture capital or partnership; based on musyarakah mutanaqisah (diminishing partnership) principle.

Sukuk Musyarakah Mutanaqisah principle

This type of sukuk can be applied to the corporate finance and real estate. The transaction involves at least two or more people who agree for the process of acquiring property. One person (A) will be the financier who has decided not to own the property for long term; the other person (B) will be the owner of the property. There are two portions of the contract. First, the contract is a partnership agreement between A and B. Initially, A will pay for a certain amount which will present its ownership of the property, for example 30%, while, B will pay the rest of the amount which gives him 70% equity. Subsequently, A then gradually redeem B's share at an agreed portion until the property is fully-owned by A. Under the second agreement, B agrees to lease the property to A under the principle of Ijarah. A agrees to pay a rental to B for using its share of the property. Figure 4 illustrates the sukuk using musyarakah mutanaqisah principle. The potential of this type of sukuk has been seen as an alternative of Bai Bithaman Ajil principle that has been claimed by some parties as the same as conventional financing instrument.

Figure 4: Structure of musyarakah mutanaqisah principle.



Source: Noreeta Mohd Nor (2008)

(1) A identified the property with 30% of the purchase price being paid by A and 70% by B. A and B therefore own 30% and 70% of the property respectively.
(2) A's monthly instalments for the financing paid to the B will increase A's ownership of the asset/property.
(3) The ownership of the asset/property will progressively move towards the customer and the financing ends when the customer owns 100% of the asset/property.

5. Conclusion

It is an undeniable fact that service (particularly, healthcare) sector will play a very important role in future economic development of Malaysia. The rising trend in earnings received by the medical tourism industry is a convincing testimony to the importance and potential of this this sector. However, Bumiputera/Muslim private healthcare providers are still left behind. Availability of financing for this sector has become one of the main problems that need to be solved. Perhaps, by integrating Islamic capital market with this sector can be one of the suitable solutions since this industry has the potential to mobilize the fund needed. In this paper, sukuk musyarakah mutanaqisah is proposed as a potential Islamic financial instrument to be used for Bumiputera/Muslim private hospitals owner to finance their capacity expansion.

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A PRELIMINARY STUDY OF CUSTOMERS' SATISFACTION ON ISLAMIC PAWNING SERVICE (AR-RAHNU): FROM KELANTANESE'S PERSPECTIVES

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Abstract

Pawn broking services are one of the instruments to make people get cash quickly without concerning rules and regulation stated by financial institutions. Early research on conventional pawn broking service identified the unlawful practice in terms of Syariah compliance. In Malaysia Ar-Rahnu has been practiced a few decades ago with the first establishment in Terengganu. This study has considers the perspective of pawnshop industry in Kelantan, in which the pawnshop industry in Kelantan is practicing Islamic Pawning Service (Ar-Rahnu) since 1995 due to the state government imposed new regulation by practicing the cessation of all *riba* or interest based in conventional pawnshops practice. It was identified the gap whether the pawn customers are satisfied with the services provided by Islamic Pawning Service (Ar-Rahnu) providers and what are the factors contribute to its satisfactions among the public in Kelantan. Therefore, 100 respondents were invited to participate in this convenience survey conducted in Kota Bharu, Kelantan to identify customers' satisfaction towards Ar-Rahnu services. From the correlation analysis and regression analysis, it was identified the significant relationship between convenience and Syariah compliance with the customers satisfactions'. Finally this study provides recommendations for future researchers and pawn broking business to study.

1.0 INTRODUCTION

Pawnshops were already well established in Asia before the 1800s. It was found that more connectivity with Chinese merchants to establish new business; a position that is still largely the case in Malaysia. Early study on pawning activity by Whelan (1979) has noted that in Japan the Japanese pawnshops during the era of Kamakura period (1185-1333 AD) farmer might rent some land and then cover the rental from the crops it produced. Hence, businessmen also might rent an exclusive franchise for a certain business within a specific town or area and then keep any profit that might result. This called "farming" was profitably applied to a range of

businesses to include gambling, opium, and liquor sales as well as pawnshops. In latest study pawn broking is a business of advancing loans to customers who have pledged household goods or personal belongings as security.

From Islamic perspective pawn service that is based on Ar-Rahn system means a pledge or security for a loan. The Holly Quran refers to the idea of a mortgage, as a pledge with possession. Therefore under the Ar-Rahnu concept the borrower (Ar-Rahin) is required to pledge or produce redeemable collateral (Ar-Rahn) in the form of gold or silver to ensure repayment of the loan. This collateral acts as an instrument of guarantee that the loan will be repaid (collateral redeemed) at the maturity of agreement. If the borrowed sum is not repaid at maturity then the lender (Al-Murtahin) has the right to sell the collateral to recover the loan. Collateral is an important instrument for the security of loan by providing a guarantee to the financial institution as it reduces the lenders risk and increases the borrowers cost of default.

2.0 PAWN BROKING

Pawn broking is basically a contract of pledging a security that becomes binding when possession of the pledge has taken place. A study by Haron, Sudin, Shanmugam (1997) stated that ownership of the collateral is not transferred to the pledge, the transfer occurs only under certain conditions. Payal and Jothee (2008) cited from IMF working paper, defined that pawn broking as a means where the lower income group and small scale traders could seek short-term financing to manage their cash flow problems. Adnan (2002) also has classified that pawn broking customers are generally people with low or modest incomes who pledged items of jewelleries in order to buy necessities. With mostly the sums of money they borrowed tended to be small.

Besides most of the pawn broking customers mostly borrowed to cover they occasional or "lumpy" household expenditure, such as large utilities bills, children education or during festive seasons where they have urgency for cash money. As such, there are also tended the small number of customers who used a pawn broker like a safe deposit box in which they kept renewing their pledges because they felt their valuables are safer there than at home.

2.1 *Islamic Pawnbroking (Ar-Rahnu)*

The term "rahn" is commonly used in fiqh al-muamalah, a chapter in Islamic law considering economic matters. Rahn means to detain debtor's certain properties as a guarantee or collateral for the loan debtor borrows. The detained properties must have economic values, so that detaining creditor has a guarantee to get back all of or a part of his receivable. Parts of Muslim scholars interpret ar-rahn as alhabs (detained). Nonetheless, syara' (Islamic law), define rahn as:

> *"To make an object with economic values in Islamic law perspective as a trust for the payment of debts, so that enabling mortgagee (murtahin) to get all or a part of the debts from the object"*

Ibn Qudamah provides the other definition, which Ar-Rahn defined as:

"An object made as a trust for the payment of debts, by which debts are met if the debtor could not pay to the creditor."

Imam Abu Zakaria al- Anshary defines rahn as:

"To make an economic object as a trust for the payment of debts, from which unsettled debts are paid."

In related with this study, the holy Al-Quran, Surah Al-Baqarah of 2:283 stated that:

"And if you are upon a journey and you do not find a scribe, then (there may be) a security taken into possession; but if one of you trusts another, then he who is trusted should deliver his trust, and let him be careful (of his duty to) Allah, his Lord; and do not conceal testimony, and whoever conceals it, his heart is surely sinful; and Allah knows what you do."

(Al-Quran, Al-Baqarah of 2:283)

Base on above justification it is important for this study to interpret that rahn as a loan guarantee or pawning, in which from Arabic language Ar-rahn means al-tsubut wa al-dawam (fixed and eternal).

2.2 Convenience Service to Ar-Rahn Customers'

Zaharuddin (2006) study on Ar-Rahnu convenience service said that Ar-Rahnu is less stringent as compared to conventional pawn-broking outlets and in the event of a default resulting in the pawned item being sold off, any extra proceeds from the sale of the pawned item will be returned to the customer. A survey by Ragayah (1986) also shows that customers turn to pawnshops for credit and she also said the borrowed amount can be disbursed in a few minutes. Hanudin, Rosita, Hazmi, Rostinah (2007) stated that there is a tendency for those individuals who want quick funds will find they are not eligible to borrow from formal financial institutions since there are red taps in getting financing/loan from the institutions. Unlike banking institutions, pawnshop is where the customers can borrow money that can be disbursed in a few minutes.

In relation to the service provide by most of pawn shop in Malaysia, study by Adnan (2004) listed nine weaknesses faced by the pawnshop namely 1) complaints received from customers are related to the decreasing value of pawned goods. 2) Higher interest rate. 3) Low collateral value during the valuation process. 4) Pawnbrokers would often issue an illegible pawn ticket. 5) Pawnbrokers had asked for 50 cent for each replacement of pawn receipts and extension of the pawning period. 6) Pawnbrokers will auction pawned goods worth more than RM200 without the customer's knowledge. 7) Pawnbrokers do not return the surplus after the goods have been auctioned off. 8) Customers do not know when their collateral will be auctioned off. 9) Finally pawnbrokers will ask for advance payment from the pawnshop customers.

From Islamic pawning service perspective it is important for this research to examine convenience as crucial factor for the customers'. In which it will be the reasons for customers to choose the Islamic Pawn system (Ar-Rahn). Therefore, it is important to

justify reasons for customers are using Islamic pawn systems, where this study will look at convenience factors base on:

i. Easier to apply, faster approval, and guaranteed safety of the jewellery.
ii. Cheaper fee than conventional pawn broking.
iii. Fixed storage fee.
iv. Longer financing term.
v. No penalties
vi. Surplus auction receipts are returned to the customer
vii. Established Syariah principles which are an interest free form of loan.

Furthermore, many complained received from customers' who have experience with pawning service where their gold jewellery had decreased in weight or length after the pawning period. According to the Federation of Consumers Association (FOMCA), this happened because under the Pawnbrokers Act 1972, it is not compulsory for the pawnbrokers to write down the weight, length or type of gold of the jewellery to be pawned. The customers who had complained suspected that the pawnbrokers had tampered with the jewellery. However, it could be difficult for the customer to prove this matter. Therefore, it is important for this research to study the convenience factors as important construct that contribute to the customers' satisfaction.

2.3 Syariah Compliant

From Islamic perspective Ar-Rahnu also known as Islamic pawn broking has practicing Syariah compliance. This consists of interest free, and only charge for Ujrah, or fees incur in pawn transactions. Payal and Jothee (2008) highlighted that Ar-Rahnu concept as being practiced by Islamic pawn broking company (Ar-Rahnu) in Malaysia is based on a combination of four concepts.

I. Qardhul Hasan (Benevolent loan) - A financial institution will grant a benevolent loan (interest-free) to the applicant who wishes to pawn his valuable item. The loan issued under the concept of Qardhul Hasan requires the borrower to pay the same amount borrowed to redeem the valuable item at the maturity of the agreed period.

II. Wadiah Yad-Amanah (Trustworthiness) - The borrower is required to produce returnable collateral to ensure repayment of the loan. The borrower entrusted the lender to look after the belongings during the loan period. If an unthinkable event happens to the collateral item not due to the lender's negligence, the lender is not required to replace the item.

III. Al- Ujrah (Safe keeping) - Al- Ujrah concept states that lender is allowed to charge a reasonable fee for the services rendered in keeping the pawned items safe and in good condition. The financial institution accepts custody of the valuable asset on a Wadiah concept whereby the bank promises to keep the valuable asset in a safe place and return when the time comes. The lending institution takes the precautionary measure such as providing security and insurance to ensure its safe returns once the customer pays his debt. Under the Wadiah concept, the bank will charge the customer for the services rendered in keeping the valuable asset.

IV. Wadiah Yad Dhamanah (Safekeeping with guarantee) - The lender will be responsible to replace the missing or stolen items to the owner if lender fails to keep the agreement due to own negligence.

2.4 Customers' Satisfaction

Many researchers have looked into the importance of customer satisfaction. Kotler (2000) defined satisfaction as: "a person's feelings of pleasure or disappointment resulting from comparing a product are perceived performance (or outcome) in relation to his or her expectations". Hansemark and Albinsson (2004) define satisfaction as "overall customer attitude towards a service provider, or an emotional reaction to the difference between what customers anticipate and what they receive, regarding the fulfilment of some need, goal or desire". Nonetheless, Hoyer and MacInnis (2001) said that satisfaction can be associated with feelings of acceptance, happiness, relief, excitement, and delight.

As customers' satisfaction experienced with the service offered by the pawn shop to cause the customers likely to tell others of their favorable experiences and thus engage in positive customers' word of mouth (Richens, 1983; File and Prince, 1992). On the other hand dissatisfied customers, are likely to share their negative experience with the service their experienced.

2.5 Syariah Compliant

In relation with Syariah compliance, Zaharuddin (2006) stated that there is an issue with regards to this practice of charging a safekeeping fee; the Syariah issue appears when the safekeeping charges are based on a percentage of the Marhun (jewellery pledge) value. While Azila (2008) study said that the storage fee is based on the value of gold and not on the amount of the loan. Ar-Rahnu concept is different from the conventional pawn broking system where the latter imposes high interest rates (two percent per month or 24 percent per annum) and other unfair practices on the borrower (Payal & Jothee, 2008).

Nonetheless, Ismail and Sanusi (2005) highlight that the Islamic principles such as wadiah, qardhul hassan and ujra must be given a careful consideration in establishing Islamic-based pawnshop. In Syariah, it is not advisable to link the safekeeping fee to the benevolent loan or Qardhul Hasan amount or financing amount because it can lead to Riba. Furthermore, Ismail and Sanusi (2005) stressed that the Islamic principles such as wadiah, qardhul hassan and ujra must be given a careful consideration in establishing Islamic pawn broking. This in line with Mohammed et al. (2005) argument that wadiah, qardhul hassan and ujra makes Ar-Rahnu clearly different from the conventional pawnshop. In which the element of riba and gharar are eliminated in Ar-Rahnu system. Therefore, the cost involved in borrowing from an Islamic pawn broking is calculated based on the safekeeping charges while the conventional pawn broking is calculated based on the monthly interest charges.

2.6 The development of Islamic pawn broking service (Ar-Rahnu) in Malaysia

Ar-Rahnu or Syariah-based pawn broking is relatively a new concept in Malaysia even though pawn broking dates back to ancient times and is one of the earliest recorded lending transactions in financial history. In Malaysia there is little evidence of ethnic Malays or other indigenous people acting as pawnbrokers. It is not known when pawn "farming" began, but was certainly well established by Malay rulers long before the Europeans arrived, and the practice was seemingly followed in Indonesia, Thailand and probably the Philippines as well.

Malaysia pawnshop began before 1811 and the licensed ownership by private sector. At the end of year 2004, Malaysia has 242 licensed pawnshops regulated under Ministry of Local Government and Housing. These pawnshop charges interest rates to their customers. Payal and Jothee (2008) said that in Malaysia, conventional pawn broking predates Islamic pawn broking by few centuries. Development in Islamic pawn broking began only in 1992, that is, when the first Islamic pawn shop was established by the Terengganu State Government by the name Muassasah Gadaian Islam Terengganu (MGIT). The establishment of MGIT provided an alternative to the people to make a choice in order to get speedy cash and at the same time adhere to methods which are considered halal by the sharia regulation.

It is obvious that the establishment of Islamic pawnshops or Islamic pawn broking was actually initiated in the East Coast states of Peninsula Malaysia. Rationally, it is discernable as these East Coast states have 95% population of Malay ethnic whereby almost 100% of them are Muslims. The Malaysian Islamic Economic development foundation (YPEIM) was the first to suggest the introduction of Islamic pawn broking service (Ar-Rahnu) concept. The first Islamic pawn broking institution was set up by Majlis Agama Islam by the Kelantan state government in January 1992. In March 1992, Kedai Al-Rahn (KAR) a subsidiary of Permodalan Kelantan Berhad commenced further operations of such activity.

In 1995, the Kelantan state government imposed new regulation by practicing the cessation of all *riba* or interest based in conventional pawnshops practice. The conventional pawnshops primarily owned and operated by non-Muslims may continue to operate if they were to adopt the Ar-Rahnu principles (Shaari and Azlina, 2003). Thus, from the regulation introduced, it is expected that the Islamic pawn broking industry in Kelantan has been growing and there is no more practice of conventional pawnbroking even among the non-Muslims pawnshops.

Base on above literatures, this research is to identify whether the Kelantanese customers are confident enough towards the service of the pawnbroking companies in Kelantan in terms of Syariah compliant and conveniences, since they; (the ex-conventional pawnshops) clarify that they are adopting Islamic pawning principles as per state government (Kelantan) jurisdiction. Therefore the objectives of this study:

1) To study if any demographic factors of customers that influence the customers' satisfaction of Islamic pawn broking service (Ar-Rahnu).
2) To determine the relationship between the convenience of using Islamic pawn broking service (Ar-Rahnu) and customers' satisfaction.
3) To determine the relationship between the Syariah compliant and customers' satisfaction on Islamic pawn broking service (Ar-Rahnu) base.

In the study, researcher uses directional hypothesis. The hypothesis will test the relationship between two variables, independent and dependent variables, that can hypothesized:

HI: There is a positive and significant relationship between the convenience in using of Ar Rahnu towards the consumers' satisfaction on Islamic pawn broking service (Ar-Rahnu) in Kelantan.

HI : There is a positive and significant relationship between Syariah compliance towards the consumers' satisfaction on Islamic pawn broking service (Ar-Rahnu) in Kelantan.

Nonetheless, from the previous literatures two factors contribute to customers' satisfactions which are convenience and Syariah Complian needs to be examined. Independent variables for this study are Syariah compliance of Islamic pawn broking (Ar-Rahnu) and convenience on Islamic pawn broking (Ar-Rahnu). While dependent variable for this study, is customers' satisfaction on Islamic pawn broking (Ar-Rahnu) services. These two variables are predicted as the contribution to customers' satisfactions towards Islamic Pawn Broking (Ar-Rahnu). Figure 1.0 show the conceptual framework of this study.

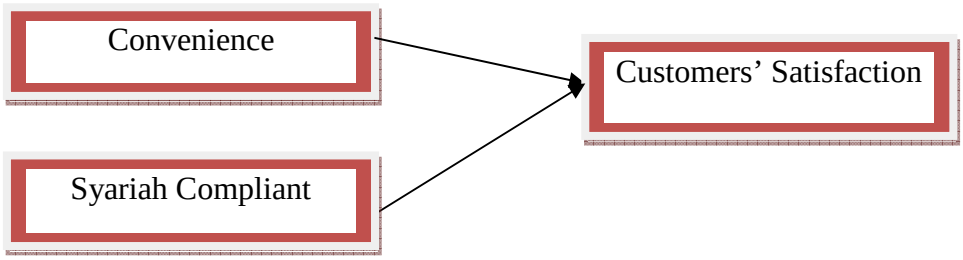


Figure 1.0 Conceptual Framework

3.0 RESEARCH METHODOLOGY

This study is to examine the customers' satisfaction with Islamic pawn broking services. This exploratory research is conducted to clarify ambiguous problems and to gain better understanding about the nature of the problems. The sampling method used in this study is sample random sampling. Random samples of 100 respondents were invited to participate in this survey. The questionnaire is distributed to them by using sample random sampling method.

Data were collected through questionnaires. Data for this research consist of questionnaires that were distributed to the customers who have used Islamic pawn broking (Ar-Rahnu) services in Kelantan to get their feedback on their satisfaction on Islamic pawn broking (Ar-Rahnu) service. The questionnaires were divided into four sections: Section A consists of questions regarding the demographic profile of the respondents, namely: gender, age group, race, level of income and type of occupation. In section A also we have included a question to determine either the respondents experience in using Islamic pawn broking service. Section B consists of the question

of their convenience in using the Islamic pawn broking (Ar-Rahnu). Section C includes questions on respondents' perception towards Syariah compliance used in Islamic pawn broking (Ar-Rahnu). Finally, section D is to measure their satisfaction on Islamic pawn broking (Ar-Rahnu) as an alternative to respondents in order to fulfill the customer's needs. The SPSS version 16 will be used to analyze the data in order to answer the objectives of the study.

4.0 RESULTS

From the total of 100 questionnaires distributed only 87 are usable. Besides from 87 of usable questionnaires only 65 respondents (75%) are Ar-Rahnu customers and balanced of 22 respondents (25%) are not Ar-Rahnu consumers. Therefore, this study analyzes the data using correlation and regression analysis from the 65 respondents with experience of using Ar-Rahnu services for the data analysis of this study.

Frequency analysis was first run to measure respondent's demographic characteristics. The results of analysis were presented in Table 1. Majority of the respondents are aged above 51 years old, which was 61%, followed by 41 to 50 years old (18%), aged 31 – 40 (14%), and young consumers aged 18 – 20 years old represent smallest sample of this study (7%). The ratio between male and female is not balance, which were 62% female and 30.4% male. Most of the respondents' ethnicities are Malay (94%) and Chinese (6%). In terms of employment, majority of respondents are government servant (31%), own business (25%), private employee (10%), unemployed (21%) and pensioner (13%). Nonetheless, majority of respondents earned less than RM1,000 per month (33%), RM1,001 – RM2,000 per month (26%), RM2,001 – RM3,000 (13%) and respondents income RM3,001 – RM4,000 and above RM4,001 represent 14% of the respondents population respectively. Finally respondents who are not Ar-Rahnu customers stated reasons for not using Ar-Rahnu because not interested with the Ar-Rahnu services (20%), less security level (1.5%), not convenience (1.5%), less information (3.5%) and other reasons (1.5%).

Table 1
Sample Characteristics

Game Players' demographic	Categories	Frequency (n=87)	Percentage (%)
Gender	Male	33	38
	Female	54	62
Age	18 - 30	6	7
	31 - 40	12	14
	41 - 50	16	18
	Above 51	53	61
Religion	Islam	82	93
	Christian	2	2
	Buddha	3	5
Ethnicity	Malay	82	94
	Chinese	5	6
Employment	Government	27	31
	Own business	22	25
	Private	9	10
	Unemployed	18	21
	Pensioner	11	13
Income	Less than 1,000	29	33
	1,001 – 2,000	23	26
	2,001 – 3,000	11	13
	3,001 – 4,000	12	14
	Above 4,001	12	14
Ar-Rahnu Customers	Yes	65	75
	No	22	25
Reasons of not using Ah-Rahnu	Not Interested	16	20
	Less Security level	1	1.5
	Not Convenience	1	1.5
	Less Informations	3	3.5
	Others	1	1.5

A reliability analysis was done on the all items to measures the variables of this study. This to ensure the degree of consistency on measurement items in a scale, as Kerlinger (1986) puts it; if a scale possesses a high reliability the scale is homogeneous. Results of this study showed that convenience reliability is .792, Syariah Compliance .932, and customers' satisfaction .952. According to Nunnaly (1978) alpha values equal to or greater than 0.70 are considered to be a sufficient condition. Thus it can be concluded that these measures possess sufficient reliability.

Table 2 presents the intercorrelation matrix between the main variables of this study. As can be seen interactive convenience and Syariah compliance are perfectly correlated. Hence, it can be conclude that discriminant validity has been established.

Table 2: Intercorrelation matrix

	Convenience	Syariah Compliance	Satisfaction
Convenience	1		
Syariah Compliance	.874*	1	
Satisfaction	.855*	.902*	1

* Correlation is significant at the 0.01 level

Multiple regression analysis was used to test the hypotheses one and two of this research. This analysis used to analyze the relationship between convenience and Syariah compliant with customers' satisfaction. As shown in Table 3, convenience variable and Syariah compliance variable is positively related to Customers' satisfaction.

Table 3: Results of regression analysis with perceived ease of use as the predictor

	Customers Satisfaction
Convenience	.255*
Syariah Compliance	.756*
F Value	102.775*
R^2	.916
Adjusted R^2	.907

Note. Significant levels: *p < .01

From the results in Table 3, it can be seen that convenience is positively related (β=0.255, p<0.00) to customers' satisfaction. Thus hypotheses H1 is supported. The positive relation between Syariah compliance (β=0.756, p<0.00) towards customers' satisfaction is also supported. Thus H2 is accepted. Nonetheless, the results also showed that normality assessed from histogram not much deviate where the error terms are normally distributed. Therefore, the data of this study provides a normal distribution.

5.0 DISCUSSION AND CONCLUSION

As sample for this study, it was unsurprising that majority of the respondents are dominated by female in relation to visit Ar-Rahnu pawning shops. As majority of Kelantanese women are mostly involved with business activity in Kelantan, and majority of them are devoted to gold and jewelry as personal collection. Furthermore, data relating to demographic characteristic revealed some interesting results. The data provide clear evidence that the customers' of Ar-Rahnu pawning shops clearly spread across the employment spectrum of government, own business, private companies, unemployed and pensioner. Furthermore, questions relating to the respondents income revealed that majority of respondents are mostly from low income earner, with monthly income less than RM1, 000 per month, this in line with study by Adnan (2002) identified that most of pawn broking customers are generally people with low or modest incomes who pledged items of jewelleries in order to buy necessities.

This exploratory analysis identified that positive relationship between convenience Ar-Rahnu service and customers' satisfaction. The finding of this study indicates the importance of Islamic pawn broking service in providing instant cash to overcome customers' financial needs. Islamic pawn broking also expected to ensure ease of borrowing to customers' when they were at the outlet, especially in terms of requirement to provide guarantor and credit scoring. Respondents also agree that facilities and locations that assessable are important for pawn broking to operate the business.

In terms of Syariah compliance this research identified a positive relationship with customers' satisfaction. Elements of usury and riba should be avoided in pawn broking (Ar-Rahnu) business. Nonetheless, terms and condition imposed by pawn broking companies should inline with Pawn brokers Act 1972 and Islamic Banking Act 1983. This to ensure that pawn shops are fully emphasize the Islamic concepts in it service. Hence, fraud elements in evaluating pledge item could be avoidable and the process is rather transparent in terms of evaluating the pledged item (marhun) value. In the event of customer does not turn up at maturity to redeem the pledged item, the pawnshop will sell the pledged items and the proceeds will be returned to the customer minus the storage fees, finance amount and cost of selling. This part is crucial because this reflects the beauty of Islamic principles as per Syariah compliant.

5.1 Limitation and Recommendation

The study also has limitation and challenges faced in the area being investigated while completing this research. This study cannot run from the limitations and constraints due to the shortage of references about Islamic pawn shop available in term of books, journals, quotations, comments and other related materials. Besides, previous research produced by the academicians, economists and journalists are also very limited in the library, online journal and any related institutions.

During the research process this study faced with limited information due to some of information are confidential and cannot be revealed and used in our research purpose. Furthermore, literature on pawn broking in Kelantan are limited and lacking of valuable information and data that supposedly can contribute to a better quality of research outcome and strengthen the evidence found in the research. One limitation is that this study involved only a small number of respondents. Finally this study has a time constrain that served as hindrance to accomplish the research successfully in a very limited time.

Future research may consider of studying the aforementioned in pawn broking business characteristics and to compare with conventional pawn broking business. Comparison also can be look in to customers' perception from experience when dealing with Islamic and conventional pawn broking. Future study also expected to employ qualitative methods to better understand any phenomenon about which little is yet known (Strauss and Corbin, 1990). This will be useful to gain more in-depth information of pawn broking business and revealing the dimensions of understanding that often remain untapped and may be difficult to convey quantitatively.

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WAQF ACCOUNTING DEVELOPMENT FOR GREATER TRANSPARENCY AND ACCOUNTABILITY OF WAQF INSTITUTIONS

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ABSTRACT

The revival of waqf institutions brings attention to the needs for accounting for waqf. Waqf can be referred to a charitable endowment that comes from an Arabic term and has no equivalent word in English. The purpose of waqf is to provide 'recurring charity' that benefit income flow to the needy continuously. Waqf Accounting is significant tool that may improve transparency and accountability of waqf institutions in Malaysia. The absence of guidelines or standards on accounting for waqf triggers the interest to examine the relevance of waqf accounting so that transparency and accountability of waqf institutions could be assured. This paper attempts to demonstrate the needs for the development of accounting standards and Statement of Recommended Practice for Charity (SORP) and AAOIFI (Accounting and Auditing of Islamic Financial Institutions) as a backbone for the framework. Thus, it is suggested that accounting is very useful means to discharge mutawalli's accountability in waqf administration and management.

Keywords: waqf, accounting for waqf, transparency, accountability, mutawalli.

Introduction to Waqf

Waqf is a private possssion or asset in any form that has been put under injunction from any form of transaction including sale, inheritance, hibah (grant) and wasiyyah (will) whilst its physical source (‘ain) remains intact and unchanged. From the Islamic point of view, endowment ownership is non-permanent because it has been entitiled to Allah SWT. to benefit all Muslims.

It is a sincere gift in the form of private possession to the state or person of authtority for the good of all Muslims as long as the wealth is used in compliance with Islamic requirements. Waqf property can contribute to the development of the sosio-economics of ummah like building, commercial projects such as business centers and social projects such as orphanage, caring centres and many others which it is not against the shari’ah or Islamic law.

As reported by Muslim from Abu Hurairah r.a. that Prophet (P.B.U.H.) said that “when a son of Adam dies, so does their deeds except for three things: lam giving or benefited knowledge or pious son who pray for them”. The Holy Al-Quaran in verse 2:261 Allah S.W.T. said: “The likeness of those who spend their wealth on Allah’s way is as the likeness of a grain which growth seven branches in every branch contains of hundred seed and remember Allah will give increase manifold to which he will and Allah is All Embracing and All Knowing”. Both supportive evidence and rewards to giver encourage Muslims commit to waqf.

There are two types of waqf. Firstly, Family Waqf (Waqf Ahli) which means that it is for immediate family members that include children, grandchildren etc. Secondly, charitable waqf (waqf khairi) that designated for charity purpose that can be classfied into two sub categories; namely general and special. For General Waqf Khairi, the wealth can be used as stated by the giver for any legal activity that benefits the community. For instance, when a person endowed a piece of land for charity. The endowment ownership which is known as Nazir Waqf has to govern the land in any form of development that could

provide benefits to the community without any ties to the types of charity or in the form of development itself. While the benefits sould be given to the community in any form of charity, so that the owenership will continuosly gain rewards. Whereas Special Waqf Khairi is a wealth specified by giver to be used for specific purpose and function. For instance, land for mosque, school, university, house, business centers etc.

Finally, one would see that the waqf practice among Muslims are very significant as it could benefit many people especially to the needy. The conception of reward to the waqf giver in getting blessing in this world or even in the Hereafter encourage them to inculcate the practice of waqf as per command in Islam. Therefore, to satisfy the giver of waqf asseta, roles of mutawalli as the trustee of waqf asset is very important to discharge the accountability in administration and management of waqf institution. For that reason, it triggers the interest of this study to examine the relevance of accounting standard for waqf as a device to enhance greater transparency and accountability of mutawalli, particularly waqf institutions.

Development of Accounting Practice for Waqf

During the Ottoman Empire, accounting in waqf institutions had been extensively practiced in managing awqaf institutions. Yayla (2007) discovered some evidence on the accounting practice in Sultan Suleyman Waqf of the Ottoman Empire. He scrutinized Ottoman's archieves and found that the bookkeeping process had been carried out at that time. Besides that, Yayla found evidence that accounting record was used to measure performance of waqf by the Sultan's commissioners. Although the preparation of recording is based on the conciousness and initiative of muitawalli, it is an appropriate way that could prevent the misuse of waqf asset.

Similarly, Toruman et. al. (2007) examined the accounting practice on waqf. They discovered the fact that from 1490 to 1928 accounting practice on waqf had been carried out using single entry in nature. However, the records showed that all information pertaining to the cash waqf management and administration like annual income of

properties, expenditures on daily, monthly and yearly basis as well as the increment of waqf assets of the year. Both studies have proven that accounting was used as a controlling device for waqf administration and management during the Ottoman Empire.

Looking at the current practice on accounting for waqf, the answer is inconsistent practice and vary report on waqf. Different waqf institution has its own accounting practice. Eventually, in Malaysia, this issus had been highlighed. Abdul Rahim et. al. (1999) investigated the accounting system used and administration practiced by State Islamic Religious Council (SIRC) in Malaysia. The telephone interviews with the officers of selected SIRCs in Malaysia was conducted. They found that there had lack of accounitng system for waqf assets, no detailed information about the waqf assets and unsystematic management of the assets. In fact, there was no written procedure of recording financial transaction relating to waqf assets. This study inferred that due to the lack of coordination on waqf institutions by federal authority in Malaysia, this phonomenon are being occured. Indeed, Abdul Rahim et. al. (1999) suggest that the establishment of waqf department which will coordinate waqf in Malaysia for the bettterment of the waqf management. In addition to that, the accounting procedures also should be improved to ensure internal control of waqf administration and management in Malaysia.

Siti Rokyah (2005) expanded the previous study by examining the financial reports to look at the level of waqf disclosure among the SIRC in Malaysia using primary and secondary methods. She mailed questionnaires to the relevant respondents in SIRC who involved directly in the administration and financial matters of waqf such as accountants or assistant accountants, accounts executives, administrative officers of waqf, finance officers and waqf clerks. This study also used secondary data from the SIRC's annual report to analyse the level of waqf disclosure. Sadly, even the study had carried out in 2004, the latest annual reports produced by SIRCs were majority for the year 2000 and 2001 whereas the rest vary from 1994 to 1997.

This study reveals that the status of producing annual report of SIRCs vary as majority of them had overdue and outdated annual reports. It showed that SIRCs had low level of disclosure in their annual report. Some of SIRCs reported higher level of disclosure as they have qualified accounting staff. They produced the latest annual report compared to the SIRCs which showed low level of waqf disclosure and outdated annual reports. The main limitation of Siti Rokyah's (2005) study also because majority of SIRCs did not provide separate account for waqf. For that reason, no information relating to waqf matters could not be found. In addition to that, that there was no guideline in preparing and maintaing waqf report. She suggests to have specific guideline of manual to maintain waqf assets and waqf reporting besides hiring of experienced accountants to ensure thay are able to maintain waqf accounting and reporting properly.

In 2006, Hisham conducted case study on accounting for waqf practice in State Islamic Religious Council (SIRC) in Malaysia. He examined the waqf administrative and management on accounting practice by comparing accounting practice in Malaysian Federal Territory SIRC with Statement of Recomemnded Practices for Charitable (SORP, 2005) in the UK. Hisham carried out his study using the combination of methodology such as interviews, observations and document review. Interestingly, he discovered that there was some improvement of waqf accounting in terms of bookkeeping at Federal Territory SIRC. But, there was no independent financial statement for waqf and no separation between different types of waqf was made. Hisham therefore, recomended that some accounting practices for waqf should be based on SORP, 2005 for the improvement of waqf accounting and reporting so that the accountability of waqf administrator (mutawalli) could be assured.

Accountability of Mutawalli

Many scholars or even practitioners claim that the phenomenon of dissimilarity of waqf accounting practices is due to the absence of accounting standards and code of good corporate governance for waqf. Ihsan (2007) suggested to set up accounting standards and code of good corporate governance for waqf because it could improve the

accountability of mutawalli in managing waqf. It is supported by Shahul (2007) whereby he reveals that it is necessary to learn the existing similar standard such as Statement of Recommended Practices for Charitable (SORP) 2005 for charity. Both of them agreed that the structure of SORP, 2005 is sophisticated and could encourages the trustee of charity (mutawalli) to be more accountable. Thus, developing the accounting standards for waqf is based on SORP model with some modification so that they are in line with Shari'ah (Islamic law). Alternatively, as far as Islamic institution is concerned AAOIFI's Statement of Financial Accounting would be useful and helpful to develop accounting framework and standards for waqf institutions.

The importance of accounting as a device to discharge mutawalli's accountability to many parties (Hisham, 2006; Ihsan, 2007 and Shahul, 2007) are supported by many scholars. Lewis (2006) stressed that the primary objective of an accounting system is to aid accountability. Those in charge of economic resources must give account of their stewardship, irrespective of whether the transactions and resources in question are those of a government organisation or a private sector entity. Whittington (1992) described accountability in terms of accounting by management either public or private to assist in the efficient allocation of resources by providing information for ex post monitoring of performance or for ex ante decisin making by those responsible for making investment decisions. The definition of accountability is very essential as a basis of performance measurement, evaluation and reporting (Cutt and Murray, 2000). Nevertheless, the understanding of accountability by mutawalli could be different which caused to the phenomenon of dissimilarity of waqf accounting and reporting. Sinclair (1995) claimed that if there is no clear consensus about accountability, the means to deliver it will vary. This issue call for study to assert what accountability in waqf like study done by Ihsan, 2007. He explored the major themes that constitute the basis of the accountability for waqf so that the types of information should be provided by mutawalli to various stakeholders are clearly defined. A Mithchell, Agle and Wood (MAW) model, 1997 was suggested in this study to explain the nature of waqf stakeholders.

The previous discussions give an insight that the construction of accountability in waqf institutions is very important, specifically the mutawalli's accountability. As waqf is a charitable and non-profit in nature as well as religious concerned, the basis of reporting and performance measurement is very crucial even subjective to define accountability. Haniffa (2001) views that the ultimate accounability in Islam is to Allah as all deeds will be counted on the Hereafter. Her justification is according to the verse of the Holy Quran, 2:284: "To Allah belongs all that is in the heavens and on earth, whether you show what is in your minds or conceal it, Allah will call you to account for it". This verse shows to us that rendering an account to discharge accountability is recognized as part of ibadah (servitude to Allah) and amal soleh (virtuos deeds) to acheive al-falah (benefit for the people in this world and the Hereafter (Haniffa, 2001).

Due to the nature of waqf as a charitable matter for social benefits, the idea of Cordery and Morley (2005) could be appropriate whom suggested the charity accountability model has speciffic characteristics unlike business entity. Sinclair (1995) defines accountability from managerial perspective as the requirement to those with delegated authority to be answerable for producing outputs or the use of resources to achieve certain ends. Generally, accountability focuses on the duty to provide account of the actions for which one is held responsible. This was supported by Cutt and Murray (2000) as they believed that formal definition of accountability presumes the existence of at least two parties, one who allocates responsiblity and one who accepts it with understanding to report on, account for, the manner in which it has been discharged. Al-Safi (1992) reminds that man-made definition of accountability is aimed to establish a certain material status for the individual and community. But, accountability in Islam (taklif) can be seen as everyone is accountable for their actions on the Day of Judgement.

