



KOLEJ UNIVERSITI ISLAM MALAYSIA
 جامعة العلوم الإسلامية بماليزيا
 ISLAMIC UNIVERSITY COLLEGE OF MALAYSIA

Muamalat

The Newsletter of
 The Faculty of Economics and Muamalat

ISSN-1675-9796

Issue: Vol. 2, No. 2 (Sept. 2004 - Feb. 2005)

FROM THE DEAN'S DESK

In the name of Allah the Most benevolent and the Most merciful.

This issue of *Muamalat* has a special connotation to it. Stepping into academic session 2005/2006, now *Muamalat* is marking an important milestone that FEM is approaching its full cycle. This simply means that the first badge of intake (2002/2003) is coming to their final year and will be graduating by end of this session, insyaALLAH. KUIM in general and the Faculty in particular will witness its first fruit of labor. The hard works will finally succeed, as promised by ALLAH (Quran. Al-Insyiraah: 5-6): "So, surely with every difficulty there is relief; Surely, with every difficulty there is relief". I could feel, come that day all the graduating class, and their families, will rejoice and celebrate that triumphant moment. And I am certain that they are not alone as all the KUIM's community, in particular the Faculty and staff, will together share that special moment with them. It will be the day to cherish!

Having said so, the task at the Faculty is not done, hardly. There will be many more challenges to come in order to make FEM recognizable and become the Faculty of choice. There will be many more bumpy roads ahead, but I believe all of us, the faculty, students, support staff and all, will continue to give their full commitment and support to meet that ends. Quality education in the muamalat administrations that builds around the aims of producing Muslim managers and muslimpreneurs that are knowledgeable, skillful, creative and trustworthy, has been the main thrust of the faculty. The *Code of Practice on Quality Assurance in Public Universities of Malaysia* (JPT, Kementerian Pengajian Tinggi Malaysia), has been fully and extensively

used as the source of quality assurance in FEM. The Faculty is 100% committed to the *Code*, and perhaps in some areas efforts have been made to deliver beyond the minimum requirements specified. After all, FEM also wants to inculcate the noble value of continuous improvement as ALLAH loves those who continuously do good (improve themselves) (Quran: Ali Imran 3:134). The Faculty has lined up a number of programs designed especially to provide the students with a learning experience that is more conducive, cooperative and challenging. Here, I would like to express my deepest appreciation to all, in particular the Faculty and the staff for their co-operations towards this effort.



I would like to take this opportunity to welcome back the seniors to the campus. This year onwards you will experience a new campus environment as we are, finally, be moving to our new campus in Bandar Baru Nilai, Negeri Sembilan. I also would like to welcome the new students of Bachelor of Muamalat Administrations (Honors) for this session 2005/2006. Having been selected from amongst so many applicants, YOU are the fortunate ones; the competition to enter the University has been very keen this year; much, much more so than the last year. I hope you will use this golden opportunity to the fullest and will strive hard, not just to succeed in the program and earn a degree, but more so to prove to yourself and others that you are worthy of this trust given to you.

I WISH ALL OF YOU THE BEST!

Prof. Dr. Muhamad Muda

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ISSN 1675-9796



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THE BIRTH OF JMIFR

FACULTY OF ECONOMICS AND MUAMALAT of KUIM has moved a step forward with the publication of its first fully refereed journal i.e. *The Journal of Muamalat and Islamic Finance Research* (JMIFR), which is intended to be published and reviewed annually. Its main objective is to provide a platform for publication in Muamalat, Islamic Economics, Finance and Banking of research-based articles locally or internationally. The first issue of JMIFR was issued in July 2004 following the National Seminar in Islamic Banking and Finance (iBAF) organized by the Faculty in March 2004

The journal welcomes original articles, research notes, case studies, book reviews and article reviews in the areas of Islamic Business, Muamalat, Islamic Finance, Islamic Banking, Takaful, Corporate Governance, Business Law, Investment, Financial Services, Risk and Operation Management, Marketing and Customer Relation, Entrepreneurship and Small and Medium Industry, Accounting, Auditing and Financial Reporting, Development and Islamic Economics Institutions, Global and International Trade, Islamic Financial System, Public Property, Zakat and Baitulmal Administration, Islamic Economics System, Islamic Management and other issues pertaining Muamalat and Islamic Economics.

The Editorial Advisory Board of JMIFR consists of well-known figures in their fields from local as well as international institutions. It is indeed an honour for the Faculty to have them as the core of its newly born journal. They are Prof. Rodney Willson (UK), Prof. Dato' Dr. Mahmood Zuhdi Hj. Ab. Majid, Prof. Dr. Sudin Harun, Prof. Dr. Hj. Abdul Samat Musa, Prof. Madya Dr. Abdul Rahim Abdul Rahman, Prof. Madya Dr. Engku Rabiah Adawiah binti Engku Ali, Prof. Madya Dr. Nor Hayati Ahmad, Dr. Mohamed A. Elgari (Saudi Arabia), Wan Abdul Rahim Kamil Wan Mohamad Ali and Euis Amalia M. Ag (Indonesia).

The journal also acts as a resource for the academicians, students, industry players and policy makers to have a deep vision on the stated areas. The Faculty hopes that the journal could contribute to the development of Islamic banking, finance and economics from the theoretical as well as practical sites. The first issue of JMIFR covers several major issues i.e. Islamic private debt securities rating, Islamic unit trust performance, credit risk, regulatory framework and customer service quality of Islamic banks, market penetration and awareness of Takaful products, review of research in Islamic economics and finance in Malaysia, social impact of BBA financing and zakat distribution, dissemination of Islamic banking

information through websites and review of two selected books in Islamic economics.

For more information, the interested party could visit <http://fem.kuim.edu.my/jmifr/> or send his/her inquiry to the Chief Editor of Journal of Muamalat and Islamic Finance Research at the following address: Faculty of Economics and Muamalat, Islamic University College of Malaysia (KUIM), Level 2, FKP Building, Bandar Baru Nilai, 71800 Nilai, Negeri Sembilan, Malaysia. Tel: (606) 798 8199; Fax: (606) 798 8198; Email: mmuda@admin.kuim.edu.my.

Majlis Pelancaran Buku KUIM 2005

Sebagai menghargai usaha para penulis dalam menerbitkan karya ilmiah mereka, Unit Penerbitan di bawah Jawatankuasa Penerbitan Kolej Universiti Islam Malaysia telah mengadakan Majlis Pelancaran Buku KUIM 2005 pada 15 Disember 2005 bertempat di Hotel Pan Pacific KLIA, Sepang.

Majlis Pelancaran buku KUIM merupakan majlis tahunan bagi Kolej Universiti Islam Malaysia dan diadakan beberapa kali sebelum ini. Majlis ini diadakan bertujuan untuk menghargai para penulis dalam menghasilkan karya ilmiah dan menggalakkan mereka menghasilkan karya ilmiah yang bermutu. Ia juga diadakan sebagai dorongan dan galakan kepada semua kakitangan khususnya kakitangan akademik KUIM untuk terus menonjolkan dan memartabatkan KUIM kepada masyarakat umum.

Sebanyak 12 buah buku telah dilancarkan. Antaranya "**Human Capital and Trade Structure of Malaysia's Manufactures**" oleh Dr. Mohamed Sharif Bashir dari Fakulti Ekonomi dan Muamalat, "**Rakyat Berjiwa Merdeka**" oleh Pn. Nik Salida Nik Saleh dan Wan Abdul Fatah Wan Ismail dan "**Ahkam Al-Musobaqat Al-Alamiyyah fi Al-Fiqh Al-Islamy**" oleh En. Azman Abd. Rahman.

