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**THE ISSUES OF SYARIAH:-
IN THE IMPLEMENTATION OF ISLAMIC BANKING AND
ISLAMIC FINANCIAL SYSTEM IN MALAYSIA**

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Perpustakaan
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AUTHOR DECLARATION

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

I hereby declare that this academic project is my own except for quotations and summaries, which have been duly acknowledged.

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بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

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May Allah help us all to work together for his sake.

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ABSTRAK

Sistem kewangan dan perbankan Islam adalah bidang yang amat menarik untuk diperkatakan. Hal ini kerana ia merupakan realiti baru yang dipraktikkan semula sejak dua dekad yang lalu. Pelaksanaan sistem kewangan dan perbankan Islam di Malaysia, walaupun dalam usia yang masih muda berbanding dengan pelaksanaan di negara lain, tetapi ia telah menampakkan kejayaan yang cemerlang sehingga dikagumi oleh negara-negara luar. Walaupun ia telah diakui negara-negara Islam lain sebagai model untuk masa hadapan namun terdapat pelbagai isu syariah yang telah timbul. Justeru itu, penulisan ini meninjau beberapa isu syariah yang dihadapi oleh system kewangan dan perbankan Islam di Malaysia yang berasaskan kepada prinsip-prinsip mu'amalah Islam. Turut dikemukakan ialah konsep syariah, sumber undang-undang syariah, dan prinsip-prinsip syariah yang dilaksanakan oleh sistem kewangan dan perbankan Islam di Malaysia.

ABSTRACT

Islamic Financial System and Islamic Banking are very attractive topics to discuss. This is due to their recent implementation which started about two decades ago. The implementation of both Islamic Financial System and Banking in Malaysia is still at its infant stage yet it has demonstrated excellent track records. However, there are still some teething problems related to issues on Syariah. This paper attempts to highlight issues related to Syariah pertaining to Islamic Financial System and Banking practiced in Malaysia based on the Islamic Muamalat principles. In addition, concept of syariah, sources of syariah laws and syariah principles practiced by the Islamic Financial System and Banking in Malaysia will also be discussed.

ملخص البحث

إن نظام المصارف والبنك الإسلامي قضية من القضايا في عصرنا الحاضر. ذلك لأنهما من الواقعية المعاصرة التي قد ظهرت منذ القرنين السابقين. وهذا النظام مهما كان في أول نشأتها لهذه الدولة بل إنه قد نجح بالتفوق حتى تعجبه الدول الخارجية. على الرغم من أن هذا النظام قد أقر من قبل الدول الإسلامية ليكون ممثلاً في الأوقات القادمة. وبناء على ذلك، هذه الكتابة تتحدث عن عدة القضايا الشرعية التي يواجهها النظام المصارف والبنك الإسلامي في ماليزيا. وهذا النظام يركز على مبادئ المعاملة الإسلامية. وكذلك هذه الكتابة تدور حول منهج الشريعة، ومصدر القوانين الشرعية والمبادئ الشرعية المنفذة في هذا النظام.

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GLOSSARY

<i>riba</i>	Interest
<i>al-mu‘amalat al-laribawiyah</i>	Mu‘amalat without riba
<i>al-gharmu bilghanam</i>	The payment or defrayal reciprocal with the deserts
<i>nasab</i>	Paternity or lineage
<i>gharar</i>	Authority
<i>ma‘rufat</i>	Virtues
<i>munkarat</i>	Vices
<i>usul</i>	A root or a principle
<i>furu‘</i>	A branch
<i>‘aqa’id</i>	Plural of aqidah means what one is bound to or belief
<i>ahkam</i>	Plural hukm means an order
<i>ijtihad</i>	To strive to the utmost
<i>ma‘ruf</i>	Well known or customary
<i>maslahat</i>	General good or welfare
<i>istihsan</i>	Public interest
<i>surah</i>	Sing. Surat means eminence or high degree
<i>sunnah</i>	The way or manner
<i>qual</i>	Saying
<i>fi‘il</i>	Action or practice
<i>taqirir</i>	Silent approval
<i>hasan</i>	Fair
<i>da‘if</i>	Weak
<i>sakim</i>	Infirm
<i>ijma‘</i>	Consensus
<i>mu‘amalat</i>	Relation between man to man
<i>‘ibadat or i‘tikadat</i>	Worship
<i>mudarabah</i>	Profit sharing or trust finance or investment through selfemployed entrepreneur
<i>musyarakah</i>	Partnership or participating financing

<i>murabahah</i>	Cost-plus financing or financing resale of goods
<i>bai ‘muazzal</i>	Deferred payment sale
<i>ijarah</i>	Leasing finance
<i>ijarah wa ‘itina</i>	Leas purchase financing
<i>wadi ‘ah</i>	Trusteeship
<i>rahn</i>	Pledge or pawn.