Shahul (2000) indicates that the Islamic accountability is the most appropriate for waqf because the nature of waqf is based on the religious motivation and for the maslahah of ummah (public interest). Indeed, this paper summarises the accountability of mutawalli also is a dual accountability; as Allah's khalifah (vicegerent) all human beings are being

accountable for all resources entrusted to them as well as fulfilling any contract made between them.

In the context of accountabilty of waqf, a clear reporting from mutawalli will enable the interested users or stakeholders such as potential givers of waqf, NGOs, politicians, business community, academicians and Islamic Financial Institutions to ensure that the management of waqf assets is in line with Shari'ah law. Thus, Cajee (2007) recomended both shari'ah advisory board and shari'ah auditing should be implemented so that the resources and utilisation of waqf assets are not against the Islamic law. The various stakeholders could be discharged through Islamic accounting practice. Then, mutawallis should provide report to waqif, waqf board, beneficiaries and community.

Furthermore, relating to the information should be provided by mutawalli in annual report, it should be clearly defined to avoid dissimilarity practice in reporting. Cordery and Morley (2006) indicates that the identification of stakeholder's interest will assist mutawalli to provide relevant information to them. This conception could be useful to determine the types of information to be disclosed in waqf reporting. Nevertheless, in the context of accountability, it is more wider scope than accounting. Thus, to discharge accountability purpose both quantitative and qualitative of reporting should be considered. Quantitative reporting is concerned on the financial performance of waqf institution on how much is the acquiring of waqf assets and how much is being utilised and invested to develop the waqf asset. The later type of reporting is non-financial information which inform the users whether objectives are achieved and how is the progress of waqf programs.

As waqf has some similarities with charitable organisation cited by Hayes in Cordery and Morley, 2005, there are four types of accountability in charity bodies; Fiscal Accountablity – to make sure that the money has been spent as agreed and according to the appropriate rules, Process Accountability – to ensure that proper procedures has been followed to provide value for money, Program Accountability – to ensure that institution is effective in achieving its objective and finally Accountability for Priorities – to fulfill

the needs of users appropriately. Since the types of information needs by stakeholders to satisfy them and accountability of mutawalli have been clearly identified, finally this could assist waqf institution to discharge accountability of mutawalli.

Roles of Federal Government to Enhance Transparency and Accountability of Waqf Institutions

The Honorable Dato' Seri Abdullah Ahmad Badawi the Former of Prime Minister of Malaysia in the Ninth Malaysia Plannings, Pages: 39 – 40, cited that "In addition, steps will be taken to enhance the capital resources of bumiputra, like land and awqaf assets under the management of the State Islamic Religious Councils (SIRC). These State Religious Councils should fulfill Fardhu Kifayah obligation and play an active role in the economic development of the muslim ummah and help in the development of human capital."

As a result, Ministry of Prime Minister Department established Department of Awqaf, Zakat and Hajj (Jabatan Waqaf, Zakat dan Haji or synonym as JAWHAR) was set up in 2004 with the objectives of improving the management of Muslim wealth in the forms of awqaf, zakat, mal and hajj. However, it does not replace or take over the roles and functions of the State Islamic Council but merely complements the functions and roles of the body in order to further strengthen the institutions of awqaf, to benefit Muslims. The roles at Federal level is very important to ensure the management and administration of awqaf properties is in order, systematic and effective (Hisham, 2006 and Shahul, 2007). The effectiveness of service delivery system towards an excellent level by reinforcing the awqaf institutions.

JAWHAR also aims to improve accountability of waqf institutions. Planning, coordination and implementation of policies and development programs of awqaf institutions particularly the State Islamic Religious Council (SIRC) and effectively monitored for the progressive development of ummah. Yet, the important tool to achieve the objective of JAWHAR is reporting as a tool to measure the performance and indeed

accounting for waqf also must be set up as guidelines and it must enforced and monitored at Federal Level.

Benefits of the Development of Accounting for Waqf

Many agree that accounting is the most appropriate means to enhance greater transparency and accountability of waqf institutions. Thus, several ways must be taken to formulate regulatory, governance, accounting and reporting standards for waqf institutions with the involvement of the Accounting and Auditing Organisations for Islamic Financial Instituions (AAOIFI), International Financial Services Board (IFSB) and Islamic Rating Agency (IRA) so does to Malaysian Accounting Standard Board (MASB) could adopt them. If the waqf institutions could enhance its transparency and accountability, this could bring together waqf Institutions along with the economic growth in Malaysia by promoting and strengthening the institutions. Perhaps, the development of waqf investments according to a set of criteria and laying down specific guidelines could assure the stability of waqf institutions.

In addition to that, another way to enahance the accountability of waqf institution is to establish a Professional Code of Conduct and a Code of Ethics for Mutawallis/Trustees, Management and other full time and volunteer workers of the waqf financial industry including Malaysian Institute of Corporate Governance (MICG) roles for the Boards as well as an accreditation authority to enforce such professional codes. A Shari'ah Advisory Council also must be established to provide Waqf Institutions with the necessary expertise on Shari'ah compliance and related issues. Consequently, it could assist to built capacity in the region for local Waqf Institutions and finally government, particularly JAWHAR could open dialogue with Malaysian Institute of Accountants (MIA) in order to facilitate systems and enabling legislation for the creation and regulation of waqf to develop the accounting standard for waqf.

Conclusion

This paper demonstrates the issue of waqf accounting to discharge the accountability of mutawalli. It is believed that accounting could improve the best practice in waqf institutions. The absence of accounting standards for waqf is the main reason of dissimilarity of waf accounting practice, besides no clear definition on accountability. An Islamic dual accountability is the most suitable element to elaborate the accountability in waqf institutions. Accountability and mutawalli cannot be separated as mutawalli should discharge his accounability to various stakeholders like waqif, waqf board, NGOs and beneficiaries. Quantitative and qualitative of report should be disclosed to satifsy the needs of various stakeholders. Accounting provides the financial matters of disclosures, thus accounting standard is necessary to overcome the dissimilarity of accounting practice for waqf. The roles of government especially at Federal level should be played to reinforce the waqf institutions.

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PERFORMANCE OF ISLAMIC UNIT TRUST DURING THE GLOBAL FINANCIAL CRISIS: AN ANALYSIS OF FUND SPECIFIC CHARACTERISTICS

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Abstract

Purpose - This study analyzes the impact of the recent global financial crisis on the performance of the Islamic unit trust funds. In particular, the study aims to examine the performance of the Islamic unit trusts based on the fund-specific characteristics, namely the fund management company's ultimate parent

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ownership of local *versus* international companies, and Muslims *versus* non-Muslims fund managers.

Design/methodology/approach – The paper evaluates the performance of 33 Malaysian Islamic unit trusts based on the adjusted Sharpe index, adjusted Jensen Alpha index, and Treynor index over the period from January 2000 to December 2009.

Findings - The findings reveal that the Islamic unit trusts are comparable to that of the market. Major findings of the study reveal that the Islamic unit trusts perform better during the crisis period. Fund management companies having foreign parent origins are shown to perform better than those having local parent origins. The results of the study also reveal that the Islamic unit trusts managed by the non-Muslim managers have better performance than those managed by the Muslim managers.

Originality/value – The paper provides the latest evidence on the performance of the Islamic unit trust funds during the global financial crisis as well as the first evidence on the effects of the origins of the ultimate parent of the fund management companies and type of fund managers on the performance of the Islamic unit trust.

Keywords - Islamic finance, Islamic unit trust, Fund management, Performance, Malaysia

Paper type - Research paper

1. INTRODUCTION

Unit trust is defined as a set of investment vehicle that pulls investors money with the similar goals to buy a set of portfolio which contains several types of securities. The securities include stocks, bonds, money market instruments, and a combination of these investments, or even other funds which is held under a portfolio. Unit trusts are also known as open-end funds since the shares from the shareholders are required to be bought back at any time at a price based on the current net asset's value (Mobius, 2007). Although all investors have common objectives of buying the portfolios, each investor has different preference of risk and return which will therefore lead to having many different set of portfolios. The portfolios are sold and managed by the financial intermediaries known as the unit trust management companies with the supervision of the appointed trustees who besides owning the trust's assets, will ensure the manager's compliance with the Trust Deed on behalf of the investors (Hassan and Lewis, 2007).

Despite having the same investment objectives, investment in the Islamic unit trusts are subject to certain criteria with the aim to be in line with the requirements of the *shariah*. In particular, investment of Islamic unit trusts are prohibited in the activities, products or services which involved in financial services based on interest (*riba'*), gambling, alcoholic drinks, *gharar* such as conventional insurance, pork, and immoral services like prostitution. After complying with the above criteria, companies must go through another two screening process decided by the *shari'ah* board or *shari'ah* council (SC). For example, investments in Islamic unit trust in Malaysia are subjected to quantitative and qualitative screening. The quantitative screening is done by screening the company's liquidity, interest income, leverage, and the total income from non-

permissible activities to be compared with the benchmarks set by the SC. Any companies which exceed even one of the maximum limits of the benchmarks is considered as non-*Shariah* compliant and will be dropped out from this stage. If the companies are able to pass through the quantitative stage, they will proceed to the next screening stage which is the qualitative screening. In this screening methodology, companies will be evaluated based on their image or public perception on the companies. The companies' securities will then be approved as permissible to be invested based on the importance of the companies to the *ummah*, *uruf* (custom), *umum balwa* (common plight), rights of non-Muslims and other factors as well.

Regulations pertaining to the Islamic unit trust industry in Malaysia were initiated in 1997 when the Malaysian Securities Commission introduced the requirement of setting up a *shari'ah* committee in a fund management company if it wants to issue any Islamic unit trust funds under the additional provision of Guidelines on Unit Trust Funds. The *shari'ah* committee must also be approved by the Securities Commission's *Shari'ah* Advisory Council before they can officially be appointed. With the enabling environment provided by the government, the Islamic unit trust industry continues to record an encouraging performance. As at 31st October 2009, there were a total of 145 Islamic-based funds or 26 percent out of the total of 561 approved funds. This is a commendable performance if compared with the total of Islamic-based funds ten years ago of only 17 Islamic funds or 13 percent out of the total of 127 approved funds at end 2000. Similarly, the total NAV of the Islamic funds has increased significantly to over RM21 billion as at end of October 2009 from RM1.7 billion as at end of December 2000 (Securities Commission of Malaysia, 2009).

The rapid growth of the Islamic unit trusts industry, to a certain extent, has also contributed by the increasing investors' interests on the Islamic finance industry following the recent global financial crisis. Dented investors' confidence due to the prolonged doldrum in the conventional financial market has resulted in increased demand for Islamic financial products as viable alternatives. Amid the increasing interests on the Islamic financial products, there is a pressing need for more information about this nascent field so as to have better understanding on deeper aspects of the industry. Among others, the topic of Islamic unit trusts has captured the interest of researchers and industry-players alike.

This study aims to analyze how specific unit trust funds' characteristics influence the funds' performance during the recent global financial crisis. Specifically, the study attempts to meet three objectives. First, to analyze the performance of the Malaysian Islamic unit trust during the non-crisis, up-market and during the global financial crisis; second, to examine whether the type of the ultimate parent origins of the fund management companies either it is from local or foreign countries have any effect on the performance of the unit trust; and third, to examine whether the type of fund managers either the Muslim or non-Muslim managers have any effect on the performance of the unit trust.

Results of this study are expected to contribute to the literature since it provides an updated analysis on the performance of the Islamic unit trusts, equip the investors with new information on the importance of selecting the fund management companies before making an investment decision, and the empirical evidence of this study presents new perspectives on the importance of the type of fund managers to the funds' performance.

This study is organized as follows. The second section discusses on the literatures on unit trust based Malaysian and Islamic evidences. The third section focuses on the data and methodology, followed by section four which explains the results and analysis of the study. The final section concludes the study and highlights the implications and directions for future research.

2. LITERATURE REVIEW

Studies on unit trusts performance have look at the issue from several dimensions. Annuar and Shamser (1995) estimate the performance of 54 unit trust funds covering the period from 1988 to 1992. Their findings indicate that the returns on investment in the unit trust are well below the risk-free and market returns. Tan (1995) examines 21 unit trusts funds over a ten-year period from 1984 to 1993. He finds that the unit trusts perform worse than the market portfolio. Wan Haslan (1999) conducts a study on 33 equity unit trust funds from the period of January 1983 to June 1998. The results reveal that most of the time, the unit trusts are underperforming the market. It also indicates that the external unit trusts managers of fund management companies have better performance than the internal manager of fund management companies. The study also documents that long serving managers of unit trusts in fund companies are able to perform better than short serving managers, and foreign unit trust managers have better performances than the local unit trust managers.

Similar findings were reported by Fauziah and Mansor (2007) who analyze 110 unit trusts funds over the period from January 1990 to December 2001. The findings

reveal that unit trusts are unable to perform well than the market over the period of study except for during the 1997-1998 crisis where the unit trust market adjusted returns are positive. Low (2007) on the other hand examines 40 Malaysian unit trust funds monthly data for the period of five years from January 1996 through December 2000. Using KLCI and EMAS Index in examining the sensitivity of fund performance to different benchmark, the study reveals that all the funds show negative overall performance regardless of the benchmarks use as the previous findings. However, the EMAS Index movements seemed to be tracked better by all the sample funds and have stronger correlation with the funds return compared to the KLCI.

On the contrary, Leong (1997) and Ch'ng and Kok (1998) obtained results which are in favor of the fund managers. Leong (1997) conducts a study on 13 unit trusts covering the period from January 1992 to December 1996. The result reveals that most of the unit trusts are able to outperform the market portfolio during the study period. Likewise, Ch'ng and Kok (1998) analyze 34 unit trusts from the period of January 1991 to June 1997. The findings show that the funds perform better than the market over the whole period. In terms of degrees of portfolio diversification, some studies including by Annuar and Shamser (1995) show that Malaysian unit trusts have low degrees of diversification since the average diversification is only 37 percent which is below their expectation in the study. Somehow, contradict results on portfolio diversification are obtained by Tan (1995) and Ch'ng and Kok (1998) where it shows that the funds are well diversified and unchanged even during the period where the market was declining.

Existing studies on the Islamic unit trusts included that of Elfakhani, Hassan and Sidani (2005) which examine 46 Islamic unit trusts from various categories covering the

period from January 1997 to August 2002. The findings indicate that majority of the Islamic unit trusts are able to outperform their benchmarks and have better performance during the recession period. Similar results are obtained by Hayat (2006) who conducts a study on 59 Islamic equity unit trust funds worldwide from the period 2001 to 2006. The results show that Islamic funds significantly outperform both the Islamic and conventional benchmarks during the bear market in 2002.

Consistent findings with Elfakhani et al.(2005) and Hayat (2006) are attained by Ferdian and Dewi (2007) when they compare the performance of the Islamic unit trusts in Indonesia and Malaysia. Using daily data for the period between October 2005 to April 2007 for a total of 25 Indonesian and Malaysian Islamic unit trusts, the study finds that Malaysian Islamic unit trusts have better performance than the Indonesian Islamic unit trusts and that the Islamic unit trusts are able to outperform the market benchmark. Ferdian and Dewi (2009) expand their studies to see the affect of global economic crisis to the Islamic unit trusts performance by using the daily return which covered the date between January 2006 to April 2009 of 24 Indonesian and Malaysian Islamic unit trusts. Consistent with their previous result, the study also conclude that the Islamic unit trusts are proven to be among the best investments because of the rising returns as well as the outperforming evidence over the market during the global economic crisis.

Despite this, different results are obtained by Fikriyah, Taufiq and Shamser (2007) when they examine the performance of 65 Malaysian unit trusts, of which 14 are Islamic unit trusts covering from January 1992 to December 2001. The findings reveal no difference in terms of performance between the unit trusts group and both were underperforming the market. However, the study finds that Islamic unit trusts have better

performance than the conventional unit trusts during the crisis and post crisis period while the conventional unit trusts outperform the Islamic unit trusts during the pre-crisis period. Likewise, Abderrazak (2008) re-investigates Elfakhani et. al's sample and finds that there is no significant performance difference between the Islamic and ethical funds and that both funds are unable to outperform the market benchmark in the study.

Hoepner, Rammal, and Rezec (2009) do a broad study on 291 Islamic unit trusts from twenty countries starting from September 1990 to April 2009. The study reveals that Islamic unit trusts appear to trail their equity market benchmark returns due to the fact that it has limited investments opportunity based on the *Shari'ah* restrictions. Consistent with Fikriyah et al. (2007), the findings also indicate that Islamic funds exhibit a hedging function during the global market crisis and are shown to be less affected by the international financial crisis due to the fact that they have *Shari'ah* law restrictions. Abdul Ghafar and Mohd Saharudin (2003) examine the relationship between return and beta for 12 Islamic unit trusts from the period of 1 May 1999 to 31 July 2001. It is reported that there is a significant positive relationship in up-markets and a significant negative relationship in down-markets. The results also reveal that beta is higher in a down-market than in an up-market based on the adjusted-R^2 and standard error of the conditional relationship between returns. A latest study on Islamic unit trust was done by Md Saad et al. (2010) on the performance of conventional vs. Islamic unit trust companies in Malaysia over the period 2002 to 2005. Using 27 unit trust companies in Malaysia of which five are Islamic unit trust companies, the results reveal that on average, some of the Islamic unit trust companies have better performance than their conventional

counterparts. Interestingly, it is also reported that an increasing size of unit trust companies leads to inefficiencies in performance.

Despite its tremendous growth and development, studies on the Islamic unit trust are still insufficient compared to its conventional counterpart. Most of the studies on the Islamic unit trust cover its performance against a selected benchmark, while others focus on its comparative performance vs. conventional unit trust or its performance among different countries. There is still lack of evidence on the factors that actually might affect the Islamic unit trust performance such as the fund size, management fees, types of manager, as well as the type of fund management companies. Therefore, this study intends to fill the gap by investigating the characteristics that might influence the performance of Islamic unit trust in Malaysia.

3. DATA AND METHODOLOGY

By focusing on the Malaysian Islamic equity unit trust funds, further categorization is made based on the funds' ultimate parent company ownership (local or international) and the funds' managers (Muslim and non-Muslim). The sample considered in the study consists of 33 Islamic unit trust funds. The selections of these funds are strictly due to data availability over the stipulated sample period.

The monthly returns of the unit trusts are adjusted for dividends and bonuses distributed to unit holders are taken from the period of January 2000 to December 2009. During this period, the Malaysian equity market has been affected by various developments in the economy. To reflect the developments and changes, the sample

period is split into three sub-periods which is the non-crisis period (January 2000-December 2004), up-market period (January 2005-June 2007), and during the crisis period (July 2007-December 2009). Apart from the Islamic unit trusts, the FTSE Bursa Malaysia EMAS Shariah Index is used as the market benchmark for the returns on the market portfolio and the three-month Malaysian Treasury bill served as the risk-free rate benchmark. This would allow for the comparison of the performance of the Islamic unit trusts against the equity market and risk-free rate performances.

3.1 Measurement of performance

The returns on the unit trust funds are obtained from income and the capital gain. The rate of returns for each fund is calculated as follows:

$$R_{i,t} = \frac{NAV_t - NAV_{t-1} + D_t}{NAV_{t-1}}$$

where: $R_{i,t}$ = Rate of return of the *i* unit trust at time *t*, NAV_t = Net Asset Value at time *t*, NAV_{t-1} = Net Asset Value one period before time *t*, D_t = Dividend or cash disbursement at time *t*.

In this study, three standard methods namely the Sharpe's index, Treynor's index, and Jensen's Alpha index are employed to evaluate the performance of Islamic unit trust funds. However, Sharpe index was found to have some biasness and Jobson and Korkie (1981) have modified the Sharpe index to become the adjusted Sharpe's index. Therefore, this study adopts the Adjusted Sharpe Index which is as followed:

$$AS_i = \frac{S_i \times N}{N + 0.75}$$

where: AS_i = Adjusted Sharpe measure for fund i, S_i = Sharpe Index measure for fund i, N = number of observations.

Treynor (1965) developed the first measured of portfolio performance that included risk. The Treynor Index focuses on the portfolio's undiversifiable risk known as the systematic risk and measured by beta. The Treynor measure can be explained by:

$$T_i = \frac{R_i - RFR}{\beta_i}$$

where: T_i = The Treynor measure for fund i, R_i = Average return for fund i, RFR = Average return on a risk free investment, β_i = The systematic risk or beta for fund i.

The Jensen Index was developed by Jensen (1968) based on the capital asset pricing model (CAPM). Again, this measurement was modified by Jobson and Korkie (1984) due to biasness and was named the Adjusted Jensen Index which is also applied in this study:

$$AJ_i = \frac{\alpha_i}{\beta_i}$$

where: α_i = Alpha or the Jensen measure for fund i, β_i = The systematic risk or beta for fund.

3.2 Measurement of diversification

The R^2 coefficient of determination is used to measure the degree of diversification of the fund relative to the diversification of the market portfolio. The R^2 coefficient can be explained as follows:

$$R^2 = \frac{\text{Sum of squares regression}}{\text{Total sum of squares}} = \frac{\text{SSR}}{\text{SST}}$$

where: n = number of observations, $\hat{y}_i$ = Estimated value of the dependent variable for each value of the independent variable, and $\bar{y}$ = average value of the dependent variable.

$$\text{SSR} = \sum_{i=1}^{n} (\hat{y}_i - \bar{y})^2$$

$$\text{SST} = \sum_{i=1}^{n} (y_i - \bar{y})^2$$

where: n = number of observations, y_i = *i*th value of the dependent variable, $\bar{y}$ = average value of the dependent variable.

4. FINDINGS AND ANALYSIS

4.1 Performance of Islamic Unit Trusts

The performance of the Islamic unit trusts during the specified sub-periods is assessed based on the risk-adjusted return using three performance measurements, namely the Treynor's Index, Adjusted Jensen's Alpha Index, and Adjusted Sharpe's Index. Subsequently, the performance of the individual Islamic unit trusts during the specified sub-periods is analyzed based on the Adjusted Sharpe's Index only.

Risk-adjusted Returns of Islamic Unit Trust Funds

Table 4.1 presents the comparative performance analysis between the Islamic unit trusts with the market portfolio over a 10-year period based on the Treynor's Index (TI), Adjusted Jensen's Alpha Index (AJI), and Adjusted Sharpe Index (ASI) by sub-periods. For the whole sample period, 34.72 percent of the Islamic unit trusts perform better than the market in terms of the TI and AJI. The result is higher based on the ASI as more than half of the Islamic unit trusts (51.39 percent) are able to outperform the market. Averaging across measures, for the overall sample, 40.28 percent of the Islamic unit trusts perform better than the market index.

In the non-crisis sub-period, 30 percent of the Islamic unit trusts are able to outperform the market portfolio based on the TI and ASI. A relatively lower result is seen based on the AJI as only 10 percent of the Islamic unit trusts or one Islamic unit trust is able to do well compared to the market. This brings to the lowest average of Islamic unit trust outperforming the market amongst other sub-periods since only 23.33 percent of the Islamic unit trusts perform better during this period.

The results in the up-market sub-period show that all the Islamic unit trusts outperform the market portfolio when it is measured using the ASI. However, when it is analyzed based on the AJI, none of the Islamic unit trusts seemed to perform better than the market and only 27.59 percent of the Islamic unit trusts are able to do well than the market when it is measured using the TI. Therefore, on average, 42.53 percent of the Islamic unit trusts are able to outperform the market portfolio during this sub-period.

During the crisis sub-period, it can be observed that the Islamic unit trust yielded contradictory results compared to the results that of in the up-market sub-period. Evidently, majority of the Islamic unit trusts or 72.73 percent are able to perform better

than the market during the crisis based on the AJI compared to the ASI of only 15.15 percent. The low result of the ASI could be due to the highest standard deviation obtained during this period than the rest of the sub-periods as the ASI includes the standard deviation as part of its measurement. The percentage of the Islamic unit trust outperforming the market based on the TI increases to 42.42 percent compared to only 27.59 in the up-market sub-period. It is also shown that the highest average of the Islamic unit trust outperforming the market is recorded in this sub-period with 43.43 percent of the Islamic unit trusts are able to perform better than the market portfolio.

Table 4.1

Performance of Islamic unit trusts against the market by sub-periods

Period	Treynor's Index	Adjusted Jensen's Alpha Index	Adjusted Sharpe Index
(1) Whole sample (January 2000 to December 2009)			
Total Number of Samples	72	72	72
No. of funds outperform FBMS	25	25	37
% of funds outperform FBMS	34.72	34.72	51.39
(2) Non-crisis (January 2000 to December 2004)			
Total Number of Samples	10	10	10
No. of funds outperform FBMS	3	1	3
% of funds outperform FBMS	30.00	10.00	30.00
(3) Up-market (January 2005 to June 2007)			
Total Number of Samples	29	29	29
No. of funds outperform FBMS	8	0	29
% of funds outperform FBMS	27.59	0.00	0.00
(4) During crisis (July 2007 to December 2009)			
Total Number of Samples	33	33	33
No. of funds outperform FBMS	14	24	5

% of funds outperform FBMS	42.42	72.73	15.15

Note. FBMS = FTSE Bursa Malaysia EMAS Shariah Index

4.2 Performance of Individual Islamic Unit Trusts

Table 4.2 (i, ii, iii, iv) exhibit the findings for each of the Islamic unit trust for all sub periods. The analysis on the risk-adjusted returns of the individual Islamic unit trusts will be based on the Adjusted Sharpe Index (ASI), while the R^2 coefficients' only will be use as a measurement of the funds diversification. Any funds having R^2 more than 0.5 are funds which are well diversified while funds having R^2 less than 0.5 are concluded to be less diversified funds. In this section, we will discuss the detailed findings of each of the MIUT fund. A few abbreviations are used in this section as follows:

i. Islamic unit trusts managed by Muslims fund managers with local ultimate parent origins (PM/LC).
ii. Islamic unit trusts managed by non-Muslims fund managers with local ultimate parent origins (PN/LC).
iii. Islamic unit trusts managed by Muslims fund managers with foreign ultimate parent origins (PM/FC).
iv. Islamic unit trusts managed by non-Muslim fund managers with foreign ultimate parent (PN/FC).

Risk-adjusted Returns of Individual Islamic Unit Trust Funds

On average, during the 10-year period, only the top three in the ASI ranking which are the CIMB Islamic Equity Fund, the ING Ekuiti Islam, and the MAAKL Al-Faid are able

to outperform the overall market portfolio return of 0.46 percent. The ING Ekuiti Islam managed by the non-Muslim manager with foreign ultimate parent origin seemed to have the best performance with the first ranking in ASI. Despite this, the ASM Syariah Aggressive Fund managed by the Muslim manager with local ultimate parent origin, have the worst performance with the last ranking in ASI.

In the non-crisis sub-period, the non-Muslim manager with local ultimate parent origin whom manage the Public Ittikal Fund, perform the best with the first ranking in ASI. Besides the Public Ittikal Fund, only two funds which are the ASM Syariah Aggressive Fund and the AUTB Dana Bakti managed to outperform the market portfolio return. Nevertheless, the ASBI Dana Al-Mubin managed by a Muslim manager with local ultimate parent origin BIMB Investment, become the worst performer with the highest negative return of 8.93 percent and ranked the last based on the ASI during this period.

All of the funds during up-market sub-period are reported to have positive ASI performance over the market return regardless of the fund management company and the type of management. Here, the ING Ekuiti Islam managed by the non-Muslim manager with foreign ultimate parent origin become the top performer in the ASI ranking and have the highest return as well as a huge different of almost 48 percent with the market return. The CIMB Islamic Small Cap Fund managed by the Muslim manager with foreign ultimate parent origin, is seen to have the lowest ranking in the ASI but yet is still outperforming the market portfolio return during this period.

On the contrary to the up-market sub-period, only five out of 33 MIUT funds in the during crisis sub-period which are the CIMB Islamic DALI Equity Growth Fund, the

CIMB Islamic Equity Fund, the HwangDBS AIIMAN Growth Fund, the Public Islamic Opportunities Fund and the TA Islamic Fund are able to outperform the market return of negative 0.27 percent. TA Islamic Fund managed by the Muslim manager with foreign ultimate parent origin obtained the best performance in the ASI ranking. Surprisingly, the ASM Syariah Aggressive Fund who was one of the top three performers in the normal sub-period obtained the lowest performance in the ASI ranking with a negative return of 30 percent.

Diversification of Individual Unit Trust Funds

On average during the 10-year period, majority of the funds or almost 92 percent of the funds are shown to be well diversified with R^2 coefficients from 0.5 to 1. The highest ranking of R^2 is obtained by the Prudential Dana Al-Ilham which is managed by the non-Muslim manager with foreign ultimate parent origin having almost 98 percent of fund's diversification. On the other hand, the Amanah Saham Wanita managed by the non-Muslim manager with local ultimate parent origin has the lowest ranking of R^2 with diversification of only 37 percent.

In the non-crisis sub-period, all the Islamic unit trusts have greater than 0.5 R^2 coefficients which mean that all of them have well diversified portfolio. The first ranking of R^2 coefficient is achieved by ASM Syariah Aggressive Fund which is managed by the Muslim manager with local ultimate parent origin having funds diversification of almost 76 percent. Despite this, the CIMB Islamic DALI Equity Growth Fund managed by the Muslim manager with foreign ultimate parent origin, has the lowest diversification of

almost 54 percent. However, the diversification level is still better since the R^2 is more than 0.5 or 50 percent.

In the up-market sub-period, 25 out of the 29 funds have well diversified portfolio with the R^2 coefficients of more than 0.5. On the contrary to the normal sub-period where it became the lowest performer, the CIMB Islamic DALI Equity Growth Fund obtained the highest R^2 coefficients of almost 0.95 or 95 percent of diversification during this period. Meanwhile, the lowest R^2 coefficient is obtained by the Amanah Saham Wanita managed by the non-Muslim manager with local ultimate parent origin.

During the crisis sub-period, only two out of the 33 Islamic unit trust funds are less diversified during this period. The Prudential Dana Ilham managed by the non-Muslim manager with foreign ultimate parent origin achieved the highest fund R^2 coefficient of almost 0.98 or 98 percent of fund's diversification. Nevertheless, the PB Islamic Equity Fund managed by the non-Muslim manager with local ultimate parent origin, have the lowest R^2 ranking with 41.6 percent of fund's diversification.

Table 4.2 (i)

Summary of Results for Individual Islamic Unit Trust for Whole Sample Data (January 2000 to December 2009)

Fund Mgt	Type Of Mgt	Period	Unit Trust Fund	Average Monthly Return	R^2	R^2 Ranking	Sharpe Index	Adjusted Sharpe Index	Unit Trust Ranking
Alliance	PM/LC	**2**	Alliance Dana Adib	0.0160	0.8621	20	0.3897	0.3893	5
Investment	PM/LC	**3**	Alliance Dana Adib	-0.0022	0.9466	5	-0.1130	-0.1129	63
Amanah	PM/LC	**2**	AMB Dana Yakin	0.0087	0.8436	25	0.2471	0.2468	16
Mutual	PM/LC	**3**	AMB Dana Yakin	-0.0036	0.9368	7	-0.1531	-0.1529	66
AmInvestment	PM/LC	**1**	AmIttikal	-0.0016	0.5808	61	-0.0742	-0.0741	56
	PM/LC	**2**	AmIttikal	0.0072	0.8877	16	0.1371	0.1370	27
	PM/LC	**3**	AmIttikal	0.0010	0.8647	19	-0.0311	-0.0311	47
Apex	PM/FC	**2**	Apex Dana Al-Sofi-I	0.0132	0.8310	27	0.2943	0.2940	11
Investment	PM/FC	**3**	Apex Dana Al-Sofi-I	0.0009	0.7981	29	-0.0358	-0.0358	49
Asia	PM/LC	**1**	AUTB Dana Bakti	0.0025	0.7131	45	0.0075	0.0075	36
Unit Trust	PM/LC	**2**	AUTB Dana Bakti	0.0076	0.8384	26	0.1818	0.1817	22
	PM/LC	**3**	AUTB Dana Bakti	-0.0061	0.9303	9	-0.2225	-0.2223	69
Market Portfolio			FTSE Bursa Malaysia EMAS Shariah Index (FBMS)	0.0046					

Note. Mgt = Management, R^2=R-squared coefficients, 1 = Normal sub-period, 2 = Up-market sub-period, 3 = During crisis sub-period

Table 4.2 (i)- Continued

Fund Mgt	Type Of Mgt	Period	Unit Trust Fund	Average Monthly Return	R^2	R^2 Ranking	Sharpe Index	Adjusted Sharpe Index	Unit Trust Ranking
Asia	PM/LC	**1**	AUTB Dana Bakti	0.0025	0.7131	45	0.0075	0.0075	36
Unit Trust	PM/LC	**2**	AUTB Dana Bakti	0.0076	0.8384	26	0.1818	0.1817	22
	PM/LC	**3**	AUTB Dana Bakti	-0.0061	0.9303	9	-0.2225	-0.2223	69
ASM	PM/LC	**1**	Dana Bestari	-0.0013	0.6770	47	-0.0764	-0.0763	57
Investment	PM/LC	**1**	Dana Al Aiman	0.0014	0.6740	49	-0.0189	-0.0188	42
	PM/LC	**1**	ASM Syariah Aggresive Fund	0.0031	0.7573	35	0.0187	0.0186	32
	PM/LC	**1**	ASM Dana Mutiara	0.0021	0.7547	37	-0.0020	-0.0020	38
	PM/LC	**2**	Dana Bestari	0.0065	0.4019	71	0.1269	0.1268	28
	PM/LC	**2**	Dana Al Aiman	0.0077	0.5812	60	0.1699	0.1697	24
	PM/LC	**2**	ASM Syariah Aggresive Fund	0.0074	0.7640	34	0.1724	0.1723	23
	PM/LC	**2**	ASM Dana Mutiara	0.0097	0.8845	18	0.2458	0.2456	17
	PM/LC	**3**	Dana Bestari	-0.0038	0.7454	40	-0.1490	-0.1489	64
	PM/LC	**3**	Dana Al Aiman	-0.0009	0.7255	42	-0.0982	-0.0981	62
	PM/LC	**3**	ASM Syariah Aggresive Fund	-0.0126	0.9109	11	-0.3018	-0.3016	72
	PM/LC	**3**	ASM Dana Mutiara	-0.0090	0.8851	17	-0.2645	-0.2643	70
Avenue	PN/LC	**2**	Amanah Saham Wanita	0.0122	0.3714	72	0.0742	0.0742	29
Invest	PN/LC	**3**	Amanah Saham Wanita	-0.0033	0.5849	59	-0.1508	-0.1507	65
Market Portfolio			FTSE Bursa Malaysia EMAS Shariah Index (FBMS)	0.0046					

Note. Mgt = Management, R^2=R-squared coefficients, 1 = Normal sub-period, 2 = Up-market sub-period, 3 = During crisis sub-period

Table 4.2 (i) - Continued

Fund Mgt	Type Of Mgt	Period	Unit Trust Fund	Average Monthly Return	R^2	R^2 Ranking	Sharpe Index	Adjusted Sharpe Index	Unit Trust Ranking
BIMB	PM/LC	**1**	ASBI Dana Al-Mubin	-0.0015	0.6691	50	-0.0894	-0.0893	60
Investment	PM/LC	**2**	ASBI Dana Al-Mubin	0.0086	0.9100	12	0.1856	0.1855	20
	PM/LC	**2**	ASBI Dana Al-Falah	0.0130	0.4796	68	0.2506	0.2504	14
	PM/LC	**3**	ASBI Dana Al-Mubin	0.0008	0.7915	30	-0.0419	-0.0419	53
	PM/LC	**3**	ASBI Dana Al-Falah	0.0019	0.5255	66	-0.0177	-0.0177	41
CIMB-Principal Asset	PM/FC	**1**	CIMB Islamic DALI Equity Growth Fund	0.0016	0.5395	64	-0.0140	-0.0140	39
	PM/FC	**1**	CIMB Islamic Equity Aggressive Fund	0.0004	0.7251	43	-0.0376	-0.0375	50
	PM/FC	**2**	CIMB Islamic DALI Equity Growth Fund	0.0141	0.9491	4	0.3250	0.3247	9
	PM/FC	**2**	CIMB Islamic Equity Aggressive Fund	0.0128	0.5429	63	0.2587	0.2585	13
	PM/FC	**2**	CIMB Islamic DALI Equity Fund	0.0179	0.8580	21	0.4429	0.4425	4
	PM/FC	**2**	CIMB Islamic Small Cap Fund	0.0038	0.6132	57	0.0373	0.0373	31
	PN/FC	**2**	CIMB Islamic Equity Fund	0.0171	0.9153	10	0.4727	0.4723	3
	PM/FC	**3**	CIMB Islamic DALI Equity Growth Fund	0.0032	0.9619	2	0.0159	0.0159	33
	PM/FC	**3**	CIMB Islamic Equity Aggressive Fund	-0.0021	0.6632	52	-0.0710	-0.0709	55
	PM/FC	**3**	CIMB Islamic DALI Equity Fund	0.0015	0.7704	33	-0.0159	-0.0159	40
	PM/FC	**3**	CIMB Islamic Small Cap Fund	-0.0023	0.7767	32	-0.0777	-0.0776	58
	PN/FC	**3**	CIMB Islamic Equity Fund	0.0029	0.7780	31	0.0078	0.0078	35
	PM/FC	**3**	CIMB Islamic Asia Pacific Equity Fund	0.0011	0.5797	62	-0.0190	-0.0190	43
Market Portfolio			FTSE Bursa Malaysia EMAS Shariah Index (FBMS)	0.0046					