Sebanyak 3 anugerah yang telah disampaikan di Majlis ini. Antaranya Anugerah Penulis, Anugerah Penyunting dan Anugerah Khas Penulisan Akhbar. Penerima bagi Anugerah Khas Penulisan Akhbar adalah En. **Mohammad Noorizuddin b. Nooh** dari Fakulti Ekonomi dan Muamalat, Puan Nik Salida Suhaila bt Nik Saleh, Fakulti Syariah & Undang-Undang dan Puan Sapora Sipon, Fakulti Kepimpinan & Pengurusan KUIM.

Majlis Pelancaran Buku KUIM ini dirasmikan oleh YB Dato' Dr. Abdullah bin Md. Zin, Menteri Di Jabatan Perdana Menteri. Majlis ini turut dihadiri oleh Y.Bhg. Tan Sri Dr. Mohd Yusof Noor, Pengerusi KUIM dan Y.Bhg Prof. Dato' Dr. Abdul Shukor bin Haji Husin, Rektor KUIM.

DISTRIBUTION CHANNELS OF INSURANCE INDUSTRY IN MALAYSIA



By: _____

Nor Haziah Hashim¹



INSURANCE industry in Malaysia optimizes several channels of distribution to help market and promote insurance products, as well as to service the customers. Among the distribution channels utilized in the industry are agency force, direct marketing, insurance brokers and bancassurance. As reported by Bank Negara Malaysia, for the year 2003, the two main distribution channels used for the conventional life insurance are traditional agency force and bancassurance. As for the takaful sector, the major distribution channels used by the takaful operators are direct marketing (*takaful desks*) and takaful agents. This essay will discuss the aforementioned marketing channels and their contribution to the increase in penetration of the insurance business.

Agency Force

Agency force has been a dominant figure in the insurance industry almost from the beginning. In fact, most people have their first and only contact with the insurance company through an insurance sales agent. Insurance agents in Malaysia are required to be registered with the mandatory insurance associations, approved by Bank Negara Malaysia (BNM), namely Life Insurance Association of Malaysia (LIAM) for life insurance agents and Persatuan Insuran Am Malaysia (PIAM) for general insurance agents. In addition to that, to ensure professionalism among the agency force, all agents are required to pass a compulsory Pre-Contract Examination for Insurance Agents (PCEIA), conducted by the Malaysian Insurance Institute (MII) as a prerequisite to registration. According to the Insurance Annual Report, in 2003, it is reported that RM 2,727.68 million (56.3 percent) of the life sector new business premiums, are generated via traditional agency force. Even though the agency force contributed to a decreasing proportion of the new business in the life sector compared to the previous years, it still remained as the predominant distribution channel, particularly conventional insurance.

After nearly 20 years in the market, Malaysia's takaful industry

now has four takaful operators, with the similar objective to fulfill the insurance needs among the Muslims. However, there is a distinctive difference in distribution channel used by the four operators. Syarikat Takaful Malaysia Berhad (STMB), a pioneer in the industry, utilized the direct marketing channel to market its products, using *takaful desks*. By 2002, there are 85 takaful desks serving STMB's customers. It is the only takaful operator that does not utilize the traditional agency force to sell and market its products. Takaful National Sdn Bhd (TNSB) and Takaful Ikhlas, on the other hand, utilize sales agents to attract and service their customers. As reported in the Takaful Annual Report 2003, in terms of distribution channel for family takaful business, direct marketing and agents remained as the major contributors, generating 86.3 percent of total new business contribution. Table 1 indicates the number of both conventional insurance and takaful agents.

Bancassurance

Bancassurance is defined as the distribution of insurance products through a bank's distribution channels. In a more concrete term, it is a strategic alliance or tie-ups between insurance and banking institutions as an alternative distribution channel for insurance products. Generally, banking institution's motives of bancassurance are product diversification and a source of additional fee income. For insurance companies, bancassurance is a tool for increasing their market penetration and premium turnover (Manoj Kumar, 2000). By capitalizing on a bank relationship, insurance companies not only can leverage on the bank's branch network, but also on the large customer base.

Although it is a relatively a new concept compared to other distribution channels in Malaysia, bancassurance has shown its ability to be a viable channel particularly in promoting life insurance products. As mentioned before, bancassurance is one of the main distribution

Table 1: Number of Registered Agents

No. of Registered Agents	Conventional Insurance			Takaful		
	2001	2002	2003	2001	2002	2003
Life/Family Takaful Policies	88,504	87,205	86,230	5391	7227	9893
General Policies	45,246	51,317	55,098	1137	1964	1540
TOTAL	133,750	138,522	141,328	6,528	9,191	11,433

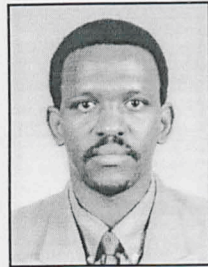
Source: BNM: Insurance and Takaful Annual Report, various issues

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EVALUATION OF BANK ISLAM'S PERFORMANCE

By: _____
Mohamed Sharif Bashir¹



MALAYSIA'S first Islamic bank, Bank Islam Malaysia Bhd. (BIMB), started operations on July 1983. Its establishment was primarily to cater for the financial needs of Muslims in the country and to further extend its services to the whole population at large. It is established under the Islamic Banking Act 1983 promulgated by the government under Islamic Banking subject to supervision and regulations of Bank Negara Malaysia (BNM), which is the central bank of the country (BIMB, 2003).

Set up with an initial authorized capital of RM500 million and a paid-up of RM 79.9 million, the bank has gradually increased its authorized and paid-up capital to RM 2 billion and RM 563 million respectively, to accommodate the growth of its assets and to better position itself in meeting future expansion and growth. The core subsidiaries of the BIMB are involved in various Islamic financial services activities including banking, takaful, stock-broking, leasing and related services. The synergistic collaboration between Bank Islam and its subsidiaries dealing with these services have complemented the overall growth of the Islamic financial system in Malaysia.

Listed on the main board of the Kuala Lumpur Stock Exchange (KLSE) on January 1992, Bank Islam has developed itself as one of the most respectable financial institutions in the country. With a network of 85 branches nationwide, the bank parades a comprehensive list of about 50 innovative and sophisticated Islamic banking products and services, comparable to those of their conventional counterparts.

Financial Performance:

BIMB's gross customer financing assets continued to record double-digit growth by 31 percent and 13 percent in financial year 2001 and 2002 respectively in tandem with growth recorded by the Islamic banking industry. Due to consistent growth in its financing assets over the years, its risk weighted capital ratio (RWCR) and core capital ratio has progressively reduced to 14.8 percent and 13.0 percent respectively at end-June 2002. The ratios

are nevertheless above the minimum requirement of 8 percent and the commercial banking industry average of 12.8 percent and 11.7 percent respectively. The Bank's stable funding base has enabled it to reduce its dependency on the interbank market. The Bank's net interbank assets have increased significantly to almost RM 2.0 billion in financial year 2000 before stabilising to RM 2.5 billion in 2001 and 2002. The bulk of the Bank's customers financing assets will be long term in nature, earning a fixed rate of return. However, a substantial amount of the Bank's customer deposits tended to be short term, exposing the Bank's profit margin to fluctuations in market rates. Generally, the Bank's profitability is understated and not directly comparable to conventional banks as the Bank's profit is recognised on a cash basis. However, with effect from 2003, the Bank will recognise its income on accrual basis. (BIMB, 2003)

Table 1, shows the performance of Bank Islam measured in financial ratios. The uses of the financial ratios are quite common for measuring a bank's performance. This paper makes inter temporal comparison of BIMB's performance between 2000 and 2003. We did not apply any inter-bank comparison because of some difficulties regarding the collection of data on Islamic operation in conventional banks. Considering the limitation of financial ratios as a tool for analysis, ratios applied here should be viewed as general

Table (1) Financial Analysis

Financial Ratios	2000	2003
	%	%
• Return on Assets (ROA)	0.50	0.95
• Return on shareholders fund (ROS)	4.37	11.70
• Capital adequacy ratio (CAR)	20.00	12.30
• Non-Performing financing (NPF)	13.10	9.90
• Financing to deposit ratio (FDR)	53.28	55.72
• Earnings per share (EPS)	4.2 sen	15.6 sen
• Net tangible assets backing (NTAB)	196 sen	222 sen

Source: BIMB (2003) Annual Report.

indicators of performance rather than absolute predictions. We analyses the ratios between two periods of time to determine trends and consistency and to provide better understanding of Bank's performance.