TRANSLITERATION

1. Vocal

<u>Arabic Vocal</u>	<u>Latin Vocal</u>	<u>Example</u>	<u>Transliteration</u>
ا	al	الإجارة	al-ijarah
ـ	a	اخلاق	Akhlak
ب	b	بيع	bai‘
ت	t	تقرير	Taqrir
ج	j	جمهور	Jumhur
ح	h	حديث	Hadith
د	d	دليل	Dalil
ر	r	رهن	Rahn
س	s	سنة	Sunnah
ش	sh	شريكة	Syarikat
ض	dh	ضعيف	Dhaif
ع	‘a	عقيدة	‘aqidah
غ	gh	غرر	Gharar
ف	f	فعل	fi‘il
ك	k	كتاب	Kitab
ق	q	قول	Qaul
ل	l	لغة	Lughah
م	m	معاملات	Mu‘amalat
ن	n	نصاب	Nasab
و	w	وديعة	wadi‘ah
ي	y	يقين	Yaqin

2. Short Vocal

<u>Arabic Vocal</u>	<u>Latin Vocal</u>	<u>Example</u>	<u>Transliteration</u>
_____	a	نَصَبَ	Nasaba
_____	i	فَسِدَ	fasida
_____	u	عُلَمَاءَ	‘ulama

3. Long Vocal

<u>Arabic Vocal</u>	<u>Latin Vocal</u>	<u>Example</u>	<u>Transliteration</u>
اَ	ã	آيَات	Ãyat
يَ	ĩ	حَدِيث	Hadĩth

4. Diphthong

<u>Arabic Vocal</u>	<u>Latin Vocal</u>	<u>Example</u>	<u>Transliteration</u>
يَ	iyy	شَرَعِي	syar‘iyy

ABBREVIATION

i.e.	that is to say
n.a	no author
n.d	no date
n.pb.	no publisher
n.pl.	no place
no.	number
p.	page
pp.	pages
r.a.	Radhi Allahu ‘An Hu
s.a.w.	Sallallu ‘Alaihi Wa Sallam
trans.	Translated
vol.	Volume
pl.	Plural
sing.	Singular



CHAPTER
ONE



THE ISSUES OF SYARIAH: - IN THE IMPLEMENTATION OF ISLAMIC BANKING AND ISLAMIC FINANCIAL SYSTEM IN MALAYSIA

CHAPTER 1

INTRODUCTION

1.1 BACKGROUND

Since the 1970s, Islamic banking has emerged as a new reality in the international financial scene. Its philosophies and principles are however, not new, having been outlined in the Holy Qur'an and the Sunnah of Prophet Muhammad (pbuh) more than 1,400 years ago. The emergence of Islamic banking is often related to the revival of Islam and the desire of Muslims to live all aspects of their life in accordance with the teachings of Islam.¹

In Malaysia, Islamic Banking and Islamic Financial System are the new improvement that leads to country's development. This kind of improvement is not attaining than 20 years. But, conventional Banking was reached approximately one century. The Islamic Banking Act (IBA), 1983 (act No.276, 1983) was enacted which

¹ Malaysia. Bank Negara Malaysia. 22 February 2004. *Overview of Islamic Banking in Malaysia*. <<http://skali.bnm.gov.my/IslamicBanking/overview.asp>>.

permitted the establishment of the first Islamic Banking in Malaysia.² In Industry Insurance of Islamic or Takaful, it was exponent by Malaysia Takaful Company. It was enacted by Takaful Act 1984. From the marketing Islamic capital, it was started at 1996 when security of commission was expelled the list of shares accepted from syari'e which all of the shares was commercial in Kuala Lumpur Stock Exchange (KLSE).

Although Islamic Banking and Islamic Financial has been developed, but it has been realized that many issues compromise with the syariah's issues that irrelevant with the industry. However, most of the part has been settled. This is common phenomena because Banking and Islamic Financial Industry in Malaysia were blazed as one of the additional product of conventional products but not for the whole financial System.