Note. Mgt = Management, R^2=R-squared coefficients, 1 = Normal sub-period, 2 = Up-market sub-period, 3 = During crisis sub-period

Table 4.2 (i) - Continued

Fund Mgt	Type Of Mgt	Period	Unit Trust Fund	Average Monthly Return	R^2	R^2 Ranking	Sharpe Index	Adjusted Sharpe Index	Unit Trust Ranking
CMS Trust	PN/LC	**2**	CMS Islamic Fund	0.0257	0.8457	24	0.3734	0.3731	6
	PN/LC	**3**	CMS Islamic Fund	-0.0146	0.7152	44	-0.2911	-0.2909	71
HLG	PN/LC	**2**	HLG Dana Makmur	0.0104	0.6287	54	0.2254	0.2252	18
Unit Trust	PN/LC	**3**	HLG Dana Makmur	-0.0023	0.6640	51	-0.0936	-0.0936	61
HwangDBS	PN/LC	**2**	HwangDBS AIIMAN Growth Fund	0.0102	0.7562	36	0.1902	0.1901	19
Investment	PN/LC	**3**	HwangDBS AIIMAN Growth Fund	0.0027	0.7513	39	0.0065	0.0064	37
ING Funds	PN/FC	**2**	ING Ekuiti Islam	0.0193	0.8554	22	0.4913	0.4909	1
	PN/FC	**3**	ING Ekuiti Islam	-0.0055	0.8998	14	-0.1721	-0.1720	68
MAAKL	PN/LC	**2**	MAAKL Al-Faid	0.0176	0.8005	28	0.4810	0.4806	2
Mutual	PN/LC	**3**	MAAKL Al-Faid	0.0004	0.6983	46	-0.0380	-0.0380	51
OSK-UOB	PN/LC	**2**	OSK-UOB Dana Islam	0.0137	0.8542	23	0.2804	0.2802	12
Unit Trust	PN/LC	**3**	OSK-UOB Dana Islam	-0.0040	0.8997	15	-0.1576	-0.1575	67
Market Portfolio			FTSE Bursa Malaysia EMAS Shariah Index (FBMS)	0.0046					

Note. Mgt = Management, R^2=R-squared coefficients, 1 = Normal sub-period, 2 = Up-market sub-period, 3 = During crisis sub-period

Table 4.2 (i) - Continued

Fund Mgt	Type Of Mgt	Period	Unit Trust Fund	Average Monthly Return	R^2	R^2 Ranking	Sharpe Index	Adjusted Sharpe Index	Unit Trust Ranking
Prudential	PN/FC	**2**	Prudential Dana Al-Ilham	0.0135	0.6754	48	0.2506	0.2503	15
Fund	PN/FC	**2**	Prudential Dana Dinamik	0.0117	0.9405	6	0.3509	0.3506	8
	PN/FC	**3**	Prudential Dana Al-Ilham	0.0013	0.9773	1	-0.0207	-0.0207	44
	PN/FC	**3**	Prudential Dana Dinamik	0.0008	0.6099	58	-0.0443	-0.0443	54
Public Mutual	PN/LC	**1**	Public Ittikal Fund	0.0072	0.6275	56	0.1377	0.1376	26
	PN/LC	**2**	Public Ittikal Fund	0.0176	0.7521	38	0.3543	0.3540	7
	PN/LC	**2**	Public Islamic Equity Fund	0.0164	0.4471	69	0.3030	0.3028	10
	PN/LC	**3**	Public Ittikal Fund	0.0002	0.9003	13	-0.0389	-0.0388	52
	PN/LC	**3**	Public Islamic Equity Fund	0.0006	0.5296	65	-0.0305	-0.0304	46
	PN/LC	**3**	PB Islamic Equity Fund	-0.0005	0.4160	70	-0.0336	-0.0335	48
	PN/LC	**3**	Public Islamic Opportunities Fund	0.0034	0.4796	67	0.0146	0.0146	34
	PN/LC	**3**	Public Islamic Dividend Fund	0.0012	0.7389	41	-0.0288	-0.0288	45
RHB	PM/FC	**2**	RHB Islamic Growth Fund	0.0086	0.9306	8	0.1606	0.1605	25
Investment	PM/FC	**3**	RHB Islamic Growth Fund	-0.0013	0.9611	3	-0.0782	-0.0782	59
TA	PM/FC	**2**	TA Islamic Fund	0.0108	0.6285	55	0.1826	0.1825	21
Investment	PM/FC	**3**	TA Islamic Fund	0.0046	0.6398	53	0.0487	0.0486	30
Market Portfolio			FTSE Bursa Malaysia EMAS Shariah Index (FBMS)	0.0046					

Note. Mgt = Management, R^2=R-squared coefficients, 1 = Normal sub-period, 2 = Up-market sub-period, 3 = During crisis sub-period

Table 4.2 (ii)

Summary of Results for Individual Islamic Unit Trust for Normal Sub-period (January 2000 to December 2004)

Fund Mgt	Type Of Mgt	Unit Trust Fund	Average Monthly Return	R^2	R^2 Ranking	Sharpe Index	Adjusted Sharpe Index	Unit Trust Ranking
AmInvestment	PM/LC	AmIttikal	-0.0016	0.5808	9	-0.0742	-0.0741	8
Asia Unit Trust	PM/LC	AUTB Dana Bakti	0.0025	0.7131	4	0.0075	0.0075	3
ASM Investment	PM/LC	Dana Bestari	-0.0013	0.6770	5	-0.0764	-0.0763	9
	PM/LC	Dana Al Aiman	0.0014	0.6740	6	-0.0189	-0.0188	6
	PM/LC	ASM Syariah Aggresive Fund	0.0031	0.7573	1	0.0187	0.0186	2
	PM/LC	ASM Dana Mutiara	0.0021	0.7547	2	-0.0020	-0.0020	4
BIMB Investment	PM/LC	ASBI Dana Al-Mubin	-0.0015	0.6691	7	-0.0894	-0.0893	10
CIMB-Principal Asset	PM/FC	CIMB Islamic DALI Equity Growth Fund	0.0016	0.5395	10	-0.0140	-0.0140	5
	PM/FC	CIMB Islamic Equity Aggressive Fund	0.0004	0.7251	3	-0.0376	-0.0375	7
Public Mutual	PN/LC	Public Ittikal Fund	0.0072	0.6275	8	0.1377	0.1376	1
Market Portfolio		FTSE Bursa Malaysia EMAS Shariah Index (FBMS)	0.0000					

Note. Mgt=Management, R^2=R-squared coefficients

Table 4.2 (iii)

Summary of Results for Individual Islamic Unit Trust for Up-market Sub-period (January 2005 to June 2007)

Fund Mgt	**Type Of Mgt**	**Unit Trust Fund**	**Average Monthly Return**	**R^2**	**R^2 Ranking**	**Sharpe Index**	**Adjusted Sharpe Index**	**Unit Trust Ranking**
Alliance Investment	PM/LC	Alliance Dana Adib	0.0160	0.8621	8	0.3897	0.3893	5
Amanah Mutual	PM/LC	AMB Dana Yakin	0.0087	0.8436	13	0.2471	0.2468	16
AmInvestment	PM/LC	AmIttikal	0.0072	0.8877	6	0.1371	0.1370	26
Apex Investment	PM/FC	Apex Dana Al-Sofi-I	0.0132	0.8310	15	0.2943	0.2940	11
Asia Unit Trust	PM/LC	AUTB Dana Bakti	0.0076	0.8384	14	0.1818	0.1817	22
ASM Investment	PM/LC	Dana Bestari	0.0065	0.4019	28	0.1269	0.1268	27
	PM/LC	Dana Al Aiman	0.0077	0.5812	24	0.1699	0.1697	24
	PM/LC	ASM Syariah Aggresive Fund	0.0074	0.7640	17	0.1724	0.1723	23
	PM/LC	ASM Dana Mutiara	0.0097	0.8845	7	0.2458	0.2456	17
Market Portfolio		FTSE Bursa Malaysia EMAS Shariah Index (FBMS)	0.0146					

Note. Mgt=Management, R^2=R-squared coefficients

Table 4.2 (iii) - Continued

Fund Mgt	Type Of Mgt	Unit Trust Fund	Average Monthly Return	R^2	R^2 Ranking	Sharpe Index	Adjusted Sharpe Index	Unit Trust Ranking
Avenue Invest	PN/LC	Amanah Saham Wanita	0.0122	0.3714	29	0.0742	0.0742	28
BIMB Investment	PM/LC	ASBI Dana Al-Mubin	0.0086	0.9100	5	0.1856	0.1855	20
	PM/LC	ASBI Dana Al-Falah	0.0130	0.4796	26	0.2506	0.2504	14
CIMB-Principal Asset	PM/FC	CIMB Islamic DALI Equity Growth Fund	0.0141	0.9491	1	0.3250	0.3247	9
	PM/FC	CIMB Islamic Equity Aggressive Fund	0.0128	0.5429	25	0.2587	0.2585	13
	PM/FC	CIMB Islamic DALI Equity Fund	0.0179	0.8580	9	0.4429	0.4425	4
	PM/FC	CIMB Islamic Small Cap Fund	0.0038	0.6132	23	0.0373	0.0373	29
	PN/FC	CIMB Islamic Equity Fund	0.0171	0.9153	4	0.4727	0.4723	3
CMS Trust	PN/LC	CMS Islamic Fund	0.0257	0.8457	12	0.3734	0.3731	6
HLG Unit Trust	PN/LC	HLG Dana Makmur	0.0104	0.6287	21	0.2254	0.2252	18
HwangDBS Investment	PN/LC	HwangDBS AIIMAN Growth Fund	0.0102	0.7562	18	0.1902	0.1901	19
ING Funds	PN/FC	ING Ekuiti Islam	0.0193	0.8554	10	0.4913	0.4909	1
Market Portfolio		FTSE Bursa Malaysia EMAS Shariah Index (FBMS)	0.0146					

Note. Mgt=Management, R^2=R-squared coefficients

Table 4.2 (iii) - Continued

Fund Mgt	Type Of Mgt	Unit Trust Fund	Average Monthly Return	R^2	R^2 Ranking	Sharpe Index	Adjusted Sharpe Index	Unit Trust Ranking
MAAKL Mutual	PN/LC	MAAKL Al-Faid	1.76%	0.800519	16	0.4810	0.4806	2
OSK-UOB Unit Trust	PN/LC	OSK-UOB Dana Islam	1.37%	0.854188	11	0.2804	0.2802	12
Prudential Fund	PN/FC	Prudential Dana Al-Ilham	1.35%	0.675376	20	0.2506	0.2503	15
	PN/FC	Prudential Dana Dinamik	1.17%	0.940459	2	0.3509	0.3506	8
Public Mutual	PN/LC	Public Ittikal Fund	1.76%	0.752103	19	0.3543	0.3540	7
	PN/LC	Public Islamic Equity Fund	1.64%	0.447104	27	0.3030	0.3028	10
RHB Investment	PM/FC	RHB Islamic Growth Fund	0.86%	0.930573	3	0.1606	0.1605	25
TA Investment	PM/FC	TA Islamic Fund	1.08%	0.628492	22	0.1826	0.1825	21
Market Portfolio		FTSE Bursa Malaysia EMAS Shariah Index (FBMS)	0.0146					

Note. Mgt=Management, R^2=R-squared coefficients

Table 4.2 (iv)

Summary of Results for Individual Islamic Unit Trust for During Crisis Sub-period (July 2007 to December 2009)

Fund Mgt	Type Of Mgt	Unit Trust Fund	Average Monthly Return	R^2	R^2 Ranking	Sharpe Index	Adjusted Sharpe Index	Unit Trust Ranking
Alliance Investment	PM/LC	Alliance Dana Adib	-0.0022	0.9466	4	-0.1130	-0.1129	24
Amanah Mutual	PM/LC	AMB Dana Yakin	-0.0036	0.9368	5	-0.1531	-0.1529	27
AmInvestment	PM/LC	AmIttikal	0.0010	0.8647	12	-0.0311	-0.0311	12
Apex Investment	PM/FC	Apex Dana Al-Sofi-I	0.0009	0.7981	13	-0.0358	-0.0358	14
Asia Unit Trust	PM/LC	AUTB Dana Bakti	-0.0061	0.9303	6	-0.2225	-0.2223	30
ASM Investment	PM/LC	Dana Bestari	-0.0038	0.7454	19	-0.1490	-0.1489	25
	PM/LC	Dana Al Aiman	-0.0009	0.7255	21	-0.0982	-0.0981	23
	PM/LC	ASM Syariah Aggresive Fund	-0.0126	0.9109	7	-0.3018	-0.3016	33
	PM/LC	ASM Dana Mutiara	-0.0090	0.8851	11	-0.2645	-0.2643	31
Avenue Invest	PN/LC	Amanah Saham Wanita	-0.0033	0.5849	28	-0.1508	-0.1507	26
Market Portfolio		FTSE Bursa Malaysia EMAS Shariah Index (FBMS)	-0.0027					

Note. Mgt=Management, R^2=R-squared coefficients

Table 4.2 (iv) - Continued

Fund Mgt	Type Of Mgt	Unit Trust Fund	Average Monthly Return	R^2	R^2 Ranking	Sharpe Index	Adjusted Sharpe Index	Unit Trust Ranking
BIMB Investment	PM/LC	ASBI Dana Al-Mubin	0.0008	0.7915	14	-0.0419	-0.0419	17
	PM/LC	ASBI Dana Al-Falah	0.0019	0.5255	31	-0.0177	-0.0177	7
CIMB-Principal Asset	PM/FC	CIMB Islamic DALI Equity Growth Fund	0.0032	0.9619	2	0.0159	0.0159	2
	PM/FC	CIMB Islamic Equity Aggressive Fund	-0.0021	0.6632	25	-0.0710	-0.0709	19
	PM/FC	CIMB Islamic DALI Equity Fund	0.0015	0.7704	17	-0.0159	-0.0159	6
	PM/FC	CIMB Islamic Small Cap Fund	-0.0023	0.7767	16	-0.0777	-0.0776	20
	PM/FC	CIMB Islamic Asia Pacific Equity Fund	0.0011	0.5797	29	-0.0190	-0.0190	8
	PN/FC	CIMB Islamic Equity Fund	0.0029	0.7780	15	0.0078	0.0078	4
CMS Trust	PN/LC	CMS Islamic Fund	-0.0146	0.7152	22	-0.2911	-0.2909	32
HLG Unit Trust	PN/LC	HLG Dana Makmur	-0.0023	0.6640	24	-0.0936	-0.0936	22
HwangDBS Investment	PN/LC	HwangDBS AIIMAN Growth Fund	0.0027	0.7513	18	0.0065	0.0064	5
ING Funds	PN/FC	ING Ekuiti Islam	-0.0055	0.8998	9	-0.1721	-0.1720	29
Market Portfolio		FTSE Bursa Malaysia EMAS Shariah Index (FBMS)	-0.0027					

Note. Mgt=Management, R^2=R-squared coefficients

Table 4.2 (iv) - Continued

Fund Mgt	Type Of Mgt	Unit Trust Fund	Average Monthly Return	R^2	R^2 Ranking	Sharpe Index	Adjusted Sharpe Index	Unit Trust Ranking
MAAKL Mutual	PN/LC	MAAKL Al-Faid	0.0004	0.6983	23	-0.0380	-0.0380	15
OSK-UOB Unit Trust	PN/LC	OSK-UOB Dana Islam	-0.0040	0.8997	10	-0.1576	-0.1575	28
Prudential Fund	PN/FC	Prudential Dana Al-Ilham	0.0013	0.9773	1	-0.0207	-0.0207	9
	PN/FC	Prudential Dana Dinamik	0.0008	0.6099	27	-0.0443	-0.0443	18
Public Mutual	PN/LC	Public Ittikal Fund	0.0002	0.9003	8	-0.0389	-0.0388	16
	PN/LC	Public Islamic Equity Fund	0.0006	0.5296	30	-0.0305	-0.0304	11
	PN/LC	PB Islamic Equity Fund	-0.0005	0.4160	33	-0.0336	-0.0335	13
	PN/LC	Public Islamic Opportunities Fund	0.0034	0.4796	32	0.0146	0.0146	3
	PN/LC	Public Islamic Dividend Fund	0.0012	0.7389	20	-0.0288	-0.0288	10
RHB Investment	PM/FC	RHB Islamic Growth Fund	-0.0013	0.9611	3	-0.0782	-0.0782	21
TA Investment	PM/FC	TA Islamic Fund	0.0046	0.6398	26	0.0487	0.0486	1
Market Portfolio		FTSE Bursa Malaysia EMAS Shariah Index (FBMS)	-0.0027					

Note. Mgt=Management, R^2=R-squared coefficients

5. CONCLUSION AND IMPLICATIONS

The primary focus of this study is to ascertain the relative performance of Islamic unit trust funds across three different economic sub periods namely the non-crisis period, up-market and during crisis as well as whole sample data. This study employed four different performance measures that include the raw return, Treynor's Index, Adjusted Jensen's Alpha Index, and Adjusted Sharpe Index. In order to see the effect of both of the categories to the fund performance, the study further divides the Islamic unit trust funds into two categories which are the Islamic unit trust funds which are managed by the Muslim and non-Muslim managers, and the Islamic unit trust funds which are managed by fund management companies whose ultimate parent company are local and international companies.

The findings of the study reveal that the Islamic unit trusts are comparable to that of the market. Nevertheless, major findings of the study reveal that the Islamic unit trust perform better during the crisis period than the rest of the sub-periods and whole sample period. Therefore, the Islamic unit trust funds can be recommended as the hedging instruments during the crisis period due to the highest average outperforming achievement of Islamic unit trust during this period. It can also be seen that on average, the Islamic unit trust funds are well diversified due to the achievement of more than 0.50 for all average R^2 coefficients in all of the sub-periods. Our result also indicate that the fund management companies having foreign ultimate parent origins perform better than the fund management companies having local ultimate parent origins over the period of study. Over the 10-year period, the results of the study also reveal that the Islamic unit

trusts managed by the non-Muslim managers have better performance than those managed by the Muslim managers.

The findings of this study have important implications for investors, fund managers and regulatory agencies of the unit trust industry to further enhance the Islamic capital market in Malaysia. It is suggested that in the future, the performance studies can be expanded up to the Islamic unit trusts around the world and also to other types of Islamic unit trusts. Future study could also consider some details on the Islamic unit trusts such as the sizes and the categories of the Islamic unit trust as well as other characteristics such as the fund managers serving term, fund managers are foreign or local, as well as fund managers' gender as it might also affect the performance.

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The Concept Of Social Responsibility Disclosures For Islamic Banks

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ABSTRACT

This research aims to develop the concept and characteristics of social responsibility disclosure and items for the social responsibility disclosure of Islamic banks. This research was conducted based on the critical paradigm by using Habermas's Theory of Communication Action in understanding social reality. Habermas's Communication Theory of Action that is used extended with spirituality. This study also use Shari'ah Enterprise Theory to analyze and to produce the concept of social responsibility disclosure for Islamic banks. This research uses a qualitative approach in gathering and analyzing data. Analysis conducted on the annual reports of three Islamic banks in Indonesia, Bank Mega Syariah, Bank Syariah Mandiri and Bank Muamalat Indonesia. In addition the analysis was also conducted based on the results of interviews with stakeholders, including direct and indirect stakeholders.As a result of the analysis of the interests of stakeholders, the study found spiritual values. These values are shared, rahmatan lil alamin and maslaha. These values are used as a guide in developing items of social responsibility disclosure. Further a concept of social responsibility disclosure is derived based on the Shari'ah Enterprise Theory. This research ultimately propose a form of social responsibility disclosure for Islamic banks that show efforts to meet the vertical accountability to God, and horizontal accountability to the people and the environment, considering the material and spiritual needs of stakeholders and disclose information both qualitatively and quantitatively.

I. Introduction

Recently there have been significant developments in the world of Islamic banking. Some results of research conducted among others by the Financial Insights & General Council on Islamic Banks (2008), The Asian Banker (2007), and General Council for Islamic Banks and Financial Institutions (2008) showed that the growth rate of Islamic banks reached more than 15 percent which makes it as the fastest-growing segments in some Islamic countries. In addition assets of Islamic banks worldwide exceeded U.S. $ 580 billion, up 66 percent compared to the year 2007 amounted to U.S. $ 350 billion. The number of banks has increased from 176 banks in 1997 to over 396 banks in 2008 that operates in over 75 countries worldwide.

In Indonesia, the same developments have also occurred. Until the year 2008 there are five Islamic banks, 27 Islamic business units of conventional banks with the number of offices reached 953 and 131 BPRS. In 2008 the Islamic banking industry has increased the volume of business so that at the end of 2008 reached Rp 49.55 trillion, with a share of total national banking assets amounted to 2.14% (Bank Indonesia, 2008).

Islamic banks or also known as the Islamic bank, a bank should carry out its activities based on Islamic principles. The main factor underlying the establishment of Islamic banks is the desire to run an economic system based on the values and principles of sharia. Usmani (2000) states that the underlying philosophy of Islamic banks are aiming to distribute justice that is free from all forms of exploitation.

Viewed from the physical size and the material in the form of total assets, profitability, number of branches as well as many conventional banks opening Islamic business units, the growth of Islamic banks are quite encouraging. Islamic bank resilience

to face the economic crisis a few years ago showed that this bank has shown its existence in the economic arena. However, the success of a company especially a company that claims to operate in accordance with Islamic principles, can not be seen simply by measuring the physical and material development course.

Haniffa and Hudaib (2004) states that one opportunity to demonstrate responsibility and commitment in meeting the needs of the Muslim community and society in general is through the disclosure of information that is relevant and reliable (reliable) in the annual report. Through the disclosure of social responsibility of Islamic banks can provide information on the extent to which he has fulfilled the function as a means to improve the welfare of the community.

Nevertheless, some existing research indicates that Islamic banks do not fully fulfill its social role as desired by the principles of sharia (Aggarwal and Yousef 2000; Usmani, 2000; Maali et al. 2003). For example: Islamic banks should be more emphasis on the financing of profit and loss sharing (musharaka), but in reality, very few Islamic banks are paying attention to this social aspect. In Indonesia, the financing structure is still dominated by murabahah, growth funds tend to murabahah constant in the range of 58.87% of total financing in the year 2008.While growth musharaka contract by using the concept of profit sharing only 19% (Bank Indonesia, 2008).

A study of 32 Islamic banks which do researchers from the International Institute of Islamic Thought in 1996 found that economic goals have been set aside social goals of these banks. This study also concluded that economic criteria has become a priority compared with social criteria in evaluating investment (Maali et al. 2003). Aggarwal and Yousef (2000) found that when Islamic banks are expected to help small entrepreneurs

who do not have access to credit to the conventional banking system, on the contrary they rely on market financing. This is something that contradiction with Islamic principles for the welfare of the community. Furthermore Aggarwal and Yousef (2000) concluded that economic factors play a role in shaping more structure than the Islamic banks and religion.

Associated with social responsibility reporting, analysis undertaken Maali et al. (2003) also stated that social responsibility reporting of Islamic banks do not meet the standards for the company which operates under Islamic principles. Findings of Maali et al (2003) shows that social issues are not issues that the main attention of most Islamic banks.

The findings of Haniffa and Hudaib (2004) regarding the disclosure practices of Islamic financial institutions show the lack of disclosure, clarity and consistency. Haniffa and Hudaib (2004) concludes that the practice of disclosure in these financial institutions are not sufficient to fulfill its obligations to God, society and the institution itself and to demonstrate accountability. Another study of Haniffa and Hudaib (2007) concerning the annual report of seven Islamic banks in the world shows that a large discrepancy between the information disclosed in annual reports with the values of Islamic business ethics. This discordance is related to the four dimensions, namely a commitment to the community, the disclosure of company mission and vision, contribution and management of zakat, charity and benevolence as well as information about loan management.

Has not fulfilled the social function of Islamic financial institutions through the disclosure of social responsibility which includes Islamic values may occur because in some aspects of Islamic financial institutions are still holding on conventional accounting

standards, including in terms of disclosure. Harahap (2003) revealed that despite Accounting, Auditing Organization for Islamic Financial Institution (AAOIFI) has been developed, but the accounting standards, including disclosure of social responsibility is still mostly based on conventional accounting concept that is filled with the values of capitalism and secularism (See also Hameed, 2000; Haniffa and Hudaib, 2001; Triyuwono, 2002; Harahap, 2003).

The issue of corporate social responsibility are not new issues in accounting. This issue began to emerge in the early 20th century where the company at that time criticized for alleged anti-social nature. While the disclosure of corporate social responsibility is a way for companies to communicate to stakeholders that the company pay attention to social and environmental impact caused by the company. There are two theories that are often used to explain the practice of disclosure of corporate social responsibility, namely the legitimacy theory and stakeholder theory. Disclosure of social responsibility in the view of both theories aim to gain legitimacy from the community to the survival of the company. Ultimately culminate in the interests of owners. Therefore not surprising that several studies have noted that companies, including Islamic financial institutions have a tendency to make a positive disclosure (Deegan and Rankin, 1996; Maali et al. 2003). In addition there are many more research findings such as: Tilt (2001), Belal (2001), Hall (2002), Donovan (2002), Rahaman et al. (2004) and Ann et al. (2008) showing that disclosure of social responsibility that is based on both theories are nothing more than an attempt to maintain the status quo in the community. Therefore, disclosure of social responsibility based on these two theories should not be used in an institution that was

founded with the philosophy that emphasizes the spiritual dimension and is based on Islamic values.

When we talk about Islamic financial institutions, then the issue of social responsibility becomes more interesting to be appointed. This is because the philosophy underlying the establishment of Islamic banking is to realize the welfare of society at large and to place public interest above individual interests. Islamic banking was established on the basis of different philosophies with the companies in general. It was founded as an effort to meet not only the material needs alone, but especially the spiritual needs of the community. To be able to meet that goal, then it should be if a practice based on theories that better fit with the philosophy of Islamic banking. In connection with the disclosure of social responsibility, is not appropriate if the practice is constituted by the capitalist theories such as legitimacy theory and stakeholder theory.

Enterprise theory is a concept that many proposed as an alternative to the entity theory in an economic system of Islam, especially Islamic accounting (Harahap, 1997; Triyuwono, 2000; Adnan, 2002). This is because this theory include social aspects and accountability.Enterprise theory according to Slamet (2001) in Triyuwono (2006) is the most fitting theory for shari'ah accounting because it contains the values of justice, truth, honesty, trust and accountability. But according to Slamet (2001) Enterprise Theory continues to be "worldly" and has no concept of tawhid. In order for this concept in accordance with shari'ah it is necessary internalized the values of unity. Shari'ah Enterprise Theory is an enterprise theory that has been internalized by the value of the Lordship. In the Shari'ah the Enterprise Theory the most important axiom is God as creator and sole owner of all existing resources in the world. Thus applicable in the

Shari'ah Enterprise Theory is the main mandate of God as the source. While the resources owned by the stakeholders is the mandate of God in them an inherent responsibility to use the means and the goals set by the Merchant of Amanah. In view of Shari'ah Enterprise Theory the distribution of wealth or value added not only applies to participants who are associated directly or participants that contributed to the company's operations, such as shareholders, creditors, employees and governments but also to other parties who are not related directly or not contribute either financial or expertise to the company. This thinking according to Triyuwono (2001) based on the premise that man is khalifatullah fil ard which carries a mission of creating and distributing wealth for all human beings and nature.

By seeing all the characteristics possessed by the Enterprise Theory of Shari'ah, it would be more appropriate if the Shari'ah Enterprise Theory used as a concept to describe the disclosure of corporate social responsibility, especially for Islamic financial institutions. Islamic banking is established with the goal to be an alternative to the capitalist economic system has a major role in increasing economic prosperity and social, material and spiritual for all stakeholders. Disclosure of social responsibility will provide information on how far the company has fulfilled its main role is. Based on what has been described above, then the focus of this research problem are:

- How is the concept and characteristics of social responsibility disclosures for Islamic banks based on Shari'ah Enterprise Theory?
- What are the information related to the social responsibilities that should be disclosed by the Islamic bank based on Shari'ah Enterprise Theory?

The main objective of this research is to develop a form of social responsibility disclosure that has the material and spiritual values.

Research Methodology

This research was conducted based on the critical paradigm. This paradigm is considered more appropriate since, in accordance with the purpose of research that is not only trying to understand but also seeks to change social reality. The objective of research in this paradigm as it is said by Sarantakos (1993:37) is to explain and criticize social reality and empower human beings to conquer it. To understand the reality of disclosures of social responsibility framework of analysis is the theory communication action of Habermas Habermas's perspective of "lifeworld" will be used to understand that the disclosure of social responsibility is a social process that is not separated from the underlying theory (knowledge) and interest of the parties involved in the disclosure. But in this case the researchers did not use Habermas's perspective as it is. This is because, according to researcher, self-reflection process is not always based on the ratio but also from spiritual values. Based on the premise that self-reflection not only derived from the ratio but also of spiritual values, the researcher using Shari'ah Enterprise Theory as a theory that has been internalized by the spiritual values to derive the concept of social responsibility disclosure for Islamic bank.

Research Methods

This study uses a qualitative approach in obtaining and analyzing data. If quantitative research generally has a large area, complex variations, but located on the surface. Thus

qualitative research is in a narrow space with a low level of variation but has an infinite depth discussion. Qualitative approach is a process of research and understanding based on a methodology to investigate human social phenomena and problems. In this approach, researchers create a complex picture, examine the words, reports detailed views of informants, and conduct studies on the natural situation (Creswell, 1998:15).

Theoretical Data Collection and Non-theoretical

Theoretical data collection is done through a literature review to explore the concepts and theories about the CSRD. Theoretical data in this case is the conceptual models and operational on the CSRD has evolved over the like: The Corporate Report (1975), Cheng (1976), The Bilan Social (1979), Jackman (1992), Gray et al. (1996), GRI3 (2006), Corporate Citizenship (Carrol, 1991) as well as thoughts that have tried to discuss from the viewpoint of Islam such as Solomon (2002), Hameed et al. (2004), Maali et al. (2003) and Haniffa and Hudaib (2004). While non-theoretical data derived from annual reports, documents and reports related to the corporate social responsibility disclosure.

Empirical Data Collection

Empirical data in this study are the data obtained from depth interviews with research informants. This activity was conducted in order to seek spiritual values that affect the interests of individuals. Although the results of interviews found rational elements associated with the influence of money and power but deeper exploration is still being done on the spiritual values which are values that have been marginalized in the social responsibility disclosure practices of Islamic bank. This study tried to see the character of

the informant as a whole based on the Shari'ah Enterprise Theory, namely direct and indirect stakeholders. Direct stakeholders are those who are involved and contribute directly to the company's activities, while indirect stakeholders are those who have no direct contribution to the bank, but according to sharia This party is entitled to receive welfare from the company.

Research Informant

Informants in this study consisted of: 1) shariah bank commissioner, 2) the head of Islamic bank branches, 3) marketing manager of Islamic bank, 4) customers of Islamic bank, 5) Shariah Supervisory Board, 6), Directorate of Islamic Banking Bank Indonesia, 7) Council National Shariah, 8) Indonesian Institute of Accountants Standards Board 9) environmental activists and10) ordinary people.

Technical Analysis

Analysis is done by reading the disclosure in annual reports. The annual report which analyzed are the annual reports of Bank Syariah Mandiri, Bank Muamalat Indonesia and Bank Syariah Mega Indonesia. All three banks were selected for having a long operation and is not a sharia units or windows of conventional banks. With the assumption of an Islamic commercial banks, these banks have a different authority with conventional bank sharia unit whose status is not independent and still take shelter under the rules of conventional banking management.

Analysis was performed by using the Theory of Communication Action which has been extended, by seeing the role of spirituality and rationality in the annual

report. This is done by looking at the role of money, power and principle on disclosure practices. Through this analysis can be known how the role of steering media (money, power and principle) on the disclosure made by the bank. This is important so that researchers get an idea about the theme and what items have been disclosed by the Islamic bank associated with corporate social responsibility. In addition the analysis was also performed by using the concepts in the Shari'ah Enterprise Theory in order to find and identify the interests of anyone who has been considered by the Islamic bank. This is useful for determining the appropriateness of disclosures of social responsibility that has been done with existing concepts in the Shari'ah Enterprise Theory. These concepts include: vertical accountability to God; horizontal accountability to direct, indirect stakeholders and the environment, as well as the concept of balance.

Findings and Discussions

Annual Report

From the results of an analysis of annual reports of three Islamic banks, it was found that the process of self-reflection that occurs in individuals who engage in the practice of Islamic banking is basically derived from the spirituality and rationality. This can be seen from the disclosure of information by these banks. Number of disclosures relating to profit and power show that the process of self-reflection in this case is more influenced by rationality. The existence of the spiritual nuances of information that have shown that in addition to rationality, spirituality is a resource for individuals in running the bank's operations. However from the disclosure can be seen that the spiritual values that become the source of self-reflection has not been widely applied in corporate operations.

When accountability to God is understood as adherence to the ruling National Islamic Council as indicated by the Shari'ah Supervisory Board opinion, it can be said that all three banks already meet the accountability to God. However, as noted by Al Mograbi (1996) that Islamic banks have two important roles in the community: the role of religious and financial. In a religious perspective, Islamic banks are responsible for compliance with Islamic principles. Concerning the role of finance, Islamic banks control the funds that actually gives them the opportunity to conduct social activities for the welfare of society and environment. The two roles should be done in parallel. Accountability to God and to humans and the environment in this case, like two sides of a coin that can not be separated and should not be separated.

Accountability to stakeholders and the environment, which is the horizontal accountability of Islamic bank, more targeted to specific stakeholder groups, especially the owner. Instead of two groups of stakeholders who discussed by the Shari'ah Enterprise Theory, the direct stakeholders are groups that get more attention in the form of information related to efforts to meet the welfare of this group. This indicates the absence of balancing the fulfillment of the welfare of stakeholders as desired by Shari'ah Enterprise Theory. Efforts to meet the welfare of any direct stakeholders in this case did not show a balance because the information disclosed more to do with the interests of owners and regulators. While the disclosure of information related to efforts to meet the welfare of other groups of stakeholders such as direct customers and employees is very limited.

Disclosure of information relating to efforts to meet the welfare of the indirect stakeholders such as society and the natural environment is not widely applied. Besides that the information disclosed commonly only associated with the material information. Observing further the contents of disclosure, it can be concluded that most of the themes expressed in the annual report by the three banks associated with the Sharia Supervisory Board opinion, the value adopted by the company, human resources, attention to the Micro Small and Medium Enterprises, Good Corporate Governance and activities charity or philanthropy. Disclosures relating to the theme of environment very few and almost none, except at the Bank Syariah Mandiri. Disclosure of information relating to social responsibility activities did not reveal a clear source of funding and allocation in detail whether derived from zakat funds or qardhul hasan. Besides the disclosure of information about the charity and qardhul hasan also very limited. In fact, this information is actually showing actual application of the values adopted by banks such as rahmatan lil alamin, sharing and devotion to God.

Role of Money, Power and Principle

In annual reports, information relating to the profit is the information always disclosed by the Islamic bank. The importance of money for the Islamic bank can also be seen from the statement following informants:

> *"After all, the bank was essentially looking for-profit institutions ..."*
> (Head of Islamic Banking Branch)
>
> *"The focus of the current Islamic bank is to socialize the effort to increase market share .."* (Directorate of Islamic Banking, Bank Indonesia)

The same is confirmed by the manager of one Islamic bank, which states:

> *"Basically, the purpose of Islamic banks or conventional bank is looking for a profit, if not to profit how we can survive ... just to make money in a way that permitted by the religion, leaving the usury ..."(* Islamic bank manager).

In addition to "money" Habermas said that "power" is something else that may affect the "interest". Role of "power" can be seen very clearly in the annual report of the company through the disclosure of information relating to good corporate governance (GCG). The role of power from Bank Indonesia, Indonesian Institute of Accountants (IAI) and the National Shariah Board of Islamic banking activities in Indonesia expressed by some informants the following:

> "BI has its own regulations related to the characteristics of Islamic banks, among others: the way the assets quality Islamic bank, Islamic bank operational procedures both in terms of fund raising, operational funds and Islamic banking services in relation to compliance with shariah principles, guidelines for the listing of Islamic bank, reporting for Islamic banks "(Directorate of Islamic Banking, BI).
>
> " In connection with the Sharia Supervisory Board Opinion there is provision of BI, which requires reports every six months to the BI about the sharia compliance" (Member of the National Islamic Council).
>
> "... in our everyday operations we are subject to the rules issued by the Directorate of Islamic Banking BI and fatwas issued by the National Islamic Council. So the same as conventional bank there are rules to follow, even in the Islamic bank is more stringent with the Fatwa DSN, not only must follow the rules of the BI, the transaction must also consider the suitability of a fatwa " (Islamic bank branch head) .

In addition to the informant's statements above, the influence of power of interest can also be viewed from any disclosure of information in the annual report which states that banks have been practicing good corporate governance and the existence of the Sharia Supervisory Board Opinion Report. The principle as stated by Agustian (2005) is something that can affect the “interest”. The principle in this case is a natural consciousness to cling to the eternal Creator, which makes man aware of relationship

with the Creator and its function as' Abduh "," khalifatullah fil ard "and realize their responsibilities in the noble task" rahmatan lil alamin "in seeking" mardhatillah " .

From the analysis also found several principles (spiritual values), which was used as reference by the informant. This shows the relationship between individuals and their Creator. These values include: sharing, rahmatan lil alamin and maslaha. These principles are the values that have been marginalized in corporate social responsibility disclosure activities. Use of these values are mostly still at the levelof normative and not show the true meaning. These values still need to be translated further to be used as guidelines for disclosure of social responsibility activities of Islamic bank.