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The most commonly used profitability ratios look at the relationship between net profit and assets or equity (Shari A. and Fadilah. A., 2001). Taken together, they give the business banker a good indication of the business's ability to grow, remain solvent and repay debt (George, 1999). The Return on Asset Ratio (ROA):² is a net earning unit of a given asset. It is an indicator for measuring managerial efficiency. It shows how bank can convert its assets into net earnings. The higher ratio indicates higher ability and therefore a signal of better performance. As measured by ROA, BIMB was very profitable in 2003 compared to 2000, which stood at 0.50% and 0.95% respectively. Similarly, ROS³ is net earnings per Ringgit equity capital. The higher ratio is an indicator of higher managerial performance (Samad and Hassan, 1999). In year 2003, BIMB returned more than 11 cents for every Ringgit invested by its shareholders, compared to 7 cents in year 2000.

We used Financing deposit ratio (FDR)⁴ to measure Bank's liquidity as well as credit risk of a bank. A higher loan deposit ratio indicates that a bank takes more financial stress by making excessive loan and a potential source of liquidity and insolvency. Therefore, a lower loan deposit ratio is always favorable to higher loan deposit ratio. FDR shows that in 2003 are a higher financing to deposit compare to 2000. The bank can share liquidity risk because transactions and saving accounts can be withdrawn at any time. Thus when withdrawal exceeds new deposit over short period of time, bank can get into liquidity troubles.

The Capital adequacy ratio is a measure of a bank's capital. It is expressed as a percentage of a bank's risk weighted credit exposures. The essential elements for computing the capital adequacy ratio for Islamic banks are tier capital, credit risk, market risk and risk weighted total assets less 50% of profit-sharing investment accounts. BIMB has to have an acceptable ratio as needed by the Central Bank and the Islamic Banking Standards. The ratios are nevertheless above the minimum requirement in the two periods 2000 and 2003⁵. The Bank management has taken into consideration the availability of sufficient equity funds to cover a percentage of certain assets

² Return on asset formula is net profit before Zakat and tax divided by total asset and multiplied by 100.

³ Return on shareholder's equity formula is net profit before Zakat and tax divided by total equity and multiplied by 100.

⁴ Financing to deposit ratio is loan divided by deposit and multiplied by 100.

⁵ The risk-weighted capital ratio (RWCR) of the local banking system stood at 13.1% as at end-June 2003, eclipsing the BASEL requirement of 8%.

with risk weights commensurate with the nature of the investment. In this respect the Bank's capital adequacy ratio as of 2003 stood at 12.3% against 20.0% in 2000, exceeding the Central Bank of Malaysia's requirement of 8% (Bank Negara introduced a minimum risk-weighted capital adequacy requirement that matches the overall risk profile of each bank) and that of the Bank for International Settlements of 8%. We would like to note that the Accounting & Auditing Organization for Islamic & Financial Institutions (AAOIFI) recommendations required that 50% of the risk-weighted assets of the profit-sharing investment accounts be included in the denominator of the capital adequacy ratio (AAOIFI, 1999; Muljawan *et al.*, 2002).

Growth of Deposits

Table (2) indicates that the growth of deposits grew rapidly. Most deposits with BIMB were in savings or investment accounts rather than current accounts. Customers appear to have viewed it as a repository for precautionary and savings fund rather than transactions balances. In terms of values, deposits in *Mudharabah* funds were higher than that of *Non-Mudharabah* funds, whereas the growth of deposits of *Non-Mudharabah* have increased by faster rate than that of *Mudharabah* funds due to considerable increased in Islamic debt certificates, which was 881.9% in 2003. The bank has been successful in arranging Islamic private debt securities for some of the big local companies such as Petronas Gas Bhd and Kumpulan Guthrie, as well as financing for some major infrastructure projects such as KL International Airport and Project Usahasama Transit Ringan Automatik (Putra). Generally, the deposits tended to be

Table (2) Bank Islam Malaysia
Deposit from Customers, 2002-2003

Type of deposits fund	2002 RM'000	2003 RM'000	Annual Growth 2003(%)
Non-Mudharabah Fund			
Current account	1,984,620	2,688,404	35.5
Savings account	1,024,358	1,158,976	13.1
Negotiable Islamic Debt Certificates	25,792	253,247	881.9
Others	14,778	20,119	36.1
	3,049,548	4,120,746	35.1
Mudharabah Fund			
Savings account	250,992	303,266	20.8
Investment account	7,755,815	7,941,028	2.4
	8,006,807	8,244,294	3.0
Total deposits	11,056,355	12,365,040	11.8

Source: BIMB (2003) Annual report.

regarded as long-term holdings such as savings to cover the deposit on purchase on some consumer items namely; education, health, housing and pilgrimage expenses. The bank's policy has encouraged longer term rather than short-term deposits.

Mode of Financing:

The most important modes of financing offer by Bank Islam are *Al-Bai Bithaman Ajil*, *Al-Murabahah*. These types of financing modes give a picture of how well BIMB has utilized its resources to generate revenues. *Al-Bai Bithaman Ajil* claimed the highest share of total financing (59.5%). This is followed by *Al-Murabahah* (21.8%) and *Al-Ijarah* (6.8%) respectively. The first two modes are criticized because of the resemblance of their profit margins to interest. Some scholars argue that *Murabahah* is an easy way out for Islamic banks interested in abolishing *riba*, but it put the entire risk of financing onto the borrower. Therefore, this mode of financing should be played down in favor of other modes of financing which are more equitable to both borrowers and the lenders.

During the later years, *Al-Ijarah* became more significant, accounted for 6.8% of total financing. *Al-Istina* and *Al-Mudharabah* represent less than 1%. *Al-Musharakah* was at 2.1%, followed by *Al-Inah* 2.0%.

Table (3) Bank Islam Malaysia Modes of Financing, 2003

Mode of Financing	2003 RM'000	Share %
<i>Al-Bai Bithaman Ajil</i>	4,901,086	59.5
<i>Al-Ijarah</i>	562,032	6.8
<i>Al-Inah</i>	160,660	2.0
<i>Al-Musharakah</i>	170,588	2.1
<i>Al-Mudharabah</i>	15,745	0.2
<i>Al-Murabahah</i>	1,795,182	21.8
<i>Al-Qardhul Hassan</i>	550,883	6.7
<i>Al-Istina</i>	75,354	0.9
Total	8,231,530	100

Source: BIMB (2003) Annual report.

Usage of Funds

A review of BIMB'S usage of fund indicates to what extent the bank has contributed to the development of various sectors in the economy. The manufacturing sector had received the largest share at 16.3%, followed by the construction sector, which contributed at 10.8%, while, on the extreme, the mining and quarrying, and whole and retail trade, restaurants and hotel sectors benefited little from BIMB's financing (Table 4). The agriculture sector received 3.5%, while business services and real states, and transports, storage and communication sectors received 4.1% and 2.0 respectively.