The explanations of acts only related with operation and activities of Islamic Banking and Takaful but not explanations with the issues which relating to Islamic Banking and Takaful as stated in statute such as the issues from perspective of law contract, law procedure, the tax, and others. As sequences, the Islamic Banking and Financial system will face many problems that regard to the '*Muamalat Islam*' and other principles that connected to the law and current practice.³

Beside that, after the Muslim faced economic problem for a century, most of them were implemented with practicing *riba (interest)*. Riba has been the hot and current issue of the Islamic Banking and Islamic Financial System. But this is not the issue that is going to be discussing about. The main discussing here is the different concept of riba that regardless to the Islamic Banking and Islamic Financial System implementation. From the research that I made, almost all of the Muslim in Malaysia was practicing riba until they reached their 70th. This execrable for the oldies or even the youth or the adult. . That is because almost all of the business affair and financial were related with bank and

² Borhan J.T- Bank Islam Malaysia Berhad: - Some Issues, Problems and Its Prospects in the Future – Journal Syariah, 7:2 [1999] 107-124.

³ Bakar M.D- Isu Syariah Dalam Perbankan dan Kewangan Islam: Pelaksanaan, Potensi dan Cabaran Dalam Pasaran Kewangan Islam Konvensional – Journal KISDAR [2000] 78-79.

the entire bank in that time which implemented with practiced *riba*. For an example anybody who wants to buy a house, are constrained to take loan or debt from the bank or any financial institutions with interest payment or *riba* between 4% to 12% a year or more. The businessman or businesswoman or others need to open their account in bank for savings and money's safety. They have no choice but to put their money in the bank in order to keep their money in a safety ways although they don't want to practice *riba* of their savings. This is because the bank to deal with the business affair that soon will relate to *riba* uses their saving.

As we know, Muslim obligation is to avoid any kind of wrong doings that dissent from Islamic ways of life. So, as a result, we must establish a bank or financial institutions that base on Syariah Law. As we can see in current development, the Islamic banking has practiced the Syariah Law and for example, the "Bank Islam" and "Bank Muamalat".

Islamic Banking which has existed earlier based on a concept of "*al-muamalat al-laribawiyah*" (المعاملات اللاريبوية) that bring means muamalat without *riba* which it's concept permitted the profit and loss concept, mean that the bank and customer are join venture with the risk in their implementation of saving. If the bank profitable, they will share the profitability together according to their shares percentage. But, if the bank reached a loss, they have to cover back the loss by themselves equally.

1.2 LIST OF FINANCIAL INSTITUTIONS OFFERING ISLAMIC BANKING SERVICES

The Islamic banks are not the only financial institutions involved in Islamic banking. Other financial institutions also offer Islamic banking services through the "Islamic Banking Scheme".

(a) Islamic Banks

1. Bank Islam Malaysia Berhad
2. Bank Muamalat Malaysia Berhad

(b) Commercial Banks

1. Affin Bank Berhad
2. Alliance Bank Malaysia Berhad
3. AmBank Berhad
4. Bank Utama (Malaysia) Berhad
5. Citibank Berhad
6. EON Bank Berhad
7. Hong Leong Bank Berhad
8. HSBC Bank Malaysia Berhad
9. Malayan Bank Berhad
10. OCBC Bank (Malaysia) Berhad
11. Public Bank Berhad
12. RHB Bank Berhad
13. Southen Bank Berhad
14. Standard Chartered Bank Malaysia Berhad

(c) Finance Companies

1. Affin-ACF Finance Berhad
2. AmFinance Berhad
3. EON Finance Berhad
4. Hong Leong Finance Berhad
5. Kewangan Bersatu Berhad
6. Mayban Finance Berhad
7. Public Finance Berhad

8. RHB Delta Finance Berhad
9. Southern Finance Berhad

(d) Merchant Banks

1. Affin Merchant Bank Berhad
2. Alliance Merchant Bank Berhad
3. AmMerchant Bank Berhad
4. Aseambankers Malaysia Berhad
5. Malaysian International Merchant Bankers Berhad

(e) Discount Houses

1. Abrar Discount Berhad
2. Affin Discount Berhad
3. Amanah Short Deposits Berhad
4. CIMB Discount House Berhad
5. KAF Discount Berhad
6. Malaysia Discount Berhad
7. Mayban Discount Berhad

1.3 RANGE OF ISLAMIC BANKING PRODUCTS AND SERVICES IN MALAYSIA

(a) Deposit Services

Products/ Services	Applicable Concepts
Saving deposit	Wadiah Yad Dhamanah/ Mudharabah
Current deposit	Wadiah Yad Dhamanah/ Mudharabah
General investment deposit	Mudharabah
Special investment deposit	Mudharabah

Special investment deposit	Mudharabah
Negotiable Islamic Deposit Certificate	Bai' Bithaman Ajil (BBA)
Islamic Negotiable Instrument of deposit	Mudharabah