Translating: Sharing, Rahmatan lil alamin and maslaha

In this section the researcher to translate the values found in the previous stage into practice and disclosure items for the social responsibility of Islamic bank. The process of self-reflection is an important thing that is used in this stage, by looking at the theory and explore further the relationship between the values that have been found with the teachings of Islam. Order to get the themes and items should be disclosed by the Islamic bank associated with the principle adopted. Application of the principle of sharing and rahmatan lil alamin can be seen in table 3.1 and table 3.2 (Annex 1 and 2).

Maslaha as described in the previous chapter have the meanings as the interests of many people. Giving priority to the interests of many people over the interests of certain groups are highly recommended in Islam. In this case the considerations in determining whether an activity will be done or not is a benefit and the damage. If an activity brings benefits to many people than the damage then it is recommended to be done and if an

activity is causing damage to many people it should not be made. In this case the levelof maslaha proposed by AlShatibi help provide clear guidelines about what and whose interests should take precedence so that injustice does not arise. Some writers like Kamali (1989a, 1989b, 1999); Chapra (2000a); Nyazee (2000); Mumisa (2002), Sardar (2003) and Hallaq (2004) considered that the classification of maslaha by AlShatibi related and have strong links with Islamic objectives to ensure that community interests are protected in the best manner.

By using maslaha principles in practices of social responsibility disclosure for Islamic bank this means that the hajiyyat and daruriyyat level should get more attention than tahsiniyyat level. This means that banks are required to disclose what he had done related to the fulfillment of social responsibility at the daruriyyat and hajiyyat level before disclosing what has been done at the tahsinyyat level. An example is the disclosure of bank policies regarding the financing of companies that have the potential or damage the environment more important than disclosure of activities of banks to contribute to environmental NGOs.

Developing Basic Concepts of CSRD based on Shari'ah Enterprise Theory

Based on the Enterprise Theory of Shari'ah, the characteristics of social responsibility disclosure reports (CSRD) for the Islamic bank is as follows:

1. Disclosure of social responsibility is a form of human accountability to God and is intended to gain legitimacy from God as the ultimate goal.

2. Disclosure of social responsibility must have a purpose as a means of providing information to all stakeholders (direct, indirect and natural) in relation to how far the

institution has complied with obligations towards all stakeholders. This is as part of an effort to comply with accountability for human.

3. The existence of social responsibility disclosures is mandatory, viewed from the Islamic bank functions as an instrument to realize the goals of sharia. CSRD report will be a report that will complement the interests of all stakeholders who have been neglected in the modern accounting system.

4. Social responsibility disclosure should include material and spiritual dimensions associated with the interests of all stakeholders. Consideration of public interest (maslaha) will be the basis of disclosure.

5. Disclosure of social responsibility should contain both qualitative and quantitative information.

Of the five basic concepts, it can be said that the first and third characteristic relates to the purpose and nature of the existence of disclosures of social responsibility. While the second and fourth characteristic is a guidance to produce disclosure themes and items, while the fifth characteristic relates to the priority guidelines for disclosure. The difference between the theoretical concept based on Shari'ah Enterprise Theory and concepts based on stakeholder theory and legitimacy can be seen in table 3.3 (Appendix 3).

Next table 3.4 (appendix 4) shows the items of social responsibility disclosures in order to meet the vertical accountability to God and the horizontal accountability of direct stakeholders as desired in the Shari'ah Enterprise Theory. While table3.5 (Appendix 3) showa the items of social responsibility disclosures to meet the horizontal accountability to indirect accountability to indirect stakeholders and the nature.

5. Research Contribution

1. This study uses the paradigm of non-mainstream and critical theory approach which aims to make the extension of the theory and concepts of social responsibility disclosures. In terms of methodology, this study provides an alternative methodology that is an extension of Habermas's theory of communication action.

2. In addition, this study also produced a concept of social responsibility disclosures, as well as information that must be disclosed by the Islamic bank which is derived from the Shari'ah Enterprise Theory.

3. The results of this research may provide enlightenment to practitioners of Islamic banking to be able to create a balance of information to improve the welfare of all stakeholders.

4. Items that were proposed in this study can serve as a guide for Bank Indonesia to set up the rules on disclosure of social responsibility for the Islamic bank.

Research Limitations

In analyzing the contents of the annual reports of Islamic bank in order to uncover the motivation behind the information disclosed, researchers conducted their own. Researcher subjectivity in this case greatly affect the result of reading the annual reports. However, because this study used a qualitative approach that allows subjectivity so this limitation is not so substantial. This study has identified three principles which indicate the form of human bondage with his Maker. These three principles are translated into items of social responsibility disclosures. This finding is probably still very modest compared with many names of God, which should be translated into human life.

Agenda for Further Research

If in this study researchers used the Enterprise Theory of Shari'ah as the basis for trying to eliminate the use of legitimacy theory and stakeholder theory in financial institutions on behalf of Islam, then subsequent research can use other theories to reject or support this finding. Other studies can also be done by attempting to expand the scope of research by entering the values of local wisdom that may affect the views of stakeholders on corporate social responsibility. Or if what is proposed in this study is limited to the Islamic bank, perhaps the next study attempted to bring a concept that has been established in this study to a broader level as in conventional banks, or even all types of companies, because Islam is rahmatan lil alamin… isn't it?

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Appendix 1.

Table 3.1. Sharing Priciple Application in CSR's Disclosure

Principle	Description	Practice	Disclosure
Fair Sharing	- Not supporting the interests of certain stakeholder groups. - Giving balanced attention for the interests of all stakeholders - Sharing goodness in the form of *amar ma'ruf nahi munkar*.	- Giving priority to financing that based on PLS - Running efforts to improve financing that based on PLS - Giving zakat, infaq and sadaqah to the poor people - Monitoring and evaluating the benefits of ZIS fund - Running non-discrimination policies on employees in terms of wages, trainings, and career developing opportunities - Reducing the practice of outsourcing	- Disclosing the amount of financing that based on PLS's scheme - Disclosing the percentage of PLS's financing compared to other schemes - Disclosing the efforts taken to improve PLS - Disclosing audited ZIS's report - Disclosing the overall results of ZIS's evaluation and benefits - Report of Zakat fund and *qardhul hasan*. - Audited report of zakat and *qardhul hasan*
		- Not providing financing to the company indicated to the practice of discrimination on employees and violate human rights - Make a donation to the institutions that benefit society	- Explanation of the sources and uses of zakat funds - Explanation of the sources and uses of *qardhul hasan* funds - Explaining *qardhul hasan* grantees - Disclosing non-discrimination policies applied on employees in terms of wages, trainings, and career developing opportunities. - Wages and remuneration policy - Providing trainings and education to employees - Employees' number data based on gender, occupation,

			and education; including contract workers - Number of trainings and education provided to employees - Awards for employees - Disclosing bank's policies in term of outsourcing - Disclosing if there are any discrimination issues that will be used as consideration of providing financing. - Disclosing donations given to activities/institutions that provide many benefits to society.

Appendix 2.

Table 3.2. *Rahmatan lil Alamin* Application in CSR's Disclosure

Principle	Description	Practice	Disclosure
Rahmatan lil alamin	- Giving grace, benefit to all stakeholders, especially to those that had been marginalized in the modern banking system so far	- Professional DPS - Encouraging the development of UMKM by financing channel - Launching the energy saving policies in internal environment - Supporting efforts to conserve the environment in the forms of contribution/donations - Not financing	-DPS's opinion -Disclosing the fatwa and operational aspect that were obeyed and not obeyed along with reasons -DPS's member qualification and experience -Activities undertaken by DPS's member -Remuneration of DPS's member -Whether the

		companies indicated to the destruction of environment	transactions/source of income/expenses that do not fit syariah are present or not. -Number of transactions that do not fit syariah. -Reasons for the existence of such transactions. -Product information and underlying syariah concept. -Disclosing efforts done to encourage the development of UMKM -Disclosing the portion of UMKM's financing -Disclosing efforts done to support energy saving and global warming effect's reducing in the internal environment -Disclosing the amount of contribution for environmental conservation efforts.
Rahmatan lil alamin	- Giving grace, benefit to all stakeholders, especially to those that had been marginalized in the modern banking system so far	- Professional DPS - Encouraging the development of UMKM by financing channel - Launching the energy saving policies in internal environment - Supporting efforts to conserve the environment in the forms of contribution/donations - Not financing companies indicated to the destruction of environment	-Disclosing policies taken relating to the financing of the company that is potential and indicated on environmental damaging -Bank's internal policy that supports the energy saving and conservation program. -Contribution to organizations that provide benefits to environmental conservation -Direct contribution to the environment (tree planting, etc)

Appendix 3.

Table 3.3. CSRD's Theoritical Concept Differences

Concept	Based on *Shari'ah* Enterprise Theory	Based on Legitimacy Theory and Stakeholders
Purpose	God's legitimacy	The most important stakeholders' legitimacy
Property	Normative mandatory	Voluntary
Stakeholders	Nature's Direct stakeholders Indirect stakeholders	Human Nature
CSRD's priority	Benefits Daruriyyat Hajiyyat Tahsinyyat	Profit and Power Economy Legal Ethic Philanthropy
Information	Material spiritual Qualitative Quantitative	Material Qualitative Quantitative

Appendix 4.

Table 3.4. Social Responsibility Disclosure's Items
(Accountability to God and Direct Stakeholders)

Dimension	Disclosing Item	Value	Priority	Type
Vertical Accountability				
God	1. Shari'ah Supervisory Board's opinion*	*Rahmatan lil alamin*	D	Qualitative
	2. Disclosing fatwa and operational aspect those are obeyed and not obeyed, along with reasons	*Rahmatan lil alamin*	D	Qualitative
Horizontal Accountability: Direct Stakeholders				
Customer	1. Qualification and experience of DPS's* member	*Rahmatan lil alamin*	D	Qualitative
	2. Activities done by DPS's member*		D	
	3. Remuneration for DPS's member*	*Rahmatan lil alamin*	D	Qualitative
	4. Whether the transactions/source of income/expenses that do not fit syariah are present or not.	*Rahmatan lil alamin*	D	Quantitative
	5. Number of transactions that do not fit syariah.	*Rahmatan lil alamin*	D	Qualitative
	6. Reasons for the existence of such transactions.		H	
	7. Product information and underlying syariah concept*	*Rahmatan lil alamin*	H	Quantitative
	8. Reports of zakat funds and *qardhul hasan**	*Rahmatan lil alamin*	D	Qualitative
	9. Audit of zakah and *qardhul hasan* reports*	*Rahmatan lil alamin*	D	Qualitative
	10. Explanation of source and uses of zakat funds*	*Rahmatan lil alamin*	D	Quantitative
		Sharing		Qualitative
		Sharing		Qualitative
Horizontal Accountability: Direct Stakeholders				
Customer	11. Explanation of the sources and uses of qardhul hasan funds*.	Sharing	H	Qualitative
	12. Explaining qardhul hasan grantees	Sharing	H	
	13. Policy/effort to reduce non-syariah transaction in the future	Sharing	D	Qualitative
	14. Total financing with PLS's scheme	Sharing	D	Qualitativ

	15. PLS's financing percentage compared to other financings	Sharing	H	e
	16. Policy/effort to enlarge the portion of PLS on the future.	Sharing	D	Quantitati ve
	17. Reason of the total (no.14)	Sharing	H	Quantitati ve Qualitativ e Qualitativ e
Employ ee	1. Wages and remuneration policies*	Sharing	D	Quantitati ve
	2. Disclosing non-discrimination policy applied on employees in the terms of wages, trainings, and career developing opportunities	Sharing Sharing	D D	Qualitativ e
	3. Providing training and education to employees*	Sharing	H	Quantitati ve
	4. Employees number's data based on gender, occupation and education, including contract workers*	Sharing	H	Quantitati ve
	5. Number of trainings and education given to employees*	Sharing	T	
	6. Awards for employees*	Sharing	D	
	7. Whether there is any training related to spiritual quality improvement for employees	Sharing	D	Quantitati ve
	8. Efforts to improve spiritual quality of employees' family.	Sharing	H	Qualitativ e
	9. Availability of health services and counseling for employees and their families	Sharing	T	Qualitativ e/ Quantitati ve
	10. Other facilities provided to employees and their families such as scholarships or special financing*			Qualitativ e Qualitativ e Quantitati ve

Appendix 5.

Table 3.5. Social Responsibility Disclosure's Items
(Accountability to Indirect Stakeholders and Nature)

Dimension	Disclosing Item	Value	Priority	Type
Horizontal Accountability: Indirect Stakeholders				
Community	1. Initiatives undertaken to improve public access to the financial services of Islamic banks	*Rahmatan lil alamin*	D D	Qualitative
	2. Whether there is financing policy that considers discrimination issues and human rights (Eg: not finance companies or businesses that employ minors)	*Rahmatan lil alamin*	D	Qualitative
	3. Whether there is financing policy that considers the interests of public (Eg: no poor people's displacing, no fooling, marginalization)	*Rahmatan lil alamin*	D H	Qualitative
	4. Efforts done to encourage UMKM's development*	*Rahmatan lil alamin*	H	Qualitative
	5. Total loans to UMKM*	*Rahmatan lil alamin*	D T	Quantitative
	6. Financing's number and percentage provided to UMKM groups compared to financing of corporate and syndication.	*Rahmatan lil alamin*	T	Quantitative
	7. Contribution to improve the quality of public's life in the field of religion, education, and health*.	*Rahmatan lil alamin*		Qualitative
	8. Total contributions are given and the source	*Rahmatan lil alamin*		Quantitative
	9. Donations/charity to help community groups that receive disaster*	*Rahmatan lil alamin* *Rahmatan lil alamin*		Quantitative
Horizontal Accountability: Nature				
Nature	1. Financing policy that considers environmental issues such as energy saving, forest destruction, water and air pollution.	*Rahmatan lil alamin*	D D	Qualitative
	2. Disclose if there is financing given to businesses that may damage environment such as farming, forestry and mining	*Rahmatan lil alamin*	D	Qualitative
	3. Total financing to businesses that may	*Rahmatan lil*	H	Quantitati

	damage environment such as farming, forestry and mining	*alamin*	H	ve
	4. The reasons for undertaking such financing	*Rahmatan lil alamin*	H	Qualitativ e
	5. Increasing environmental awareness in employees with training, lectures or similar program	*Rahmatan lil alamin*	T	Qualitativ e
	6. Bank's internal policy that support energy saving and conservation program*	*Rahmatan lil alamin*	T D/H/T	Qualitativ e/ Quantitati ve
	7. Contribution to organizations that provide benefits to the preservation of environment*	*Rahmatan lil alamin*		Qualitativ e/ Quantitati ve
	8. Direct contribution for environment (tree planting, etc)*	*Rahmatan lil alamin*		Qualitativ e/ Quantitati ve
	9. Addition to policies above undertaken by the Islamic bank.	*Rahmatan lil alamin*		Qualitativ e

Table Information:
D = *Daruriyyat* (Very Important) , H = *Hajiyyat* (Complement)
T = *Tahsiniyyat* (Addition)
* *item* that has been discussed by researchers before

ASYMMETRIC BEHAVIOR OF GOODS AND SERVICES INFLATION IN SELECTED MUSLIM COUNTRIES

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Abstract

Recently, there is concern that the gap between goods and services inflation is getting bigger in the developed economies. The aim of this study is therefore to investigate whether the gap between goods inflation and services inflation has widened in the selected Muslim countries during recent period. If the gap between goods and services inflation is getting bigger and there is rapid continued increase in services prices, this will lead to faster overall inflation. The hypothesis is that when the gap between goods and services inflation is above its long term trend, goods inflation will rise and services inflation will decrease to restore equilibrium. We employ Hodrick-Prescott filter to the CPI and PPI indexes for each country to measure the size of the gap. It is expected that rapid increases in services inflation will be moderated by the decline in goods inflation in the long run in the countries under study.

Keywords: goods and services inflation; Hodrick Prescott filter; Muslim Countries

1. Introduction

Inflation is defined as a sustained increase in the general level of prices for goods and services. It is measured as the percentage rate of change in a country's Consumer Price Index (CPI). Recently, there is concern that services inflation is rising in the developing economies and the trend will continue. Controlling inflation requires a high degree of foresight. Since policy actions to curb inflation usually take effect only after long lags, policy makers need to forecast inflation in designing appropriate policy measures. A period often used in forecasting inflation for policy discussion is 18 to 24-month horizon (Engert and Hendry, 1998). Some economists suggest that a reasonable rate of inflation should be around 3 to 6 percent. At this rate, inflation is often viewed to have positive effects on the economy as it encourages investment and production and allows growth in wages. In recent years, most developed countries have attempted to sustain an inflation rate of 2 to 3 percent.

When inflation crosses reasonable limits, it has negative effects. It reduces the value of money, resulting in uncertainty of the value of gains and losses of borrowers, lenders, and buyers and sellers. The increasing uncertainty discourages saving and investment (Abdul Aleem Khan, 2007). Not only can high inflation erode economy from growth, it also makes the poor worse off and widens the gap between the rich and the poor. If much of the inflation comes from increase in food prices, it hurts poor more since over half of family budget of the low wage earners goes for food. Second, it redistributes income from fixed income earners (for instance pensioners) to owners of assets and earners of large and variable income, such as profits.

Several supply and demand factors could be responsible for this surge in inflation. Supply-side shocks can cause large fluctuations in food and oil prices, effects of which on overall inflation, at times, can be so excessive that these cannot be countered through demand management, including monetary policy. First, increased domestic demand created an output gap, putting upward pressure on prices. Growth in private consumption is a signal of demand side pressures on price level.

The relationship between growth and inflation depends on the state of the economy. High growth, without an increase in inflation, is possible if the productive capacity or potential output of the economy is growing enough to keep pace with demand. This is also possible if the actual output is below the potential output and there is sufficient spare capacity available to cope up with the demand pressures.

In this study, we attempt to investigate whether the gap between goods inflation and services inflation has widened in the selected Muslim countries over the period under study. If the gap between goods and services inflation is getting bigger and there is rapid continued increase in services prices, this will lead to faster overall inflation. Hence, it is expected that the goods inflation will take the burden of adjustment in the long run.

This paper is organized as follows. The next section, Section 2 provides some background on inflation and its relation to Islamic economic syatem. In Section 3, we provide the empirical methodology followed by the results in Section 4. Finally, Section 5 concludes and summarizes the discussion.

2. Inflation and Islamic Economic System

The following are among the few aspects of the Islamic economic system that would help lower and control inflation (MHCNiazi, 2008). There are briefly reproduced as follows:

i. Hard Currency Tied to Gold Standard

The Islamic system requires currency/medium of exchange to be based on the gold and silver standard which have an intrinsic value. Notes can be used to represent the precious metals instead of carrying gold and silver around, but they must be backed up by them. Due to the intrinsic value in the precious metals stability is achieved and devaluation and inflation controlled.

ii. No Artificial Money

As well as printing, money is also artificially created via bank loans. Banks regularly loan out more money than they have and there is in circulation, that is, they lend what they don't have. This artificial consumer spending power also leads to inflation, as artificially increased money supply is competing in chasing limited goods. This will also lead to excessive consumerism.

iii. Ownership of Oil, Gas and Natural Resources

Pricing and inflation is also linked to the cost of energy resources. The price of a barrel of oil is rising exponentially and likewise is the cost of production and transportation. This has a direct effect on the price of all commodities especially the basic necessities such as food items. High-energy costs are also affected by government taxes and drive for profits by companies and this contributes to inflation.

Islam's solution is based on its view of ownership and permissibility of generating profits from natural resources. Islam defines three types of ownership: (1) individual; (2) public; and (3) state property. The Prophet S.A.W. in his *hadith* has included natural resources that combust (oil field, gas field, coal mine and others) as public property as well as other natural resources. Public property can not be transferred to the state or private sector, but remains the property of the public (Muslim *ummah*) and is run by the Islamic state for their benefit on a non-profit, non-tax basis. Any profit generated by selling surplus oil to friendly non-Muslim countries must be spent on the *ummah*. Hence, the Islamic view on natural resources can provide guidelines in reducing prices and controlling inflation.

iv. No Hoarding to Manipulate Supply and Demand

Government intervention in the form of either price ceiling or price floor leads to market intervention and deadweight loss. The resulting market inefficiency in the form of shortage or surpluses lead to either black market or hoardings. In the free-market economy, suppliers hoard essential items in an attempt to artificially affect supply and demand in order to push up prices. The Islamic system would actively prevent hoarding and the artificial manipulation of supply and demand.

v. Revival of Dead Land

> According to the narration of the Prophet Muhammad S.A.W, a Muslim who revives a dead *Khiraji* land, which was never cultivated since Muslims opened it, would own the neck (narrow part) as well as its produce. Furthermore, any Muslim or *Zimmi* (non-Muslim citizen of the Islamic state) who revives a dead *Khiraji* land on which *Khiraj* was applied in the past would own the produce, whilst the neck would remain with the State. The concept being whoever revives a dead land can benefit from it. This presents a great incentive for poor farm workers and others to take advantage of this Islamic rule and revive dead land and the whole state would benefit. Poverty would be reduced, employment would increase and so would production. Increased production leads to increased supply and therefore cheaper prices and lower inflation.

Siddiqi (1996) discusses four "built-in stabilizers" inherent in Islamic economic system fiscal policy to help curb inflation. First, equity and sharing based finance which are non inflationary and stable as an alternative to conventional debt financing. Second, *zakat*, inheritance laws and other redistributive provisions in Islam will change the composition of aggregate demand thereby reducing the fluctuations in aggregate demand. Third, moderation concept in Islamic consumption pattern and avoidance of wasteful expenditure will reduce aggregate demand. Finally, state authority in Muslim countries, treating public money as *Amanah*, will keep public expenditure at the optimal level by minimizing public expenditure and avoiding deficit financing.

The author also mentioned that the type of inflation experienced in early Islamic history was short lived. Most of the times what causes inflation were climatic conditions or disruption in transportation that caused a failure in supply leading to sharp rise in food prices. According to him:

> "Putting an end to debasement of currency and meeting rise in prices by arranging for increased supply are policies rooted in Islamic tradition, the difference in the nature of inflation notwithstanding. These policies are likely to evoke public cooperation as well as endorsement by the *Ulama*. The two other fiscal measures noted above, reduction in public expenditure (with welfare provisions bearing most of the cut) and increased taxation (and domestic borrowing) are doubly doomed. They are not practical. They have no roots in the Islamic past, hence they do not sound familiar, neither to the populace nor to the *Ulama*."

On the other hand, economists generally agree on two causes of inflation. The first one is demand pull inflation. This theory can be summarized as "too much money chasing too few goods". In other words, if demand is growing faster than supply, prices will increase. This usually occurs in growing economies. Second is cost-push inflation. When companies' costs go up, they need to increase prices to maintain their profit margins. Increased costs can include things such as wages, taxes, or increased costs of imports.

Inflation affects different people in different ways. In fact, inflation is a sign that an economy is growing. It also depends on whether inflation is anticipated or unanticipated. If the inflation rate corresponds to what the majority of people are expecting (anticipated inflation), then we can compensate and the cost isn't high. For

example, banks can vary their interest rates and workers can negotiate contracts that include automatic wage hikes as the price level goes up.

However, there are costs to inflation. Problems arise when there is unanticipated inflation. First, creditors lose and debtors gain if the lender does not anticipate inflation correctly. For those who borrow, this is similar to getting an interest-free loan. Second, uncertainty about what will happen next makes corporations and consumers less likely to spend. This hurts economic output in the long run. Third, people living off a fixed-income, such as retirees, see a decline in their purchasing power and, consequently, their standard of living. Fourth, the entire economy must absorb repricing costs (menu costs) as price lists, labels, menus and more have to be updated. Finally, if the inflation rate is greater than that of other countries, domestic products become less competitive. The impact of inflation therefore depends on the overall health of the economy.

3. Research Method

The countries selected for the study are countries that are categorized as Middle Developed countries (MDC) namely: Lebanon, Malaysia, Morocco, Pakistan, Syrian, and Tajikistan. However, due to data unavailability, selections are done randomly. Countries included are Malaysia, Morocco, Pakistan, Saudi Arabia and Turkey. Data are annual and ranging from 1960 to 2004. Data are mostly in constant 2000 prices and are sourced from the International Financial Statistics (IFS) online.

In this paper, we model the long run relationship between goods and services inflation using proxies. For goods inflation, Industrial Price Index (IPI) or Wholesale Price Index (WPI) is used as proxies. For services inflation, we used CPI (excluding petroleum) as a proxy, where available. This might not accurately measure goods and services inflation, but this is the limitation of the research. In addition, empirical studies on goods and services inflation gap are more on commonly performed on the developed economies.

The inflation gap is defined as the difference between actual and potential inflation where potential inflation is an unobservable variable that reflects the maximum level of inflation. The industrial production index (IPI) is used as the proxy for real output. The inflation gap is estimated as the log difference between actual output and its Hodrick-Prescott (HP) filter. HP filter decomposes output into permanent and transitory components generating a smoothened trend of output. The generated smoothened series is the estimated potential output.

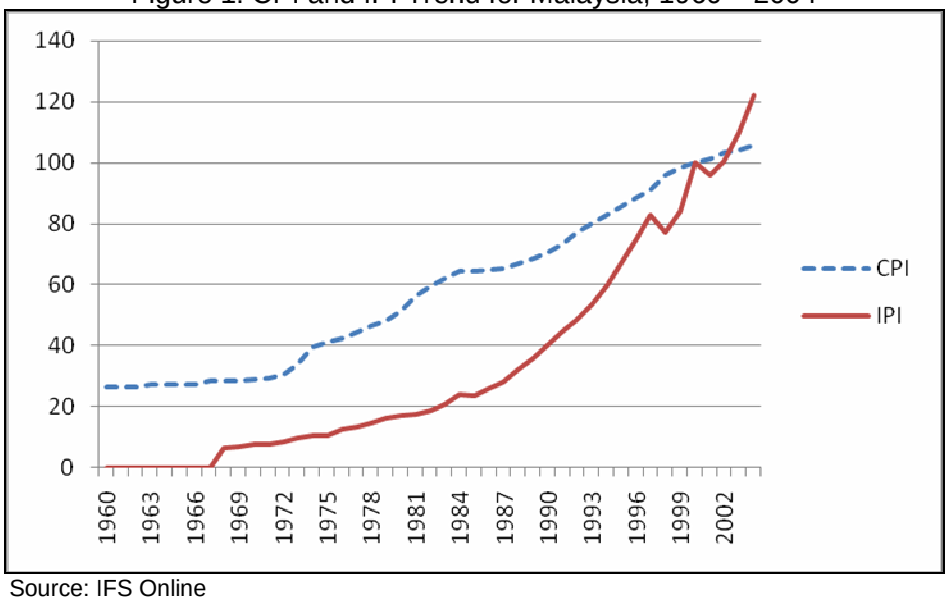
4. Findings

Figures 1-5 below illustrate the trend of IPI/WPI and CPI for the selected countries under study. Overall, the indexes are trending upwards and there exist noticeable differences between them in all countries. For Malaysia, the gap is smaller in recent years and the IPI is rising at a much faster rate. This probably indicates that the goods inflation takes the burden of adjustment in the long run.

Meanwhile, CPI is higher than IPI/WPI in the case of Malaysia and Saudi Arabia only. For Saudi Arabia, Morocco and Pakistan, the two indexes seem to trend together in the

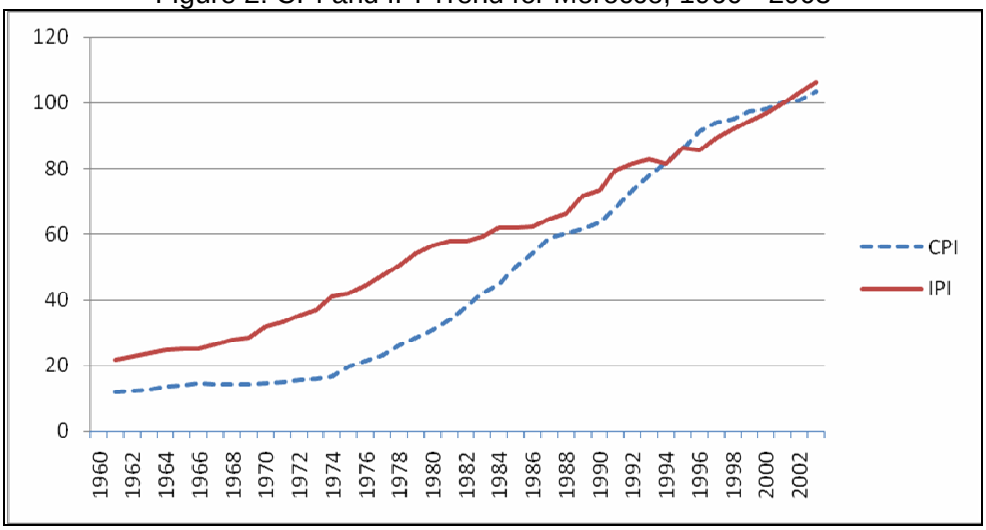
long run and the gaps between them tend to gradually diminish. On the other hand, the gap between IPI and CPI seems to widen in the case of Malaysia and Turkey. The situation in Turkey is quite interesting because CPI seems to escalate after the year 2000. These might be due to Turkey's country specific macroeconomic performance.

Figure 1: CPI and IPI Trend for Malaysia, 1960 – 2004



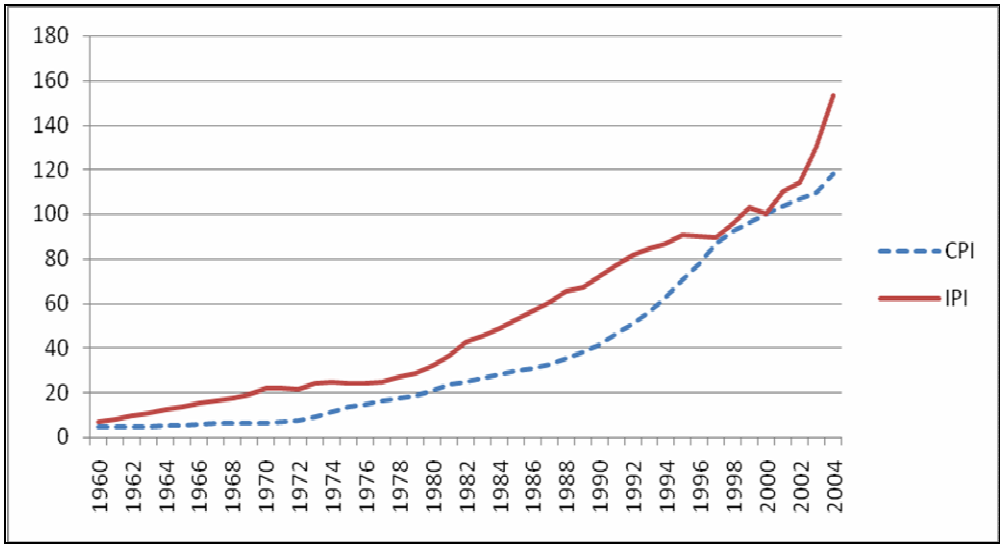
Source: IFS Online

Figure 2: CPI and IPI Trend for Morocco, 1960 - 2003



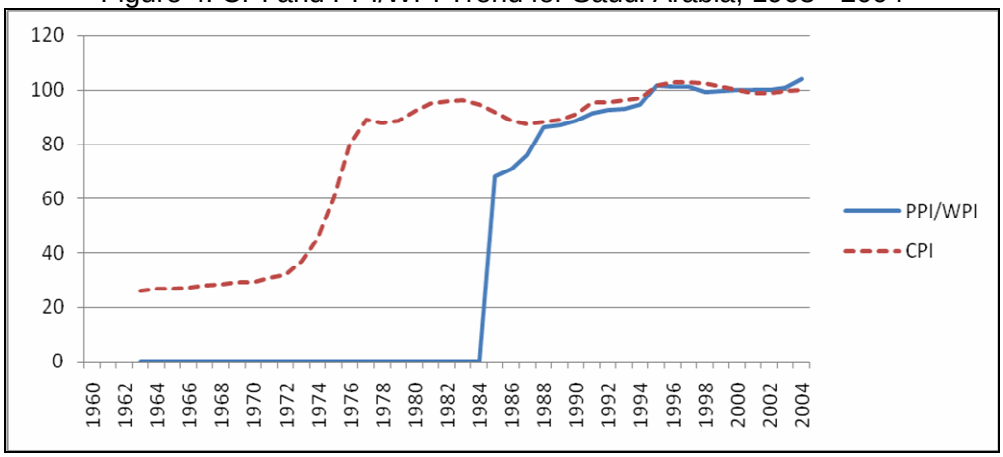
Note: CPI: 8 major cities. Source: IFS Online

Figure 3: CPI and PPI Trend for Pakistan, 1960 - 2004



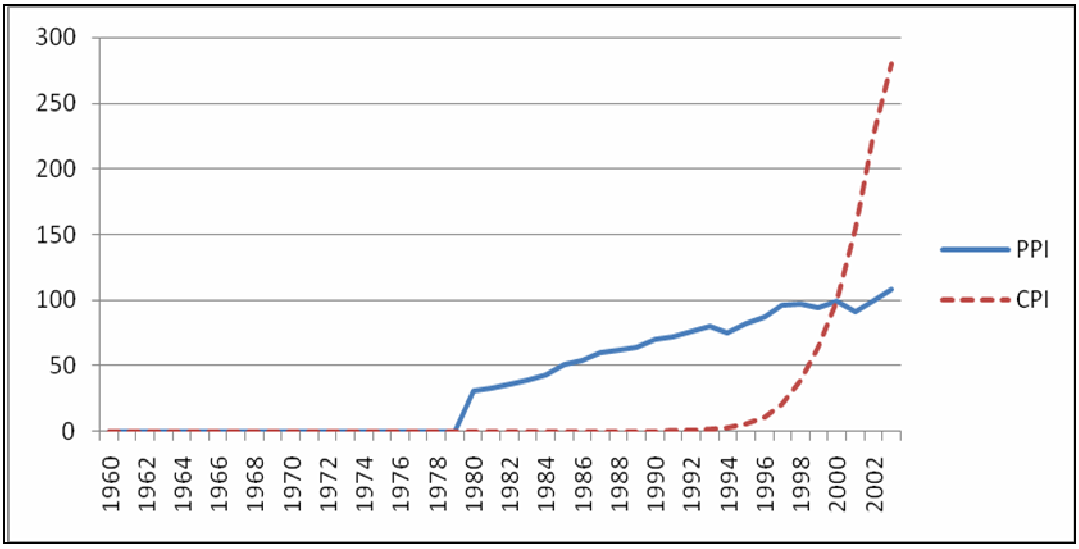
Note: CPI: 10 major cities. Source: IFS Online

Figure 4: CPI and PPI/WPI Trend for Saudi Arabia, 1963 - 2004



Note: CPI: 10 cities. Source: IFS Online

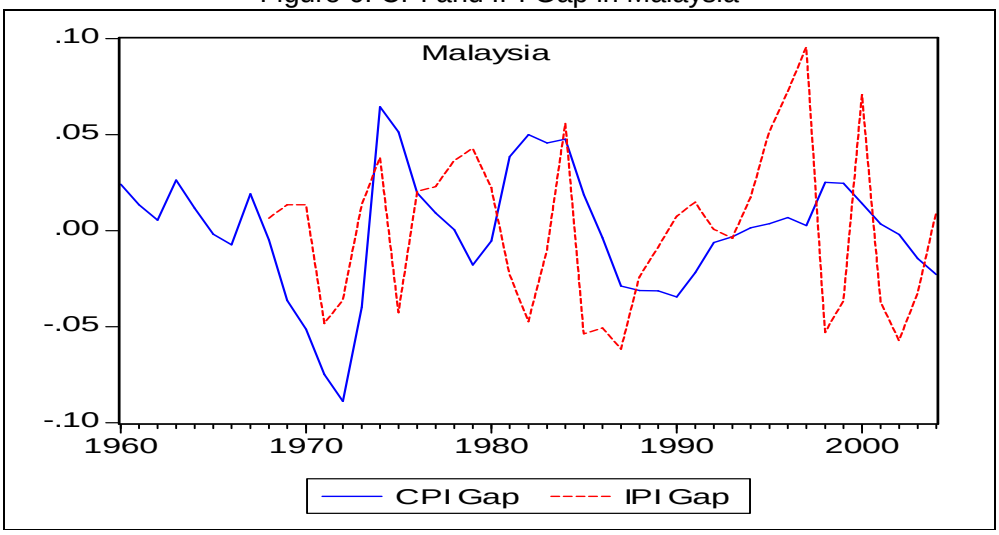
Figure 5: CPI and PPI/WPI Trend for Turkey, 1960 - 2003



Source: IFS Online

Next, we calculate the size of the gap between CPI and PPI index for each country by applying Hodrick-Prescott filter. There seems to be an symmetric behavior of goods and services inflation in Malaysia, Pakistan, Morocco and Turkey based on Figure 6, 7, 8 and 10. For Arab Saudi, based on visual inspection, the two variables are moving closely together, probably suggesting that both types of inflation are moving towards equilibrium at an approximately equal speed.