The above result indicates that BIMB financing is mainly focusing on the manufacturing and construction sectors and little on the mining and

quarrying and business services sectors. This reflects the structural transformation of the country economy from agricultural based to one, which is manufacturing based.

Table (4) Sectoral Distribution of Financing of Bank Islam, 2003

Sector	2003 (RM'000)	Share (%)
Agriculture	290,107	3.5
Mining & Quarrying	29,457	0.4
Manufacturing	1,340,392	16.3
Construction	888,633	10.8
Wholesales & retail trade, restaurants & hotels	107,672	1.3
Business services and real states	337,907	4.1
Transports, storage & communication	162,431	2.0
Miscellaneous (including land properties electricity, gas and water)	5,074,931	61.7
Total	8,231,530	100

Source: BIMB (2003) Annual report.

Social Obligations:

Bank Islam discharges its social obligation through *Zakat* payments and *Qardal-hasan* contribution. *Zakat* contribution is depending on the fitability of the Bank operation, which has increased over the years in proportion to its profit. With regard to *Qardal-hasan*, the bank providing loans to those deserving customers without charges. However, this portion of financing is accounted for 6.7% of total financing funds.

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HUMAN DEVELOPMENT INDEX AND THE MUSLIM SOCIETIES

By: _____
Nursilah Ahmad¹



HUMAN DEVELOPMENT INDEX (HDI) was first introduced in 1990 in the premier issue of Human Development Report, published by the United Nation Development Program (UNDP). HDI measures the average progress of a country in human development. Human development, according to the report, is about human empowerment and the ability to make choices in life. These choices will lead to a higher living standard.

There are three components in HDI: longevity, knowledge and income. Longevity is measured by life expectancy. Knowledge is measured by a combination of adult literacy (two-thirds weight) and combined gross enrollment ratio of first, second and third level of schooling (one-third weight). Standard of living is measured by real GDP per capita.

HDI is a composite index on the scale of 0 to 1; 0 being the least and 1 being the most human development value achieved. Countries that are ranked 0 to 0.5 in the calculation of HDI are categorized as having low level of human development; 0.501 to 0.8 as medium human development; and 0.801 to 1 as high human development. Human development index reports are issued each year for about 170 countries.

In 2002, the HDI value of Arab states was 0.651 compared to the world's HDI of 0.729. The Arab region performs better than sub-Saharan Africa and South Asia on the overall HDI. However, it falls behind East Asia, Latin America and the Caribbean. In general, HDI prepared by UNDP revealed that most Muslim nations lagged behind in terms of literacy, health and economy since 1980 onwards.

In 2002, UNDP published the Arab Human Development Report 2002. Rima Khalaf Hunaidi (2002), a United Nation official said: "The report was written by Arabs for Arabs." The report measures economic, scientific, social and political Arab performance against global standards. The sober finding is "...the Arab world is in decline, even relative to the developing world."

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A study of 192 countries concludes that human and social capital explains at least 64 percent of growth performance. Physical capital (machinery, buildings and infrastructure) explains only 16 percent of growth (Middle East Quarterly, 2002). Therefore, Muslim societies should invest in human development by focusing on the three components of HDI.

Well-known Islamic thinker Maulana Abul Kalam Azad once said while addressing Muslims at a seminar, "...after 16th century, the situation of knowledge (scientific) in Muslim and Christian societies changed completely. Now Christians started following Muslims way of progressive thinking and enquiry whereas Muslims copied Christian's way of life of Middle Ages that was full of ...retrograde thoughts." Therefore, Muslims must accept changes.

Dr Mahathir Mohamed reminded Muslims to learn science and technology and consider acquiring modern knowledge as part of ibadah to face the challenges of globalization. As Fergany (2002) put it: "A person who is not free is poor. A woman who is not empowered is poor. And a person who has no access to knowledge is poor."

Malaysia is ranked 59th in the 2004 Human Development Report, with an HDI value of 0.793. The policy-makers can benefit from the information revealed by HDI, or from the lack of it. In view of the social agenda of Islam Hadhari and Vision 2020, it is timely for Malaysia to produce her own Human Development Report.

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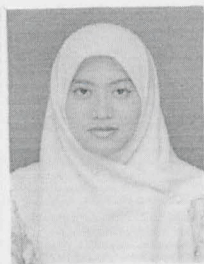
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BOARD OF DIRECTORS' INDEPENDENCE AND CORPORATE GOVERNANCE

By: _____

Suhaila Abdul Hamid¹

AGENCY problem arises because the people who decide for the organization namely the managers are not the major recipients of the wealth created from their decision making. Indeed, Islam accepts this irrationality behaviour of human beings as *fitrah*, which acknowledged that sometimes people may pursue their own long term interests. Nonetheless, Islam provides some principles to be adhered to such as absolute honesty and transparency in order to prevent the irrational economic behaviour in conducting business.



In view of this, an effective system for decision control has to be implemented to ensure that the decisions being made do not jeopardize the interests of the stakeholders. It is also in line with the Islamic teachings which among others require people not to do injustice unto others as mentioned in the holy Qur'an (the meaning) "Give just measure, and cause no loss (to others by fraud). And weight with scales true and upright. And withhold not things justly due to men, nor do evil in the land working mischief" (Al-Quran. Al Shu'ara' 26: 181-183). Therefore, an organization must practise good corporate governance to ensure everyone receives reasonable profit as allowed in Islam.

One mechanism to ensure good corporate governance practices is through the board of directors. The board of directors has the authority to employ, dismiss and compensate the top level management. They are also responsible to safeguard the assets of the corporation by setting the organizations' long term strategy and making the right decisions on investment and finance.

In practice, the independence of the board of directors has always become the main issues especially when the corporation does not show favourable performance. Board of directors must practise with high transparency and complete accountability, ready to justify their decisions and answer to the stakeholders in line with the practice of absolute honesty in Islam. Many studies in corporate governance attempt to investigate the independence of a board of directors. The size of the board of directors and the composition of independent and non independent directors in a board are said to demonstrate some signals on how independent the board is.

The board's effectiveness is argued to decline once the size reaches a certain average number. As the size grows, the board members encounter poor communication problems; thus keeping the board small will help to improve its performance. By using different methods to measure performance, for instance Tobin's Q (Eisenberg et.al, 1998) and stock price performance (Bhagat and Black, 1999), these studies provide some evidence on the inverse association between the size of the board of directors and value of the firms.

The effect of the independent board members serving in a board has also been given enormous attention by researchers. The studies on the fraction of independent directors have produced mixed evidence. A board of directors, which has dominant independent directors was found to be effective in certain situations such as monitoring management for financial fraud (Beasley, 1996).

The other group of studies collates empirical evidence on the relationship between the fraction of independent directors on a board and firm performance. For instance, there is no relation between board composition with Tobin's Q (Hermalin and Weisbach, 1991).

The mixed evidence is consistent with the theory suggested by Fama and Jensen (1983). The insiders are needed in the board because they have the specific knowledge accumulated from the daily operations of the firm. The specific knowledge makes them more superior compared to the outsiders and an advantage that can be utilized while making decisions in investment and finance. However, outsiders are needed especially in crucial situations that determine the long term survival of the firm such as takeover. Perhaps, it is because the outsiders are appointed due to the expertise that they possessed in certain areas.