(b) Retail / Consumer Banking

Products/ Services	Applicable Concepts
House financing	BBA/ Al-Ijarah wa Iqtina (AIWI)
Commercial property financing	BBA
Hire purchase	Al-Ijarah Thumma Al-Bai' (AITAB)
Overdraft	Murabahah
Share financing/ unit trust financing	BBA / Mudharabah / Musyarakah
Factoring	Bai' Al-Dayn (BAD)
Working capital financing	Murabahah
Credit card	BBA
Charge card	Qardhul Hasan
Umrah financing	BBA

(c) Corporate Banking

Products / Services	Applicable Concepts
Project financing	Mudharabah/ Musyarakah/ BBA/ Istisna'/ AIWI
Bridging finance	Istisna'/ BBA/ Musyarakah
Financing syndication	BBA/ Musyarakah/ Istisna'/ Ijarah
Revolving financing	BBA/ Murabahah
Bonds	BBA/ Musyarakah/ Istisna'/ Qardhul Hasan/ Ijarah
Commercial papers	Murabahah
Leasing	Ijarah

Industrial hire purchase	AITAB
Underwriting, lead arranging/ advisory	Ujr

(d) Treasury/ Money Market Investment Products

Products / Services	Applicable Concepts
Sell & buy-back agreements	Murabahah
Sanadat (bonds) Mudharabah Cagamas	Mudharabah/ Musyarakah/ BBA/ Istisna'/ Ijarah wa Iqtina
Foreign exchange	Ujr
Government Investment Issues	Qardhul Hasan
Forward rate agreements	Ujr

(e) Trade Financing

Products/ Services	Applicable Concepts
Letters of credit	Wakalah/ Murabahah/ Musyarakah
Islamic accepted bills	Murabahah/ Bai' Al-Dayn
Export credit financing	Murabahah/ Bai' Al-Dayn
Bank guarantee	Ujr
Shipping guarantee	Ujr

(f) Other Products & Services

Products/ Services	Applicable Concepts
Stockbroking services	Ujr
TT/ Funds Transfer	Ujr
Travellers' Cheques	Ujr
Demand Draft	Ujr
Cashier's Order	Ujr

Standing Instruction	Ujr
ATM Service	Ujr
Telebanking	Ujr

1.4 THE NATIONAL SYARIAH ADVISORY COUNCIL

The National Syariah Advisory Council on Islamic Banking and Takaful (NSAC) was established on 1 May 1997. The primary objectives of the NSAC are as follows:-

- To act as the sole authoritative body to advise BNM on Islamic banking and takaful operations;
- To co-ordinate Syariah issues with respect to Islamic banking and finance (including takaful); and
- To analyse and evaluate Syariah aspects of new products/ schemes submitted by the banking institutions and takaful companies.

1.4.1 Council Members

The NSAC members are appointed by the BNM Board of Directors.

(a) Session 2001-2003

- Dato' Sheikh Ghazali Abdul Rahman (Chairman)
- Dato' Md. Hashim Haji Yahaya
- Dato' Hassan Ahmad
- Dato' Dr. Abdul Halim Ismail
- Dato' Dr. Abdul Monir Yaacob
- Dr. Mohd Daud Bakar
- Dr. Joni Tamkin Borhan

(b) Session 1999-2001

- Dato' Md. Hashim Haji Yahaya (Chairman)
- Dato' Sheikh Ghazali Abdul Rahman
- Dato' Hassan Ahmad
- Dato' Dr. Abdul Halim Ismail
- Dato' Dr. Abdul Monir Yaacob
- Dr. Mohd Daud Bakar
- Dr. Joni Tamkin Borhan

(c) Session 1997-1999

- Prof. Dato' Dr. Hj. Othman Hj. Ishak (Chairman)
- Prof. Emeritus Tan Sri Datuk Ahmad Ibrahim
- Dato' Sheikh Azmi Ahmad
- Dato' Md. Hashim Hj. Yahaya
- Dato' Hassan Ahmad
- Dato' Dr. Harun Din
- Dato' Dr. Abdul Halim Hj. Ismail
- Dr. Abdullah Hj. Ibrahim
- Dr. Mohd Daud Bakar
- Dr. Ahmed Ali Abdalla⁴

1.5 THE BOTTOM LINE BETWEEN PROFIT APPORTIONMENT AND INTEREST GIVING.

Before discussing about Muamalat systems (المعاملات) under the concept of Syariah in the Islamic Banking and Islamic Financial System in Malaysia, it is essential

⁴ Malaysia. Bank Negara Malaysia. 22 February 2004. *The National Syariah Advisory Council*. <<http://skali.bnm.gov.my/IslamicBanking/default.asp?>>>.

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