Figure 6: CPI and IPI Gap in Malaysia



Source: Author's calculation

Figure 7: CPI and IPI Gap in Pakistan

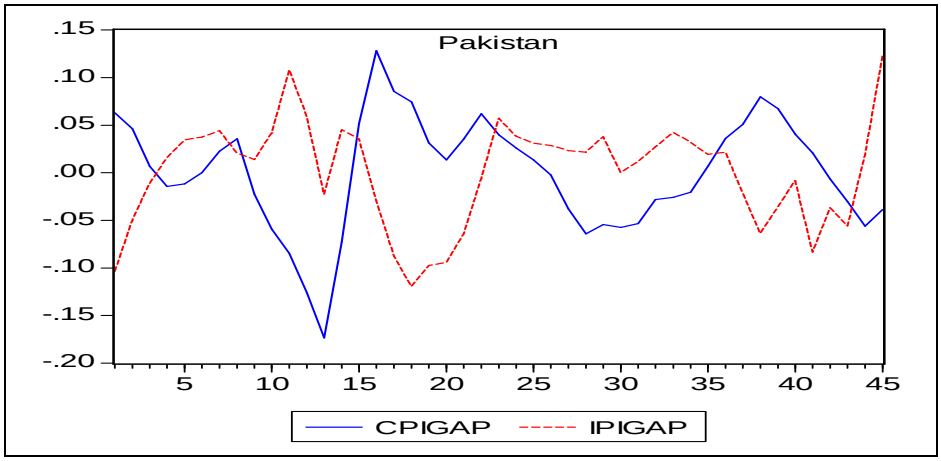


Figure 8: CPI and IPI Gap in Morocco

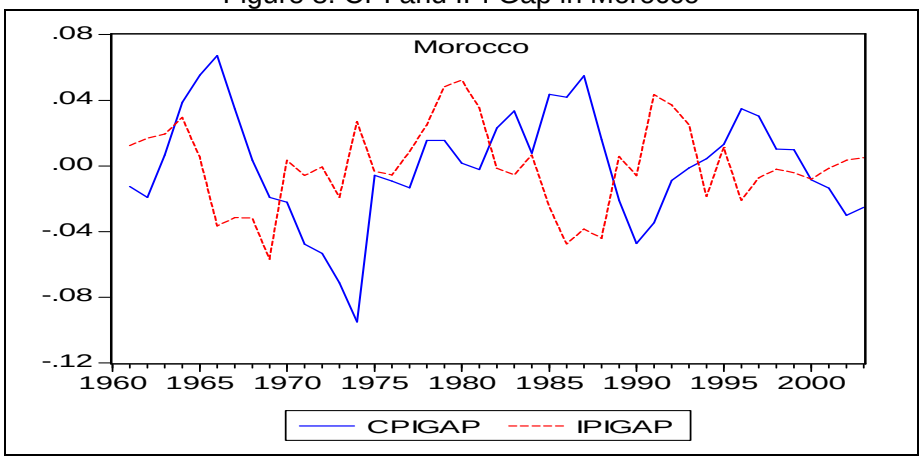


Figure 9: CPI and IPI Gap in Saudi Arabia

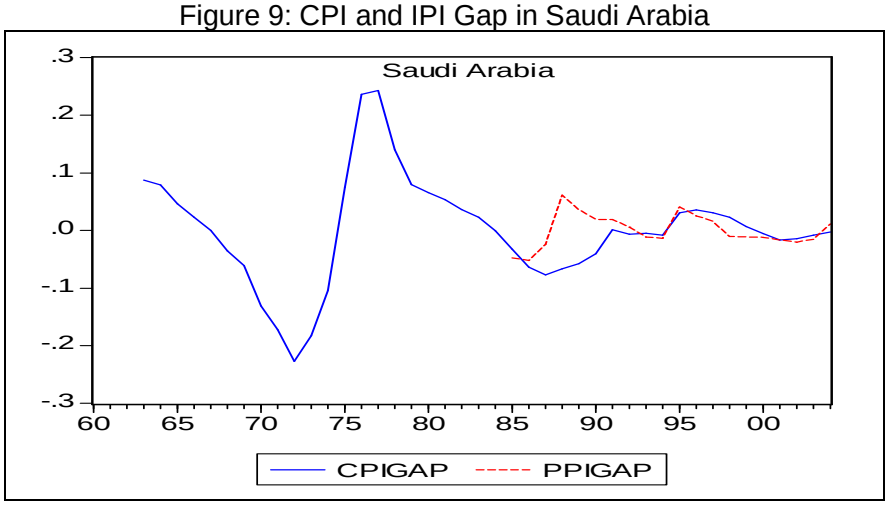
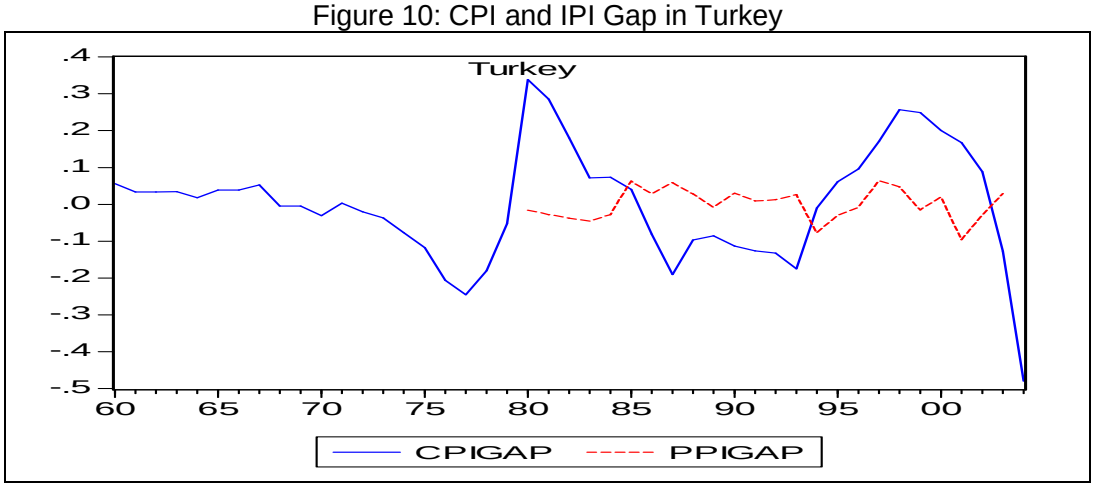


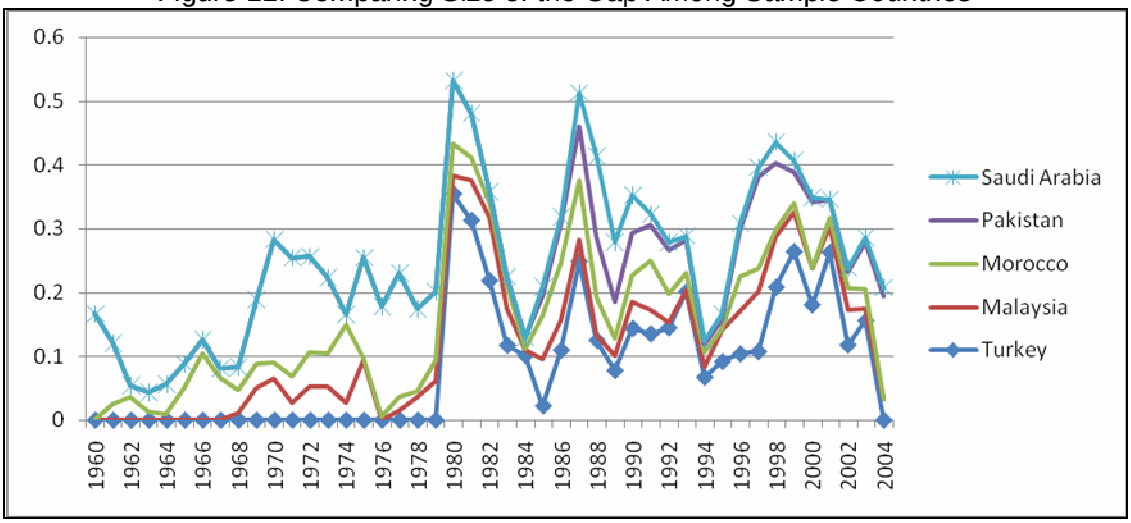
Figure 10: CPI and IPI Gap in Turkey



Source: Author's calculation

To compare the overall size of the gap, we measure the difference between actual and potential PPI and CPI for each country under study. The difference in CPI gap and PPI/IPI gap are then plotted and illustrated in Figure 11 for all five countries. Saudi Arabia and Pakistan both display higher degree of the size of gap. Morocco, Malaysia and Turkey have almost similar patterns and the size of the gap is mostly below 0.3. To interpret the results, it is most likely that in the case of Arab Saudi and Pakistan, neither types of inflation takes the burden of adjustment towards equilibrium in the long run. This means that policy makers need to take appropriate measures to prevent inflation from rising in these countries. As for the other three countries, even though the two gaps are trending together, the size of the difference are getting bigger after 1980s and trending downwards after 2004.

Figure 11: Comparing Size of the Gap Among Sample Countries



Source: Author's calculation. All values are in absolute figures.

5. Conclusion

The paper attempts to establish the size of the gap between goods and services inflation in five Muslim countries namely Malaysia, Morocco, Pakistan, Saudi Arabia and Turkey covering the period of 1960 to 2004. For each county, the IPI and CPI variables are used to represent goods and services inflation, respectively. The Hodrick-Prescott Filter was applied to each indicator to measure the size of the gap. The findings indicate that the goods and services inflation behaves asymmetrically in four out of five countries under study. The overall pattern indicates that the gap tends to close in the long run, which suggest that goods inflation take the burden of adjustment in the long run. This is probably due to the fact that in most developing economies, about 40 to 50 percent of the items in the CPI basket are controlled items. However, these controlled items are also mostly imported, which raises the issue of imported inflation. On the other hand, Saudi Arabia and Turkey both display higher differences in the size of CPI and PPI gap starting from 1980 onwards. The results indicate these two countries will experience rising inflation in the future if the policy makers didn't have inflation targeting policies.

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BANKING FOR THE POOR

The Role of Islamic Banking in Indonesia as Microfinance Institution through *Koperasi*

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Abstract

Asian crisis has been attacked Indonesia in 1997-1998 and followed by second crisis of subprime mortgage 2008, which affect all industries and sectors worldwide either directly or indirectly effects, the effect of these crisis the percentage of poverty in Indonesia has been increase so, many cases we showed in TV and read in a newspaper, a number of suicide has increase due to poverty. This crisis implies that the current economic system does not support anymore in alleviating poverty. Therefore, need a new scheme of financing to be proposed to Islamic Bank in Indonesia. We need a new scheme to use to finance the poor and discuss how Islamic bank can participate on doing so without compromising the issue of institutional viability and sustainability through Islamic way, otherwise it will bring into the same effect (crisis). Therefore, the main objective of this paper is to suggest Islamic bank to use '*Koperasi*' in each region (every Rukun Tetangga (RT) or Rukun Warga (RW)) to channel the fund to the needy via building human capacity through social intermediation and designing group-based lending programmes that are proven to be the effective tools to reduce transaction costs and lower exposure to numerous financial risks in relation to provide a credit to rural poor. In strengthening this model, the author will use 'ashabiyah concept that recommend by Ibn Khaldun in group-member. The author also will provide the structure and diagram in details how it is works.

Keywords: Islamic Bank, Microfinance, *Koperasi*, Islam, unemployment and Poverty

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1. Introduction

Indonesia is one of the biggest countries' populations in the world. At the same time, the issues of poverty and unemployment are the greatest challenges faced by Indonesian government, a large number of studies on poverty indicate that exclusion of the poor from the financial system and service is a major factor contributing to their inability to participate in economic development. Islamic Bank as one of Islamic financial institution that basically based on shariah rules and principle encouraged becoming a leader on channeling fund to the poor people, low income and economic level of life. The role of Islamic bank here as a Microfinance institution that channeling fund to the poor via *koperasi* through social intermediation and group-based lending program from a plenty a sources, not only from bank itself as internal sources but can also can be taken from zakat, cash waqf, and sadaqah as an external sources.

In order to have a good economy and social life Islam encourages people to do business and entrepreneurship, because one hadith mentioned that more than ninety percent of al-rizqu given to entrepreneur. The issue is that the poor people have no capital (money) to start business and no link to financial services. Therefore, we face the issue miss information between poor and bank especially Islamic bank as proposed to take a role as an Islamic microfinance institution to channel the fund to the poor.

Microfinance means "programme that extend small loans to very poor people for self employment projects that generate income in allowing them to take care of themselves and their families" (Rahman, 2007). Microfinance is one of a powerful tool and instrument that can alleviate poverty. It means provision of financial services to poor and low-income people whose low economic standing excludes them from formal financial system to access such as, credit, venture capital, savings, insurance, remittance is provided on a micro-scale enabling participation of those with severely limited financial means. The provision of financial services to the poor helps to increase household income and economic security build assets and reduce vulnerability; creates demand for other goods and services (especially nutrition, education, and health care); and stimulates local economies (Obaidullah and khan, 2008).

Since the poor having difficulty to access to the fund due to non-qualify person, we have to have a good scheme to propose to Islamic bank that might be used to overcome the issue. Therefore, the objective of this paper is to propose to Islamic bank in Indonesia to take a role in microfinance for funding the poor and small (micro) entrepreneurs without charging interest (*riba*) but apply profit and loss sharing scheme in every contracts. In the first part will discuss about microfinance and prohibition of Islam in micro credit, second part will discuss the issue of poverty and unemployment in Indonesia and why microfinance needed in this case, third will discuss how microfinance will take over by Islamic bank by introducing Koperasi scheme, the sources of fund and what are the barriers in this structure. The paper also discuss the issue of '*ashabiyyah* to overcome the issue of untrustworthy in this group lending. Finally the paper concludes by encouraging the Islamic bank in Indonesia to use this scheme as microfinance product in current system.

2. Issue of Poverty and Unemployment in Indonesia

The issue of poverty and unemployment has been always become an enemy to the society worldwide. These two issues always become logo for presidents' candidates and head of the state who wants become a leader have to take care these two in order to get sympathy from majority of people, because if these two issues settled, all the people become happy and indicate that his/her leadership success.

According to Mihajat (2010), In Indonesia, this two elements from my humble understanding, observation, and analysis increase year by year, even though the government claim it decrease depend on how much the income per month they measure to decide whether this family poor or not. According to BPS (Badan Pusat Statistik), the data of poverty in Indonesia decrease from 1998 by 24.23% to 2005 by 15.97%, and increase a bit in 2006 by 17.75% and decrease in 2007 16.58 and 2008 by 15.42%. (Look at table 1.1)

Table 1.1

A Number and Percentage of Poverty in Indonesia By Region, 1996-2008						
Year	**A Number of Poverty (million)**			**Percentage of Poverty (million)**		
	Urban	**Rural area**	**Urban and Rural Area**	**Urban**	**Rural area**	**Urban and Rural Area**
(1)	**(2)**	**(3)**	**(4)**	**(5)**	**(6)**	**(7)**
1996	9,42	24,59	34,01	13,39	19,78	17,47
1998	17,60	31,90	49,50	21,92	25,72	24,23
1999	15,64	32,33	47,97	19,41	26,03	23,43
2000	12,30	26,40	38,70	14,60	22,38	19,14
2001	8,60	29,30	37,90	9,76	24,84	18,41
2002	13,30	25,10	38,40	14,46	21,10	18,20
2003	12,20	25,10	37,30	13,57	20,23	17,42
2004	11,40	24,80	36,10	12,13	20,11	16,66
2005	12,40	22,70	35,10	11,68	19,98	15,97
2006	14,49	24,81	39,30	13,47	21,81	17,75

2007	13,56	23,61	37,17	12,52	20,37	16,58
2008	12,77	22,19	34,96	11,65	18,93	15,42

Source: Badan Pusat Statistik (BPS), No. 43/07/Th. XII, 1 Juli 2009.

The development of a number of poverty in Indonesia on March 2008 is 34.96 million people (15.42%) compare to poverty on March 2009 decrease by 2.43 million or 32.53 (14.15%). The number of poor people in rural area decrease significantly compare to urban area, from March 2008-March 2009 poor people in rural area reduce by 1.57 million people but in urban area only reduce by 0.86 million (Look at table 1.2).

Table 1.2

Poverty Line, Quantity and Percentage of Poor people According by Region March 2008-March 2009

Region/Year	**Poverty Line (Rp/Capita/Month)**			**Quantity of Poor People (Million)**	**Percentage of Poor People**
	Food	**Non-Food**	**Total**		
(1)	(2)	(3)	(4)	(5)	(6)
Urban					
March 2008	143 897	60 999	204 896	12,77	11,65
March 2009	155 909	66 214	222 123	11,91	10,72
Rural					
March 2008	127 207	34 624	161 831	22,19	18,93
March 2009	139 331	40 503	179 835	20,62	17,35
Urban+Rural					
March 2008	135 270	47 366	182 636	34,96	15,42

March 2009	147 339	52 923	200 262	32,53	14,15

Source: Badan Pusat Statistik (BPS), No. 43/07/Th. XII, July first 2009.

The Indonesian battles are to reduce unemployment and poverty, many programmes and actions has been done by government to reduce these two, such as giving BLT (*bantuan langsung tunai*) to the poor people even though this action from my opinion its not the right way, we have another way that we can do such as combination of *Sukuk*, *zakat* and *waqf* that I want to proposed in this paper on doing project and business activity that can generate income for local government and increase GDP for national income.

Base on CIA World Factbook data, the unemployment rate in Indonesia from 2006 is 12.50% and decrease in three years in 2010 is only 7.70%.[2] (Look at table 1.3 and chart 1.1)

Table 1.3

Year	Unemployment Rate	Rank	Percent Change	Date of Information
2003	10.60	92		2002 est.
2004	8.70	111	- 17.92	2003 est.
2005	9.20	82	5.75	2004 est.
2006	11.80	121	28.26	2005 est.
2007	12.50	133	5.93	2006 est.
2008	9.10	115	-27.20	2007 est.
2009	8.40	115	-7.69	2008 est.
2010	7.70	80	-8.33	2009 est.

At the other hand, there is good intention from our president (SBY) who has planning namely the five-year development plan *Pelita* in reducing poverty and unemployment, many economists' expert doubt this programme to be achieved. At the same time national economic development growth is only 7% per year, lower than the threshold of poverty to 8%, reduce unemployment rate to 5%, so it is not easy to achieve the objective of this programme. To realize this programme, a summit On October 29 and 30 has been held in Jakarta organized by the Chamber of Commerce and Industry, attended by over 1000 people, a summit with the theme "*Making a Prosperous, Judicious and Democratic Indonesia*". It brought together financial experts, businessmen, government officials and officers leading the country. During the opening ceremony, SBY emphasized that "any hurdles to boost economic performance should be seriously

[2] See on www.indexmundi.com/indonesia/unempyment_rate.html, access on 10/04/2010.

tackled." This statement to show how serious he is in alleviating poverty and reducing unemployment (Asianews.com, October 2009).[3]

Therefore, the main objective in this paper to help and propose a model of microfinance that based on shariah to Islamic bank in catering these two issues (unemployment and poverty) that basically bring in to a social problem in the society.

3. Microfinance and Islamic Banking

Islam is a comprehensive religion covers all sectors of human life, individual and social, material and moral, economic and politic, legal and cultural, national and international and soon. Since the objective of microfinance is to channel the fund to the poor whose need capital to do business and Islam encourages people to do business to increase economic growth and help the poor to achieve the fairness of equality of income so Islam and microfinance has the same objective.

However, the current practices of microfinance including grameen bank founded by Muhammad Yunus is basically base on riba. Therefore, this paper proposing microfinance has to be base on profit and loss sharing and real economic activity. Since Indonesia is one of the largest Muslim' country in the world and poverty and unemployment still high, the emergence of microfinance will become tool to alleviate poverty and reduce unemployment. According to Rahman (2007) the main aim of Islamic banking and finance is to provide the Muslim society with an Islamic alternative to conventional banking system that based on *riba*. Riba can be classified into at least two main types, namely credit riba (riba al-nasi'ah) and surplus riba (riba al-fadhl) (al-Zuhayli, 2006). Credit riba is any delay in settlement of a due debt, regardless whether the debt of goods sold or loan. Muslim jurists define riba al-nasia'ah in loans as bringing to the lender a fixed increment after an interval of time, or extension of time over the fixed period and increase of credit over the principal. On the other hand, surplus riba (riba al-fadhl) is the sale of similar items with disparity in amount in the six canonically forbidden categories of goods: gold, silver, wheat, barley, salt, and dry dates. This riba is appear by way of excess over and above the quantity of the commodity advanced by the lender to the borrower. Riba can also exist if there is either inequality or delay in delivery of goods offered. In Islam, we can delay either goods (salam) or price (BBA) we cannot delay on price and goods at the same time.

As explained by Qureshi (1991), Imam Fakhruddin Razi in his book *al-Tafsir al-Kabir* emphasizes that there are basically 3 reasons for the unlawfulness of *riba'*. The first reason is where the creditor's can ensure its income from the interest paid by the debtor that will lead to the exploitation and living in reduced circumstances which is a massive inequity. Charging excess or surplus in exchanging one commodity against the other will lead to the exploitation of the borrowers. The borrowers would have to pay back the interest on top of the principal. This will make the lenders better off at the expense of the borrowers. In addition, the strong condemnation of interest-based

[3] www.asianews.com, saturday, october 31, 2009, access on 9/04/2010.

transactions is intended to uphold equity and the protection of the poor (i.e. the borrower). In other words, interest or *riba'* supports the possibility for wealth to accumulate in the hands of a few, and thereby it shows that man's concern for his fellow men is decreased.

Secondly, since interest or *riba'* is predetermined and the creditor is certain to receive the interest imposed, it may prevent the creditor from being involved in any occupation because it is certainly easy to receive income from the interest on a loan [Qureshi 1991]. In this situation, the creditor has not made any effort or undergone any hardship in acquiring income and this will hinder the progression of worldly affairs. Finally the unlawfulness of *riba'* is due to an end of mutual sympathy, human goodliness and obligations because the practice of *riba'* may lead to borrowing and squandering [Qureshi 1991].

As an alternative to *riba'*, the profit and loss sharing arrangements are held as an ideal mode of financing in Islamic finance. It is expected that this profit and loss sharing will be able to significantly remove the inequitable distribution of income and wealth and is likely to control inflation to some extent [Siddiqui 2001]. Furthermore, the profit and loss sharing may lead to a more efficient and optimal allocation of resources as compared to the interest-based system. Since the depositors are likely to get higher returns leading to richness, it is hoped that progress towards self-reliance will be made through an improved rate of savings. Thus will ensure justice between the parties involved, as the return to the bank on finance is dependent on the operational results of the entrepreneur [Siddiqui 2001].

Consequently, the theory of Islamic finance gives rise to the development of Islamic banking where the functions of a bank do not vary between conventional and Islamic banks. However, the operations, philosophy, and objectives differ significantly between the conventional and Islamic Banks [Ziauddin 1991]. Conventional bank operates its business in the capitalist system where the root of the system is based on interest and *riba'*. On the other hand, the Islamic bank provides the solution to the Muslims in terms of principles, instruments and issues in dealing with banking business activities where the operations of the activities are based on the principles of the *Shari'ah* that avoid the issue of riba, gharar, and gambling by encouraging profit and loss sharing instrument (Ahmad and Ahmad, 2009).

4. The Role of Islamic Banking

The development of Islamic banking in Indonesia increase significantly over the year since the demand of Islamic banking by the customers is huge and enthusiastic. However, there is one missing component that does not take into consideration by Islamic bank which is microfinance for the poor.

There are reasons why bank reluctant to give financing to the poor, one of the important elements is trust. The basis of trust depends on two critical elements: first is the

applicant's reputation as a person of honor; and second is the availability of enough capital or collateral against which claims can be made in case of default (Dusuki, 2008). According to Dusuki (2008), the essence of conventional profit-maximization banks as financial intermediaries providing financial services to people hinge upon two elements. As formal lenders, risk-averse banks would only willing to lend if these two elements serving as a basis of trust exist in their reciprocal relationship with clients (as borrowers). For instance, the bank is able to assess the reputation of borrowers based on bank's intimate knowledge embedded in the clients personal accounts as well as other documented history of past borrower behavior. At the same time, the clients have material value such as properties or any valuable asset serving as collateral to pledge against risk.

Another element that taking into consideration by the bank is "too poor" to save. Those elements make the poor has difficulty to access the credit from the bank. Therefore, this paper proposes a microfinance model to Islamic bank and use shariah compliant contract based on group lending to avoid moral hazard risk.

5. Microfinance Model

The most famous model up to date is the grameen bank model of microfinance that found by Muhammad Yunus in 1983 on principles of trust and solidarity. Muhammad Yunus - a Professor in Economics from the University of Chittagong, Bangladesh - has found a brilliant idea for the best solution in helping the poor out of their poverty, which then grows over the world. It initially began in Jobra, Bangladesh and later known as Grameen Bank, the largest bank in Bangladesh and probably the biggest micro credit organization in the world. Grameen Bank provides micro credit to the poorest of the poor in rural Bangladesh without any collateral. At Grameen Bank, credit is a cost effective weapon to fight poverty and it serves as a catalyst in the overall development of socio-economic.

Until 2002, Grameen Bank model has been replicated, either modified or kept original, by 400 replicators in 22 countries of Africa, 19 in Asia, 3 in Oceania, 15 in America, and 7 in Europe. This proves the successful of Grameen Bank as poverty alleviation program and has been internationally accepted by different countries and cultures. Remarkable achievements have been surprising. With mostly 100% of repayment record, the program has also been able to improve the life quality, provide better food, better education, as well as better housing for the poorer community.

Grameen Bank Replication (GBR) program in Indonesia was initially started in Bogor, West Java by Karya Usaha Mandiri (KUM) in 1989. This initiative was followed in 1993 by Mitra Karya East Java (MKEJ) in Malang, East Java. Both organizations have pioneered the GBR story in Indonesia as over 15 GBRs have taken part in different places in the country since 1997. In Sumatra, Grameen Bank model was replicated by Yayasan Pokmas Mandiri (YPM). Now YPM has 2 branches in 2 regencies (Deli Serdang and Asahan) that covers over 60 villages and purely operates as a sustainable micro-credit organization (Sarumpaet, 2005).

Some modification from the original Grameen Bank was made in according to the

local culture and settings. Within 2 years, YPM had reached over 700 members and disbursed Rp. 320 million (approximately US$ 32,000) as micro-loan with 100% repayment rate. Recent coordination with international financing agency has also contributed a significant improvement the number of local micro enterprises getting financial capital and the amount of the loan given. The Citigroup Foundation has given a total grant of $190,000 for the program to four micro credit NGOs in Indonesia, including Yayasan Pokmas Mandiri (Sarumpaet, 2005).

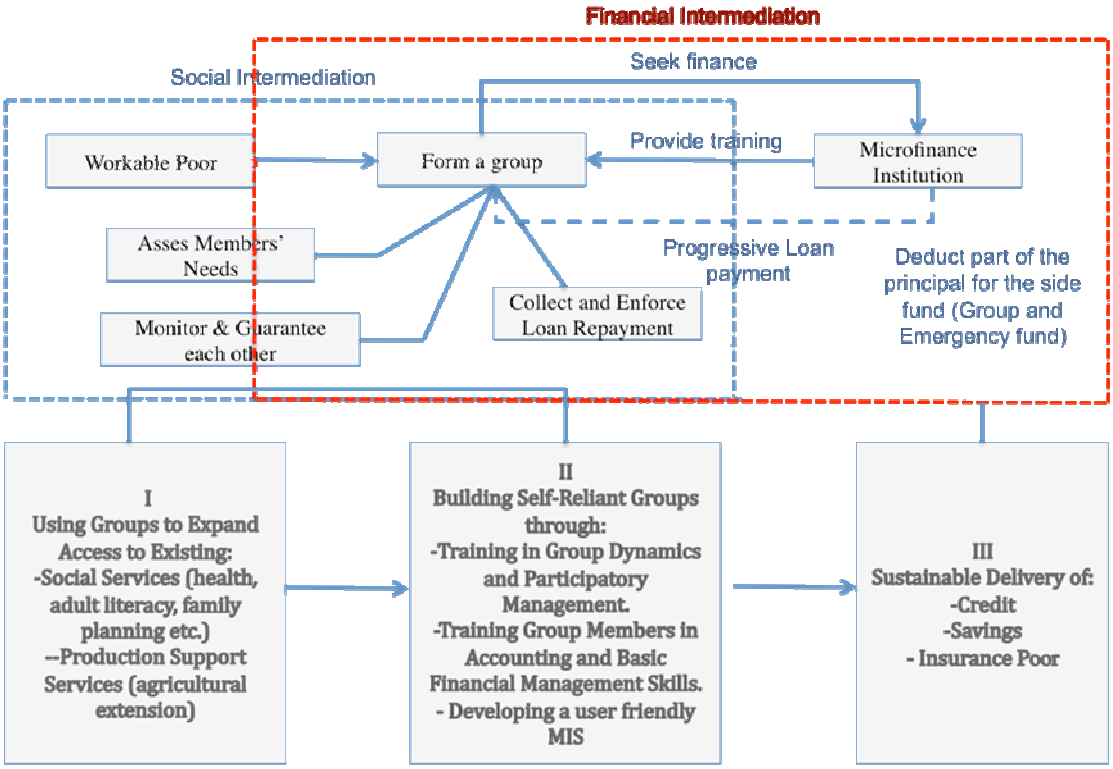
The failure of commercial banking to provide financial services to the poor is the major rationale why microfinance innovations have come into the picture needed to serve the poor. The most quoted examples are Grameen Bank, Koperasi unit desa of Bank Rakyat Indonesia, ACCION International in United States and Latin America and PRODEM, BancoSol's Predecessor in Bolivia (Dusuki, 2008). Consequently, in order to avoid many issues in microfinance scheme has to follow market-oriented and enterprise development approach that emphasizes institutional and programme innovations to reduce costs and risks. According to Dusuki (2008), there are some salient features of microfinance mechanism.

1. Integrating Social Intermediation

The traditional microfinance model cannot be utilized anymore since the issue of untrustworthy come to the picture. In the era of Prophet it can be done because Muslim at that time can be trusted and many companions come as guarantor to the lender. Since the time has change and many people naturally untrustworthy, the social intermediation needed to solve the moral hazard issue.

According to Dusuki, 2008; Benet et al., 1996; Pitt & Khandker, 1996) social intermediation is "a process in which investments are made in the development of both human resources and institutional capital, with the aim of increasing self- reliance of marginalised groups, preparing them to engage in formal financial intermediation". Social intermediation is different from other common types of social welfare services because it offers mechanism enabling beneficiaries to become clients who should then ready to enter into a contract involving reciprocal obligations. This aspect of social intermediation should eventually prepare individuals to enter into solid business relationships with formal financial institutions. The process normally involves training members in basic accounting and financial management as well as business strategy to ensure viability and sustainability of financial services offered. Figure 2 illustrates the social intermediation process in microfinance aiming to make groups to enter into solid business relationship (a contract involving reciprocal obligations) with formal financial institutions.

Figure 1. Social Intermediation Process



Sources: (Combination of Dusuki, 2008, and Benet et al., 1996)

2. Group-based Lending

Many successful microfinance institutions worldwide adopt group-based lending approach capitalising on peer monitoring and guarantee mechanism. Group-based approach normally involves the formation of groups of people who have a common objective to access financial services. One important feature of group-based lending is the use of peer pressure as a substitute to collateral. It has been proven empirically as one of the most effective ways of designing an incentive-monitoring system in the presence of costly information. Therefore its potential to reduce transaction costs in credit delivery and disbursements (searching, monitoring and enforcement) of the lender by shifting onto the groups.

Generally, the are three types of conventional microfinance (Dusuki, 2008); first, group-loan join liability, second, individual-loan join liability, third, individual-loan individual liability (current banking practice). The model that we proposed in this model is the second type of conventional microfinance, individual-loan join liability where the every group can choose their group member according to them in each region. Let say, in in Gombak Selangor we have Batu 4,5,6 or other area in Selangor or Kuala Lumpur in Malaysia conduct meeting every month. In each area we can asses for those who need loan for doing business, they can choose the member among its self 5 members, or we can broaden the region to have a group member in order to get financing from MF institution. The idea behind this model is basically to ease the member in choosing their

group and usually they know each other.

3. Saving mobilization

According to Dusuki (2008), saving is crucial element in building self-sufficient microfinance institutions. Saving mobilization can strengthen microfinance institutions and reduce their dependence on government subsidies and donors for loanable funds. Well-crafted saving services can encourage a move from non-financial savings into financial savings, with advantages for entrepreneurs of safety and liquidity and for society of providing funds for investment by others. For example, Grameen Bank, Amanah Ikhtiar Malaysia and several programmes of ACCION International have used some form of compulsory savings, where borrowers are required to save a portion of the amount they borrow. The amount required for compulsory savings is sometimes determined based on a percentage of the loan granted or sometimes as a nominal amount. On the other hand BRI Unit Desa System in Indonesia offers a voluntary savings instruments such as passbook savings, with free access to deposits, which better meets depositors' liquidity requirements. The reason behind compulsory saving is to mitigate the moral hazard issue in MF institutions since there are many issues that currently happened in Indonesia whereby many BMT (one of Microfinance in Indonesia) suffered huge losses due to moral hazard problem.

In Addition, the model that proposed in this paper is developing microfinance model that has been emerged in the previous practices that basically non-shariah compliance activities and how do we apply it in Islamic context that appropriate for Indonesian culture through Koperasi. Basically, this model is to encourage Islamic bank to utilize Koperasi Concept in microfinance in order to smooth this idea. Look at figure 1.5

The basic mechanism procedures of applying the microfinance model via koperasi summarized as follows:

1.a Form a group. In order to get financing, there are should be five members in group whose form the group that they can trust each other. To ensure the cooperation, they are bound under underlying contract namely Ta'awun. Every member is responsible if there is default etc.

b. Approach Koperasi to get financing, so that Koperasi will report to the Islamic bank the group that want to get facility.

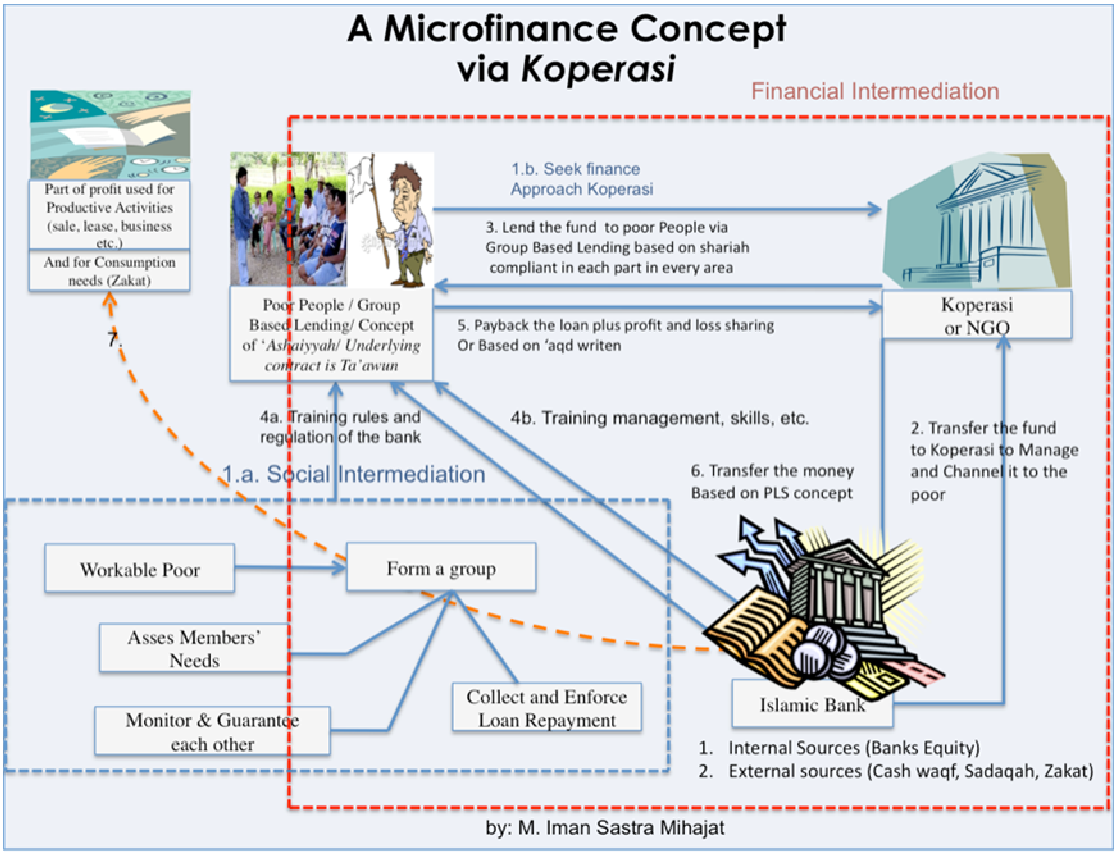
2. Islamic bank transfer the fund to Koperasi

3. Koperasi will transfer the fund to the group members and; 4. Islamic Bank will provide training regarding to management, skills etc. and training of rules and regulation of the bank

5. The group will pay back the principal plus the loss sharing profit to Koperasi and loss based on the agreement made and based on the contract used at front.

6. Koperasi will transfer the payment to the bank and; 7. Since part of the fund taken from zakat, sadaqah and waqf, the profit will shared into one for productive activities (refinancing), and part of it will distribute to the needy for consumption purposes.

Figure 5: A Microfinance Model via *Koperasi*



5.1 Concept of 'Ashabiyyah in This Model

The concept of 'Ashabiyyah that proposed in this model is basically the concept of solidarity that can strengthen the model of microfinance. The failure of commercial banking previously in lending money to the poor due to non-group based-lending structured with solidarity. Therefore, this model trying to combine all idea of successful microfinance model that is interest-based system into Islamic system which is free interest-based, free ambiguity, and free speculation.