In Malaysian context, the board of directors' characteristics are highlighted in the Malaysian Code on Corporate Governance (MCCG), the listing requirements and practice notes from Bursa Malaysia Sekuriti Berhad (BMSB) as well as the Malaysian Companies Act 1965 (the Act). The MCCG proposes that the board should include a balance of executive directors and non-executive directors to ensure that no individual dominates the board and at least one third of its members are independent from the organization.

The BMSB enforces all applicants and the existing listed companies to have a board of directors that consists of at least two independent members or the independent members must compose one third of the board, whichever is higher. Nonetheless, the Act only states generally

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that the number of directors in a company must be at least two people and at least two who are residents in Malaysia.

The Malaysian Corporate Governance Survey 2002 jointly conducted by the Malaysian Institute of Corporate Governance and Price Waterhouse Coopers Malaysia indicates that most companies have an average of eight directors in the board. Majority of the companies fulfil the minimum regulatory requirement in respect of the number of independent non-executive directors. However, the survey does not offer any explanations on the effect of the compliance.

The legal aspect in Malaysian corporate governance practices is similar to those practices in the Anglo-Saxon economies. Given the differences from the Anglo-Saxon firms, among others in the culture and structure of ownership of the firms, the board of directors in Malaysia may encounter different issues of corporate governance. However, many studies in corporate governance still apply the same concept as in the Anglo-Saxon economies. Therefore, the independence of the board of directors will remain a fruitful and interesting issue to be explored further in Malaysia.

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.... from page 3.

channels in conventional life insurance, contributing RM1, 860.44 million (38.4 percent) of the new business premiums in 2003. Meanwhile in the takaful sector, although direct marketing and agents remain as the main forms of marketing channel, as of the year 2002, one takaful operator ventured into bancassurance arrangement. Through this arrangement, takaful products were made available to the public at the branch network of the respective bank. Reported in Takaful Annual Report, new business sourced through bancassurance accounted for 13 percent of the contributions for the year 2003.

As a conclusion, in a service sector such as insurance, the existence of an effective distribution channel is crucial to market the products and to service the customers. The traditional agency force has been a dominant channel and will remain as one of the major distribution channels in the insurance industry. Thus, players in the industry should further equip and enhance their agents' skills and technical knowledge. In addition to that, the bancassurance concept has also become a viable distribution channel and has contributed significantly to the increased penetration, particularly in the life sector. Takaful operators, especially, should explore this arrangement since it will benefit them from the banking system's network. Finally, insurance companies

cannot ignore marketing products and servicing customers via the Internet, as more Malaysians are becoming IT savvy. As Internet banking is already established as an effective channel for conducting banking operations, the internet will be an important channel of distribution in the insurance industry in the future.

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ISLAMIC EQUITY INVESTMENT: FTSE ISLAMIC INDICES

By: _____
Khaled A. Hussein ¹

ISLAMIC FINANCE in general aims at promoting specified sectors/industries that provide added value to the real economy. On the other hand, Muslim investors expect their financial portfolio to provide stable earnings and capital growth opportunities in accepted investments. Islamic investing is low-debt, non-financial, social-ethical investment. It has much in common with modern forms of investing known as "ethical investing", "green investing", "faith investing" and "socially responsible investing". The most important difference between Islamic and other ethical funds is that in addition to the exclusion of particular sectors, Islamic funds do not deal in fixed income market and the receipt and payment of interest is not permitted.

In general, most Islamic funds have extensive retail distribution channels and have minimum investment subscription of between \$2000 to \$5000. There are few Islamic funds that target high net-worth individuals. For example, Wellington Management Company based in the US and Barclays Global equity have a minimum investment thresholds of \$1 and \$5 million, respectively. A typical Islamic portfolio includes cross-sectoral holdings, ranging from technology, telecommunications, engineering, steel, transportation, healthcare, utilities, construction and real-estate. However after the bursting of the IT bubble in early 2001 and the subsequent plunge in technology stocks, several Islamic funds have increased their exposure to defensive stocks such as healthcare and utilities.

At the end of December 1998 and due to the growing interest in Islamic finance, FTSE², in collaboration with the International investor, launched FTSE Global Islamic Index Series (GIIS). GIIS are equity benchmark indices designed to track

“ FTSE has 15 Islamic indices, classification is based on industry (10 indices) and region (Global, Americas, Europe, Pacific Basin, South Africa) ”

the performance of leading publicly trading companies whose activities are consistent with Islamic shariah principles. The GIIS are a subset of FTSE All-World Index group. The FTSE All-World Index covers 48 different countries and over 2,700 stocks. The index is divided into Developed, Advanced Emerging and Emerging segments, which includes stocks from 29 countries. Countries eligible for inclusion in the FTSE Global Islamic Index series are: Australia, Austria, Belgium/Luxembourg, Brazil, Canada, Denmark, Finland, France, Germany, Greece, Hong Kong, Indonesia, Ireland, Italy, Japan, Mexico, Netherlands, New Zealand, Norway, Philippines, Portugal, Singapore, South Africa, Spain, Sweden, Switzerland, Thailand, UK and USA. FTSE has 15 Islamic indices, classification is based on industry (10 indices) and region (Global, Americas, Europe, Pacific Basin, South Africa).

The GIIS are calculated at the end of each day when the FTSE All-World Index is calculated where the base currency for the GIIS is the US dollar. Companies are included in the appropriate GIIS index, if they are current constituents of one of the FTSE All-World index markets and also meet the Islamic criteria. Islamic shariah principles exclude stocks whose core activities are related to any of the following: banking or any other interest related activity, alcohol, tobacco, gambling, arms manufacturing, life insurance, pork production, packaging and processing any activity related to pork, and companies with gross interest bearing debt to total assets exceeds 33%. GIIS have a management committee, which is responsible for the calculation of the GIIS, reviewing the GIIS and approving changes to the constituents. The GIIS are reviewed semi-annually in the first week of March and September. If a stock drops out of the FTSE All-World Index markets, it is removed from the relevant GIIS index. Further, if a stock of the GIIS fails to meet the eligibility criteria, the management committee removes it from the relevant GIIS index. Changes arising from the semi-annual review are implemented after the close of the index calculation on the third Friday in March and September.

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² FTSE is an independent company whose sole business is the creation and management of indices and associated data services. The company originated as a joint venture between the Financial Times and the London Stock Exchange.

For further information:

1- FTSE Homepage: <http://www.ftse.com/>

TEORI SEBAB DALAM PEMBENTUKAN KONTRAK: ANALISIS FIQH

Oleh: _____

Shahida bt. Shahimi ¹

Sanep b. Ahmad ²

SEBAB dalam fiqh dianggap sebagai objektif asal dalam kontrak yang akan melahirkan kesan yang diingini. Kesan yang diingini inilah yang mendorong pihak yang berkontrak membuat kontrak. Sebab ini jugalah yang menjadi pendorong sebenar kepada pihak yang berkontrak untuk melakukan kontrak. Jika sekiranya tidak ada sebab asal yang boleh melahirkan kesan yang diingini oleh orang yang berkontrak, berkemungkinan orang tidak akan membuat kontrak. Jadi teori sebab akan menilai dan menentukan sama ada kontrak tersebut sah atau batal berdasarkan kepada kedudukan sama ada tujuan sebenar di dalam hati orang yang berkontrak dianggap selari dengan tujuan kontrak sebagaimana yang dikehendaki oleh syarak atau pun tidak.