Ibn Khaldun in his al-Muqaddimah postulates the necessity to have 'asabiyah in constructing a strong civilisation. 'Asabiyah or social solidarity or *'espirit de corp'* can be broadly defined as the state of mind that makes individuals to identify with a group and subordinate their own personal interests to the group interests. According to Ibn

Khaldun, human being by nature is social being who prefer to live together, cooperate and helping each other. However, due to numerous worldly temptations and motivations, individuals sometime acting to serve their own self- interest, thereby undermining the interest of the society at large. In his writings, Ibn Khaldun asserts that ‘asabiyah or social solidarity was more evidenced and much stronger in nomadic tribes. This is due the fact that nomads lead a very simple life and do not know anything of luxury (Dusuki, 2006).

Generally, there is main reason why the author integrated the concept of ‘ashabiyah in good manner in this model is to indoctrinate into the group member the solidarity of cooperation and helpful among them. While one of the froup member default in repayment, other group members will help in order to strengthen their financial rating in the bank. In Islam, the term ‘asabiyah is used to connote two different meaning. The first meaning identifies ‘asabiyah as a social solidarity which is in harmony with the concept of brotherhood in Islam. This type of ‘asabiyah is praiseworthy since it encourages people to cooperate with each other for common objectives, restraint their self-interest, and fulfil their obligations towards each other. The following Quranic verse attests to this:

> *“And cooperate in righteousness and piety, but do not cooperate in sin and aggression:* (Al-Quran 5:2)

The second meaning of ‘*asabiyah* is ‘*asabiyah jahiliyah* referring to the blind and prejudiced loyalty to one’s own group. This leads to the favouring of one’s own group, irrespective of whether it is right or wrong. This type of ‘asabiyah is blameworthy, having tendency to promote injustices, inequities, mutual hatred and conflict. The Prophet (p.b.u.h) made a clear distinction between these two types of asabiyah in a hadith:

> It was reported by Ibn Majah from the father of Fusaylah, that the Prophet, peace be upon him, was asked whether the love for one’s own qawm (group, ribe or nation) constituted under the meaning of ‘asabiyah. He replied: “No! ‘asabiyah is rather the helping of one’s qawm in zulm (injustice).”

There are many cases in Indonesia where Islamic microfinance has failed in financing the poor due to untrustworthy issue and microfinance model issue that not apply Grameen Bank’s model which is group-based lending. Currently, many microfinance institutions have been adopted Grameen’s model in lending money to the poor where they learn from historical failure of microfinance. Undoubtedly, Ibn Khaldun uses the word ‘asabiyah in the Muqaddimah to imply the positive ‘asabiyah or social solidarity strongly premised in Shariah. He asserts, social solidarity becomes an irresistible power if it is grounded on the religious paradigm. Hence a sense of solidarity of any group or tribes can only make a real impact if supported by religion and not otherwise (Dusuki, 2006).

5.2 Contracts in Microfinance Scheme

Generally, many ‘aqd that can be used by Islamic bank in microfinance concept as follows:

Category	Instrument	Description	Application
1. Participatory-based	Musharakah	A partnership contract between two parties who both contribute capital towards the financing of a project. Both parties share profits on a pre agreed ratio, but losses are shared on the basis of equity participation. Either parties or just one of them may carry out management of the project. This is very a very flexible partnership arrangement where the sharing of the profits and management can be negotiated and pre-agreed by all parties.	This financing mode is suitable for working capital financing, fixed asset purchased, project financing, etc.
	Mudharabah	An agreement made between two parties: one which provides 100 per cent of capital for the project and another party known as a *mudharib*, who manages the project using his entrepreneurial skills. Profits are distributed according to predetermined ratio. Any losses accruing are borne by the provider of capital. The provider of capital has no control over the management of the project.	This financing mode is suitable for working capital financing, fixed asset purchased, project financing, etc.
2. Exchange-based (*mu’awadhat*)	Murabahah	A contract sale between the bank and its client for the sale of goods at a price which includes a profit margin agree by both parties. As a financing technique, it involves the purchase of goods by the bank as requested by the client. The goods are sold to the client with a mark-up. Repayment, usually in installments is specified in the contract.	This financing mode is suitable for working capital financing, fixed asset purchased, project financing etc.
	Bay` Bithaman ‘Ajil	This contract refers to the sale of goods on a deferred payment basis. Equipment or goods requested by the clients are bought by the bank which subsequently sells the goods to the client at an agreed price which includes the bank’s mark- up (profit). The client may be allowed to settle the payment by installments within a	This financing mode is suitable for working capital financing, fixed asset purchased, project financing etc.

		pre-agreed period, or in a lump sum. Similar to a murābahah contract, but with payment on a deferred basis.	
	Bay` al-Salam	A contract of sale of goods where the price is paid in advance and the goods are delivered in the future.	This financing mode is suitable for agricultural financing which requires capital at certain critical stage (e.g. during plantation stage).
	BBay` al-Istisna'	A contract of acquisition of goods by specification or order, acquisition of goods by specification or order, where the price is paid in advance, but the goods are manufactured and delivered at a later date.	This financing mode is suitable for financing assets which require capital at different stages of construction and tailor-made manufacturing.
	Ijarah	A contract under which a bank purchases and leases out equipment required by its clients for a rental fee. The duration of the lease and rental fees are agreed in advance. Ownership of the equipment remains in the hands of the bank.	This instrument is suitable for financing fixed assets such as machinery, motor vehicles etc.
3. Voluntary charitable contract (*tabarru`*)	*Ar-Rahn*	A pawning contract which involves holding a valuable non-fungible good as insurance against a debt, where the non- fungible may be used to extract the value of the debt or part thereof. In some jurisdiction, a minimum custodian fee may be charged to the borrower for safekeeping of pawned property	This financing mode is suitable for all purposes including working capital, personal consumption, fixed assets purchase etc. This mode of financing requires customer to have valuable asset eligible for pawning such as gold or silver.
	Qard al-Hassan	An interest-free loan given mainly for welfare purposes. The borrower is only requires to pay back the amount borrowed. In some cases, a minimum administrative fee may also be charged to the borrower. However this service charge must be the actual administrative cost incurred in managing the loan and not a fixed percentage on the amount of loan.	This financing mode is suitable for all purposes including working capital, personal consumption, fixed assets purchase etc.
	Musharakah Mutanaqisah	This instrument involves three different contracts, namely musharakah, sale and ijarah. Islamic banks jointly purchase and own an	This financing instrument is suitable for fixed asset financing.

4. Hybrid		asset with client aiming at transferring the ownership to the client. The bank's share will gradually be reeemed by client by executing sales contract. The bank is also allowed to lease its portion of the asset to client for rental income.	
	Ijarah Thumma al-bay`	This instrument involves two separate contracts namely leasing and sales contracts executed separately and in sequence. The bank normally purchases the asset and leases it to client. At the end of leasing period, the ownership is transferred to the client by executing sales contract which normally at a nominal price.	This financing instrument is suitable for fixed asset financing such as motor vehicles.

Source: (Dusuki, 2008)

In addition, there are many contracts that we can utilize for this model depend on the need of entrepreneur and Islamic bank. Since the contract is not limited, the microfinance model via koperasi is more acceptable and relevant to use in the current system. If it is business activities, we can use *mudharabah* and *murabahah* that based on profit and loss sharing, whereby the loss born by capital provider and profit disbursed depend on agreed ration among parties. For agriculture purposes we can use *salam*, where the payment in advanced where the commodity will delivered in the future in agreed price and agreed types of commodity and so on.

6. Conclusion

This paper introduces the relevance of Islamic microfinance concept via *Koperasi* to utilize by Islamic bank in Indonesia that can be accepted also globally by using NGO as intermediary between group members and the bank. This microfinance bound under shariah compliance contract in mobilizing the fund that promotes financing activities to the poor. The workable poor are potential clients that can generate profit for the bank and generate profit for the bank that can increase economic growth of the country. One the poor can be decreased from time to time using this model, the prosperity of the *ummah* will taken place. Introducing Islamic microfinance is to promote social justice in the society and equal distribution of wealth at same time prohibiting illegal activities that can destroy social and environmental well being is constrained in this model.

The model in this paper has been discussed its salient features, first; the concept of group based lending that is one of the most successful microfinance concept as a globally accepted to be practiced by Islamic bank. In the group based lending, we train the members to become '*ashabiyah* to each other under contract *ta'awun* where each members will responsible with any issue happened among them and cooperate in the time of profit and loss. Second; the purpose of using Koperasi as intermediary between group members and the bank is to reduce the cost. The bank does not need to open the branches

in the urban area that can increase the administration cost and other cost. Third; training for the members is very urgent in this financing, many microfinance institutions failed due to lack of skills of group members and less educated. Thus, the task of bank is giving training regarding to the relecant skills and management of business and also regulation of the bank to improve their ability.

As far as the poor are being concerned, they should perceive formal savings, credit and financial services as safer and more attractive (Obaidullah and Khan 2008). Formal saving by group members also one of risk mitigation instrument that can be used by Islamic bank. However, the primary goal of this model is to develop a microfinance industry that is institutionally and financially sustainable and integrated within the broader formal financial sector that respects the cultural and religious values of a Muslim society. This model seen as an essential tool and approach for poverty alleviation and soci-economic development in Muslim countries.

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PERFORMANCE OF ISLAMIC BONDS (SUKUK) AND CONVENTIONAL BONDS: AN EMPIRICAL INVESTIGATION FROM PUBLIC LISTED ISSUER IN MALAYSIA.

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ABSTRACT

The purpose of this study is threefold; (i) to analyze the performance of the company that issues Islamic bonds (sukuk) as compared to corporate bonds (conventional). (ii) to look at relationship between bond facets and firms' performance and (iii) to evaluate the effects of independent variables in terms of size of issuance, bond's rating, coupon rate, types of instruments and tenor of each issuance towards firm's performance. The study used a secondary data for a total of N= 966 issuance which are gathered from Bank Negara info Bond website, and Rating Agency Malaysia (RAM) for such a bond facets. Data from Thompson Data Stream and Bloomberg are utilized to represent firm's performance proxies (N=970) from 2002 until 2009. The preliminary result revealed by multivariate regression and independent T test was shown there is a statistically significant relationship between bond facets with firm's performance. Most of the public listed issuer was issued Islamic bonds as compared to conventional bond. However, this study cannot be concluded which types of instrument is better since the study period captured only eight years not enough to prove since it involved a long term investment in capital bond market.

Key words: Sukuk, Conventional Bonds, Bond facets, Firm Performance.

1.0 INTRODUCTION

The evolution cycle of sukuk in Malaysia was quick because of sophisticated Shariah-compliant products which have gained worldwide acceptance. Besides, it based on interest- free trading and followed the syariah principle for all sukuk contracts such as bai' bithaman ajil (BBA), murabahah, istisna', ijarah, musyarakah and mudharabah. Sukuk are basically investment certificates consisting of ownership claims in a pool of assets. Sukuk were widely used by Muslims as papers instead of financial obligations originating from trade and other commercial activities. However, the present structure of sukuk are different from the sukuk originally used and are similar to the conventional concept of securitization, a process in which ownership of the underlying assets is transferred to a large number of investors through certificates representing proportionate value of the relevant assets.

The Islamic Banking Act of 1983 was based on an acknowledgement of the aspirations of Muslims to have *riba*-free banking and investment services as well as the government's goal of establishing a modern financial system in every aspect to Malaysia's socio-economic goals for the 21st century economy. On a continuous basis, the Malaysian government has been revising and adapting its Interest Free Banking Scheme and securities programs to meet market and economic changes. Sukuk also known as Islamic bond was regulated under the powers of the Securities Commission (SC) in Malaysia. The main issuers of public debt are the Government of Malaysia, the central bank (Bank Negara Malaysia), and quasi government institutions (Khazanah, Danamodal and Danaharta). Private debt securities and asset-backed securities are issued by the National Mortgage Corporation (Cagamas Berhad), financial institutions and non-financial corporations. Bond issuers have an option to issue bonds under the conventional or Islamic principles. Islamic bonds are similar to conventional bonds in Malaysia. It always has

time to maturity, a coupon rate, and trades on the normal yield price relationship. For conventional investors, the structuring of the bonds by the issuer is irrelevant. The difference lies only in the way the issuer structure the bonds. An Islamic bonds is structured such that the issuance is not an exchange of paper for money consideration with the imposition of an interest as per conventional. It is based on an exchange of approved asset for some financial consideration that allows the investors to earn profits from the transactions. Approval of the assets and the contract of exchange would be based on Shariah (Islamic law) principles, which is necessary to meet the Islamic requirement. On the other hand, conventional bonds are standard bonds bearing a coupon, paying interest twice a year and have a maturity date at which they will redeem their bonds at face value or par value. The price of conventional bonds will change primarily with the change in interest rate, which could include trading activities that are deemed prohibited and are not regarded as suitable for Muslim investors.

The remainder of the paper is structured as follows. In section 2.0, the study discusses the development of hypotheses through reviewing previous articles besides provide a brief review of related research and report. In section 3.0, it was introduce the operational definition used, present the proposed methodology and describe the data for the study. The methodology is applied in section 4.0 where the statistic is derived in this section to test the model goodness of fit. Further, the result was discussed to show how the model can be put to use by individual investors. Section 5.0 concludes the paper.

2.0 REVIEW OF LITERATURE AND HYPOTHESIS DEVELOPMENT

In this study, the hypothesis are developed based on previous literature and report done by many authors, for instance Shahrim, (2006) and Al-Amine (2001) were focused on leverage and risk when issuing bonds. They mentioned that bonds issued by high leverage companies are considered risky for Muslims, as they might contain elements of gharar and may lead to maysir. In conventional bonds there is exploitation of interest rate movement, and the bond risk is assessed not by the bondholder, but by a third party rating agency. Therefore, it can be said that the bondholder's only concern is the return, without any consideration of the use of the proceeds.

Besides the return, size of sukuk issuance need to be considered when making a decision in creating structure of capital by firms. Usually, the money raised from the sukuk issuance is used to invest in the underlying asset (Clifford Chance (2008); Manaf, 2007; Shahrim (2006). In addition, the issuance of Sukuk has undergone rapid increase; for example, London based financial institutions had arranged more than a dozen Sukuk issuances on behalf of Middle Eastern clients in 2006, while in 2008 Indonesia will increase the sale of both conventional and Islamic bonds in order to generate a domestic source of finance to solve its financial deficit (Emergingmarketsmonitors.com (2007); Alvi (2006, 2007).

Based on the Rating Agency Malaysia Berhad (RAM) report in 2004, the Malaysian corporate sukuk market continued to expand and mature in 2004, affirming the role that Islamic finance plays in mobilizing the capital needed by corporate. The entry of 51 corporates sukuk issues, with an aggregate value of RM15.03 billion. These represented 55% of total ringgit denominated corporate bonds issued which grossed RM27.37 billion. To the credit of the industry, these well-received sukuk issuances underscore the growing appetite for syariah-compliant instruments and

strong investor confidence in the prospects of such instrument. Meaning that, from this report the size of sukuk issuance was tremendously increasing among public and private sector in generating profit. Furthermore, Zeti Akhtar Aziz (2007) a governor of Bank Negara Malaysia said that the growing role of Islamic finance in mobilising and channeling funds to productive investment activities across borders contributes to more efficient allocation of funds across borders and facilitates international trade and investment. The more recent developments in Islamic finance are the rowing significance of the sukuk market to become an increasingly important component of the development of the global sukuk market. There has been growing interest in the issuance of sukuk by corporations, sovereigns and multinational corporations; the demand for sukuk significantly exceeds the supply. Today, the global sukuk market, denominated in international currencies, is estimated to exceed USD50 billion. Although the size of the market is modest by global standards, the sukuk market is experiencing remarkable growth, increasing at an average rate of growth of forty per cent per annum. In her other articles, She also focus on the vast potential of the Islamic bond market in the economic development process, in its role in ensuring financial stability and its role in promoting greater financial integration in the global financial system. Similar with the Abdul kader Thomas (2007) also stress on the important of the sukuk market. He argue that the application of the forward lease is an innovation developed elsewhere, but made possible in the sukuk space thanks to Malaysia's progressive steps to define the broad sukuk space, and grow it with new concepts. Faisal Alshowaikh (2008) also mentioned that Malaysia has been developing a more extensive capital market after the Asian financial crisis to ensure a more resilient financial system. He also said that Malaysia is a matured market as indicated not only by the market share but also by the number of issuances. Here with, this study was developing the first and second hypotheses to outfit for the pooling regression model as below:

H1: There is a significance positive relationship between size of issuances with the firm's performance.

H2: There is a significance positive relationship between coupon rates with the firm's performance.

Ali Arsalan Tariq (2004) mentioned in his study the success and popularity of the Sukuk framework as an alternative asset management platform will invariably require inbuilt mechanisms which can be instrumental in mitigating risks that exist in the structures due to the benchmarking of Sukuk with market references such as London Inter-bank Offer Rate (LIBOR). Rodney W. (2008) provides an analysis of different sukuk structures from a financial perspective. This examination includes murabahah and ijara-based sukuk, the former offering a fixed return, and the latter, the most popular form of sukuk, a variable return. The potential for other more novel sukuk structures based on musharakah partnership contracts is also examined, and sukuk pricing issues are explored using alternative benchmarks to LIBOR. The paper finds that special purpose vehicles are a prerequisite for the successful issuance and management of sukuk. Saiful Azhar Rosly & Mahmood M. Sanusi, (2008) argue that financial contracts involving use of bay' al-inah and bay' al-dayn have been extensively used in design of Malaysian Islamic bonds. This paper argues that both these mechanisms have been found unacceptable by the majority of Islamic scholars and proposes the use of financing based on Muqarada and Musharakah principles as genuine alternatives to Interest-bearing financial instruments. Based on this four articles review, this study was comes out with third hypothesis as below:

H3: There is a significance positive relationship between types of instruments with the firm's performance.

From view of conventional bonds, Modigliani and Miller (1958) argue that the presence of perfect capital markets, all financial decisions including debt maturity do not matter. Stiglitz (1974) has formalized and extended Modigliani and Miller's propositions to demonstrate that the debt maturity structure is irrelevant for firm value under perfect market assumptions. However, market imperfections, which are later introduced primarily based on the role of agency cost, signaling and asymmetric information, liquidation risk or taxes, have led to theories supporting the choice of debt maturity mix either short or long term debt. Enclosed, the study was concluding the fourth hypotheses as below:

H4: There is no significance relationship between maturity of bond or tenure with the firm's performance

According to a report released by the Islamic Finance Information Services (IFIS) February 10, 2008, the sukuk market continues to enjoy a year -on-year increase despite a slowdown in the rate of growth. However, a drop in the number of sukuk issued in Southeast Asia mainly result of a fall in Malaysian corporate medium-sized issuance. Despite this, Malaysia remains the world's leader in sukuk issuance by both number and value, with 2007 trade totaling about RM25 billion. In addition, the Malaysian ringgit remains the most common currency for sukuk issuance, followed by the dollar. Furthermore, Andreas J. et. al (2008) said that the recent years have witnessed a surge in the issuance of Islamic capital market securities *(sukuk)* by corporates and public sector entities amid growing demand for alternative investments. As the *sukuk* market continues to develop, new challenges and opportunities for sovereign debt managers and capital

market development arise. Mohd Izazee Ismail (2002) said that the growth of Islamic Private Debt Securities ("IPDS") in Malaysia has been very encouraging since the first issue in 1990. In 2001, the issuance of IPDS constituted 43% of total PDS issued compared to 34% in 2000. With its continued strong presence, we can expect IPDS to take up a larger share than conventional PDS in 2002. The Islamic bonds issued in 2001 were mainly to finance large privatized projects such as water and power projects which require higher capital outlays. The Al-Bai Bithaman Ajil ("ABBA") structure has been the preferred choice to finance such projects with long gestation periods. Besides ABBA, another popular IPDS tool is the Murabahah concept which caters for short- to medium-term requirements. With that, the last hypothesis was set up as below:

H5: The Islamic bonds will have a higher means than conventional bonds among public listed issuer in Malaysia.

3.0 RESEARCH METHODOLOGY

3.1 Operational Definition of sukuk versus conventional bonds and its facets.

Sukuk or Sikak come from Arabic word means Islamic bond or Islamic Investment Notes. Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI) released an exposure draft of its Shari'ah standards concerning Sukuk in November 2002. The exposure draft of AAOIFI Shari'ah Standard No. 18, p.4 stated that *"Investment Sukuk are certificates of equal value representing, after closing subscription, receipt of the value of the certificates and putting it to use as planned, common title to shares and rights in tangible assets, usufructs, and services, or equity of a given project or equity of a special investment activity."* According to Manaf (2007), Islamic bond, or sukuk, is an investment certificate which allows investors to claim ownership of underlying assets. Many types of sukuk issues in Malaysia capital market i.e. sukuk Murabahah and sukuk Bai Bithamin Al-Ajil (BBA) which rated the most popular Islamic private

debt securities issued (Noriza et. al, 2009) and these are also proved by Rating Agency Malaysia (RAM), besides sukuk Musyarakah, sukuk Ijarah, sukuk Istisna and etceteras. Again, according to Manaf (2007), there are seven types of Islamic bond based on model of financing and trades which structure the bond. These are mudaraba/ muqarabah sukuk, musharaka sukuk, Ijarah sukuk, Murabaha sukuk, Salam sukuk, Istisna sukuk and Hybrid sukuk.

Al Fairuzabadi (2007) was defined the words sukuk in his Al Muhit qamus, p.960 as "to strike or to hit, the connotation is allied to strike one's seal on a document. Sukuk also refers to Islamic securities that comply with syariah principles and rules which prohibit the issues of gambling and riba (excessive interest rate charging). As compared to conventional bond focus on corporate bond in this study defined as a debt security issued by a corporation and sold to investors. The backing for the bond is usually the payment ability of the company, which is typically money to be earned from future operations (Investopedia website). In Malaysian capital market, word sukuk has been used interchangeably with the syariah securities as poles apart from the conventional bonds. There are several bond facets was studied either Islamic or conventional issuance such as coupon rate, rating, size of issuance and tenure of maturity. In this study, the types of bond instrument were indicated 1 for the Islamic bond and 2 for the conventional bond. Data on coupon rate was collected based on the ranking; 1 if the bond issuance is zero coupon bond or 0 percent interest which is normally issued by government like Malaysian Government Bond, T-bonds, subordinated bonds, commercial paper, medium terms notes and many more, 2 for less than 3 percent, 3 for 3 to 5 percent, 4 for more than 5 percent and 5 for floating rate of interest. Similar ranking was developed to represent data on bond rating where 1 for AAA (high class bond); 2 for AA; 3 for A; 4 for BBB and 5 for others (C and below which is classify as a speculative bond or junk bond).

3.2 Sampling and Data Collection

The sample of mixed 970 issuance Islamic and conventional bond had been randomly selected from the BNM bond info's website in Malaysia for eight conservative year's period from 2002 to 2009. For the purpose of collecting information on the bond facets, this study obtained data from the RAM where there are sufficient for gathering such data considering Islamic and conventional perspectives. Thompson's DataStream and Bloomberg were used to employ the data on firm's performance (N=966) i.e. return on assets (ROA), return on equity (ROE), operating profit margin (OPM), asset turnover (AT), book value (BV), net profit margin (NPM), fixed asset turnover (FAT), log sales (which is represent the size of firm), log debt to equity (LnDTE) and log debt to assets (LnDTA). The determination of the dependent variables mostly depends on these recent surges of studies done by Cantor and Packer (1995) on rated or non-rated securities affect default risk; Kaminsky and Schmukler (2002) on types of rating affect other asset and Gande and Parsley (2003) also on rating or bond grade effects yield or returns; Karmilla et. al. (2009) on various types of returns links to sukuk pricing and in details was mentioned sukuk issuer may devise sukuk pricing in setting returns to the holders in many ways. For example, sukuk issuer may introduce a variable returns to the holders of the certificates. A contrast to return factor which is focus on risk done by Khan and Ahmad (2001) identify various unique credit risks that are particular to Islamic finance. Sukuk issuances maneuver for the large fraction in emerging bond markets where posses less sophisticated risk management mechanisms counterparty. The rescheduling and rearrangement of bond issuances at higher markup rate is not permissible due to the prohibition of excessive interest rate charging or riba. Thus, counterparties would be more inclined to default on their commitments to other parties. In fact, agency costs are higher with regard to equity arrangements.

Next, the relationship between the bond facets and firms' performance will be estimated using the following regression equations:

$$ROA_i = \alpha + \beta_1(RATING_1) + \beta_2(ISSUE_2) + \beta_3(INST_3) + \beta_4(TENOR_4) + \beta_5(COUPON_5) + \varepsilon_i$$

$$ROE_i = \alpha + \beta_1(RATING_1) + \beta_2(ISSUE_2) + \beta_3(INST_3) + \beta_4(TENOR_4) + \beta_5(COUPON_5) + \varepsilon_i$$

$$OPM_i = \alpha + \beta_1(RATING_1) + \beta_2(ISSUE_2) + \beta_3(INST_3) + \beta_4(TENOR_4) + \beta_5(COUPON_5) + \varepsilon_i$$

$$AT_i = \alpha + \beta_1(RATING_1) + \beta_2(ISSUE_2) + \beta_3(INST_3) + \beta_4(TENOR_4) + \beta_5(COUPON_5) + \varepsilon_i$$

$$BV_i = \alpha + \beta_1(RATING_1) + \beta_2(ISSUE_2) + \beta_3(INST_3) + \beta_4(TENOR_4) + \beta_5(COUPON_5) + \varepsilon_i$$

$$NPM_i = \alpha + \beta_1(RATING_1) + \beta_2(ISSUE_2) + \beta_3(INST_3) + \beta_4(TENOR_4) + \beta_5(COUPON_5) + \varepsilon_i$$

$$FAT_i = \alpha + \beta_1(RATING_1) + \beta_2(ISSUE_2) + \beta_3(INST_3) + \beta_4(TENOR_4) + \beta_5(COUPON_5) + \varepsilon_i$$

$$LnSALES_i = \alpha + \beta_1(RATING_1) + \beta_2(ISSUE_2) + \beta_3(INST_3) + \beta_4(TENOR_4) + \beta_5(COUPON_5) + \varepsilon_i$$

$$LnDTE_i = \alpha + \beta_1(RATING_1) + \beta_2(ISSUE_2) + \beta_3(INST_3) + \beta_4(TENOR_4) + \beta_5(COUPON_5) + \varepsilon_i$$

$$LnDTA_i = \alpha + \beta_1(RATING_1) + \beta_2(ISSUE_2) + \beta_3(INST_3) + \beta_4(TENOR_4) + \beta_5(COUPON_5) + \varepsilon_i$$

Where α = the constant term,

β = the slope or coefficient estimates of the explanatory variables,

$RATING_i$ = the bond rating by the ith issuance,

$ISSUE_i$ = the size of issuance of the ith bond,

$INST_i$ = the types of instruments of the ith issuance,

$TENOR_i$ = the time to maturity period of the ith issuance,

$COUPON_i$ = the coupon rate of the ith bond, and

ε_i = the standard error of the ith bond.

4.0 RESULTS AND DISCUSSION

Table 1 revealed the minimum, maximum, mean and standard deviation of bond facets and firm's performance indicators. Amidst the period of studied (2002-2009), the minimum value of firm's performance is shown bad sign representing statistically negative value to all variables for instance ROA (-13.486), ROE (-134.283), OPM (-62.172), NPM (-106.753, LnDTE (-0.797) and LnDTA (-1.061). Otherwise, the maximum value indicates positive value to all. Nonetheless, the means value didn't show encouraging figure since ROE indicate negative and other ratios indicate low. Most of the bond issuance is sukuk or Islamic bond and represent high grade bond with the mean 2.315 means the bond rating is between AA to A.

The size of issuance value bond have been log due to thousand million figure issues by certain companies for examples Projek Lebuhraya Utara-Selatan Berhad (PLUS Bhd) on 27-Dec-2007 for RM3,550 million and Public Bank Berhad on 5-Jun-2009 for RM5,000 million. Statistics shown the maturity period of the bond or tenure indicate 100 years is the longest and less than a year for the short term bond with the mean of 7.105 years maturity period.

Bond coupon shows that majority of the issuance is zero coupon. It should be noted that government is a major player in Malaysian capital market which offered low rate to zero resulted to low standard deviation at 1.109 meaning bearing a low risk.

Table 1: Descriptive Statistics

	N	Minimum	Maximum	Mean	Std. Dev.
ROA	966	-13.486	44.909	2.011	7.415
ROE	966	-134.283	129.642	-8.703	52.619
OPM	966	-62.172	79.510	43.952	28.416
AT	966	.000	2.130	.307	.348
BV	966	.000	6.000	2.174	1.761
NPM	966	-106.753	59.688	3.595	46.879
FAT	966	.000	57.906	1.572	3.417
LnSALES	962	1.034	4.492	2.859	.608
LnDTE	947	-.797	2.524	1.940	.428
LnDTA	948	-1.061	5.253	1.665	.594
RATING	970	1.000	5.000	2.315	1.087
LnISSUANCE	970	3.602	9.892	6.828	1.105
INSTRUMENT	970	1.000	2.000	1.224	.417
TENURE	970	.000	100.000	7.105	5.589
COUPON	970	.000	6.000	1.408	1.109

Table 2 shows the result for the multiple regressions for all variables involved in the study. From the result we can see that bond rating and coupon have a statistically significant positive relationship with the ROA at 1 percent and 10 percent confidence level with P value of 9.047 and 2.505 respectively. Other bond facets such as issuance, instrument and tenure do not have significant value. Meaning that, H1 and H3 were rejected at this level. Similar evidence applied to ROE where only rating (P=13.047) and coupon (P=3.394) was shown significant positive relationship at 1 percent confidence level and the other explanatory variables are not. OPM shown significantly negative relationships with rating, instrument and coupon but tenure indicate positive and result was shown not significant with size of issuance. Surprisingly that AT and FAT were shown a significant result to all bond facets. This is, however, only 2 bond facets (rating and tenure) shown a significant positive result to NPM and the improvement of significant result for log Sales and log DTA with 4 and log DTE with 3 bond facets have a relationships. Thus, H2 and H4 were accepted. R-squared and adjusted R-squared for all firm's performance proxies indicate results between 0.083 to 0.398 and 0.079 to 0.395 respectively and therefore explaining a somewhat not strong relationship because only 8.3 to 39.8 percent

of the variation in firm's performance proxies is explained by the variation in the bond facets. F-statistics had shown significant value for all variables at 1 percent confident level.

Table 2: Regression Results

Dependent	Constant	Rating	Issuance	Inst	Tenure	Coupon	R Square	Adj. R	F-value
ROA	-2.020	9.047	-.087	.029	-.285	2.505	0.109	0.104	23.452
	.044	.000***	.931	.977	.776	0.012*			.000***
ROE	-5.440	13.047	-.595	1.021	.322	3.394			52.353
	.000	.000***	.552	.308	.747	0.001***	0.214	0.210	.000***
OPM	16.399	-6.399	-.567	-9.336	8.409	-9.593			127.094
	.000	.000***	.571	.000***	.000***	.000***	0.398	0.395	.000***
AT	3.067	2.850	-4.321	9.409	-5.137	2.663			57.924
	.002	0.004**	.000***	.000***	.000***	0.008**	0.232	0.228	.000***
BV	-1.759	2.444	8.615	-7.264	-.898	3.460			17.469
	.079	0.015*	.000***	.000***	.369	0.001***	0.083	0.079	.000***
NPM	-2.173	12.993	-1.515	-.768	2.663	.868			43.518
	.030	.000***	.130	.443	0.008**	.385	0.185	0.181	.000***
FAT	-6.137	4.129	3.740	2.066	1.822	5.172			27.553
	.000	.000***	.000***	0.039**	0.069*	.000***	0.125	0.121	.000***
LnSALES	9.977	-7.954	13.859	-.990	-2.803	1.865			88.759
	.000	.000***	.000***	.322	0.005**	0.062*	0.317	0.313	.000***
LnDTA	25.309	-5.610	-.735	-2.393	2.215	-9.156			46.703
	.000	.000***	.462	0.017**	0.027**	.000***	0.199	0.195	.000***
LnDTE	13.192	-.158	3.003	-6.974	-3.002	-1.407			22.387
	.000	.874	0.003***	.000***	0.003***	.160	0.106	0.101	.000***

The results in the table 3 and 4 could be discuss together since the objective of this analysis done to occupy the 1st objective of this study, that is to analyze the performance of the company that issues Islamic bonds (sukuk) as compared to corporate bonds (conventional). Levene's test for equality of variances was shown a significant result to all the proxies explaining that there are significantly means different between issuance Islamic bonds (sukuk) with conventional bonds. Out of 966 issuance, a total of 753 issuance is sukuk and 213 issuance is conventional to represent data on firm's performance and 753 out of 970 is sukuk and remaining balance of 217 is conventional bonds representing bond facets.

Table 3: Independent Samples Test

		Levene's Test for Equality of Variances		t-test for Equality of Means					
								95% Confidence Interval of the Difference	
		F	Sig.	t	Sig.	Mean Diff.	Std. Error Diff.	Lower	Upper
ROA	Equal var. assumed	11.358	.001	-3.996	.000	-2.282	.571	-3.402	-1.161
	Equal var. not assumed			-4.240	.000	-2.282	.538	-3.340	-1.223
ROE	Equal var. assumed	157.975	.000	-6.413	.000	-25.659	4.001	-33.511	-17.807
	Equal var. not assumed			-10.455	.000	-25.659	2.454	-30.475	-20.843
OPM	Equal var. assumed	45.604	.000	18.872	.000	35.582	1.885	31.882	39.282
	Equal var. not assumed			19.433	.000	35.582	1.831	31.981	39.183
AT	Equal var. assumed	289.910	.000	-12.707	.000	-.317	.025	-.366	-.268
	Equal var. not assumed			-8.499	.000	-.317	.037	-.391	-.244
BV	Equal var. assumed	10.245	.001	2.521	.012	.344	.136	.076	.611
	Equal var. not assumed			2.877	.004	.344	.119	.109	.578
NPM	Equal var. assumed	163.028	.000	-2.407	.016	-8.737	3.629	-15.859	-1.615
	Equal var. not assumed			-4.080	.000	-8.737	2.141	-12.939	-4.535
FAT	Equal var. assumed	82.581	.000	-8.862	.000	-2.261	.255	-2.761	-1.760
	Equal var. not assumed			-5.790	.000	-2.261	.390	-3.030	-1.492
LnSALES	Equal var. assumed	5.681	.017	-5.513	.000	-.256	.047	-.348	-.165
	Equal var. not assumed			-5.080	.000	-.256	.050	-.356	-.157
LnDTE	Equal var. assumed	156.377	.000	9.355	.000	.305	.033	.241	.369
	Equal var. not assumed			6.242	.000	.305	.049	.209	.401
LnDTA	Equal var. assumed	9.517	.002	8.945	.000	.406	.045	.317	.495
	Equal var. not assumed			9.519	.000	.406	.043	.322	.490
RATING	Equal var. assumed	128.887	.000	-10.341	.000	-.822	.080	-.979	-.666
	Equal var. not assumed			-7.967	.000	-.822	.103	-1.026	-.619
LnISSU	Equal var. assumed	13.691	.000	-18.442	.000	-1.351	.073	-1.495	-1.208
	Equal var. not assumed			-17.125	.000	-1.351	.079	-1.507	-1.196
TENOR	Equal var. assumed	46.138	.000	1.294	.196	.557	.430	-.288	1.402
	Equal var. not assumed			.792	.429	.557	.703	-.828	1.942
COUPON	Equal var. assumed	266.868	.000	-9.634	.000	-.787	.082	-.947	-.627
	Equal var. not assumed			-7.098	.000	-.787	.111	-1.005	-.569

Results from independent sample T test in table 4 shown that conventional bonds (ROA=3.790) and (ROE=11.298) indicate higher mean as compared to Islamic bonds (ROA=1.508) and (ROE=11.298). However, inverse result shown to OPM where Islamic bonds (51.798) is higher mean than conventional (16.216). In terms of other proxies of firm's performance shown that conventional bonds indicate higher means except for OPM as mentioned. BV is important for the firms as a default risk benchmark (Hakim, S.R. and Shimko D., 1995). In general, default is caused by the firm's inability to meet its obligations in a required timely given. It can be

highlighted here; the firm's with issuance of Islamic bonds have many default risk cases as compared to conventional bonds issuances.

As regards on leverage performance, the lowest is better for the firm means that they bear a low risk in their financing. Result shows that conventional bonds have a lower means compared to Islamic bonds for both log DTA and log DTE. Islamic bonds indicate good rating offers to public listed issuer as compared to conventional bonds based on mean results of 2.131(high grade of bonds with majority of AA class) instead of 2.954 (quite low grade, BBB class).

Size of issuance shown that conventional bond is higher means than Islamic bonds with value of 7.877 and 6.525 respectively. Albeit, the numbers of Islamic bond issuer is higher than conventional bonds but the total value in ringgit Malaysia shows that conventional bond issuance is higher. Therefore, a rise in the firm's debt may be interpreted as the beginning of more risky investment to follow and consequently, a large amount of bond issues a higher a risk bear in long term investment. This an empirical study only employ eight years period study is not enough to prove the long term investment managed by firms.

Result of coupon rate postulate that Islamic bonds issuance have better (lower mean = 1.231) than conventional bonds (higher mean = 2.018) where low coupon rate will be increase the price of the bond by theoretically and versed versa. It can be concluded that, H5 was accepted since Islamic Bonds indicate higher means than conventional bonds among public issuer in Malaysia.

Table 4: Group Statistics

	INSTRUMENT	N	Mean	Std. Dev.	Std. Error Mean
ROA	ISLAMIC BOND	753	1.508	7.518	.274
	CONVENTIONAL BOND	213	3.790	6.760	.463
ROE	ISLAMIC BOND	753	-14.361	57.532	2.097
	CONVENTIONAL BOND	213	11.298	18.617	1.276
OPM	ISLAMIC BOND	753	51.798	24.565	.895
	CONVENTIONAL BOND	213	16.216	23.311	1.597
AT	ISLAMIC BOND	753	.237	.231	.008
	CONVENTIONAL BOND	213	.555	.531	.036
BV	ISLAMIC BOND	753	2.249	1.835	.067
	CONVENTIONAL BOND	213	1.906	1.445	.099
NPM	ISLAMIC BOND	753	1.669	52.412	1.910
	CONVENTIONAL BOND	213	10.405	14.126	.968
FAT	ISLAMIC BOND	753	1.073	2.260	.082
	CONVENTIONAL BOND	213	3.334	5.570	.382
LnSALES	ISLAMIC BOND	749	2.802	.577	.021
	CONVENTIONAL BOND	213	3.058	.669	.046
LnDTE	ISLAMIC BOND	747	2.005	.303	.011
	CONVENTIONAL BOND	200	1.700	.673	.048
LnDTA	ISLAMIC BOND	748	1.751	.582	.021
	CONVENTIONAL BOND	200	1.345	.523	.037
RATING	ISLAMIC BOND	753	2.131	.878	.032
	CONVENTIONAL BOND	217	2.954	1.446	.098
LnISSUANCE	ISLAMIC BOND	753	6.525	.920	.034
	CONVENTIONAL BOND	217	7.877	1.052	.071
TENURE	ISLAMIC BOND	753	7.230	3.201	.117
	CONVENTIONAL BOND	217	6.673	10.209	.693
COUPON	ISLAMIC BOND	753	1.231	.862	.031
	CONVENTIONAL BOND	217	2.018	1.566	.106

5.0 CONCLUSION AND RECOMMENDATIONS

In this study, it can be concluded that majority of the issuances is Islamic bonds. This finding was proven by Muhammad and Adrian from Bank Negara Malaysia in their paper on corporate bond market in Malaysia (BIS papers No.26) p.126, Islamic capital market products have garnered universal acceptance as viable alternatives to conventional products where 49.4 percent of funds raised in the private debt securities (PDS) market in 2004 were through Islamic products. It also found evidence indicating that there is a relationship between bond facets with the AT and FAT. Almost all firms' performance proxies have shown a significant value with rating except for DTE imply that issuer should deeply considered bond rating in their future

issuances to tap the bond market at competitive rates. In Malaysia capital market, prior to July 2000 all corporate bond issues were subject to a mandatory minimum rating requirement of BBB or above, however this compliance rule was subsequently lifted. Overall multivariate regression shown that bond facets; size of issuance, instrument, tenure and coupon rate also significantly influenced the at least 5, 6, 7 and 8 out of 10 proxies of performance respectively. It was also found that there is a relationship between the variables despite the fact that the relationship was not a strong relationship as the value of R square is below 60%, consistent with suggestion made by Gompers et al. (2003). Again, this an empirical study only employ eight years period study is not enough to prove either Islamic or conventional bonds do performed better in the long term investment managed by firms. The study also believe that for future research, more sample period should be used.

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Validity Of *Al-Bai Bithaman Ajil* Contract In Malaysia: An Analysis Of Judicial Decisions In Malaysia

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ABSTRACT

It is known that Al-Bay' Bithaman Ajil (BBA) is the most common type of Islamic financing. The most probable reason might be that few people can afford to buy a house, land, consumer goods etc. on cash terms. It is clear that when disputes relating to BBA 'rears its ugly head', it is the civil court (and not the syariah court) which is empowered to examine and make a finding of fact in the case before it and what element if any, is involved which is not approved by the Religion of Islam. In the light of the above situation, this study intends to determine the nature and essential features of a BBA contract and to analyse the factual circumstances which are judicially taken into consideration by Malaysian civil courts in determining the validity of BBA contracts. This objectives are achieved by using reliable method well received by the legal fraternity i.e. by analyzing authoritative case laws which contain the findings of the trial judges and the appeal judge, as the case may be. The study is important in the sense that the findings can firstly; be a guide to ensure that BBA contracts meet not only syariah and legal requirements but more importantly are legally enforceable; and secondly to promote BBA as a safe product which has taken into account contractual justice from Islamic and secular views.

Keywords: BBA contract, nature, features, judicial reasonings

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1.0 Introduction

The fundamental requirement under Islamic Banking Act 1983 and the Banking and Financial Institutions Act 1989 is contained in the provision that in respect of Islamic banking and financing, the aims and operations of the bank do not involve any element not approved by the Religion of Islam. *Al-Bay' Bithaman Ajil* (BBA) facility is an Islamic facility which is defined as the sale of an object against an obligation to provide payment on a future date whereby the commodity exchanged is delivered immediately and the price is paid by instalments (Norhashimah Mohd Yasin, 1997). According to Nik Mustapha Nik Hassan (2000), BBA is universally known for at least one distinguishing feature namely that they are not based on *riba* (interest) Equally important feature is that Islamic financial instruments have to be *Maysir* (gambling free) as well as free from *Gharar* (excessive ambiguity).

Banking, hire-purchase, employment and trade, whether entered into by Muslims or non-Muslims, are within the purview of federal laws. Thus, in terms of testing the enforceability of an Islamic banking product in the event of default by the customer/borrower, it is the civil court (and not the syariah court) which is empowered to examine and make a finding of fact in the case before it. The civil court might be taking into consideration of any element which is not approved by the Religion of Islam. There is however, neither necessity nor reason for the civil court to refer religious concepts to the Syariah Advisory Council for any ruling, which in any case, while they are to be taken into consideration, are not binding upon the court. This was also evident with the enforcement of a practice circular known as *Arahan Amalan No.1/2003, Pendaftaran*

kes-kes Muamalat di Mahkamah (Kod Pengklasan) which later on led to the setting up of a *muamalat* division within the civil court system to specifically handle federal laws with an Islamic contents. It may be safely conclude that the function of the civil courts is to examine the application of these Islamic concepts, as to whether as implemented, and in the particular cases before it, the transactions do not involve any element not approved in the Religion of Islam. It is a question of looking at the particular facts. That remains the judicial function of the court which it cannot abdicate.

The above explanation forms the foundation of the civil court's approach in respect of the actions involving Islamic financing facilities before it.

2.0 Problem Statement

Muslim scholars worldwide agree that there is no dispute that the concepts of *Al-Bai' Bithaman Ajil, Al-Istisna'a, Bai Al-Inah, Murabahah, Al-Ijarah* and the like are, in principle, Islamic in nature by reason that no interest is involved. In Malaysia, Islamic financing schemes, approved by the Syariah Advisory Council under the Central Bank of Malaysia Act 1958 (Revised 1994) Act 519, in principle do not involve any element not approved by the Religion of Islam. However, the issue of concern is in terms of legal enforcement which takes place not in the syariah but the civil courts.

In Malaysia, List II, Paragraph 4(k) of the Federal Constitution provides the federal Parliament absolute power in relation to ascertaining Islamic law and other personal laws for purposes of federal law. It is judicially accepted that the federal Parliament have the last say on matters in the Federal List even with Islamic components.

Hence, the scenario in Malaysia is that disputes relating to Islamic financial schemes including BBA contract fall within the jurisdiction of the civil courts instead of the syariah courts. In *Bank Islam v Adnan Omar* [1984] 3 CLJ 735 and *Dato' Nik Mahmud Daud v Bank Islam* [1998] 3 MLJ393; *Bank Kerjasama Rakyat v. Emcee Corporation* [2003] 1 CLJ 625, the Courts 'did not buy' the argument that the syariah courts and not the civil courts as the proper forum to adjudicate matters over Islamic banking. The issue worth pondering here is what are the factors taken into consideration by civil court judges (who are not necessary Muslims and who are not necessary educated in Syariah or Islamic studies but is vested with powers to hear disputes relating to Islamic banking) which led to undisputable judgment worthy of praises from both Muslims and non-Muslims scholars.

Hence, there are several questions needed to be answered for the purpose of this study. The questions are:

1. What is the nature of a BBA contract from the civil courts' perspective?
2. What are the essential features of a BBA contract from the civil courts' perspective?
3. What are the factual circumstances which are judicially taken into consideration by Malaysian civil courts in disputes involving BBA contract?

3.0 Objectives of the Paper

This paper aims to:

1. determine the nature of a BBA contract from the civil courts' perspective
2. determine the essential features of a BBA contract from the civil courts' perspective

3. analyze the factual circumstances which are judicially taken into consideration by Malaysian civil courts in disputes involving BBA contract

4.0 Literature Review

Islamic banking business is one whose aims and operations do not involve any element which is not approved by Islam (Mohamed Ismail Sharif, 1998) and there arise no charging of interest (Hamid Sultan, 2002). The relationship between the banker and its client is that of a banker and a borrower instead of a lender and a borrower (Yow, 2003). However, the validity of a BBA contract can only be tested in the civil courts and not the Syariah Court. The Federal Constitution (Malaysia) reveals that legal areas such as civil law, criminal law, contracts, employment, equity and trust, banking, trade, commerce are mentioned in the Federal list. List 1 Federal List indicates 27 paragraphs cover 110 more items where important legislative matters such as finance, defence and internal security is vested to the federal Parliament.

Apart from the Federal Constitution, there are judicially decided cases which show that disputes relating to Islamic banking products fell within the jurisdiction of the civil courts instead of the syariah courts. Decisions in *Bank Islam v Adnan Omar* [1994] 3 CLJ 735 and *Dato Nik Mahmud Daud v Bank Islam* [1998] 3 MLJ 393; *Bank Kerjasama Rakyat v. Emcee Corporation* [2003] 1 CLJ 625 are evidence that the civil courts and not the syariah courts are vested with powers or jurisdiction to hear Islamic banking matters. In fact, superior court decisions strengthened the view that the civil court is the proper forum to hear Islamic banking litigation. Prior to *Adnan Omar's* case, in *Tinta Press Sdn Bhd v. Bank Islam Malaysia Berhad* (1987) 2 MLJ 192, the Supreme Court held that the High Court had discretion to grant an interlocutory mandatory injunction in the dispute which involved an Islamic banking product.

There is inclination of civil court judges who are not necessary educated in Syariah or Islamic studies to refer to Islamic principles as seen in the case of *Tahan Steel Corp Sdn Bhd v bank Islam Malaysia Berhad* [2004] 6 MLJ 1 whereby the learned judge referred to the prohibition of usury as prohibited in Surah Al-Baqarah verse 275. Sudin Haron (1997) speaks of the functions of the Syariah Advisory Council which amongst others include the duty to ensure that services and banking products are in line with the Syariah. However, according to Noor Inayah Yaakub *et. el*. (2008), the present scenario in Malaysia is that *fatwa* (religious rulings/edicts made by the National Syariah Advisory Council (NSAC) including matters on Islamic banking are not binding on the civil courts. The writer's argument is found to hold support from the case of *Tengku Mariam Binti Tengku Sri Wa Raja v. Commissioner for Religious Affairs Terengganu & Ors* [1969] 1 MLJ 110 where the civil court held that it was not bound by the fatwa of the Mufti. In spite of the call by Bank Negara via amendment to Bank Negara (amendment) Act 2003 ;section 16B(8) that civil courts should refer to *fatwas* of the NSAC but however the situation has not changed as seen in the case of *Tahan Steel Corp Sdn Bhd v Bank Islam Malaysia Berhad* [2004] 6 MLJ 1, whereby the civil court still do not find it binding upon it.

An analysis of other decisions of civil court judges tend to show that even though there is inclination to refer to Islamic principles, but however, they are not ready to be bound by Islamic principles but by secular laws. This trend can be seen in the manner adopted by civil court in interpreting and determining the nature and form of agreements executed by parties Islamic banking product. For example, the Honourable Dato' Abdul

Hamid Mohamad JCA stated in his judgment in *Bank Kerjasama Rakyat Malaysia Bhd. v. Emcee Corp Sdn Bhd* (Court of Appeal, appeal no.N-02-421-1999)(unreported) as follows :

"*As was mentioned at the beginning of this judgment the facility is an Islamic banking facility. But that does not mean that the law applicable in this application is different from the law that is applicable if the facility were given under conventional banking. The charge is under the National land Code. The Procedure is provided by the Rules of the High Court 1980…*".

Similarly, in *Bank Islam Malaysia Bhd v. _Pasaraya Peladang Sdn Bhd* [2004] 7 MLJ 355, the court followed the decision in *Bank Rakyat Malaysia Bhd v. EMCEE Corporation Sdn Bhd* [2003] 1 CLJ 625 and held that the laws applicable were the National Land Code and the Rules of the High Court 1980 even though the facility (which was a BBA contract) was granted under Islamic principles.

Islamic banking brings in the idea of ethical values to the centre of banking practices (Monzer Kahf, 2000.) Lack of unequivocal and unambiguous specification of the details of one of the three constituents of a valid transaction either the *Mabie'* (sale item) and/or *Thaman* (item price) and /or *Ajal* (time of sale), the non-fulfillment of these requirements will see to the disruption of stability and confidence in the contractual relationship and fairness regarding the outcome (Ahmad Abisourour & Muhammad Anas Zarqa, 2000, *An Islamic Approach To Infracture Financing: The Emerging Role of Islamic Finance*,Institute of Islamic Understanding, Kuala Lumpur Malaysia.

Central to the concept of Islam is Justice. Justice is connected to honesty and sincerity. In this sense, Islam prohibits false or misleading presentations of one's products for such dishonesty removes the "mutual consent". Prophet Muhammad (pbuh) advised: *Swearing produces a ready sale but blots out the blessing.* ((Nik Mohamed Affandi, 2002).

All transactions whether it is judicial, political, commercial or private etc. are subject to this concept. In the Qur'an, (al-Hijr: 85) states that:

We created not the heavens, The earth, and all between them, But for just ends. And the Hour is surely Coming (when this will be manifest). So overlook (any human faults) With gracious forgiveness.

This concept has been emphasised in various places in the Holy Qur'an. (See the Qur'an (al-Maidah: 8); Qur'an (an-Nisaa: 135); Qur'an (ad-Dukhan: 38-39); Qur'an (an-Nisaa: 58) and Qur'an (an-Nisaa: 105); Qur'an (al-Baqarah: 213); Qur'an (ash-Shura: 15); Qur'an (an-Nisaa: 107); Qur'an (Sad: 26); Qur'an (al-Hadid :25)). In Islam, man is seen to be the servant (abd) and vicegerent of Almighty. He has specific duties and obligations to perform in relation to Allah, to himself, to nature, to the religion, to his relatives and to the community. Islamic ethos demands that a Muslim abides by the messages of the Holy Qur'an, follows the Sunnah of the Prophet (Pbuh) and accepts the rulings of recognised religious scholars of the past. Justice in Islam is part of Allah's attribute and to stand firm for it is to be a witness to Allah. (See the Qur'an (an-Nisaa: 135). In the Qur'an, (al-Maidah: 8) it is asserted that:

O ye who believe! Stand out firmly, as witnesses to fair dealing, and let not the hatred of others to you make you swerve to wrong and depart from justice. Be just: that is next to piety: and fear God. For God is well-acquainted with all that ye do.

In addition, the Qur'an, (an-Nisaa: 135) says:

O ye who believe! Stand out firmly for justice, as witnesses to God, even as against yourselves, or your parents, or your kin, and whether it be (against) rich and poor: For God can best protect both, follow not the lusts (of your hearts), lest ye swerve, and if ye distort (justice) or decline to do justice, verily God is well-acquainted with all that ye do.

Furthermore, in the Qur'an (ad-Dukhan: 38-39) it is asserted that:

We created not the heavens, the earth, and all between them, merely in (idle) sport. We created them not except just ends: but most of them do not understand.

Further, the Qur'an (an-Nisaa: 58) says:

God doth command you to render your Trusts to those to whom they are due; and when ye judge between man and man, that ye judge with justice: verily how excellent is the teaching which he giveth you! For God is He who heareth and seeth all things.

In addition, in the Qur'an (al-Baqarah: 213) it is asserted that:

Mankind was one single nation, and God sent Messengers with glad tidings and warnings; and with them He sent the Book in truth, to judge between people in matters wherein they differed; but the People of the Book, after the clear Signs came to them, did

not differ among themselves through selfish contumacy. God by His Grace guided the Believers to the Truth, concerning that wherein they differed. For God guides whom He will to a path that is straight.

The Qur'an (ash-Shura: 15), over and above says:

Now then, for that (reason), call (them to the Faith), and stand steadfast as thou art commanded, nor follow thou their vain desires; but say: "I believe in the Book which God has sent down; and I am commanded to judge justly between you. God is our Lord and your Lord: For us (is the responsibility for) our deeds, and for you your deeds. There is no contention between us and you. God will bring us together, and to Him is (our) final goal."

Riba transaction is prohibited in Islam. Islam encourages brotherhood and good relationship with even non-Muslims and proper contracts particularly in written form to ensure economic prosperity and social harmony (Nik Mohamed Affandi, 2002). Saiful Azhar Rosly (2000) in *The Premises and promises of Islamic Banking in the Revitalisation of the Malaysian Economy*, opines that al-bay and riba loans are two major forms of transactions widely used in pre-Islamic Mecca but only riba was responsible for economic unrest. The writer adds that the economic crisis in Asia today has rob the Muslim Ummah the opportunity to best identify the problems of the crisis and to suggest appropriate remedies. Riba is also associated with unjust distribution of wealth.

Allah (SWT) has placed an injunction on all Muslims (or mankind) not to deal in any transactions that have an element of interest ('riba' or usury). The Holy Qur'an (al-Baqarah) asserts 2:275:

Those who devour usury will not stand except as stands one whom the satan by his touch Hath driven to madness. That is because they say:'Trade is like usury, but Allah hath permitted trade and forbidden usury.

All trade related documents under the Syariah must have the element of employment of capital, labour and risk, failing which it may be tainted as a *'riba'* transaction and treated as forbidden (haram). The fixing of profit or definite returns in terms of percentage as opposed to sharing of profits in Syariah banking activities are more akin to *'riba*' than trade. It must be emphasized that the basic and most important characteristic of Islamic financing is that it does not deal with fixed interest rate or predetermined profits. It is based on a profit and loss sharing contract.

The primary element governing Islamic financing facilities is the Qur'anic prohibition and condemnation of *riba*. On this, there is no dispute among the different *mazhabs*.

Translations of the same verses of the Qur'an into English from other recognised sources are as follows:

Verse 275

YUSUF ALI: *Those who devour usury will not stand except as stand one whom the Evil one by his touch Hath driven to madness. That is because they say: "Trade is like usury," but Allah hath permitted trade and forbidden usury. Those who after receiving direction from their Lord, desist, shall be pardoned for the past; their case is for Allah (to judge); but those who repeat (The offence) are companions of the Fire: They will abide therein (for ever).*

Verse 276

YUSUF ALI: *Allah will deprive usury of all blessing, but will give increase for deeds of charity: For He loveth not creatures ungrateful and wicked.*

Verse 277

YUSUF ALI: *Those who believe, and do deeds of righteousness, and establish regular prayers and regular charity, will have their reward with their Lord: on them shall be no fear, nor shall they grieve.*

Verse 278

YUSUF ALI: *O ye who believe! Fear Allah, and give up what remains of your demand for usury, if ye are indeed believers.*

Verse 279

YUSUF ALI: *If ye do it not, Take notice of war from Allah and His Messenger: But if ye turn back, ye shall have your capital sums: Deal not unjustly, and ye shall not be with unjustly.*

Verse 280

YUSUF ALI: *If the debtor is in a difficulty, grant him time Till it is easy for him to repay. But if ye remit it by way of charity, that is best for you if ye only knew.*

5.0 Findings from Analysis of Case Reports

There are two sets of appeal that went before the Court of Appeal relating to BBA contracts in Islamic banking. The first set of appeal involves 11 Writs of Summons and one originating summons. They were heard together and decided by the Court of Appeal on 26 August 2009 which was delivered on 26 August 2009 by a panel of judges consisted of Raus Sharif JCA, Abdull Hamid Embong JCA and Ahmad Maarop JCA [CIVIL APPEALS NOS: W-02-918-2008, W-02-954-2008, W-02-955-2008, W-02-957-2008, W-02-958-2008, W-02-959-2008, W-02-960-2008, W-02-961-2008 and W-02-962-2008] and reported in *Bank Islam Malaysia Bhd v. Lim Kok Hoe & Anor and Other Appeals* [2009] 6 CLJ 22. The Court of Appeal held that a BBA contract is valid and enforceable and reversed an earlier decision of the High Court in *Arab-Malaysian Finance Bhd v. Taman Ihsan Jaya Sdn Bhd & Ors; Koperasi Seri Kota Bukit Cheraka Bhd (Third Party) And Other Cases* [2009] 1 CLJ 419 HC. Another set of appeal came

before another panel of the Court of Appeal on 20 October 2009. That panel followed its earlier decision. Particulars of nine out of the 12 appeals are as shown in **Figure 1:**

No.	Case References	Particulars of Parties
i.	Civil Appeal No:W-02-918-2008	Bank Islam Malaysia Berhad v. Lim Kok Hoe & Koh Hsia Ping (F)
ii.	Civil Appeal No: W-02-954-2008	Bank Islam Malaysia Berhad v. Mohd Razmi bin A.Rahman & Wan Hazlina binti Wan Mohd Ali
iii.	Civil Appeal No: W-02-955-2008	Bank Islam Malaysia Berhad v. Baharom bin Harun & Rohynoon bt Mohd Yusoff
iv.	Civil Appeal No:W-02-957-2008	Bank Islam Malaysia Berhad v. Ghazali bin Shamsuddin, Mokhtar bin Shamsudin & Kamarudin bin Shamsudin
v.	Civil Appeal No:W-02-958-2008	Bank Islam Malaysia Berhad v. Peringkat Raya (M) Sdn Bhd & Mohamed Kamal bin Hussain
vi.	Civil Appeal No:W-02-959-	Bank Islam Malaysia Berhad v. Nordin bin Suboh

	2008	
vii	Civil Appeal No:W-02-959-2008	Bank Islam Malaysia Berhad v. Zawawi bin Osman & Maznon binti Mohd Sidin
viii	Civil Appeal No:W-02-961-2008	Bank Islam Malaysia Berhad v. Widyawati binti Mohd Nor
ix	Civil Appeal No:W-02-962-2008	Bank Islam Malaysia Berhad v. Noor Azlina bt Baharom

Figure 1

After hearing the parties, the court of appeal unanimously allowed the respective appeals of Bank Islam Malaysia Berhad. Thus, based upon the reasoning of the learned judges in *Lim Kok Hoe*, the test of validity of a BBA contract is based on the nature and essential features which are laid down as follows:

6.0 Nature of a BBA contract from Viewpoint of Civil Courts

In *Lim Kok Hoe & Anor*, the nature of a valid BBA contract is explained as follows:

In a typical BBA contract, the first transaction begins with a Property Purchase Agreement ("PPA"). There are, depending on the circumstances, variations as to the manner in which a bank pays the purchase price under the PPA to the customer. In a case where the construction of the property is completed, the bank will pay by lump sum payment of the full purchase price. In other instances, payment may be made progressively, which usually depends on the stage of completion. Ordinarily the repayment by the customer under the PSA is on deferred payment basis by way of periodical installments for an agreed tenure which may run to 20 years or more. Again depending on the terms agreed, payment of the installments may commence immediately upon the initial payment or after payment by the bank of the full purchase price under the PPA. As security for the payment of the installments by the customer under the PSA, a charge over the property is created in favour of the bank.

Upon default by the customer, the bank may enforce the charge by applying for an order for sale. Simultaneously, the bank may also file a writ of summons for judgment sum. An application for an order for sale is made by way of an originating summons. Section 256(2) of the National Land Code, 1965 ("NLC") states that, an application for an Order for Sale, must be made in accordance with the law relating to civil procedure, namely, the procedures as laid down under the Rules of the High Court 1980, ("RHC"). O. 83 of the RHC provides for *inter alia*, the procedure for a sale of a charged property. Section 257(1)(c) NLC, requires an order for sale made by the court "shall specify the total amount due to the chargee at the date on which the order is made ..." whilst under O. 83 r. 3 of the RHC, requires that there must be “particularisation” of the account between the chargor and chargee which includes "the amount remaining under the charge" (see O.

83 r. 3(3)(d)). Thus, an additional or supplementary affidavit would be required in an application for an order for sale for the purpose of specifying the amount due to the chargee at the date on which the order is made.

7.0 Essential features of a valid BBA Contract

The panel of judges In *Lim Kok Hoe & Anor* also decided on the essential features of a valid BBA contract as follows:

A BBA contract contains the element of *bona fide*

A *bona fide* sale is one where the profit should not be an element not approved by the Religion of Islam. Even so, an interpretation of the selling price must not be such as to impose a heavier burden than on a loan with interest for that would obviously be contrary to the intent and purpose of Surah al-Baqarah. The correct interpretation would be that which is not worse if not better than in conventional loan with *riba*. If effort to maintain a *bona fide* sale is abandoned, deferred payment of sale price is effectively a credit or loan extended and any profit would be prohibited as *riba.*

The substance of the BBA contract must be in line with Islamic teachings

The correct approach to determine the validity of a BBA contract would be to look at the substance, not just the label which had been attached to it. The law will always look beyond the terminology of the document to the actual facts of the situation and it is no longer a question of words but substance (see *Woo Yew Chee v. Yong Yong Hoo* [1978] 1 LNS 240; *Addiscombe Garden Estates Ltd v. Crabbe* [1958] 1 QB 513*)*.

The argument that the court must look no further into a BBA contract if the parties have agreed upon a selling price, there is "aqad" does not appear to be right. The fact there is an "aqad", and before that an "ijab" and "qabul" does not prevent an examination of the terms as to the transaction in fact is. (see *Malayan Banking Bhd v. P K Rajamani* [1994] 2 CLJ 25 SC)

The court has authority to check whether there are elements that are not approved by the religion of Islam by looking beyond the words of agreement to the actual facts of the case in order to determine the substance of the transaction between the plaintiffs and the defendants before it draws any conclusions on the nature of the BBA contract.

It is necessary to look beyond the labels used and look at the substance particularly in light of the fact that the interpretation advanced by the plaintiffs result in the defendants being burdened with a debt far in excess of that if they had taken an interest based conventional loan, a result which on the face of it contradicts the intent and purpose of the Qur'an to banish the burden of *riba* in *riba*-burdened loans.

8.0 Factual circumstances which are judicially taken into consideration by Malaysian civil courts in disputes involving BBA contracts

8.1 Foundation of the BBA contract

BBA contracts have Islam as their foundation whilst the foreclosure proceedings come under the civil law jurisdiction specifically the National Land Code 1965 and the Rules of the High Court 1980. It follows that if the civil court is not to be a rubber stamp to issue

orders for sale, it must maintain crucial supervision that the orders for sale are being sought upon balance sums that are not disproved by Islam.

The essential features laid down in the case of *Bank Islam Malaysia Bhd v. Lim Kok Hoe & Anor and Other Appeals* [2009] 6 CLJ 22 and *Arab-Malaysian Finance Bhd v Taman Ihsan Jaya Sdn Bhd & Ors; Koperasi Seri Kota Bukit Cheraka Bhd (Third Party)* (2009) 1 CLJ 419 are as follows:

a)That order for sale by public auction is granted in respect of charged properties for the recovery of the balance of purchase price upon the sum due as purchase price on the date of settlement, if any;

b)That auction date shall be held on a date four months from the date of this judgment;

c) That the reserved price, being a price equivalent to the market price, shall be fixed by the deputy registrar;

d) Other orders in respect of auction as provided by s. 257(1) of the National Land Code;

e) Costs to be taxed and paid by the defendants; and

f) Liberty to apply.

In *Arab-Malaysian Merchant Bank Berhad v. Silver Concept Sdn Bhd* [2006] 8 CLJ 9 as follows:

This case involves the marriage of two distinctly diverse worlds, namely the Islamic world and the common-law sourced civil law, both protected and enabled by the

Federal Constitution. The agreements here have Islam as their foundation whilst the foreclosure proceedings come under the civil law jurisdiction, specifically the National Land Code 1965 and the Rules of the High Court 1980.

8.2 The manner of concluding the BBA contract

Reported cases in *Bank Kerjasama rakyat Malaysia Bhd v. PSC Naval Dockyard Sdn Bhd* [2008] 1 CLJ 784 (High Court Malaya, Kuala Lumpur), *BIMB v. Adnan bin Omar* [1994] 3 CLJ 735 and *Bank Islam Malaysia Berhad v. Adnan Omar* [1994] 3 CLJ 735; [1994] 4 CLJ 372 show that the courts would look into aspects of the existence of undue pressure or persuasion to determine the validity of a BBA contract. A valid BBA contract is one where parties have agreed before executing the agreements, and without any undue pressure or persuasion, to the preconditions of the Islamic based contracts. Parties also must agree to be bound by the terms to conclude the agreement.

A defendant who had chosen a banking facility which is more exorbitant than the other available products or the conduct of the defendant in having agreed to be bound and in fact complied with the terms of the agreement by installment payment but subsequently claimed the agreements to be uncertain, are situations that invite the application of the doctrine of estoppel. The decision of the Court of Appeal in *Boustead Trading (1985) Sdn Bhd v. Arab Malaysia Merchant Bank Bhd* [1995] 4 CLJ 283 is a clear authority that the defendant by its own conduct has waived all the issues raised.

8.3 Profit earned in BBA contracts

The issue of the presence of *riba* in BBA contracts is laid to rest in the case of *Bank Islam Malaysia Bhd v. Lim Kok Hoe & Anor and Other Appeals* [2009] 6 CLJ 22 wherein it is not right to equate BBA contracts to conventional contracts.

Raus JCA in delivering the appellate court's decision, said:

"but it is equally evident in this case that the result of what is presented as the application of the Quran principle is that the defendant became liable, upon default at any time, to an amount that is 2.2 times the facility he obtained. It could hardly have been intended by these words in the Surah Al-Baqarah that an Islamic financing facility should result in consequences for more onerous than the conventional loan with "riba" that is prohibited and unequivocally condemned. One might pause and observe that the harshness of usury is hardest upon those who default, and much less so, if at all, upon those fortunate enough to be able to service the loan successfully. The Qur'an could hardly have intended that its followers, faithfully and trustingly seeking an Islamic compliant facility, should be delivered to those who offer what appear to be perfectly Islamic compliant facilities, but upon a default, had an interpretation applied that imposes a far more onerous liability than the conventional loan with interest. It is difficult to conceive that the Religion of Islam intended to discourage its followers from the conventional loan with interest, condemn lenders for such loans, and deliver its followers into the bands of banks and financiers who under sale agreements with deferred payments, exact upon default, payments far exceeding the liability upon default of a conventional loan with interest. One cannot say that the Religion of Islam is so much

more concerned with form than substance as would sustain the bank's interpretation of "selling price". "

However, the learned judge held that BBA contract should not be equated to conventional loan agreement. This is because the two instruments of financing are not alike and have different characteristics. BBA contract is a sale agreement whereas a conventional loan agreement is a money lending transaction. The profit in BBA contract is different from interest arising in a conventional loan transaction. BBA contract is in fact a trade transaction. It is a transaction between the customer and the bank. In such transaction, there is a purchase agreement and a separate sale agreement between the customer and the bank.

Further, the comparison between BBA contract and conventional loan agreement is of no relevance. It serves no purpose as the law applicable in BBA contract is no different from the law that is applicable in a conventional loan agreement.

8.4 Computation of "unearned profit" under a valid BBA contract

"Unearned profit", as the name suggests, is the amount which has yet to be earned by the bank. The computation, as I understand it, is based on the full sale price under the Property Sale Agreement (PSA) less the paid installments. Since the tenure of the contract has not completed, the bank will further deduct as *ibrar* (a term used in Islamic banking for rebate) what it refers to as "unearned profit".

In *Bank Islam Malaysia Bhd. v. Azhar Osman & Other* [2010] 5 CLJ 54, Rohana Yusuf J illustrated the method of computation used by the bank based on this table in

determining the balance sale price and the rebate granted to customers. This table below represents an ideal BBA transaction. In reality of a banking transaction, there may be late payment of installment by a customer. Then the bank will have to readjust the respective figures in the table accordingly.

Eg, for illustration purposes only

Payment No.	Installment	Financing Amount	Unearned Profit/Ibrar	Balance Selling Price
0		100,000.00	48,912.97	148,912.97
1	1,128.13	99,517.70	48,267.14	147,784.85
111	1,128.13	22,087.88	1,602.82	23,690.70
112	1,128.13	21,102.40	1,406.17	22,562.57
113	1,128.13	20,110.56	1,323.88	21,434.44
114	1,128.13	19,112.31	1,194.00	20,306.31
115	1,128.13	18,107.62	1,070.57	19,178.19
116	1,128.13	17,096.43	953.62	18,050.06
117	1,128.13	16,078.72	843.21	16,921.93
118	1,128.13	15,054.43	739.37	15,793.80
119	1,128.13	14,023.53	642.14	14,665.67
120	1,128.13	12,985.97	551.57	13,537.54
121	1,128.13	11,941.71	467.71	12,409.41
122	1,128.13	10,890.70	390.58	11,281.29
123	1,128.13	9,832.91	320.25	10,153.16

124	1,128.13	8,768.29	256.74	9,025.03
125	1,128.13	7,696.79	200.11	7,896.90
126	1,128.13	6,618.37	150.41	6,768.77
127	1,128.13	5,532.98	107.66	5,640.64
128	1,128.13	4,440.59	71.93	4,512.51
129	1,128.13	3,341.14	43.25	3,384.39
130	1,128.13	2,234.59	21.67	2,256.26
131	1,128.13	1,120.89	7.24	1,128.13
132	1,128.13	0.00	0.00	0.00

This table illustrates a BBA transaction where the customer sells to the bank *vide* a PPA an assets of the customer for a sum of RM100, 000. The bank sells back to the customer under the PSA for RM148,912.97, payable in 132 installments of each RM1,128.13. The first column denotes the installment numbers which is on monthly basis. As an example, if a customer defaulted on payment of installment No. 112 in the first column, the balance selling price due to the bank will be RM23,690.70. This figure appears in the last column. If the sum is paid immediately, the bank will grant an *ibrar* by deducting the unearned profit of RM1,406.17 as shown in the "unearned profit" column. However, if the amount is not paid immediately, for example, it is only paid on the date when installment No. 124 is due; the unearned profit that the bank will deduct as *ibrar* will be recomputed taking into account the non payment of the outstanding instalment from date of default to the payment date. It must be born in mind that the figure in the "unearned profit" column in the installment number 124 does not automatically apply but need adjustment based on punctuality of installment payment.

In the event that no payment is made till the end of the tenure that is, when installment No. 132 becomes due or thereafter, the bank would be entitled to receive the sum of RM23,690.70 with no rebate, as there would be no further unearned profit left to be deducted as *ibrar*. The balance sale price of RM23,690.70 would be the maximum amount that the bank could claim as there is no interest chargeable thereon after judgment is obtained. If I am permitted to state here, compared to conventional banks, Islamic banks' claim will be capped to the sale price and no more. Needless to say, depending on the terms of the contract the bank may also be entitled to other ancillary charges due, including late payment charges.

9.0 Conclusion

The financing aspects of BBA is complex as it must represent the buying and selling activities (al-bay'). The introduction of Islamic financing in Malaysia is complicated by this country's constitutional arrangements. Article 74 of the Federal Constitution of Malaysia which provides that finance, including banking, money-lending, pawn-brokers, control of credit, as well as trade, commerce and industry are subject matters within the Federal List draws issues where Islamic financing disputes are decided in the civil courts instead of the Syariah courts. This jurisdictional limitation in respect of the States and the Syariah courts means that cases involving Islamic financing in Malaysia will remain within the Federal legislative jurisdiction, and cases relating thereto are brought in the Civil courts. Thus, the way civil judges perceive BBA contracts must be looked into by practitioners of Islamic financing (bankers and lawyers alike) in order to find a way to minimize the occurrence of BBA contracts being challenged for being invalid.

To sum up, civil court judges must give consideration of the basic principles concerning Islamic financing. In this regard, consideration of the Religion of Islam under the Federal Constitution must be given emphasis apart from the relevant laws as to banking and finance. Apart from that, the practitioners of Islamic financing (bankers and lawyers) must also be conversant with both legal systems as well as rules and procedure so as to avoid possibility of a BBA contract being challenged in the court of law for non-conformity or contradiction with Shariah, existing civil law or even on rules of procedure.

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Customers Awareness and Acceptance of Islamic Internet Banking

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This study analyzes the customer's awareness and acceptance of using internet banking introduced by the Islamic banks or Window Islamic Banks in Malaysia as their usage for daily transaction. This study also looks into the demographic factor which influences the awareness and acceptance of using the Islamic Internet Banking. 350 questionnaires were distributed at random. A high tendency of security and no *Ijab* which finds many customers of different ages mostly with Islamic background did not used the Internet Banking introduced by their bank, rather choosing to do transaction traditionally. Promoting and demonstrating of using this transaction will actually help to boost the number of user of internet banking in Malaysia especially for the Islamic banks customers.

Keyword: Customer, Islamic, Internet Banking

1. INTRODUCTION

Traditional banking has been used widely in Malaysia since it first started. But, revolution of technology made changes in the financial service industry by introducing Automated Teller Machine (ATM). Since then, the technology had been rapidly changed. Before internet banking was introduced to the customer, PC banking being used widely by companies to monitor their transaction by the authorised party. Financial software package being installed by their respective banks in making ease for their customer to do the banking at their own office. But, it was hassle due to the limited staff to install that software and providing training to them. PC banking was meant for business people and not personal customers as the added values service were not incorporate together.