Teori sebab amat berkait rapat dengan tujuan kontrak. Syariah menghendaki bahawa sebab mengadakan kontrak harus selari dengan tujuan kontrak. Contohnya, berkahwin untuk menghalalkan berseronok, berkasih sayang dan membina keluarga, manakala jual beli barang pula adalah untuk memiliki barang. Oleh itu sekiranya dalam pernikahan itu ia bernikah untuk tujuan muhallil, atau bernikah untuk tujuan menganiaya perempuan, walaupun apa yang dilafazkan tidak menyebutnya maka hukumnya adalah haram.

Persoalan penting dalam hal ini ialah apa yang dizahirkan dalam akad melalui lafaz ijab dan qabul tidak semestinya sama dengan niat sebenar yang ada dalam hati. Perkara di dalam hati adalah tersembunyi dan tiada siapa yang mengetahui hakikat sebenarnya. Adalah mustahil untuk orang lain mengetahui dengan tepat niat hati orang yang berkontrak. Hanya orang yang berkontrak sahaja mengetahui hakikat sebenar tujuan kontrak dilakukan. Oleh itu adalah sukar untuk menyatakan dengan tepat sama ada tujuan orang yang berkontrak itu bertepatan dengan syarak atau tidak. Rumusan bagi menentukan tujuan sebenar di

dalam hati orang yang berkontrak itu selari atau tidak dengan tujuan kontrak yang dikehendaki syarak adalah penting bagi menentukan status sah atau batal sesuatu kontrak. Hal ini telah dibahaskan oleh fuqaha' dan telah dirumuskan dalam dua aliran utama seperti berikut:

Berdasarkan kepada pandangan berbeza mazhab mengenai hukum kontrak yang mengandungi tujuan tersembunyi yang tidak disyariatkan seperti kontrak muhallil dan kontrak bai' al-'inah ialah pertama, kontrak sah tetapi haram melakukannya, dan kedua, kontrak batal dan haram melakukannya.

Secara umum, jika sesuatu kontrak berasaskan kepada konsep bai' al-'inah, maka jumhur fuqaha' Hanafi, Maliki dan Hanbali selain Imam Syafie berpendapat bahawa kontrak tersebut adalah batal dan haram melakukan atau melaksanakannya.

Aliran pertama: melihat pada subjek atau zahir kontrak sahaja

Aliran ini adalah aliran bagi golongan mazhab Hanafi dan

Syafie. Aliran ini menyatakan bahawa penentuan sah atau batal sesuatu kontrak hanya perlu mengambil kira subjek atau kehendak zahir dalam kontrak dan bukan kehendak batin. Sesuatu kontrak itu dianggap sah berdasarkan apa yang dizahirkannya tanpa perlu mengkaji niat atau tujuan tidak syar'ie yang tersembunyi (tidak mengikut teori sebab atau dorongan). Sesuatu yang tidak kelihatan tidak perlu diteliti kerana urusan yang batin itu akan terserah kepada Allah. Aliran ini berpandangan bahawa tidak perlu diselidiki sebab sebenar atau dorongan di dalam hati orang yang berkontrak. Penilaian hanya perlu melihat apa yang ada pada lafaz kontrak secara zahir. Kehendak zahir yang terkandung di dalam lafaz dianggap telah menggambarkan sebab dan

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dorongan sebenar di dalam hati. Oleh itu sekiranya apa yang dizahirkan tidak mengandungi dorongan yang tidak sah maka kontrak dianggap sah.

Golongan ini tidak berpegang dengan sebab atau dorongan kecuali jika sebab atau dorongan itu termasuk dalam lafaz kontrak sama ada secara terang atau secara isyarat. Jika pendorong itu tidak termasuk dalam lafaz kontrak maka sebab atau dorongan itu tidak dikira. Ertinya sesuatu kontrak itu dianggap sah secara zahir sahaja tanpa perlu mengkaji niat atau tujuan jahat yang tersembunyi.

Namun demikian, aliran ini menyimpulkan bahawa kontrak menjadi makruh lagi haram jika dilakukan dengan dorongan dan niat yang bercanggah dengan syarak. Ini bermakna walaupun kontrak sah kerana telah memenuhi segala syarat dan rukunnya secara zahir tetapi hukum melakukannya adalah makruh lagi haram kerana mempunyai niat dan dorongan yang tidak syar'i. Oleh yang demikian, mengikut aliran ini haram urusan seperti jual beli 'inah, jual anggur untuk dibuat arak, jual senjata kepada musuh, dan nikah muhallil kerana ia mengandungi dorongan dan niat yang tidak sesuai dengan syarak.

Aliran kedua: melihat kepada kehendak batin atau tujuan kontrak

Aliran ini adalah berdasarkan kepada pandangan golongan mazhab Maliki, Hanbali³ dan Zahiriyah⁴. Aliran ini menyatakan bahawa penentuan sah atau batal sesuatu kontrak perlu melihat kepada kehendak batin kontrak iaitu tujuan, niat dan dorongan. Sesuatu kontrak dianggap batal jika mengandungi niat atau dorongan yang tidak disyariatkan walaupun kehendak batin tersebut tidak dinyatakan dalam kontrak sama ada secara langsung atau tidak langsung. Kontrak menjadi batal dengan syarat pihak berkontrak tahu sebab ia tidak disyariatkan dan juga mengetahui adanya dorongan itu berdasarkan suasana dan qarinah yang menunjukkan kepada tujuan jahat itu (suasana menyatakan demikian).

Mengikut pandangan aliran ini jika pendorong yang mendorong kontrak itu sah mengikut syariah maka kontrak itu sah dan sebaliknya jika pendorong tidak mengikut syarak maka kontrak itu

batal lagi haram. Kontrak sedemikian dianggap sebagai melakukan pertolongan kepada melakukan perbuatan haram serta melakukan kontrak ke atas sesuatu untuk bertujuan melakukan maksiat atau membantu melakukan maksiat kepada Allah. Dorongan sedemikian jelas bercanggah dengan matlamat dan tujuan asal kontrak. Mengikut pandangan aliran ini hukumnya batal lagi haram melakukan kontrak seperti jual beli 'inah, jual anggur untuk dibuat arak, jual senjata kepada musuh, dan nikah muhallil.

Kesimpulan

Sebagai kesimpulan, berdasarkan kepada pandangan berbeza mazhab mengenai hukum kontrak yang mengandungi tujuan tersembunyi yang tidak disyariatkan seperti kontrak muhallil dan kontrak bai' al-'inah ialah pertama, kontrak sah tetapi haram melakukannya, dan kedua, kontrak batal dan haram melakukannya. Secara umum, jika sesuatu kontrak berasaskan kepada konsep bai' al-'inah maka jumhur fuqaha' Hanafi, Maliki dan Hanbali selain Imam Syafie berpendapat bahawa kontrak tersebut adalah batal dan haram melakukan atau melaksanakannya. Ini adalah kerana ia mengandungi niat yang bertentangan dengan syarak dan bersubhat melakukan maksiat kepada Allah. Tindakan jual beli di sini hanya dilihat sebagai satu helah untuk menghalalkan riba. Manakala Imam Syafie yang hanya melihat pada zahir kontrak mengatakan bahawa kontrak tersebut adalah sah, akan tetapi oleh kerana tujuan sebenar yang mendorong perlakuan kontrak tersebut mengandungi unsur yang bertentangan dengan syarak maka ia adalah haram. Ringkasnya walaupun kontrak ini adalah sah tetapi haram melakukannya.

Penelitian juga mendapati bahawa wujud secara implisit beberapa syarat yang boleh dianggap sebagai syarat fasid di dalam kontrak. Kewujudannya difahami oleh kedua-dua pihak yang berkontrak kerana kontrak menjual dan membeli dilakukan serentak. Syarat fasid tersebut menyebabkan wujud unsur berhimpun dua safqah dalam satu safqah yang dilarang oleh Rasulullah S.A.W. Mengikut sesetengah fuqaha', syarat fasid di dalam kontrak boleh merosakkan kontrak iaitu membatalkan kontrak.

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- Al-Quran.
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³ Memberi kebebasan penuh untuk melakukan kontrak, tidak terhad kepada akad tertentu (yang dinyatakan oleh nas & ijma') sahaja. Hujah golongan ini ialah hukum sesuatu akad pada dasarnya adalah harus dan berkuatkuasa selagi tidak ada nas lain yang mengharamkan atau membatalkannya.

⁴ Membataskan kehendak dalam melakukan kontrak, di mana kontrak atau syarat (kontrak) hanya boleh dibuat mengikut apa yang dinaskan syarak. Jika tidak berasaskan nas atau ijma' yang secara jelas mengharuskannya, maka akad batal dan tidak sah. Ini bermakna kehendak kontrak terbatas kepada hal-hal yang ada nas atau ijma' sahaja.

KONSEP HIBAH DAN PENDEKATAN KONTEMPORARI DALAM KRONOLOGI PENGAGIHAN HARTA

Oleh: _____

Hisham Sabri¹



PERKATAAN *hibah* berasal daripada bahasa Arab yang membawa maksud *pemberian*. Apabila seseorang memberikan harta miliknya kepada orang lain maka bererti si pemberi telah menghibahkan miliknya itu². Hibah juga membawa maksud menyerahkan sesuatu barang kepada orang lain tanpa ada gantinya dan tanpa ada sebarang sebab. Pensyariatan kontrak hibah diterangkan secara tidak langsung dalam al-Quran dengan menggalakkan manusia melakukan perkara kebaikan³ seperti firmanNya:

وَتَعَاوَنُوا عَلَى الْبِرِّ وَالتَّقْوَىٰ

Maksudnya, "Dan tolong menolonglah kamu dalam (mengerjakan) kebaikan dan taqwa".

(Surah al-Maidah: 2)

Dalil ini disokong Nabi Muhamad s.a.w juga bersabda:

لَهَا صَدَقَةٌ وَلَنَا هَدِيَّةٌ

Bermaksud, "Untukku hadiah dan untuknya sedekah"⁴.

(Hadis riwayat Imam Muslim)

Pensyariatan hibah telah dijelaskan di dalam ayat al-quran secara tidak langsung dengan menyebut perkataan "tolong-menolong". Dalam konteks bantuan kepada orang lain juga boleh terjalin dengan pemberian hibah. Manakala dalam hadis di atas pula, perkataan hadiah di sini juga

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² Shamsudin Muhammad al-Khatib al-Syarbiniy bi Tahqiq Syekh Ali Muhammad A'wwidh. 1994. *Mughni al-Muhtaj Ila Makrifah Ma'ani al-faz al-Minhaj*. Dar al-Kutub al-Ilmiah, Beirut. Jilid. 3. m/s: 559.

³ Muhammad Ali al-Sabuniy. 1976. *Sofwah al-Tafasir*. Dar al-Fikr, Beirut. m/s: 326.

⁴ Imam Abi Hussin Muslim bin al-Hajjaj. t.t. *Sahih Muslim Bi Sharah al-nawawi*. Bab 52, Kitab al-Zakat. Juzuk-2. Maktabah Dahlan: Indonesia. m/s: 756.

Jika ditinjau atmosfera hibah di Malaysia, kita dapati bahawa pemberian harta (hibah harta) di kalangan umat Islam belum mencapai tahap yang langsung. Para dermawan menggunakan platform undang-undang sivil untuk melakukan transaksi perpindahan milik kepada pihak ketiga bagi melaksanakan kontrak hibah penubuhan *Dar al-Hibah* sebagai sebuah institusi kewangan Islam yang menjalankan operasi berkaitan hibah amat bersesuaian.

Dengan penubuhan institusi ini, masalah-masalah berkaitan pemberian harta akan dapat diatasi.

membawa pengertian kontrak hibah dan sememangnya boleh diguna pakai dalam transaksi muamalat semasa.

Jika ditinjau dari aspek konsep hibah, semua barang yang boleh dijualbeli boleh dihibahkan kepada orang lain. Sekiranya barang berkenaan tidak diiktiraf oleh syarak sebagai barang dagangan, maka kontrak hibah tidak mungkin berlaku kerana tiada sebarang manfaat yang diperolehi oleh pihak penerima contohnya, seperti barang-barang yang haram, najis, atau barangan curi. Hibah tidak mempunyai persamaan dengan kontrak jualbeli dan sewaaan dari sudut kerosakan barangan. Oleh sebab itu, ganti rugi tidak berlaku dalam transaksi hibah bagi barang yang dihibahkan.⁵

Selain itu, apabila dikaitkan dengan sesuatu perbuatan, hukum hibah termasuk salah satu bentuk perpindahan hak milik. Pihak penghibah dengan sukarela memberikan hak miliknya kepada pihak penerima hibah tanpa dikenakan sebarang syarat. Oleh itu, hibah sangat berbeza dengan

⁵ H. Abdul Fatah Idris, H. Abu Fahmi Ahmadi, 1994, *Fiqh Islam Lengkap*, Jakarta: Pt. Rineka Cipta. m/s 174.

pinjaman dimana barang pinjaman mesti dipulangkan kepada pemiliknya semula. Dengan terjadinya akad hibah maka pihak penerima dilihat telah mempunyai hak sepenuhnya terhadap harta itu sebagai hak miliknya sendiri. Urusan Hibah juga mestilah dilakukan oleh penghibah kepada penerima hibah semasa kedua-dua pihak masih hidup.

Dari aspek hukum kontrak hibah pula, ia adalah satu bentuk kontrak yang disunatkan⁶. Ganjaran pahala akan diperolehi oleh sesiapa yang melaksanakannya dengan hati yang ikhlas. Namun, jika ia dilakukan dalam bentuk paksaan dan bukan menjadi pemilikan mutlak, maka kontrak berkenaan tidak lagi disebut sebagai hibah⁷. Hikmah pensyariatannya adalah untuk mengikis sifat bakhil di kalangan umat Islam disamping mendidik semangat *ukhuwwah* khususnya perkara yang melibatkan harta. Selain daripada itu, ia juga berupaya mengurangkan jurang perbezaan antara golongan kaya dan miskin dari kalangan umat Islam.

Seterusnya, jika ditinjau atmosfera hibah di Malaysia, kita akan dapati bahawa pemberian harta (hibah harta) di kalangan umat Islam belum mencapai tahap yang langsung. Para dermawan menggunakan platform undang-undang sivil untuk melakukan transaksi perpindahan milik kepada pihak ketiga bagi melaksanakan kontrak hibah. Sehubungan itu, penubuhan Dar al-Hibah sebagai sebuah institusi kewangan Islam yang menjalankan operasi berkaitan hibah amat bersesuaian pada arus perdana sekarang. Ini disebabkan, dengan penubuhan institusi ini, masalah-masalah berkaitan pemberian harta akan dapat diatasi khususnya yang melibatkan stratifikasi sosial.

Dalam konsep hibah yang dijalankan oleh Dar al-Hibah pada masa sekarang, harta seseorang itu dapat dilindungi daripada tuntutan hutang dan tindakan muflis. Selain itu, segala urusan dapat dijalankan dengan lebih mudah dan cepat kerana harta melalui hibah ini dijalankan semasa pemilik harta masih hidup. Ia berbeza jika dibandingkan dengan hukum faraid. Pembahagian harta mengikut hukum faraid dijalankan selepas kematian pemilik harta. Ia dikatakan mudah dan cepat kerana tidak perlu menjalani proses undang-

⁶ Rachmat Syafe'i. 2001. *Fiqh Muamalah*. CV Pustaka Setia, Bandung, Jakarta. m/s. 242.