If in the early stage of using interest banking is used to transfer money, checking account balance and printing their statements, it had moved another step by providing their customer with purchasing shares, bills payment, credit card payment, cheque book request and this service will always goes on without stop. This is to make convenient to the customer in transferring their money anywhere and at anytime. The first country who uses internet in their financial services would be the America before being followed by other countries later on. According to ACNeilsen (2001), internet banking had spread out in the blink of eyes to most of the Asia countries such as Singapore, China, Taiwan, Korea, Hong Kong, Thailand and not forgetting Malaysia to feel the fever of internet banking.

The objective of this study is to investigate the awareness and acceptance of Islamic Internet banking by customers of various age and education background. Technology Acceptance Model (TAM) will be used for this study. The findings from this study, can be used by banks to develop better strategies in maximizing the acceptance rate pf Islamic Internet banking in Malaysia.

OVERVIEW OF ISLAMIC INTERNET BANKING IN MALAYSIA

There had been 30 years since Malaysia emerged with the Islamic finance industry. With the asset reached USD1Trillion, Islamic finance continues to grow rapidly (Halal Journal, 2010). With the current number of 21 full-fledged and window Islamic banks here in Malaysia providing service to their customer with traditional banking service, these banks are looking forward to capture more attention of the current trend of having their own internet banking in improving the competitiveness.

The Islamic bank in Malaysia is currently active in promoting the usage of electronic banking. This is a way to educate their customer not too depend on the counter service and the current trend would be internet banking to their customer. This latest in this trend had queued Bank Muamalat Malaysia Berhad to be inline with the other Islamic Banks in Malaysia to use internet banking as part of their daily routine. It is currently being tested to their employee as the crème to use that service before promoting it to their customer. This is because; according to (Gonzalez et al., 2004) a key component in improving customer focus of tools which will help the development of a better relationship between the bank and customer as a whole. Services from the perspective of bank is the most crucial as they have most likely similar product and service being offered to their customer. But, what makes it different would be the quality of service in terms of personal touch and good communication, the latest trend of providing services through internet banking would be the added value to the bank in capturing the customers attention and at the same time, getting more passive income from it through receiving charges from companies who which to collaret business with them.

Internet banking had allows customer to felt more value in managing their own account 24/7. To date, there are 19 Islamic banks out of 21 banks offers internet banking service to their customer.

Table 1: List of Islamic Banks Offers Internet Banking

Local Banks	International Bank
• Bank Kerjsama Rakyat Malaysia Berhad • Alliance Islamic Bank Berhad • Bank Islam Malaysia Berhad • Bank Muamalat Malaysia Berhad (Currently Testing) • Hong Leong Islamic Banking Berhad • CIMB Islamic Bank Berhad • RHB Islamic Bank Berhad • AmIslamic Bank Berhad • Affin Islamic Bank Berhad • EONCAP Islamic Bank Berhad • Maybank Islamic Berhad • Public Islamic Bank Berhad	• Asian Finance Bank Berhad • Al Rajhi Banking & Investment Corporation (Malaysia) Berhad • Kuwait Finance House (Malaysia) Berhad • HSBC Amanah Malaysia Berhad • OCBC Al-Amin Bank Berhad • Standard Chartered Saadiq Berhad • Unicorn International Islamic Bank Malaysia Berhad

2. LITERATURE REVIEW

Technology has emerged in the internal changes in the current financial services provided by the bank. According to (Mols, 1999), internet banking is growing and banking conventionally is declining. But as we are reading this, more branches are being opened in fulfilling the needs of customers such as Bank Islam Malaysia Berhad had newly open their branches to cater the needs of people especially in the Islamic banking services. The fundamental reason in the development of internet banking would be

- Cost savings. Internet banking channel is the cheapest delivery channel in providing extra mile services to the customer (Pikkarainen et al.,2004). For example, we do not need to go to the bank just to pay our car loan, PTPTN, transferring money elsewhere and paying for credit cards as just for one click, anywhere and anytime, we can transact our payments with no questions asked.
- Increased customer base. Due to the increasing number of population in Malaysia and at the same time having their accounts in banks, this will increased the banks customer base in marketing their internet banking.
- Marketing and Communication. By using the World Wide Web (WWW), banks has the capability to promote their product better with innovative marketing campaign, having alliances with other companies and at the same time, generating more income and save cost from publish more campaign in billboard and mass media.

Perceived Usefulness

It is defined as a person who use will increase their job performance, (Davis, 1989), (Chiu et al., 2005) the intention of online purchases. But (Pikkarainen, 2004) urged that perceived usefulness is correlated with the usage of internet banking. As studied by (Guriting and Ndubisi, 2006) the usage of TAM Model for internet banking in Malaysia had shown a direct relationship between perceived usefulness and their intention of using internet banking.

Perceived Credibility

While looking at credibility, it emphasized on the importance of security and privacy while connecting with the internet banking services. According to (Suganthi and Balachandran, 2001) had found the important factor affecting internet banking in Malaysia is the security consent.

Amount of Information on Internet Banking

Information on internet banking is important in understanding their customers on how this system works. According to (Ramayah and Ling, 2002), information of internet banking is not an issue as their research done in Penang shows that respondent are aware of internet banking as the bank had done a good job in providing the knowledge.

Perceived Enjoyment

Perceived enjoyment refers to the activity used which will enjoy to the maximum of the respective person (Davis et al., 1992). (Teo et al., 1999) had perceived enjoyment correlate with the frequent usage of using computer and had increased the intention of using it day to day.

Social Norm

Social norms refer to the person perception on how should they do things and they sometimes are comfortable in seeking knowledge from people who are closer to them.

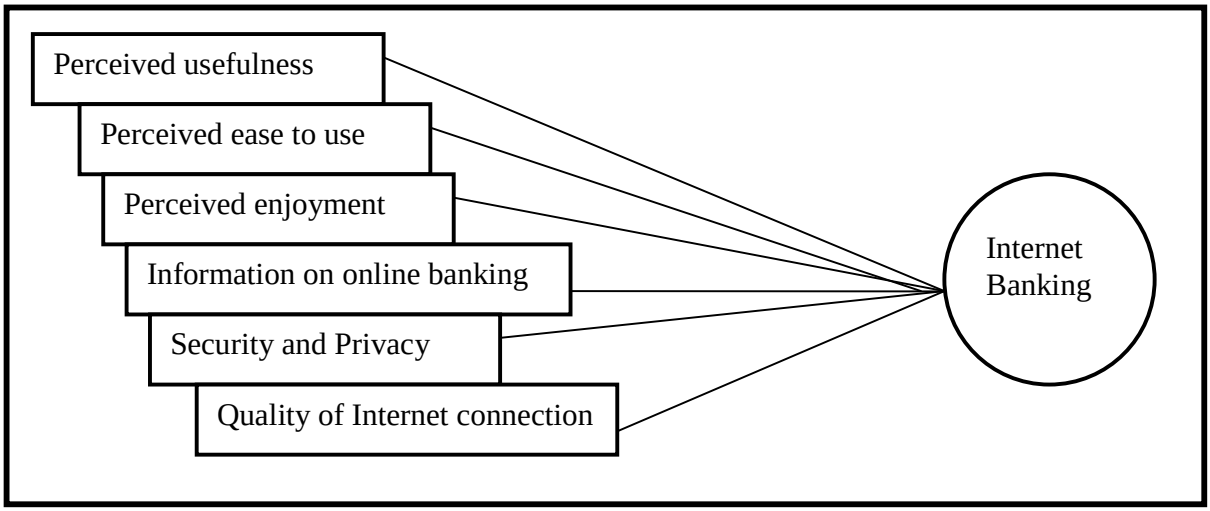
Advantage and disadvantage of Internet Banking

Advantage	Disadvantage
Cost Savings	Costly to deliver (for the bank)
Increase customer base	Open to fraud
Profits from the charges charged to customer for various transaction	Damage customer –banker relationship
Marketing and communication	
Increase innovation and alliances between companies	

3. THEORETICAL FRAMEWORK

In adapting technology in providing better financial service to the customer, Technology Acceptance Model had been used in most research (Chiu et al., 2005; Pikkarainen et al., 2004) measuring the acceptance of Internet banking including researcher who modified it (Hanudin, 2007) in finding the right modelling to measure the acceptance of internet banking by Muslim people. The model consists of six factors on customer's acceptance of internet banking.

Figure 1:The Research Model



Source: Adapted from Pikkarainen et, al (2004)

4. METHODOLOGY & ANALYSIS

The data for this study being obtained by survey conducted in Islamic Banking branches in Bangi, Nilai and Seremban, Malaysia. This survey was conducted in May-July 2010 which was a voluntary participation from bank customers of Bank Islam, CIMB Bank, Maybank, RHB Bank and Affin Bank. There were 400 questionnaires being distributed and 350 was filled up due to time constrained by the respondent. The data was analyze using SPSS.

Table 1: Summary of Respondent Profile (n=350)

Gender	Race	Education	Marital Status	Location
Male: 40.86%	Malay: 95%	SPM: 37.5%	Single:47.5%	Seremban: 27.4%
Female: 59.14%	Chinese: 4%	Diploma:5.9%	Married: 51.2%	Nilai: 36.9%
	Indian: 1%	Degree: 48.7%	Single Parent: 1.3%	Bangi: 35.7%
		Masters & Phd: 7.9%		

Trust the Internet
Yes: 62.6%
No: 37.4%

Income	Occupation	Age	Internet Experience	Internet banking experience	Banks (Islamic)
No Income: 11.5%	Student: 9.5%	<21: 8.9%	< 1 year: 14.5%	< 1 year: 12.5%	CIMB: 58.2%
< RM1,000: 19.4%	Unemployed 2%	21-30: 37.5%	1-3 years: 20.7%	1-3 years: 25.87%	Maybank: 32.2%
RM1,001-RM2500 24.7%	Government: 42.6%	31-40: 30.1%	4-6 years: 17.9%	4-6 years: 22.5%	Bank Islam: 9.6%
RM2,501-RM4,000 32.5%	Private: 37.3%	41 and >23.5%	More than 6 years: 40.9%	More than 6 years: 9.03%	
RM4,001 & over 11.9%	Housewife: 3.5%		No internet experience: 6%	No experience: 30.10%	
	Retired: 5.1%				

5. PROBLEMS AND CONCLUSION

From the analysis being done, there are still many people who do not have the internet banking experience.

- *Trusting the system.*

Lack of customers trust on the internet and internet banking need to be changed. As many of the respondent who answer the questionnaires as high as 37.4% who do not trust the system due to three major reasons

- *Security*

  A strong concern of security system is the common factor whereby increased their libido not to use the internet banking as many stories of hackers, fraud and identity thieves. As technology improved, number of fraud internet scams and cases increases.

- Bank Image

  Image plays a major role in promoting the internet banking portal. A good reputation will enhance the image apart from being honest and concern on customers issues when transacting.

- Reliability

  Reliability and system failure will bounce back to the perceived risk by the customer to or not to use the internet banking.

- Legal Issues

Privacy on usage of internet is the primary consent of many internet users especially when comes to internet banking as it involved with money. No supports in the legal law made many people do not want to have or do any internet banking transaction. This is due to acceptance of proof payment or transaction not being accepted in court if any other matters arise in future.

- Organization barrier

Lack of IT resources in implementing the technology makes no added value to the internet banking of a certain bank for their customers to do. Expertise and infrastructure are the major barrier in providing better service. Lack of knowledge on internet banking in their staff also would be a problem as they are the shield and front liner to the bank in providing knowledge and support to the customer.

CONCLUSION

Internet banking from the Islamic Banks are still crucial as many customers still using the conventional system due to the efficiency that they have compared to the Islamic bank's internet banking. Some recommendation that the banks can do in ensuring their internet banking service is inline with the conventional internet banking would be:

1. The bank should improvise their quality in the system as they need to invest more on the quality and reliability of the system. A good helpdesk is needed for all Islamic banks internet providers to have in ensuring all problems arise will be taken care of.
2. Training on internet banking to their staff will be a good thing to do as they will later need to assist their customers on the usage and benefit of using it.
3. Do a strategic alliance with other company of association in getting more traffic to the internet banking portal and make it user friendly like make it with different language to cater the needs of Malaysian customer of various races.
4. The issue of security need to be enhance always to make sure no fraud; hackers can go into a person's account. A better solution need to have as internet banking contribute more profits from the charges charged to the customer.
5. Government need to look into protecting the citizen who uses internet banking. Apart from that, the government need to look into the account of money laundering and unlegitimate business transaction not to be done. It will affect the highly on the perception of Islamic banking.

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WAQF MODELS IN ISKANDAR MALAYSIA: AN ANALYSIS[1]

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Abstract

The Malaysian government's initiation to establish Iskandar Malaysia (IM), which is located within the southern-most part of Johor, as the new southern development corridor has been identified as one of the catalyst developments to spur the growth of the Malaysian economy. Iskandar Malaysia covers 221,634 hectares (2,217 sq km) of land area which is about 3 times the size of Singapore and 2 times the size of Hong Kong. In the other hands, the Waqf lands in the state of Johor have been identified as the biggest in term of size and some of them are located within the IM area. Those lands which are under the purview of Johor State Religious Council (MAIJ) have significant potentials to participate in the development of the region. The existence of JCorps at the heart of IM which is known for its "Corporate Waqf" gives more significance and colours to the potential of Waqf concept to be applied in IM. Hence, this article aims to study the Waqf models being applied by the relevant institutions such as MAIJ and JCorps in IM and suggest other potential models that could be further applied in the region. The methodology of this study is based on the case study method through meetings with the relevant parties. The findings of this study could highlight the important roles of Waqf concept in the development of IM and the variations of Waqf models that could be applied for Waqf development and participation in the region.

Keywords: Iskandar Malaysia, Waqf, Corporate Waqf

[1] This paper is an excerpt from a research entitled: "Amalan Dan Pembangunan Wakaf Di Wilayah Pembangunan Iskandar (WPI) Johor" under Fundamental Research Grant Scheme (FRGS) headed by Prof. Dr. Hajah Mustafa Mohd Hanefah.

1. INTRODUCTION

The Ninth Malaysia Plan (2006-2010) has identified Iskandar Malaysia (hereafter stated as IM) as the focus area for development in the southern region of Peninsular Malaysia and as one of the major catalyst and high-impact development under the plan. IM covers 221,634 hectares (2,217 sq km) of land area which is about 3 times the size of Singapore and 2 times the size of Hong Kong. Iskandar Regional Development Authority (IRDA) is the supervisory body appointed by the Federal Government to oversee and monitor the development activities in the area. As the region consists of five local authorities, namely; City Council of Johor Bahru, Municipal Council of Johor Bahru Tengah, Local Authority of Pasir Gudang, District Council of Kulai, it is a duty of IRDA to facilitate and coordinate with these authorities in designing and developing the area.

1.1 Problem Statement

The Waqf lands in the state of Johor have been identified as the biggest in term of size and some of them are located within the IM area. Those lands which are under the purview of Johor State Religious Council (MAIJ) have significant potentials to participate in the development of the region. The existence of JCorps at the heart of IM which is known for its “Corporate Waqf” gives more significance and colours to the potential of Waqf concept to be applied in IM. Given the various institutions that involve in waqf management and huge volume of waqf assets in IM, the study of waqf models applied by these institutions is necessary. The participation of waqf institutions in the development of IM should not be neglected. This study could highlight the variations of

Waqf models that are applied for Waqf development and participation in the region and suggest other models that could be relevant for future waqf development. Hence, there are several questions needed to be answered for the purpose of this study. The questions are:

1. What are the waqf models that have been developed in IM?
2. What are the potential waqf models to be implemented in IM

1.2 Objectives of the Paper

This paper aims:

- to study and analyze *waqf* models that have been developed and applied in IM
- to suggest the potential waqf models to be implemented in IM

This paper focuses only on waqf models in IM. The findings shall suggest the structure of waqf models that could be further implemented by the waqf authorities and managements in IM as well as in other parts of the world. It could be significant for those institutions, countries or states that have planned to apply the models in the nearest future.

1.3 Methodology

The methodology of this study is based on the case study method through meetings with the relevant parties. Top managements from the three different government agencies,

namely; MAIJ, JCorp and IRDA have been interviewed to provide information on their roles and experiences in managing and monitoring the waqf properties.

2. LITERATURES REVIEW

Nowadays, the main issues related to *waqf* properties or assets are the management and development aspects. Most of the current literatures focus on the development of *waqf* property rather than the establishment of new *waqf* property. Sources for the financing and development of *waqf* property could be obtained from (al-Misri, 2005):

i. The property of *al-waqif* (donor)
ii. The property of *al-mawquf ᶜalayh* (beneficiaries)
iii. The revenue of the *waqf* property
iv. The revenue of other *waqf* property
v. Baitumal for *maslahah* (public interest)
vi. Reserves from the revenue of the *waqf* property
vii. The sale of a portion of *waqf* property to develop the remaining portion of *waqf* property
viii. The lease of the *waqf* property with advanced rentals
ix. Charities
x. Loan or debts (without interest)

According to Abu Zahrah (2007), developing waqf properties is necessary to make sure the longevity these assets in providing benefits or usufruct to the beneficiaries as stipulated by the founder. Cizaksa (1998) and Kahf (1998) state that throughout Muslim

history, *waqf* institutions are play an important roles in providing public facilities such as mosques, public halls, religious schools and universities. The famous al-Azhar University is established and governed by waqf institution. In Malaysia, as stated by Mashitoh (2006), three mosques, namely; The Kg. Hulu Mosque, Kg Laut Mosque and Sultan Abu Bakar Mosque are considered to be among the earliest waqf creations in Malaysia. Ahmad Zaki et.al (2006) on the hand elaborates that the majority of the traditional religious schools in Malaysia are built on *waqf* lands.

Financing the development of waqf properties is another popular topic that has been discussed by the scholars. Kahf (1998) has categorized three modes of financing that can be applied in developing *waqf* assets, namely; traditional modes such hukr and istibdal, modern schemes modes such as sukuk and self finance modes, for example cash and share waqf. Abdullah and Asharaf (2008) elaborate on the potential of various waqf instruments for construction projects. According to the study, waqf instruments such as cash and e-waqf, certificate and sukuk could be used to accumulate fund for the construction of universities, research centres etc. Modern schemes of developing *waqf* assets as suggested by Md. Nurdin Ngadimon (2006), Tahir Sabit (2005) and Kahf (1998) is the securitization of *waqf* through *sukuk*. Sukuk Musyarakah according to Shamsiah (2006) and Hajah Mustafa et.al (2009) has been successfully applied by MUIS in developing a number of waqf lands in Singapore.

The implementation of cash waqf, e-waqf and share waqf by the authorities has attracted Muslim to contribute their money for charitable purposes. The proceeds accumulated from the fund are channeled to buy new building as applied by MAIJ or any other projects (MAIJ, 2010). Waqf Foundation of Malaysia is also actively promoting their

cash waqf instrument for the construction of waqf assets in Maaysia (Yayasan Waqaf Malaysia, 2010). Corporate share waqf is a new waqf concept established by a corporate entity; Johor Corporation (JCorp). As a corporate body, JCorp has founded Waqaf An-Nur Corporation Berhad (WANCB) or formerly known as Kumpulan Waqaf An-Nur Berhad Kumpulan Waqf An-Nur (KWAN) to monitor and manage waqf activities (Hajah Mustafa Mohd. Hanefah et al., 2009).

It could be observed that the focus of the contemporary writings is on the development of existing *waqf* property (land). The focus of this study is on waqf models in IM.

3. WAQF MODELS IN ISKANDAR MALAYSIA

It is observed that Waqf models in IM could be categorized into three categories namely:

1. Real Estate Waqf
2. Cash Waqf and
3. Corporate Waqf

Currently, there are two main institutions that take part in the Waqf development and management within IM. They are Johor State Religious Council (MAIJ) and JCorp. Johor State Religious Council manages the first and second models of Waqf while the third model is under the purview of JCorp. The following sub-sections shall discuss the three waqf models in more details.

3.1 Real Estate Waqf

Real estate waqf refers to the immovable waqf property. It is the main form of waqf property as it is perpetual and indestructible. Until today, most of the real estate waqf in IM are created through the state government's requirements for local planning and development. Hence, waqf *irsad* is the main source for waqf assets creation in this category. Furthermore, real estate waqf in Johor generally and IM specifically could be divided into five (5) categories based on its purpose. The purposes are:

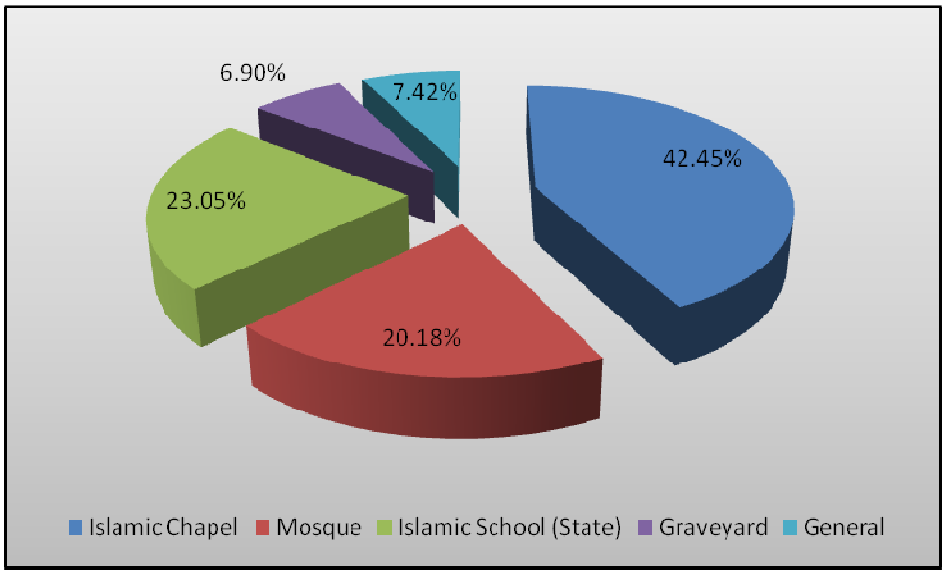
1. Mosque
2. Islamic Chapel (Surau)
3. Islamic School (under State)
4. Graveyard/Cemetery
5. General

Table 1 describes the categories of real estate waqf in Johor Bahru and Kulai Jaya districts where IM is located.

Table 1: Categories of Real Estate Waqf in IM (Units and Percentage)

Category	**Unit**	**Percentage**
Islamic Chapel	326	42.45%
Mosque	155	20.18%
Islamic School (State)	177	23.05%
Graveyard	53	6.90%
General	57	7.42%
TOTAL	**768**	100.00%

Figure 1: Categories of Real Estates Waqf in IM (Percentage)



Based on Figure 1, real estate waqf in IM primarily fulfill the two main needs of Muslim society there i.e. basic Islamic education and worships. This could be derived from the total percentage of real estate waqf dedicated for the two sectors that amounts to 85.68% of the total real estate waqf assets.

3.2 Cash Waqf

MAIJ commonly applies the cash waqf model through the waqf shares approach. Waqf shares approach is perhaps the most common approach for cash waqf in Malaysia. Waqf shares model has been practiced and supported by seven of the nine State Islamic Councils, YADIM, YAPEIM and Yayasan Waqf Malaysia (Magda Ismail Abdel Mohsin,

2009; MAIJ, 2010; Yayasan Waqaf Malaysia, 2010). One of the most successful examples of Cash Waqf implementation in IM is the establishment of a six-storey building at Batu 6½, Tampoi with the cost of RM4.99 millions. The building is currently being used as Hemodialysis centre for the patients of acute kidney injury. Another example is the purchase a six-storey building in Cairo, Egypt. The building is then renovated as hostels for the students who are studying at Al-Azhar University. It is a second building owned by the Johor state and has been officiated by the Sultan of Johor, Sultan Ibrahim Ibni Almarhum Sultan Iskandar on 17th April 2010 (MAIJ, 2010) .

Waqf shares mechanism is a highly flexible waqf method compared to the real estate waqf. The sources could be collected through several methods from different places and parties and could be expended on different kind of purposes. Hence, the sources and uses of waqf shares funds are more flexible in nature. As far as IM is concerned, waqf shares could be used to increase the size of real estate waqf. For example, MAIJ plans to buy four (4) two-storey commercial units with the cost of RM 1,573,566.00 at Fortune Point, Taman Perindustrian Nusa Cemerlang, Nusajaya. The commercial units are intended to be leased out to Muslims who plan to start their businesses in Nusajaya, IM (MAIJ, 2010). On January 4, 2010, Johor State Religious Council (MAIJ) has launched an official website dedicated for waqf shares. The domain is: http://www.e-wakafjohor.gov.my . The launch of the website could increase the awareness of the cash waqf schemes amongst the Muslim community.

3.3 Corporate Waqf

JCorp plays a very important role in developing waqf properties in Malaysia particularly in corporate sector. Thus, its contribution in managing waqf property is proven and recognized by many parties. As a private institution, JCorp is one of the prominent institutions which contribute directly towards this development. Waqf activities anticipated by JCorp is diversified to various activities via Waqf An-Nur Corporation Berhad (WANCB) or formerly known as Kumpulan Waqf An-Nur Berhad. WANCB started their operation on 25 October 2000 to manage Waqf An-Nur clinics and dialysis centers under JCorp. In 2006, JCorp was launched Waqf An-Nur Hospital in Pasir Gudang, Johor where it is the first waqf hospital in Malaysia. This is the expansion from the Waqf An-Nur clinics that started with Waqf An-Nur clinic in Plaza Kotaraya, Johor Bahru on 1 November 1998. By the end of the year 2008, there was a network of 8 Waqf An-Nur Clinics Johor, Negeri Sembilan, Selangor and Sarawak and one Waqf An-Nur hospital in Pasir Gudang, Johor (WANCB Annual Report, 2008).The Waqf An-Nur Clinics and hospital provide healthcare services to lower income group from all level of community regardless of religion and race. In the year 2008, the entire network of Waqf An-Nur Clinics and Hospital succeeded in providing 82,261 medical treatments to patients, including 5,480 treatments to non-Muslim patients. With the implementation of cash waqf in Waqf An-Nur, it has contributed towards the society in its own range.

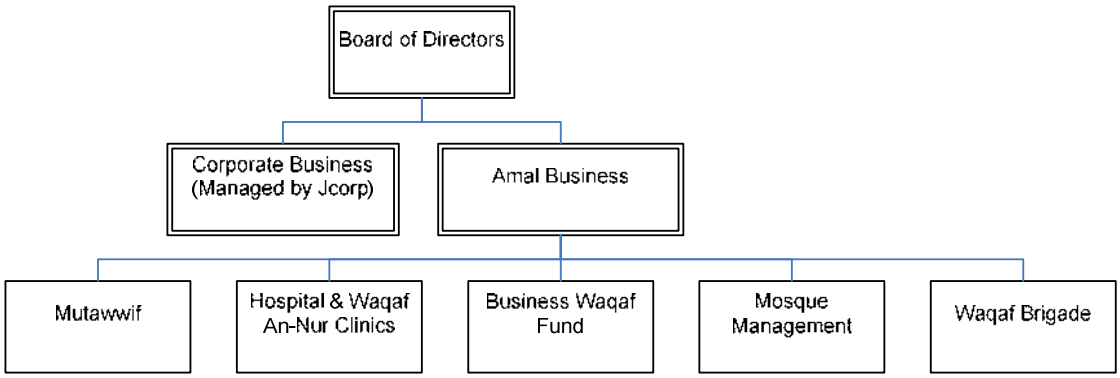
Besides that, WANCB also introduced the Business Waqf Fund through the Cash Endowment and Fisabilillah Benefit. The Business Waqf Fund aims to provide micro capital facility and rolling capital (without interest), especially to small businesses, specifically for start-up businesses. Business Waqf Fund offers the qualified entrepreneur a maximum financial facility of RM3,000 with a maximum payback period up to two years. The recipients only to pay a RM1 processing fee and it is free from usury. By the

end of 2008, Business Waqf Fund was provided an accumulated amount of RM169,100 to a total of 63 new businesses. A business center known as Semai Niaga had also been established in co-operation with the Pasir Gudang Municipality Council to locate the businesses that received support from the Business Waqf Fund. A total of 13 recipients have started their businesses at Semai Niaga.

In 2008, WANCB established the Waqf Brigade, a disaster relief and charity aid team. The Waqf Brigade will always standby to provide support and assistance domestically and internationally as and when it is required. The elite team was chosen after a stringent selection process based on professional backgrounds and capability as well as individual personal deportment, and they will be trained professionally in all aspects on how to respond to the various disasters that may occur.

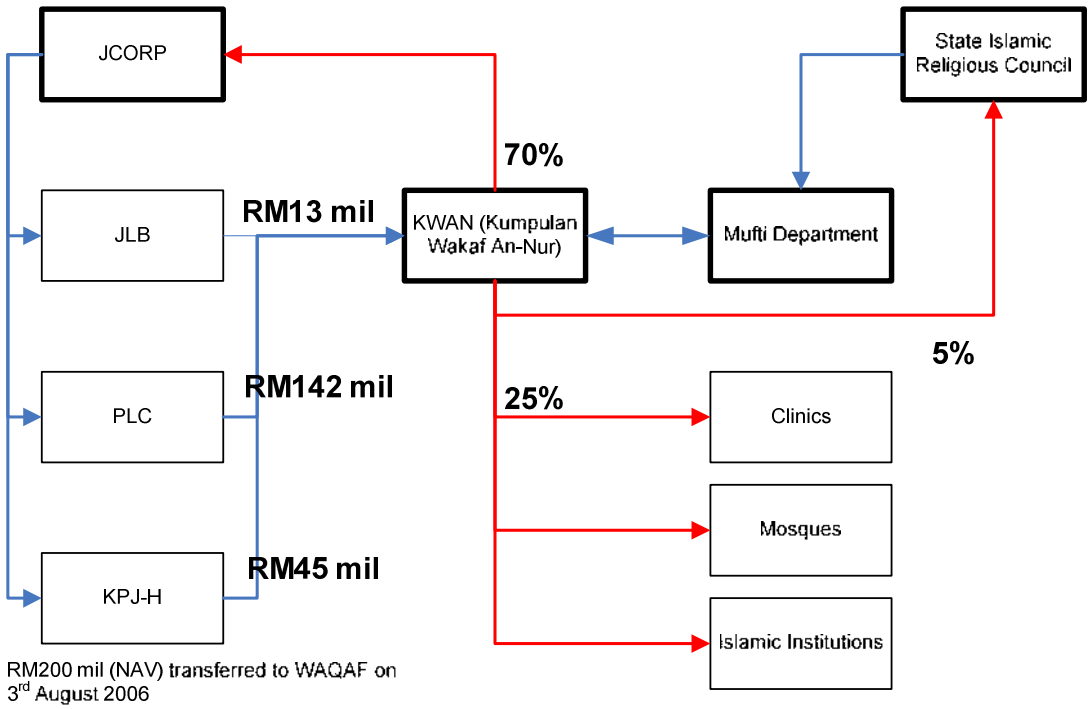
Figure 2 below depicts the corporate structure of Waqf An-Nur Corporation Berhad.

Figure 2: The Corporate Structure of Waqf An-Nur Corporation Berhad



JCorp has committed itself to reform business and corporate ways to suit Islamic demands and standards which known as a "Business Jihad". JCorp's Business Jihad has involved many highly entrepreneurial ventures including healthcare services, palm oils and food and restaurants. It was aimed to fully integrate Islamic values into capitalist corporate practice through a corporate culture that integrates Amanah through its highly successful Intrapreneuring or entrepreneur-managers program. JCorp aims to transform itself into a "waqf" corporate institution where the business is not owned by anyone but owned by Muslims. JCorp was launched the idea of "Corporate Waqf" in 2006 which involved the transfer of 12.35 million unit shares owned by JCorp Kulim (M) Bhd, 18.60 million unit shares in KPJ Healthcare Bhd and 4.32 million unit shares in Johor Land Bhd to Waqf An-Nur Corportion Berhad as trustee (JCorp Annual Report, 2007).

Figure 3: JCorp's Corporate Waqf Framework



Corporate waqf is an innovative adaptation of the Islamic waqf institution that can be made a key organizational strategy to translate the "Business Jihad" energy into real and sustainable business and economic success. This is a unique agenda planned by JCorp for the Ummah through its Corporate Shares of Waqf Corporation. As a proof, via its corporate waqf agenda as reported in 2007, JCorp pledges to dedicate 25% of the annual dividend payout from the shares transferred into waqf. (JCorp Annual Report, 2007). Thus, the dividend is useful to organize various activities for Muslims and non-Muslims and arranged for charitable and religious activities that benefit and fulfill the needs of the society as a whole. In 2008, another company owned by JCorp, TPM Management Sdn Bhd has started its contribution towards waqf An-Nur. JCorp has endowed 61 pecent of its shares worth RM50.33 million that brought the total amount values of shares being endowed by JCorp up to RM258.01 million as net asset value (Waqf An-Nur Corporation Berhad Annual Report, 2008). Below is the model of JCorp's corporate waqf.

4. POTENTIAL WAQF MODELS FOR WAQF ASSETS DEVELOPMENT IN ISKANDAR MALAYSIA (IM)

The future of Waqf development in Malaysia is constantly bright and inspiring with full support by the Malaysian government. Many corporate institutions particularly the Malaysia government-linked companies (GLC) such as Petronas, Tenaga Nasional Berhad and Khazanah Nasional would be able to absorb waqf concepts and apply them in its CSR (Corporate Social Responsibility) programmes, especially the corporate waqf model. The corporate entity could set up a dedicated unit for corporate waqf management

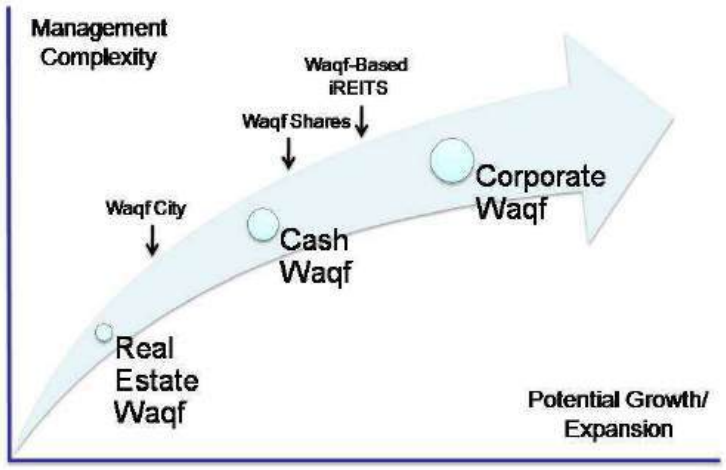
as practiced by JCorp. Thus, the waqf is not only evident in the financial statement of the corporations as waqf shares and dividends. Moreover, corporate waqf model requires the corporations to involve in waqf as their significant agenda. In addition, in the third Islamic Economics Congress on 12th January 2009, the concept of corporate waqf has been selected to be a main strategy to run the idea of Business Jihad . Besides, in order to continuously support and motivate the society to return back what they have received to whom they obtained, cash waqf would be implemented through various means. For example in Singapore, a successful story is exemplified by Singaporean Muslims waqf collection of MUIS via monthly salary deduction. Thus, a continuous support towards waqf activity is gained and spiritual development also is obtained in this religious performance.

As mentioned in the previous discussion, IM at the similar side plays an important role in developing potential waqf activities in Johor. With large scale of waqf assets throughout Johor Bahru, Pasir Gudang, Johor Bahru Tengah and Kulai, the IM involves directly and indirectly to a modern and industrial-based waqf activities. Its capacity as the architect of physical development of the said districts, a strategic development of waqf activities may gain benefits from IM's potential movement. Bandar Dato' Onn for example as one of the waqf estate owned by JCorp, provides potential as Waqf City with a proper planning by JCorp through its subsidiary; JLand. The development will take place in a 1,514 acre land with intentions for social responsibilities by protecting the rights of Muslims community. Thus, in parallel to its physical development, economic development will be also taken care by the developer to ensure the *maqasid* of waqf activities in Islam are performed as required.

Another most important and potential waqf model that should be taken into serious outlook is Islamic Real Estate Investment Trust (iREITs) model. The activity does not only involve a direct investment of the land per say, it also includes a development of residential areas, commercial areas and may also taken into account Islamic-based social activity areas, or family activity areas. All these developments are totally based on waqf project and the return of all the projects will be then returning back to waqf trustee, i.e MAIJ. While waqf irsad concept in IM mainly fulfills the needs of Muslims to have basic Islamic education and places of worship, the cash waqf concept through Waqf Shares and iREITs could help the Muslims to increase their real estate ownership especially the commercial properties within IM and thus help them to remain competitive economically.

With that, a combination of three waqf models, namely real estate waqf, cash waqf and corporate waqf in the physical, economic and spiritual development of IM will produce a success and inspiring Muslims society as a whole. The cash waqf and corporate waqf models could offer continuous growth and expansion of waqf assets in IM. However, the two models are more complicated in terms of management. Figure 4 illustrates the relationship between management complexity and potential growth and expansion of the three waqf models available in IM.

Figure 4: Relationship between Management Complexity and Potential Growth and Expansion for the Three



Waqf Models in IM

5. CONCLUSION AND RECOMMENDATION

The three waqf models applied in IM are quite comprehensive. The models illustrate the evolution of waqf concept itself. The corporate waqf model as introduced by Tan Sri Ali Hashim and JCorp and with the supervision of MAIJ contributes to the development of a waqf concept tremendously in the corporate entity. The involvement of corporate/private institutions and professionals in the development and management of waqf properties such as JCorp could revitalize the roles of waqf concept in satisfying the needs of the Muslims nowadays and fulfilling the Shariah objectives in this modern and challenging world. In the other hands, MAIJ applies two waqf models (real estate and cash waqf models) that are more fundamental in nature. It is recommended that more concerted efforts should be taken to study the features of these three models and how they could be applied strategically in strengthening the socio-economic position of the *ummah*.

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