⁷ Abdul Karim Zaidan. 1989. *al-Fiqh al-Islami Wa Adillatuhu*. Dar al-Fikr, Damsyik. Jilid. 5. m/s. 14.

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Lecturer

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1. Pn. Zurina Shafii (UK)
2. Pn. Norailis Ab. Wahab (UK)
3. Pn. Sumaiyah Abd. Aziz (Australia)
4. Cik Nurul Aini Muhamed (Australia)
5. Cik Nathasa Mazna Ramli (Malaysia)
6. Cik Amilia Syuhada Abdul Majid (Malaysia)

undang harta pusaka seperti yang dijalankan mengikut hukum faraid.

Kesimpulannya, penubuhan institusi ini adalah satu orientasi pemikiran yang berlaku dalam kehidupan masyarakat Malaysia. Namun begitu, landasan syarak melalui prototaip yang dirangka oleh ulamak muktabar perlu diikuti dan dijadikan panduan bersama. Selain itu, institusi ini juga mampu membantu para dermawan sebagai pengantara dalam melaksanakan kontrak hibah supaya ia menjadi lebih sistematik. Secara dasarnya, penubuhan Dar al-Hibah ini telah diluluskan oleh **Majlis Fatwa Wilayah Persekutuan** 14 Februari 2001. Selepas diluluskan dan mendapat pengiktirafan, kontrak hibah yang dijalankan oleh Dar al-Hibah dapat diterima pakai dalam masyarakat Islam pada masa sekarang. Penubuhan Dar al-Hibah diharapkan akan menjadi ikon penting khususnya di Malaysia dalam meneruskan kelangsungan kronologi pembangunan umat Islam seluruh dunia.

Dictionary of Islamic Economics and Finance Terms

Bai' urbun: It is deposit given by the buyer to the seller in a buying and selling contract. If the sale proceeds, the deposit will be part of the price of the goods. Otherwise, it will be considered as *hibah* (gift) from the buyer to the seller.

Bai' inah: it refers to trading whereby the seller sells his assets to buyer at an agreed selling price to be paid by the buyer at a later date. After that, the buyer immediately sell back the assets to the seller at a cash price, lower than the agreed selling price.

Bai' muzayadah: it is the offering of goods for sale in a market by a seller followed by demands from buyers who compete to offer the highest price.

Gharim: A person who is in debt and cannot pay the debt from his wealth.

Ijara with diminishing Musharaka: the principle of *Ijara* with diminishing *Musharaka* can be used for home-buying services. Diminishing *Musharaka* means that we reduce our equity in an asset with any additional capital payment you make, over and above your rental payments. Your ownership in the asset increases and ours decreases by a similar amount each time you make an additional capital payment. Ultimately, we transfer ownership of the asset entirely over to you.

Iktinaz: refers to hoarding wealth without fulfilling one's legal obligations on it.

Joalah: an agreement that involves hiring optional services. For instance, if someone offers a prize or compensation to any person who performs a given service, such as a father offering a prize for finding his missing son or indicating where he is. In this contract, the person who does the designated job becomes entitled to receive the promised compensation. In *Joalah*, anyone can do the job even though he does not have the means to do it. But once he does it, he is entitled to the posted compensation.

Kafalah bi al-thaman: surety for paying the price or sum if unpaid by the person originally liable.

Maysir (gambling): It is playing games of chance with the intention of making an easy, unearned profit; a form of *Gharar*.

Muhaqalah: refers to the sale of wheat while it is still growing. It also refers to the sale of unharvested crop. This kind of sale contract is not allowed in Islam.

Mukhabarah: It is a share-cropping contract whereby the land owner reserves the crop of a certain area for himself. The share-cropping contract of this nature is not permitted in Islam.

Musyarakah Mutanaqisha: It is another term for *musyarakah muntahiyah bi tamlik*. It's a form of partnership contract whereby the financier allows his partner to buy assets in one payment or in installments based on terms agreed by both parties.

Nisab: refers to the minimum amount of property liable to *Zakat* payment.

Riba al-Fadl: refers to interest in barter. This indicates the excess charged in the exchange of commodities of the same kind (for instance, wheat for wheat, barley for barley, etc.). Barter transactions were common during Prophet Muhammad (peace and blessings be upon him)'s time, and he did not restrict the application of *Riba* only to the credit transaction of cash, but to all types of barter.

Riba Nasia: refers to interest in debt. *Nasia* means a delay given to the debtor. You will find this kind of *Riba* in all credit transactions in which a loan is advanced to a person on a payment of interest over and above the principal for the time of the debt.

Sanadat Al-Moqarada are participation bonds issued according to *modaraba* principles. The bonds relate to a specific venture, the agreement for which will set out terms under which each bondholder undertakes to pay a certain amount of money and, in return, becomes entitled to a pro rata share of the profits. In addition to the pro rata share of profits, it is common for the bondholder to receive limited payments to redeem the bonds. The precise nature of the venture and terms of the bond issue must be clearly agreed on the subscription date.

Student Window

Visit to Bank Negara

On 4th April 2005, 144 of second year students from Faculty Economics and Muamalat have visited Bank Negara in order to give them an exposure of the environment of this central bank for Malaysia. It was established on 26 January 1959 under the Central Bank of Malaysia ordinance, 1958 and located at Jalan Dato' Onn, Kuala Lumpur.

In the early agenda, we were briefed about Bank Negara consists of its objectives and functions, mission statements and etc. Concisely, the objectives are as follows:

- To issue currency and keep reserves safeguarding the value of the currency;
- To act as a banker and financial adviser to the Government;
- To promote monetary stability and a sound financial structure; and
- To influence the credit situation to the advantage of the country.

Besides, Bank Negara is responsible to carry out in promoting the economic growth, a high level of employment, maintaining price stability and a reasonable balance in the country's international payments position, eliminating poverty and finally restructuring society.

Whereas, its Mission statement said that as the Central Bank, Bank Negara is committed to excellence in promoting monetary and financial system stability and fostering a sound and progressive financial sector, to achieve sustained economic growth for the benefit of the nation.

This will be achieved through:

- promoting a work culture which emphasises the highest standards of professionalism and integrity, prudence, teamwork and innovation;
- developing and maintaining a committed workforce which is highly competent and proactive, sensitive to the changing needs of the industry;
- adopting a collaborative approach in everything we do;
- promoting the effective use of technology and good work practices to enhance productivity, efficiency and quality;
- adopting policies and practices to enhance the competitiveness of local financial institutions to face international competition; and
- having the necessary financial resources and financial instruments to effectively manage monetary stability.

After that we were brought to visit Museum "Mata Wang", Bank Negara. The Money Museum has an interesting display of old Malaysian



INTERNATIONAL EDUCATIONAL VISIT TO BRUNEI
Twenty four (24) second year students of the faculty went to visit Brunei Darussalam from 27th June to 1st July 2005.

currency, memorial and rare coins and also foreign currencies. The money museum was opened in 1989. Its Numismatic Collection considering of Early Money, Malay Sultanate Coins, Colonial Money, Private Tokens and Currencies, Post-Colonial Money, Malaysian Currency Notes and Coins, Malaysian Commemorative Issues, and finally World Currencies and Commemorative issues. Each collection has its own history and story.

In addition, we learned the History of money in Malaysia for instance history of Early Money in the Country, Borneo as well as Malay States. Before going back to the university we were served with the light breakfast.

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